LAWS AND RESOLUTIONS
OF THE
STATE OF MONTANA

ENACTED BY THE

Fifty-Second Legislature
In Regular Session

and the

Fifty-First Legislature
In Special Session

Held at Helena, the Seat of Government
January 7, 1991 to April 29, 1991
May 1990

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OFFICERS AND MEMBERS OF THE MONTANA SENATE
1991

50 Members

29 Democrats

21 Republicans

OFFICERS

President	Joseph P. Mazurek
President Pro Tempore	J.D. Lynch
Majority Leader	Fred Van Valkenburg
Majority Whip	Paul Svrcek
Minority Leader	Bruce Crippen
Minority Whip	Thomas Keating
Secretary of the Senate	Dave Hunter

MEMBERS

Name	Residence of Mailing Address	Dist No	County of Residence	Party
Aklestad, Gary C.	P.O. Box 32, Galata, 59444	6	Toole	Republican
Anderson, Jr., John H.	P.O. Box 86, Alder, 59710	37	Madison	Republican
Beck, Thomas A. (Tom)	651 Greenhouse Rd, Deer Lodge, 59722	24	Powell	Republican
Bengtson, Esther G.	8124 Clark Rd, Shepherd, 59079	49	Yellowstone	Democratic
Bianchi, Don	490 Secretariat Circle, Belgrade, 59714	39	Gallatin	Democratic
Blaylock, Chet	502 Third Ave, Laurel, 59044	43	Yellowstone	Democratic
Brown, Robert (Bob)	333 Cougar Trl, Whitefish, 59937	2	Flathead	Republican
Bruski, Betty	Box 234, Wibaux, 59353	12	Wibaux	Democratic
Burnett, James H. (Jim)	P.O. Box 4460, Luther, 59051	42	Carbon	Republican
Crippen, Bruce D.	P.O. Box 80747, Billings, 59108-0747	45	Yellowstone	Republican
Devlin, Gerry	P.O. Box 186, Terry, 59349	13	Prairie	Republican
Doherty, Steve	1531 3rd Ave SW, Great Falls, 59404	20	Cascade	Democratic
Eck, Dorothy	10 W Garfield, Bozeman, 59715	40	Gallatin	Democratic
Farrell, William E. (Bill)	Box 8305, Missoula, 59807	31	Missoula	Republican
Franklin, Eve	4021 4th Ave S, Great Falls, 59405	17	Cascade	Democratic
Fritz, Harry	675 E Central Ave, Missoula, 59801	28	Missoula	Democratic
Gage, Delwyn	P.O. Box 787, Cut Bank, 59427	5	Glacier	Republican
Grosfield, Lorents	HC 87, Box 2145, Big Timber, 59011	41	Sweet Grass	Republican
Hager, Thomas O. (Tom)	150 Norris Ct, Billings, 59105	48	Yellowstone	Republican
Halligan, Mike	P.O. Box 9121, Missoula, 59807	29	Missoula	Democratic
Hammond, H. W. (Swede)	P.O. Box 1366, Malta, 59538	9	Phillips	Republican
Harding, Ethel M.	P.O. Box 251, Polson, 59860	25	Lake	Republican
Harp, John G.	53 Willow Dr, Kalispell, 59901	4	Flathead	Republican
Hockett, Bob	Shambo Rte Box 306, Havre, 59501	7	Hill	Democratic
Jacobson, Judy H.	330 Blacktail Canyon Rd, Butte, 59701	36	Silver Bow	Democratic
Jergeson, Greg	RR 71 Box 8, Chinook, 59523	8	Blaine	Democratic
Keating, Thomas F.	P.O. Box 20522, Billings, 59104	44	Yellowstone	Republican
Kennedy, Jr., John (Ed)	5567 Montana Hwy 35, Kalispell, 59901	3	Flathead	Democratic
Koehnke, Francis	P.O. Box 692, Townsend, 59644	16	Broadwater	Democratic
Lynch, John (J. D.)	527 W Mercury, Butte, 59701	34	Silver Bow	Democratic
Manning, Richard Edward	810 Seventh Ave N, Great Falls, 59401	18	Cascade	Democratic
Mazurek, Joseph P.	516 Hayes, Helena, 59601	23	Lewis & Clark	Democratic
Nathe, Dennis G.	P.O. Box 4, Redstone, 59257	10	Sheridan	Republican
Noble, Jerry	712 Central W, Great Falls, 59404	21	Cascade	Republican
Pinsoneault, Richard J.	P.O. Box 250, St. Ignatius, 59865	27	Lake	Democratic
Pipinich, Bob	4430 Hwy 200 Marshall Grade, Missoula, 59802	33	Missoula	Democratic
Rea, Jack (Doc)	2255 Madison Rd, Three Forks, 59752	38	Gallatin	Democratic
Rye, David	2211 Oak St, Billings, 59102	47	Yellowstone	Republican
Stimatz, Lawrence G.	P.O. Box 3762, Butte, 59702	35	Silver Bow	Democratic
Svrcek, Paul S.	P.O. Box 1392, Thompson Falls, 59873	26	Sanders	Democratic
Swift, Bernie A.	236 Rose Ln, Hamilton, 59840	32	Ravalli	Republican
Thayer, Gene	1200 32 St S Apt 2, Great Falls, 59405	19	Cascade	Republican

Towe, Thomas E. (Tom)	P.O. Box 30457, Billings, 59107	46	Yellowstone	Democratic
Tveit, Larry J.	RR 1 Box 1475, Fairview, 59221	11	Richland	Republican
Van Valkenburg, Fred R.	219 University, Missoula, 59801	30	Missoula	Democratic
Vaughn, Eleanor L.	251 Mahoney Rd, Libby, 59923	1	Lincoln	Democratic
Waterman, Mignon	530 Hazelgreen Place, Helena, 59601	22	Lewis & Clark	Democratic
Weeding, Cecil F.	P.O. Box 78, Jordan, 59337	14	Garfield	Democratic
Williams, Bob	P.O. Box 390, Hobson, 59452	15	Judith Basin	Democratic
Yellowtail, Bill	P.O. Box 308, Wyola, 59089	50	Big Horn	Democratic

OFFICERS AND MEMBERS
OF THE MONTANA
HOUSE OF REPRESENTATIVES
1991

100 Members

61 Democrats

39 Republicans

OFFICERS

Speaker	Hal Harper
Speaker Pro Tempore	Dave Brown
Majority Leader	Jerry Driscoll
Majority Whip	Paula Darko
Minority Leader	John Mercer
Minority Whip	Larry Grinde
Chief Clerk of the House	Joyce Andrus

MEMBERS

Name	Residence of Mailing Address	Dist No	County of Residence	Party
Bachini, Bob	409 19th St, Havre, 59501	14	Hill	Democratic
Bardanouve, Francis	P.O. Box 367, Harlem, 59526	16	Hill	Democratic
Barnett, Joe	204 N Davis, Belgrade, 59714	76	Gallatin	Republican
Barnhart, Beverly	514 S 6th, Bozeman, 59715	80	Gallatin	Democratic
Beck, Gary	93 East Side Rd, Deer Lodge, 59722	48	Lewis & Clark	Democratic
Becker, Arlene	1440 Lewis Ave, Billings, 59102	91	Yellowstone	Democratic
Benedict, Steve	P.O. Box 668, Hamilton, 59840	64	Ravalli	Republican
Bergsagel, Ernest	HC 84 Box 8045, Malta, 59538	17	Valley	Republican
Boharski, William E.	P.O. Box 2965, Kalispell, 59901	4	Flathead	Republican
Bradley, Dorothy	919 W Lamme, Bozeman, 59715	79	Gallatin	Democratic
Brooke, Vivian M.	1610 Madeline Ave, Missoula, 59801	56	Missoula	Democratic
Brown, Dave	3040 Ottawa, Butte, 59701	72	Silver Bow	Democratic
Brown, Jan	906 Madison Ave, Helena, 59601	46	Lewis & Clark	Democratic
Clark, Robert C.	P.O. Box 262, Ryegate, 59074	31	Wheatland	Republican
Cobb, John	P.O. Box 388, Augusta, 59410	42	Lewis & Clark	Republican
Cocchiarella, Vicki	535 Livingston Ave, Missoula, 59801	59	Missoula	Democratic
Cody, Dorothy A.	P.O. Box 973, Wolf Point, 59201	20	Roosevelt	Democratic
Cohen, Ben	P.O. Box 1657, Whitefish, 59937	3	Flathead	Democratic
Connelly, Mary Ellen	3315 Whitefish Stage, Kalispell, 59901	8	Flathead	Democratic
Cromley, Brent R.	235 Park Hill Dr, Billings, 59101	94	Yellowstone	Democratic
Daily, Fred (Fritz)	1057 W Steel, Butte, 59701	69	Silver Bow	Democratic
Darko, Paula A.	P.O. Box 490, Libby, 59923	2	Lincoln	Democratic
Davis, Ervin	P.O. Box 63, Charlo, 59824	53	Lake	Democratic
DeBruycker, Jane	P.O. Box 7700, Dutton, 59433	11	Teton	Democratic
DeBruycker, Roger	SR Box 8, Floweree, 59440	13	Choteau	Republican
Dolezal, Edward J.	3236 Fifth Ave S, Great Falls, 59405	34	Cascade	Democratic
Dowell, Tim	46 West View Dr, Kalispell, 59901	5	Flathead	Democratic
Driscoll, Jerry L.	4344 Stone St, Billings, 59101	92	Yellowstone	Democratic
Elliott, Jim	100 Trout Creek Rd, Trout Creek, 59874	51	Sanders	Democratic
Ellis, Jr., Alvin A.	Rt 1, P.O. Box 4840, Red Lodge, 59068	84	Carbon	Republican
Ellison, Orval S.	HC 59 Box 106, McLeod, 59052	81	Park	Republican
Fagg, Russell	221 Ave E, Billings, 59101	89	Yellowstone	Republican
Feland, Gary	215 11th Ave N, Shelby, 59474	12	Toole	Republican
Forrester, Gary	2527 Gardiner St R 8, Billings, 59101	98	Yellowstone	Democratic
Foster, Mike	P.O. Box 126, Townsend, 59644	32	Broadwater	Republican
Galvin, Patrick G.	105 29th Ave NW, Great Falls, 59404	40	Cascade	Democratic
Gervais, Floyd (Bob)	P.O. Box 1810, Browning, 59417	9	Glacier	Democratic
Gilbert, Bob	P.O. Drawer 1228, Sidney, 59270	22	Richland	Republican
Gould, R. Budd	2205 S Fifth W, Missoula, 59801	61	Missoula	Republican
Grady, Edward J. (Ed)	Star Route, Canyon Creek, 59633	47	Lewis & Clark	Republican
Grinde, Larry Hal	RR 3, Lewistown, 59457	30	Fergus	Republican
Hansen, Stella Jean	841 Woodford St, Missoula, 59801	57	Missoula	Democratic
Hanson, H. S. (Sonny)	2237 Green Terrace Dr, Billings, 59102	87	Yellowstone	Republican

Hanson, Marian W.	P.O. Box 237, Ashland, 59003	100	Powder River	Republican
Harper, Hal	9 Comstock Rd, Helena, 59601	44	Lewis & Clark	Democratic
Harrington, Dan W.	1201 N Excelsior, Butte, 59701	68	Silver Bow	Democratic
Hayne, Harriet	P.O. Box 285, Dupuyer, 59432	10	Pondera	Republican
Hoffman, David	2720 Hwy 287, Sheridan, 59749	74	Madison	Republican
Johnson, John	124 Gresham, Glendive, 59330	23	Dawson	Democratic
Johnson, Royal C.	2915 Illinois, Billings, 59102	88	Yellowstone	Republican
Kadas, Mike	922 Taylor, Missoula, 59802	55	Missoula	Democratic
Kasten, Betty Lou	HC 77 Box A-14, Brockway, 59214	28	McCone	Republican
Keller, Vernon V.	HC 55 Box 355, Fishtail, 59028	83	Stillwater	Republican
Kilpatrick, Thomas E. (Tom)	814 First Ave Box 546, Laurel, 59044	85	Yellowstone	Democratic
Kimberley, Bervyl C. (Berv)	2511 Wyoming Ave, Billings, 59102	90	Yellowstone	Democratic
Knox, Dick	HCR Box 14, Winifred, 59489	29	Fergus	Republican
Larson, Don	P.O. Box 285, Seeley Lake, 59868	65	Missoula	Democratic
Lee, Thomas N.	P.O. Box 261, Bigfork, 59911	49	Lake	Republican
Madison, James	Jefferson City, 59638	75	Jefferson	Democratic
McCaffree, Ed	P.O. Box 1354, Forsyth, 59327	27	Rosebud	Democratic
McCarthy, Bea	1906 Ogden, Anaconda, 59711	66	Deer Lodge	Democratic
McCulloch, Scott T.	611 Tabriz Dr, Billings, 59105	96	Yellowstone	Democratic
Measure, Bruce	P.O. Box 918, Kalispell, 59903	6	Flathead	Democratic
Menahan, William T. (Red)	1304 W Fifth, Anaconda, 59711	67	Deer Lodge	Democratic
Mercer, John A.	P.O. Box 450, Polson, 59860	50	Lake	Republican
Messmore, Charlotte K.	14 20th St S, Great Falls, 59401	38	Cascade	Republican
Nelson, Linda J.	HC 51 Box 30, Medicine Lake, 59247	19	Sheridan	Democratic
Nelson, Thomas E.	1116 Moon Valley Rd, Billings, 59105	95	Yellowstone	Republican
Nisbet, Jerry	1401 Park Garden Rd, Great Falls, 59401	35	Cascade	Democratic
O'Keefe, Mark	531 Power St, Helena, 59601	45	Lewis & Clark	Democratic
Pavlovich, Robert J. (Bob)	1375 Harrison Ave, Butte, 59701	70	Silver Bow	Democratic
Peck, Ray	729 Fourth Ave, Havre, 59501	15	Hill	Democratic
Peterson, Mary Lou	234 Glen Lake Dr, Eureka, 59917	1	Lincoln	Republican
Phillips, John E.	1200 32nd St S #61, Great Falls, 59405	33	Cascade	Republican
Quilici, Joe	3040 Kossuth, Butte, 59701	71	Silver Bow	Democratic
Raney, Bob	212 S Sixth St, Livingston, 59047	82	Park	Democratic
Ream, Robert R. (Bob)	5950 Wildcat Rd, Missoula, 59802	54	Misoula	Democratic
Rice, Jim	1525 Williamsburg Rd, Helena, 59601	43	Lewis & Clark	Republican
Rice, Sheila	1501 4th Ave N, Great Falls, 59401	36	Cascade	Democratic
Russell, Angela	P.O. Box 333, Lodge Grass, 59050	99	Big Horn	Democratic
Schye, Ted	N Star Route, Glasgow, 59230	18	Valley	Democratic
Scott, John F.	P.O. Box 58, Ballantine, 59006	97	Yellowstone	Democratic
Simpkins, Richard D.	1221 Park Garden Rd, Great Falls, 59404	39	Cascade	Republican
Southworth, Jim	3843 Sandpiper Lane, Billings, 59102	86	Yellowstone	Democratic
Spring, Wilbur	2383 Penwell Bridge Rd, Belgrade, 59714	77	Gallatin	Republican
Squires, Carolyn M.	2111 S Tenth St W, Missoula, 59801	58	Missoula	Democratic
Stang, Barry (Spook)	142 Montana Hwy 135 S, St. Regis, 59866	52	Mineral	Democratic
Steppler, Don	P.O. Box 431, Brockton, 59213	21	Richland	Democratic
Stickney, Jessica	2206 Main St, Miles City, 59301	26	Custer	Democratic
Strizich, William S. (Bill)	736 27th Ave NE, Great Falls, 59404	41	Cascade	Democratic
Swysgood, Charles	506 S Atlantic, Dillon, 59725	73	Beaverhead	Republican
Thoft, Bob	1520 S Burnt Fork Rd, Stevensville, 59870	63	Ravalli	Republican
Thomas, Fred	3566 Holy Lane, Stevensville, 59870	62	Ravalli	Republican
Toole, Howard	1625 McDonald, Missoula, 59801	60	Missoula	Democratic
Tunby, Rolph	Box 56, Plevna, 59344	24	Fallon	Republican
Wallin, Norm	2422 Springcreek Dr, Bozeman, 59715	78	Gallatin	Republican
Wanzenried, David E.	435 3rd Ave NE, Kalispell, 59901	7	Flathead	Democratic
Whalen, Timothy J.	101 Avenue C, Billings, 59101	93	Yellowstone	Democratic
Wyatt, Diana E.	300 31st St S, Great Falls, 59405	37	Cascade	Democratic
Zook, Tom	c/o Broadus Stage, Miles City, 59301	25	Custer	Republican

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21 *(Senate Bill No. 36; Rea)* AN ACT REVISING LICENSING PROCEDURES REGARDING VETERINARIANS; CLARIFYING THE EXEMPTION OF PERSONS PERFORMING EMBRYO TRANSFER TECHNOLOGY FROM VETERINARY PRACTICE LAW; REMOVING THE REQUIREMENT THAT THE BOARD OF VETERINARY MEDICINE SET LICENSING AND EXAMINATION FEES EACH YEAR; REMOVING THE REQUIREMENT THAT APPLICANTS FOR LICENSURE AS VETERINARIANS OBTAIN A GRADE OF 70 PERCENT IN ALL SUBJECTS EXAMINED; AMENDING SECTIONS 37-18-104, 37-18-302, AND 37-18-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *92*

22 *(House Bill No. 17; Ream)* AN ACT ALLOWING THE FISH AND GAME COMMISSION TO ADOPT RULES REGARDING THE USE AND TYPE OF ARCHERY EQUIPMENT THAT MAY BE EMPLOYED FOR HUNTING AND FISHING PURPOSES; RESTRICTING THE USE OF PROHIBITED ARCHERY EQUIPMENT; AND AMENDING SECTION 87-1-301, MCA. *95*

23 *(House Bill No. 79; L. Nelson)* AN ACT REVISING ELECTION MATERIALS DISCLOSURE REQUIREMENTS TO DELETE THE NAME AND ADDRESS OF THE COMMERCIAL PRINTER FROM THE ELECTION MATERIALS IT PRINTS; AMENDING SECTION 13-35-225, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *97*

24 *(House Bill No. 84; Stang)* AN ACT TO AUTHORIZE THE DEPARTMENT OF HIGHWAYS TO ENTER INTO AGREEMENTS WITH OTHER STATES FOR THE ISSUANCE OF OVERWEIGHT AND OVERSIZE PERMITS.......... *98*

25 *(House Bill No. 243; J. Brown)* AN ACT ABOLISHING THE STATE EMPLOYEE SICK LEAVE ADVISORY COUNCIL AND TRANSFERRING ITS FUNCTION TO THE STATE EMPLOYEE GROUP BENEFITS ADVISORY COUNCIL; AMENDING SECTION 2-18-618, MCA; AND REPEALING SECTION 2-15-216, MCA.. *98*

26 *(Senate Bill No. 6; Mazurek)* AN ACT TO REVISE THE UNIFORM STATUTORY RULE AGAINST PERPETUITIES BY PROVIDING A UNIFORM METHOD FOR MEASURING A PERIOD OF TIME CONTAINED IN INSTRU-

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MENTS GOVERNING PROPERTY ARRANGEMENTS; AND AMENDING SECTION 70-1-802, MCA. *99*

27 *(House Bill No. 48; Grady)* AN ACT PROVIDING SPECIFICATIONS FOR COMMERCIAL TOW TRUCK WARNING SIGNS AND FIRE EXTINGUISHERS; AMENDING SECTION 61-9-416, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *101*

28 *(House Bill No. 89; Grady)* AN ACT TO CHANGE THE NAME OF THE FISH AND GAME COMMISSION TO THE FISH, WILDLIFE, AND PARKS COMMISSION; AND AMENDING SECTION 2-15-3402, MCA. *103*

29 *(House Bill No. 126; Simpkins)* AN ACT TO REPEAL SECTION 21, CHAPTER 473, LAWS OF 1979, WHICH PROVIDES THE PERIOD OF EFFECTIVENESS FOR THE ENERGY SUPPLY EMERGENCY POWERS OF THE GOVERNOR; AND PROVIDING A RETROACTIVE APPLICABILITY DATE. *104*

30 *(House Bill No. 181; Larson)* AN ACT TO REQUIRE THE SELLER OF A DWELLING TO GIVE THE BUYER WRITTEN NOTIFICATION OF WHETHER OR NOT THE DWELLING IS EQUIPPED WITH SMOKE DETECTION DEVICES. *104*

31 *(House Bill No. 98; Dolezal)* AN ACT AUTHORIZING SPECIAL LICENSE PLATES FOR SURVIVORS OF THE PEARL HARBOR ATTACK; PROVIDING FOR RETENTION OF SPECIAL LICENSE PLATES; AND AMENDING SECTION 61-3-446, MCA. *105*

32 *(Senate Bill No. 11; Thayer)* AN ACT PROVIDING FOR RECIPROCAL BID PREFERENCE ON PUBLIC CONTRACTS FOR CONSTRUCTION, REPAIR, OR PUBLIC WORKS; AMENDING SECTION 18-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *106*

33 *(Senate Bill No. 70; Gage)* AN ACT CLARIFYING THAT THE OFFICER OR EMPLOYEE OF A CORPORATION RESPONSIBLE FOR COLLECTING, TRUTHFULLY ACCOUNTING FOR, AND PAYING WITHHOLDING TAX WHO FAILS TO COLLECT, TRUTHFULLY ACCOUNT FOR, AND PAY THE TAX IS LIABLE TO THE STATE FOR THE TAX, INCLUDING PENALTY AND INTEREST; AMENDING SECTION 15-30-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *108*

34 *(Senate Bill No. 41; B. Brown)* AN ACT TRANSFERRING THE COLLECTION OF THE ASSESSMENT ON PASSENGER TRAMWAYS FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF COMMERCE; AMENDING SECTION 23-2-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. *109*

35 *(Senate Bill No. 54; Nathe)* AN ACT TO PERMIT A LICENSED OCCUPATIONAL THERAPIST TO PROVIDE TREATMENT THAT INCLUDES THE USE OF SUPERFICIAL HEAT AND COLD AND OTHER LIMITED TREATMENT USED IN PREPARATION FOR OR IN CONJUNCTION WITH PURPOSEFUL ACTIVITY; AMENDING SECTION 37-24-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. *109*

36 *(Senate Bill No. 68; Kennedy)* AN ACT UPDATING THE DANGEROUS DRUG SCHEDULES TO CONFORM TO THE CONTROLLED SUBSTANCES CONTAINED IN FEDERAL REGULATIONS; AND AMENDING SECTIONS 50-32-222, 50-32-224, 50-32-226, 50-32-229, AND 50-32-232, MCA. *111*

37 *(Senate Bill No. 81; Grosfield)* AN ACT CLARIFYING THE DEPARTMENT OF REVENUE'S AUTHORITY TO ISSUE REVISED ASSESSMENTS FOR CENTRALLY ASSESSED PROPERTY TO THE PERSON OR ENTITY THAT

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OWNED THE PROPERTY AT THE TIME IT ESCAPED ASSESSMENT, WAS ERRONEOUSLY ASSESSED, OR WAS OMITTED FROM TAXATION; AMENDING SECTION 15-8-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *124*

38 *(Senate Bill No. 150; Hockett)* AN ACT TO ELIMINATE THE CARRYING CAPACITY ADJUSTMENT TO THE MINIMUM RENTAL RATE FOR STATE GRAZING LEASES; AND AMENDING SECTION 77-6-507, MCA. *126*

39 *(Senate Bill No. 155; Jergeson)* AN ACT REPEALING THE ANNUAL AUDIT REQUIREMENT FOR THE AGRICULTURAL LOAN AUTHORITY; AND REPEALING SECTION 80-12-401, MCA. *127*

40 *(Senate Bill No. 39; Halligan)* AN ACT REMOVING IMPRISONMENT AS A PENALTY FOR MINOR TRAFFIC OFFENSES; AND AMENDING SECTIONS 61-8-104, 61-9-104, 61-9-511, 61-9-515, 61-9-518, AND 61-9-519, MCA. *127*

41 *(Senate Bill No. 83; Jergeson)* AN ACT TO DIRECT THAT ALL INTEREST EARNED ON LICENSE MONEY RECEIVED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE DEPARTMENT; AMENDING SECTION 87-1-601, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. *129*

42 *(Senate Bill No. 140; Waterman)* AN ACT TO INCLUDE ANABOLIC STEROIDS AS A SCHEDULE III DRUG; PROVIDING A MISDEMEANOR PENALTY FOR FIRST OFFENSE POSSESSION OF ANABOLIC STEROIDS; AND AMENDING SECTIONS 45-9-102, 46-18-201, 46-18-231, AND 50-32-226, MCA. *131*

43 *(House Bill No. 207; Barnett)* AN ACT TO ELIMINATE THE DEPOSIT REQUIREMENT FOR THE LESSEE OF A STATE AGRICULTURAL GRAZING LEASE WHO EXERCISES HIS PREFERENCE RIGHT TO MEET A HIGH BID AND REQUESTS A HEARING TO HAVE THE BID RATE LOWERED; AND AMENDING SECTION 77-6-205, MCA. *137*

44 *(House Bill No. 372; Gould)* AN ACT REQUIRING A CITY JOINING THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM TO PAY EXCESS UNFUNDED LIABILITIES; REMOVING THE REQUIREMENT FOR A SEPARATE VALUATION OF UNFUNDED LIABILITIES OF ALL PRIOR PLANS AS OF JULY 1, 1986; AMENDING SECTION 19-13-503, MCA; AND PROVIDING AN EFFECTIVE DATE. *138*

45 *(House Bill No. 427; G. Beck)* AN ACT TO DESIGNATE THE MONTANA LAW ENFORCEMENT OFFICERS' MEMORIAL IN THE OLD MONTANA STATE PRISON IN DEER LODGE, MONTANA, AS THE STATE'S OFFICIAL LAW ENFORCEMENT OFFICERS' MEMORIAL. *139*

46 *(House Bill No. 14; Peck)* AN ACT REVISING THE SECURITIES REGULATION LAWS TO REQUIRE THAT QUANTITIES OF PRECIOUS METALS PURCHASED AND DELIVERED TO A DEPOSITORY INSTITUTION BE PHYSICALLY LOCATED WITHIN THE STATE AT ALL TIMES AFTER DELIVERY; AND AMENDING SECTION 30-10-105, MCA. *139*

47 *(House Bill No. 22; Cody)* AN ACT REVISING THE EXEMPTION STATUTE RELATING TO LICENSURE OF PRIVATE INVESTIGATORS AND PATROL OFFICERS TO CLARIFY THAT PARALEGALS EMPLOYED BY ONE OR MORE LAWYERS, LAW OFFICES, AGENCIES, OR ENTITIES ARE EXEMPT FROM LICENSURE; AMENDING SECTIONS 37-60-101 AND 37-60-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *144*

48 *(House Bill No. 318; Kadas)* AN ACT PROVIDING THAT THE TERM OF APPOINTMENT FOR THE LEGISLATIVE AUDITOR COMMENCES IN EVEN-NUMBERED YEARS; PROVIDING FOR A TRANSITION TERM; AND AMENDING SECTION 5-13-303, MCA. *148*

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49 *(House Bill No. 323; Driscoll)* AN ACT CHANGING THE ELIGIBILITY AND BENEFIT PROVISIONS FOR DISABILITY RETIREMENT FOR NEW MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; PROVIDING A ONE-TIME ELECTION FOR ALL CURRENT MEMBERS TO PARTICIPATE IN THE NEW PROVISIONS, AS REQUIRED BY FEDERAL AMENDMENTS TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967; AMENDING SECTIONS 19-3-1002 AND 19-3-1008, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *148*

50 *(House Bill No. 373; O'Keefe)* AN ACT PROVIDING REFUNDS OF CONTRIBUTIONS AND INTEREST TO MEMBERS WHO ELECT TO TERMINATE THEIR MEMBERSHIP IN THE JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS', AND MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEMS; AMENDING SECTIONS 19-5-403, 19-6-403, 19-7-304, 19-7-705, 19-8-503, AND 19-9-304, MCA; REPEALING SECTION 19-7-305, MCA; AND PROVIDING AN EFFECTIVE DATE. *150*

51 *(Senate Bill No. 161; Weeding)* AN ACT AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO ESTABLISH A VOLUNTARY WASTE PESTICIDE REPORTING SYSTEM; DIRECTING THE DEPARTMENT TO DEVELOP A PROPOSED WASTE PESTICIDE DISPOSAL PROGRAM; AMENDING SECTION 80-8-102, MCA; AND PROVIDING AN EFFECTIVE DATE. *152*

52 *(House Bill No. 280; Thomas)* AN ACT TO DENY TEMPORARY TOTAL DISABILITY BENEFITS TO A WORKER WHO IS RELEASED BY A TREATING PHYSICIAN TO RETURN TO THE SAME, A MODIFIED, OR AN ALTERNATIVE POSITION WITH THE SAME EMPLOYER AT AN EQUIVALENT OR HIGHER WAGE EVEN IF THE WORKER HAS NOT REACHED MAXIMUM HEALING; TO PROVIDE FOR REQUALIFICATION FOR BENEFITS; AMENDING SECTION 39-71-701, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. *158*

53 *(House Bill No. 16; Driscoll)* AN ACT REQUIRING THAT ALL PRINTING, BINDING, AND STATIONERY WORK FOR THE STATE MUST BE PRINTED IN THE STATE OF MONTANA BY THE LOWEST RESPONSIBLE BIDDER; PROVIDING THAT IF THERE IS NO RESPONSIBLE IN-STATE BIDDER, THE WORK MAY BE PERFORMED BY THE LOWEST RESPONSIBLE BIDDER OUTSIDE THE STATE; AND AMENDING SECTION 18-7-107, MCA. *159*

54 *(House Bill No. 119; Ream)* AN ACT ALLOWING THE CREATION OF A SPECIAL IMPROVEMENT DISTRICT TO ACQUIRE PARK LAND; AND AMENDING SECTION 7-12-4102, MCA. *160*

55 *(House Bill No. 27; Foster)* AN ACT TO EXEMPT, IN CERTAIN CIRCUMSTANCES, A SCHOOL DISTRICT FROM THE NEPOTISM LAW IN THE EMPLOYMENT OF A SUBSTITUTE TEACHER; AND AMENDING SECTION 2-2-302, MCA. *162*

56 *(House Bill No. 53; Nisbet)* AN ACT INCREASING THE LICENSE FEES FOR PETROLEUM AND LIQUEFIED PETROLEUM DEALERS; CLARIFYING THE STATUS OF LICENSES UPON CHANGE OF OWNERSHIP OF MEASURING DEVICES; AMENDING SECTION 82-15-105, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. *163*

57 *(House Bill No. 91; Gilbert)* AN ACT PROHIBITING A PERSON WHO RECEIVES A MOOSE, MOUNTAIN GOAT, OR LIMITED MOUNTAIN SHEEP SPECIAL LICENSE FROM RECEIVING ANOTHER SPECIAL LICENSE FOR THAT SPECIES FOR 7 YEARS; AMENDING SECTION 87-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *164*

58 *(House Bill No. 138; Peterson)* AN ACT TO ESTABLISH QUALIFICATIONS FOR PUBLIC SAFETY COMMUNICATIONS OFFICERS; TO ALLOW FOR

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CERTIFICATION OF PUBLIC SAFETY COMMUNICATIONS OFFICERS; AMENDING SECTIONS 44-4-301 AND 44-4-302, MCA; AND PROVIDING AN EFFECTIVE DATE. *165*

59 *(House Bill No. 140; Raney)* AN ACT REQUIRING A STATE OFFICER OR STATE EMPLOYEE SOLICITING OR ACCEPTING EMPLOYMENT, OR ENGAGING IN NEGOTIATIONS OR MEETINGS TO CONSIDER EMPLOYMENT, WITH A PERSON WHOM HE REGULATES TO FIRST NOTIFY HIS SUPERVISOR AND DEPARTMENT DIRECTOR IN WRITING; AND AMENDING SECTION 2-2-121, MCA. *168*

60 *(House Bill No. 163; Kasten)* AN ACT EXPANDING THE USE OF STATE LAW ENFORCEMENT PAYMENTS TO MUNICIPAL POLICE DEPARTMENTS; AND AMENDING SECTION 7-32-4120, MCA. *169*

61 *(House Bill No. 171; Benedict)* AN ACT REPEALING STATUTES THAT PROVIDE FOR THE ABANDONMENT OF THE DALY DITCH WATER PROJECT; REPEALING SECTIONS 85-1-401, 85-1-402, 85-1-403, 85-1-404, 85-1-405, 85-1-406, 85-1-407, 85-1-408, AND 85-1-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *170*

62 *(House Bill No. 178; Toole)* AN ACT ADOPTING THE UNIFORM INTERNATIONAL WILL ACT; PROVIDING FOR THE VALIDITY OF INTERNATIONAL WILLS; PROVIDING FOR CERTIFICATION OF INTERNATIONAL WILLS; AND PROVIDING FOR A REGISTRY FOR INTERNATIONAL WILLS. *170*

63 *(House Bill No. 194; Toole)* AN ACT ENSURING DUE PROCESS TO INDIGENTS BY PROVIDING THAT THE DISTRICT COURT SHALL WAIVE THE UNDERTAKING FOR AN APPEAL TO DISTRICT COURT WHEN THE APPEALING PARTY IS INDIGENT; IMPLEMENTING THE MONTANA SUPREME COURT'S DECISION IN MERCHANTS ASSOCIATION V. CONGER, 185 MONT. 552, 606 P.2D 125 (1979); AND AMENDING SECTIONS 25-33-104 AND 25-33-201, MCA. *170*

64 *(House Bill No. 205; Davis)* AN ACT TO CHANGE THE CALCULATION OF CONTRIBUTIONS DUE FOR SERVICE CREDITS TRANSFERRED BETWEEN THE PUBLIC EMPLOYEES' AND TEACHERS' RETIREMENT SYSTEMS; AMENDING SECTIONS 19-3-511 AND 19-4-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *173*

65 *(House Bill No. 242; Thomas)* AN ACT TO ALLOW STATE EMPLOYEES INVOLUNTARILY TERMINATED FROM EMPLOYMENT TO ENTER INTO CONTRACTS WITH THE STATE IMMEDIATELY FOLLOWING THEIR TERMINATION; AMENDING SECTION 2-2-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *175*

66 *(Senate Bill No. 90; Jergeson)* AN ACT RECOGNIZING DENTAL AND DENTAL HYGIENE SCHOOLS; CHANGING THE LICENSURE REQUIREMENTS FOR OUT-OF-STATE DENTAL HYGIENISTS AND ALLOWING DENTAL HYGIENISTS TO PERFORM MORE TASKS UNDER THE GENERAL AS OPPOSED TO THE DIRECT SUPERVISION OF A DENTIST; RECOGNIZING ACCREDITED DENTAL HYGIENE SCHOOLS; AMENDING SECTIONS 37-4-302, 37-4-401, 37-4-404, 37-4-405, AND 37-4-408, MCA; AND PROVIDING AN EFFECTIVE DATE. *179*

67 *(House Bill No. 23; Cody)* AN ACT REQUIRING THE DEPARTMENT OF REVENUE TO ACCEPT A SIGNED STATEMENT FROM THE VENDOR AS EVIDENCE OF KEYLOCK OR CARDTROL PURCHASES OF GASOLINE FOR WHICH AN AGRICULTURAL-USE REFUND IS REQUESTED; AMENDING SECTION 15-70-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *182*

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68 (*House Bill No. 115; J. Johnson*) AN ACT REVISING THE PADDLEFISH ROE DONATION PROGRAM; DEFINING THE INTAKE FISHING ACCESS SITE FOR PURPOSES OF DONATION OF ROE TO THE PROGRAM; AMENDING SECTION 87-4-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *183*

69 (*House Bill No. 154; Forrester*) AN ACT TO ALLOW A BUS DEPRECIATION RESERVE FUND TO BE USED TO CONVERT, REMODEL, REBUILD, OR REPLACE A BUS OR RADIO; AND AMENDING SECTION 20-10-147, MCA. *185*

70 (*House Bill No. 326; Thomas*) AN ACT REVISING AND CLARIFYING THE DUTIES OF THE VETERANS' BURIAL SUPERVISOR; AND AMENDING SECTIONS 10-2-101, 10-2-501, 10-2-503, AND 10-2-504, MCA. *186*

71 (*House Bill No. 39; Peck*) AN ACT TO EXCLUDE FROM TAXATION MOTOR VEHICLES OWNED BY CERTAIN ENTITIES THAT PROVIDE POTABLE WATER; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *189*

72 (*House Bill No. 434; McCaffree*) AN ACT TO ALLOW THE STATE TREASURER TO ASSESS COUNTIES AN INTEREST CHARGE FOR THE LATE REMITTANCE OF MONEY COLLECTED BY COUNTY TREASURERS FOR THE STATE, RATHER THAN TO REQUIRE THE ASSESSMENT; AMENDING SECTION 15-1-504, MCA; AND PROVIDING AN EFFECTIVE DATE. *191*

73 (*House Bill No. 439; Barnett*) AN ACT REQUIRING A COURT TO INFORM A DEFENDANT WHO IS BEING ARRAIGNED THAT IF HE IS NOT A CITIZEN OF THE UNITED STATES, A GUILTY PLEA MIGHT RESULT IN DEPORTATION FROM OR EXCLUSION FROM ADMISSION TO THE UNITED STATES OR DENIAL OF NATURALIZATION UNDER FEDERAL LAW; AND AMENDING SECTIONS 46-12-202 AND 46-12-204, MCA. *192*

74 (*House Bill No. 453; Fagg*) AN ACT REQUIRING A PUBLIC EMPLOYER TO PICK UP A MEMBER'S CONTRIBUTION UNDER THE MONTANA JUDGES' RETIREMENT SYSTEM; REQUIRING THE EMPLOYER TO DEDUCT FROM THE MEMBER'S COMPENSATION AN AMOUNT EQUAL TO THE AMOUNT OF THE MEMBER'S CONTRIBUTION PICKED UP BY THE EMPLOYER; REQUIRING A MEMBER TO PAY STATE AND LOCAL TAXES ON A REFUND OF CERTAIN CONTRIBUTIONS; AMENDING SECTIONS 19-5-402 AND 19-5-704, MCA; AND PROVIDING AN EFFECTIVE DATE. *194*

75 (*House Bill No. 456; J. Rice*) AN ACT INCREASING THE NUMBER OF REPORTING TIMES FOR STATEWIDE BALLOT ISSUE COMMITTEES TO FILE REPORTS; REVISING CAMPAIGN REPORTING REQUIREMENTS CONCERNING IDENTIFICATION OF PERSONS MAKING CERTAIN CONTRIBUTIONS; REVISING CERTAIN LIMITS ON CONTRIBUTIONS SUBJECT TO REPORTING; REQUIRING THAT EMPLOYERS OF CONTRIBUTORS BE IDENTIFIED; AND AMENDING SECTIONS 13-37-226, 13-37-228, AND 13-37-229, MCA. *195*

76 (*House Bill No. 54; L. Nelson*) AN ACT TO ALLOW A COUNTY THAT CONSOLIDATES THE OFFICE OF COUNTY SUPERINTENDENT OF SCHOOLS WITH ANOTHER OFFICE TO CONTRACT WITH A PERSON WHO MEETS STATUTORY QUALIFICATIONS; AMENDING SECTION 20-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE. *199*

77 (*House Bill No. 58; Driscoll*) AN ACT AMENDING THE LAWS RELATING TO THE SUSPENSION AND CANCELLATION OF THE COLLECTION OF CERTAIN PROPERTY TAXES ON COMMERCIAL PROPERTY; PROVIDING THAT THE GOVERNING BODY MAY SUBORDINATE A COUNTY'S TAX LIEN TO A PURCHASER'S FINANCING; REMOVING THE TERMINATION

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OF THE PROGRAM BY REPEALING SECTION 17, CHAPTER 631, LAWS OF 1989; AND AMENDING SECTION 15-24-1701, MCA. 200

78 *(House Bill No. 288; Strizich)* AN ACT INCREASING THE SERVICE RETIREMENT ALLOWANCE FOR MEMBERS OF THE SHERIFFS' RETIREMENT SYSTEM WITH 24 YEARS OR LESS OF CREDITABLE SERVICE WHO RETIRE ON OR AFTER JULY 1, 1991; AMENDING SECTION 19-7-503, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 201

79 *(House Bill No. 367; J. Brown)* AN ACT PROVIDING FOR THE EXPANSION OF BUSINESS IMPROVEMENT DISTRICTS; PROVIDING FOR ASSESSING LAND IN THE EXPANDED AREA OF A DISTRICT; AND AMENDING SECTIONS 7-12-1111, 7-12-1112, 7-12-1114, 7-12-1115, AND 7-12-1133, MCA. .. 202

80 *(House Bill No. 480; Lee)* AN ACT TO INCLUDE TOWN EMPLOYEES AMONG THOSE PUBLIC EMPLOYEES ENTITLED TO MILITARY LEAVE; AND AMENDING SECTION 10-1-604, MCA. 205

81 *(House Bill No. 599; Mercer)* AN ACT REVISING THE CALCULATION OF PENSION BENEFITS PAID UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; AMENDING SECTION 19-12-404, MCA; AND PROVIDING AN EFFECTIVE DATE. 205

82 *(Senate Bill No. 92; Bruski)* AN ACT DELETING REQUIREMENTS FOR LOCAL GOVERNMENTS TO REPORT THE USE OF MOTOR FUEL TAX FUNDS AND OF THE DEPARTMENT OF HIGHWAYS TO REPORT MONTHLY CONSTRUCTION PLANS AND PROJECTS; AMENDING SECTIONS 15-70-101 AND 60-2-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 207

83 *(Senate Bill No. 100; Hockett)* AN ACT TO DELETE THE REQUIREMENT THAT INTERLOCAL AGREEMENTS BE APPROVED BY THE ATTORNEY GENERAL; AMENDING SECTION 7-11-107, MCA; AND REPEALING SECTION 7-11-106, MCA. 209

84 *(Senate Bill No. 110; Keating)* AN ACT TO AUTHORIZE THE DEPARTMENT OF REVENUE TO WRITE OFF THE COLLECTION OF A TAX, PENALTY, OR INTEREST DUE TO THE STATE WHEN THE DEPARTMENT DETERMINES THAT IT IS NOT COST-EFFECTIVE TO ATTEMPT TO COLLECT THE TAX, PENALTY, OR INTEREST. 210

85 *(Senate Bill No. 144; Mazurek)* AN ACT AMENDING THE UNIT OWNERSHIP ACT TO REQUIRE THE FILING OF A DECLARATION OF UNIT OWNERSHIP WITH A CITY OR TOWN CLERK IF CONDOMINIUM PROPERTY IS LOCATED WITHIN A CITY OR TOWN; AND AMENDING SECTION 70-23-305, MCA. 211

86 *(Senate Bill No. 147; Gage)* AN ACT PROVIDING A PROCEDURE FOR THE FILING OF A SHORT-PERIOD MONTANA CORPORATION LICENSE TAX RETURN BY CORPORATIONS PERMITTED TO FILE A MONTANA CONSOLIDATED CORPORATION LICENSE TAX RETURN; AMENDING SECTION 15-31-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 211

87 *(Senate Bill No. 166; Jergeson)* AN ACT ALLOWING A LOCAL GOVERNMENT TO ESTABLISH AN EMPLOYEE INCENTIVE AWARD PROGRAM; AND PROVIDING AN EFFECTIVE DATE. 213

88 *(Senate Bill No. 201; B. Brown)* AN ACT PROVIDING THAT THE COUNTY ATTORNEY IS THE LEGAL ADVISER TO FIRE SERVICE AREAS; AND AMENDING SECTION 7-4-2711, MCA. 215

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89 *(Senate Bill No. 202; Hager)* AN ACT REQUIRING INFORMATION AGENTS TO REPORT SEPARATELY TO THE DEPARTMENT OF REVENUE FOR MONTANA INCOME TAX PURPOSES INTEREST INCOME FROM OBLIGATIONS OF ANOTHER STATE AND POLITICAL SUBDIVISIONS OF THAT STATE; AMENDING SECTION 15-30-301; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. .. *216*

90 *(Senate Bill No. 244; Jergeson)* AN ACT REQUIRING PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS TO CONSULT WITH THE DEPARTMENT OF COMMERCE PRIOR TO INITIATING PROGRAM EXPANSION; AND AMENDING SECTION 37-1-131, MCA. *217*

91 *(House Bill No. 450; Harper)* AN ACT PROVIDING FOR THE DISAPPROVAL OF AN APPLICATION TO LOBBY IF REPORTS HAVE NOT BEEN FILED OR ARE INACCURATE; CLARIFYING THE CONTENTS OF THE LOBBYING DOCKET; PROVIDING FOR THE ISSUANCE OF ORDERS OF NONCOMPLIANCE; PROVIDING FOR ENFORCEMENT; REDUCING THE PERIOD OF TIME LOBBYING RECORDS MUST BE KEPT; REDUCING THE TIME PERIOD FOR BRINGING AN ACTION FOR A VIOLATION OF THE LOBBYING LAWS; AND AMENDING SECTIONS 5-7-103, 5-7-201, 5-7-208, 5-7-212, AND 5-7-305, MCA. *217*

92 *(Senate Bill No. 15; Gage)* AN ACT EXEMPTING FROM THE RESOURCE INDEMNITY TRUST TAX OIL AND GAS ROYALTIES RECEIVED BY THE UNITED STATES AS TRUSTEE FOR INDIVIDUAL INDIANS AND BY THE UNITED STATES, THE STATE OF MONTANA, OR A COUNTY OR MUNICIPAL GOVERNMENT; AMENDING SECTION 15-38-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *222*

93 *(Senate Bill No. 25; Williams)* AN ACT ALLOWING A COUNTY TREASURER TO DEPOSIT NONTAX REVENUE OF $25 OR LESS IN THE GENERAL FUND. *223*

94 *(Senate Bill No. 119; Noble)* AN ACT REQUIRING DEALERS TO RECORD AND REPORT DELIVERIES OF LIQUEFIED PETROLEUM GAS USED TO POWER MOTOR VEHICLES; AND AMENDING SECTION 15-71-101, MCA. *223*

95 *(Senate Bill No. 168; Doherty)* AN ACT DIRECTING AMENDMENT OF RULES 11.14.502 AND 16.24.410, ADMINISTRATIVE RULES OF MONTANA, TO ELIMINATE CURRENT RESTRICTIONS ON THE USE OF NONDISPOSABLE DIAPERS IN DAY-CARE FACILITIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *224*

96 *(House Bill No. 3; Bardanouve)* AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1991; AMENDING NARRATIVE PROVISIONS IN HOUSE BILL NO. 100, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *226*

97 *(House Bill No. 38; Grady)* AN ACT REVISING THE STATUTES RELATING TO ASSISTANCE BY THE STATE AUDITOR IN THE COLLECTION OF DELINQUENT ACCOUNTS OWED TO STATE AGENCIES; AMENDING SECTIONS 17-4-103 AND 17-4-106, MCA; AND PROVIDING AN EFFECTIVE DATE. *231*

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168 *(House Bill No. 90; Cobb)* AN ACT REVISING THE MONTANA AGRICULTURAL LOAN AUTHORITY ACT; REASSIGNING THE ALLOCATION OF BONDING AUTHORITY BETWEEN CERTAIN STATE PROGRAMS; PROVIDING A CONTINGENCY FOR THE REASSIGNED ALLOCATION TO BE USED FOR AGRICULTURAL PURPOSES; AMENDING SECTIONS 17-5-1302, 17-5-1312, AND 80-12-102, MCA; REPEALING SECTION 2-15-3011, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *414*

169 *(House Bill No. 99; Stang)* AN ACT TO ALLOW A PERSON TO OPERATE A BICYCLE ON THE PAVED SHOULDER OF A ROADWAY; AND AMENDING SECTIONS 61-1-206 AND 61-8-605, MCA. *417*

170 *(House Bill No. 109; Brooke)* AN ACT PROVIDING VICTIMS AND WITNESSES OF JUVENILE FELONY OFFENSES THE SAME SERVICES AND ASSISTANCE THAT MUST BE PROVIDED TO THE VICTIMS AND WITNESSES OF CRIME; REQUIRING THE ATTORNEY GENERAL TO ASSURE THAT VICTIMS AND WITNESSES OF JUVENILE FELONY OFFENSES ARE PROVIDED THE SAME SERVICES AND ASSISTANCE AS THE VICTIMS AND WITNESSES OF CRIME; AND PROVIDING AN EFFECTIVE DATE. *419*

171 *(House Bill No. 123; Hansen)* AN ACT ALLOWING SELF-INSURED GOVERNMENTS TO TRANSFER UNUSED EMPLOYER GROUP INSURANCE CONTRIBUTIONS TO A SPECIAL ACCOUNT; AND AMENDING SECTION 2-18-703, MCA. *420*

172 *(House Bill No. 137; Harrington)* AN ACT CONFORMING THE VALUATION AND TAXATION OF AGRICULTURAL LAND TO THE EXTENSION OF THE CURRENT REVALUATION CYCLE ENACTED BY CHAPTER 13, LAWS OF 1989; AMENDING SECTION 15-7-201, MCA; SECTION 10, CHAPTER 681, LAWS OF 1985; AND SECTION 3, CHAPTER 705, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *421*

173 *(House Bill No. 167; McCulloch)* AN ACT TO AMEND SPECIAL PROVISIONS RELATING TO MOTOR CARRIER TRANSPORTATION OF BUILDINGS AND TO DELETE THE GRANDFATHER PROVISIONS AND RULEMAKING AUTHORITY AS BEING SURPLUSAGE; AMENDING SECTION 69-12-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *423*

174 *(House Bill No. 197; Boharski)* AN ACT CLARIFYING THAT THE PENALTY IMPOSED UPON INSURERS WHO UNREASONABLY DELAY PAYING WORKERS' COMPENSATION CLAIMS MAY BE IMPOSED WHEN AN INSURER ACCEPTS LIABILITY BUT UNREASONABLY DELAYS PAYING A CLAIM WHETHER OR NOT THE WORKERS' COMPENSATION COURT ORDERS PAYMENT OF THE CLAIM; APPLYING THE MONTANA SUPREME COURT'S DECISION IN HANDLOS V. CYPRUS, 47 ST. REP. 1329, 794 P.2D 702 (1990); AMENDING SECTION 39-71-2907, MCA; AND PROVIDING AN APPLICABILITY DATE. *424*

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175 *(House Bill No. 211; Bradley)* AN ACT MAKING THE PENALTY FOR SEXUAL INTERCOURSE WITHOUT CONSENT UNIFORM FOR BOTH HETEROSEXUAL AND HOMOSEXUAL RAPE; AND AMENDING SECTIONS 45-5-501, 45-5-503, AND 45-5-505, MCA. *425*

176 *(House Bill No. 269; Cocchiarella)* AN ACT INCREASING THE PENALTY FOR REPEAT OFFENSES OF INDECENT EXPOSURE; MAKING A THIRD OR SUBSEQUENT INDECENT EXPOSURE OFFENSE A FELONY; AND AMENDING SECTION 45-5-504, MCA. *426*

177 *(House Bill No. 270; Cocchiarella)* AN ACT RELATING TO THE PENALTY FOR THE OFFENSE OF VIOLATING PRIVACY IN COMMUNICATIONS; INCREASING THE PENALTY FOR CERTAIN REPEAT OFFENSES INVOLVING ILLEGAL TELEPHONE CALLS; MAKING A THIRD OR SUBSEQUENT OFFENSE A FELONY; AND AMENDING SECTION 45-8-213, MCA......... *427*

178 *(House Bill No. 274; Strizich)* AN ACT PROVIDING THAT ALL SERVICE TIME PURCHASED BY A MEMBER OF THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM MAY BE CREDITED TOWARD THE MEMBER'S ELIGIBILITY FOR SERVICE RETIREMENT; DEFINING "QUALIFIED SERVICE"; AMENDING SECTIONS 19-9-104, 19-9-403, AND 19-9-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *428*

179 *(House Bill No. 275; Strizich)* AN ACT TO PROVIDE THAT IN ADDITION TO OR INSTEAD OF A PRISON TERM FOR FRAUDULENTLY OBTAINING DANGEROUS DRUGS, A CONVICTED PERSON MAY BE FINED AN AMOUNT NOT TO EXCEED $50,000; AND AMENDING SECTION 45-9-106, MCA. *432*

180 *(House Bill No. 297; Spring)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SURPLUS LINES INSURANCE; ELIMINATING THE PLACEMENT FEE; ALLOWING NONRESIDENT INSURANCE PRODUCERS TO BECOME SURPLUS LINES PRODUCERS; REQUIRING PURCHASING GROUPS TO IDENTIFY A MONTANA-LICENSED INSURANCE PRODUCER WHEN REGISTERING WITH THE DEPARTMENT OF INSURANCE; SUBJECTING SURPLUS LINES INSURERS TO PROVISIONS OF THE MONTANA INSURANCE CODE CONCERNING PREMIUM CHANGES AND CANCELLATION; AND AMENDING SECTIONS 33-2-305, 33-2-306, 33-11-108, AND 33-15-1102, MCA. *433*

181 *(House Bill No. 313; McCaffree)* AN ACT REVISING THE PROCEDURE FOR THE ISSUANCE OF A TAX DEED; CANCELING THE PROPERTY TAX LIEN IF THE PURCHASER OF THE TAX LIEN, OTHER THAN THE COUNTY, FAILS TO GIVE NOTICE TO INTERESTED PARTIES; ELIMINATING THE COUNTY TREASURER'S DUTY TO NOTIFY INTERESTED PARTIES IF THE PURCHASER FAILS TO GIVE NOTICE; AMENDING SECTION 15-18-212, MCA; AND PROVIDING AN APPLICABILITY DATE. *436*

182 *(House Bill No. 348; Gervais)* AN ACT REQUIRING THAT IMITATION INDIAN ARTS OR CRAFTS ARTICLES BE DISPLAYED NEAR A SIGN PROMINENTLY AND LEGIBLY DESIGNATING THE ARTICLES AS IMITATION; AND AMENDING SECTION 30-14-602, MCA. *439*

183 *(House Bill No. 425; Stickney)* AN ACT REVISING THE GROSS VEHICLE WEIGHT LAWS TO ALLOW CERTAIN TRAILERS AND SEMITRAILERS TO BE MOVED IN THE LOCAL DELIVERY ZONE WITHOUT ADDITIONAL FEE; AMENDING SECTION 61-10-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *440*

184 *(House Bill No. 445; J. Rice)* AN ACT INDEFINITELY EXTENDING THE CERTIFICATE OF NEED LAW BY REPEALING THE EXPIRATION DATE OF

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THE LAW; REPEALING SECTION 3, CHAPTER 377, LAWS OF 1989, SECTION 9, CHAPTER 477, LAWS OF 1987, AND SECTION 13, CHAPTER 329, LAWS OF 1983; AND PROVIDING AN EFFECTIVE DATE. *441*

185 *(House Bill No. 481; Wallin)* AN ACT TO AUTHORIZE LAND SUBJECT TO A TAX DEED TO BE SOLD FOR NOT LESS THAN MARKET VALUE TO A PERSON AT A PRIVATE SALE IF THE LAND WAS NOT SOLD AT A TAX-SALE AUCTION; AMENDING SECTION 7-8-2301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *442*

186 *(House Bill No. 521; Dolezal)* AN ACT PROVIDING THAT THE DEPARTMENT OF INSTITUTIONS HAS THE DUTY AND RESPONSIBILITY TO ASSIST INTERESTED AGENCIES AND ORGANIZATIONS IN DEVELOPING EDUCATION AND PREVENTION PROGRAMS FOR CHEMICAL DEPENDENCY; AND AMENDING SECTION 53-24-204, MCA. *443*

187 *(House Bill No. 529; Feland)* AN ACT TO EXTEND THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *444*

188 *(House Bill No. 555; Hoffman)* AN ACT TO REMOVE UNLAWFUL PRESUMPTIONS AND BURDEN-SHIFTING LANGUAGE FROM CRIMINAL OFFENSE STATUTES; AMENDING SECTION 45-5-201, MCA; REPEALING SECTION 45-6-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *444*

189 *(House Bill No. 622; Sywsgood)* AN ACT REVISING THE MONTANA GROWTH THROUGH AGRICULTURE ACT; ELIMINATING THE AGRICULTURAL BUSINESS INCUBATOR PROGRAM; AMENDING SECTION 90-9-103, MCA; AND REPEALING SECTION 90-9-302, MCA. *445*

190 *(Senate Bill No. 3; Nathe)* AN ACT EXTENDING THE SUNSET PROVISIONS OF THE AGRICULTURAL ASSISTANCE PROGRAM; AMENDING SECTION 8, CHAPTER 269, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *447*

191 *(Senate Bill No. 122; Weeding)* AN ACT EXTENDING THE HIGHWAY RECONSTRUCTION TRUST PROGRAM; ALLOCATING CERTAIN REVENUE TO THE HIGHWAY RECONSTRUCTION TRUST ACCOUNT; AMENDING SECTION 7, CHAPTER 541, LAWS OF 1983, AND SECTIONS 15-36-108 AND 60-3-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE. ... *448*

192 *(Senate Bill No. 170; Vaughn)* AN ACT ESTABLISHING QUALIFICATIONS FOR SEXUAL OFFENDER EVALUATORS; PROVIDING FOR PAYMENT OF SEXUAL OFFENDER PRESENTENCE EVALUATIONS BY THE DEFENDANT OR DISTRICT COURT; PROVIDING REIMBURSEMENT FROM THE STATE IF THE DISTRICT COURT PAYS; AMENDING SECTION 46-18-111, MCA; AND PROVIDING AN EFFECTIVE DATE. *451*

193 *(Senate Bill No. 305; Anderson)* AN ACT AUTHORIZING MULTIJURISDICTIONAL SERVICE DISTRICTS TO PROVIDE AMBULANCE SERVICE; AND AMENDING SECTION 7-11-1102, MCA. *452*

194 *(Senate Bill No. 334; Harding)* AN ACT REVISING THE PERSONAL LIABILITY OF COUNTY OFFICIALS WHO EXCEED BUDGET APPROPRIATIONS; APPLYING THE FORFEIT PROVISION TO DEPARTMENT OFFICIALS; PROVIDING THAT A COUNTY OFFICIAL MAY NOT EXCEED A DEPARTMENT'S TOTAL BUDGET APPROPRIATION; AND AMENDING SECTION 7-6-2323, MCA. *453*

195 *(Senate Bill No. 350; Svrcek)* AN ACT REVISING AND CLARIFYING THE LAW CONCERNING THE REVIEW OF NEW LICENSING BOARDS OR THE

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CONSOLIDATION OF EXISTING LICENSING BOARDS; AMENDING SECTIONS 2-8-205, 2-8-206, 2-8-207, AND 5-4-207, MCA; AND REPEALING SECTION 2-8-209, MCA. *454*

196 *(Senate Bill No. 358; T. Beck)* AN ACT REVISING THE REQUIREMENTS FOR A POLITICAL PARTY TO NOMINATE ITS CANDIDATES BY PRIMARY ELECTION; AND AMENDING SECTION 13-10-601, MCA. *456*

197 *(Senate Bill No. 360; Gage)* AN ACT TO LIMIT THE LIABILITY OF PERSONS SERVING ON ACCOUNTING REVIEW BOARDS OR OF NONPROFIT CORPORATIONS PERFORMING THE FUNCTION OF ACCOUNTING REVIEW BOARDS; AND TO EXCLUDE FROM EVIDENCE THE PROCEEDINGS AND RECORDS OF ACCOUNTING REVIEW BOARDS. *457*

198 *(Senate Bill No. 367; Crippen)* AN ACT AUTHORIZING THE YELLOWSTONE COUNTY COMMISSIONERS TO DONATE THE YELLOWSTONE ART CENTER AND ITS APPURTENANCES TO THE PRIVATE, NONPROFIT ENTITY KNOWN AS THE YELLOWSTONE ART CENTER FOUNDATION; PROVIDING FOR REVERSION OF THE PROPERTY UPON CERTAIN CONDITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. *458*

199 *(Senate Bill No. 371; Jacobson)* AN ACT REQUIRING INSURANCE COMPANIES AND HEALTH SERVICE CORPORATIONS TO PROVIDE COVERAGE FOR WELL-CHILD CARE FOR CHILDREN FROM BIRTH THROUGH 2 YEARS OF AGE; AND PROVIDING AN APPLICABILITY DATE. *458*

200 *(Senate Bill No. 424; Hager)* AN ACT REVISING THE TERMS OF CONVERSION OF CERTAIN INSURANCE POLICIES; AND AMENDING SECTIONS 33-22-508 AND 33-30-1007, MCA. *461*

201 *(Senate Bill No. 432; Pinsoneault)* AN ACT TO CLARIFY THE RESPONSIBILITY OF THE DEPARTMENT OF FAMILY SERVICES AND OF YOUTH PROBATION OFFICERS REGARDING THE SUPERVISION OF YOUTH IN PLACEMENT FACILITIES; TO CLARIFY THE APPLICABILITY OF AN AFTERCARE AGREEMENT IF A DELINQUENT YOUTH IS TRANSFERRED FROM A STATE YOUTH CORRECTIONAL FACILITY TO A MENTAL HEALTH FACILITY AND SUBSEQUENTLY RELEASED; AMENDING SECTIONS 41-5-523 AND 53-30-226, MCA; AND PROVIDING AN EFFECTIVE DATE. *464*

202 *(Senate Bill No. 433; T. Beck)* AN ACT PROHIBITING THE USE OF COERCION TO OBTAIN NEW MOTOR VEHICLE DEALERS' PARTICIPATION IN ADVERTISING CAMPAIGNS OR SALES PROMOTIONS; AND AMENDING SECTION 61-4-208, MCA. *469*

203 *(House Bill No. 63; Stang)* AN ACT TO AMEND CLASS C MOTOR CARRIER CONTRACT PROVISIONS TO REMOVE REFERENCE TO CLASS B CONVERSION; AMENDING SECTION 69-12-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *469*

204 *(House Bill No. 105; L. Nelson)* AN ACT TO PROVIDE FOR TRANSFER OF A TENURE TEACHER BETWEEN ADMINISTRATIVE AND TEACHING POSITIONS; AMENDING SECTION 20-4-203, MCA; AND PROVIDING AN APPLICABILITY DATE. *470*

205 *(House Bill No. 120; Hayne)* AN ACT CREATING THE FARM ANIMAL AND RESEARCH FACILITIES PROTECTION ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *472*

206 *(House Bill No. 166; Keller)* AN ACT TO ADDRESS THE DECISION OF THE MONTANA SUPREME COURT IN STATE V. AUSTIN, 217 MONT. 265, 704 P.2D 55 (1985), BY REPEALING SECTION 87-3-122, MCA. *475*

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207 *(House Bill No. 411; Kadas)* AN ACT TO MAKE PERMISSIVE THE REPORTS COMMON CARRIERS OF BEER, TABLE WINE, AND CIGARETTES FILE WITH THE DEPARTMENT OF REVENUE; TO REQUIRE RECORDKEEPING; AND AMENDING SECTIONS 16-3-235, 16-3-405, AND 16-11-104, MCA. *476*

208 *(House Bill No. 424; Stickney)* AN ACT TO DIRECT THAT ALL APPOINTING AUTHORITIES OF ALL APPOINTIVE BOARDS, COMMISSIONS, COMMITTEES, AND COUNCILS OF STATE GOVERNMENT TAKE POSITIVE ACTION TO ATTAIN GENDER BALANCE AND PROPORTIONAL REPRESENTATION OF MINORITY RESIDENTS TO THE GREATEST EXTENT POSSIBLE; TO REQUIRE THAT THE SECRETARY OF STATE PUBLISH INFORMATION ON APPOINTMENTS; TO REQUIRE THAT THE GOVERNOR REPORT TO SUCCEEDING LEGISLATURES THE PROGRESS MADE TOWARD GENDER BALANCE AND PROPORTIONAL REPRESENTATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *477*

209 *(House Bill No. 537; Harper)* AN ACT CREATING A DROUGHT ADVISORY COMMITTEE; DEFINING THE COMMITTEE'S RESPONSIBILITIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *478*

210 *(House Bill No. 610; Bradley)* AN ACT CLARIFYING THE AUTHORITY OF THE PUBLIC SERVICE COMMISSION TO APPROVE THE IMPLEMENTATION OF ALTERNATIVE FORMS OF REGULATION BY PROVIDERS OF REGULATED TELECOMMUNICATIONS SERVICES; AUTHORIZING THE COMMISSION TO PERMIT CERTAIN DETARIFFING; PROVIDING THE MANNER OF OFFERING AND WITHDRAWING SERVICES; AUTHORIZING PROVIDERS TO OFFER PROMOTIONAL REBATES; AMENDING SECTIONS 69-3-305, 69-3-802, 69-3-807, AND 69-3-808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *480*

211 *(House Bill No. 774; R. Johnson)* AN ACT TO AUTHORIZE A PERSON TO IMPORT ILLEGAL GAMBLING DEVICES IF THE PERSON IS LICENSED TO MANUFACTURE THE DEVICES FOR EXPORT; AMENDING SECTION 23-5-152, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. ... *487*

212 *(House Bill No. 779; Cromley)* AN ACT REVISING THE SMALL TRACT FINANCING ACT OF MONTANA; PROVIDING A LIMITATION ON THE TIME THAT NONJUDICIAL FORECLOSURES MAY BE DELAYED BY THE INTERVENTION OF STAYS; AND AMENDING SECTION 71-1-315, MCA. *487*

213 *(House Bill No. 918; Southworth)* AN ACT TO REVISE THE DEFINITION OF SOLID WASTE; AND AMENDING SECTION 75-10-103, MCA. *489*

214 *(House Bill No. 941; Benedict)* AN ACT ALLOWING MEMBERS OF THE SHERIFFS' RETIREMENT SYSTEM TO PURCHASE AN ADDITIONAL YEAR OF SERVICE FOR EVERY 5 YEARS OF CREDITABLE SERVICE; LIMITING THE COMBINED PURCHASE OF SERVICE TO 5 YEARS; AMENDING SECTION 19-7-310, MCA; AND PROVIDING AN EFFECTIVE DATE. *491*

215 *(Senate Bill No. 357; T. Beck)* AN ACT REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO CONSULT WITH LOCAL GOVERNMENTS WHEN LICENSING SOLID WASTE MANAGEMENT FACILITIES; AND AMENDING SECTION 75-10-102, MCA. *492*

216 *(House Bill No. 60; Harrington)* AN ACT TO EXCLUDE A MEAL ALLOWANCE FROM THE MINIMUM WAGE PAID TO MONTANA EMPLOYEES; AMENDING SECTION 39-3-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *493*

217 *(House Bill No. 107; J. Johnson)* AN ACT REVISING THE SAFETY INSTRUCTION REQUIREMENTS NECESSARY FOR ISSUANCE OF A BOW

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AND ARROW LICENSE; AMENDING SECTION 87-2-105, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. *494*

218 *(House Bill No. 113; Lee)* AN ACT TO DEFINE THE TERM "FORCE" AS IT RELATES TO SEXUAL INTERCOURSE WITHOUT CONSENT AND TO DEVIATE SEXUAL CONDUCT; AND AMENDING SECTIONS 45-5-501 AND 45-5-503, MCA. *496*

219 *(House Bill No. 118; J. Brown)* AN ACT ALLOWING A LICENSED PHARMACIST TO USE THE SERVICES OF A PHARMACY TECHNICIAN OR AUXILIARY UNDER THE TERMS OF AN APPROVED UTILIZATION PLAN; PROVIDING FOR FEES AND PENALTIES; AMENDING SECTIONS 37-7-101, 37-7-301, AND 37-7-323, MCA; AND PROVIDING EFFECTIVE DATES. *497*

220 *(House Bill No. 153; Ream)* AN ACT TO CONFORM THE FILING DATES FOR THE WORKERS' COMPENSATION PAYROLL TAX TO THE FILING DATES FOR THE STATE INCOME WITHHOLDING TAX; AND PROVIDING AN EFFECTIVE DATE. *503*

221 *(House Bill No. 158; Wanzenried)* AN ACT REMOVING LIMITATIONS ON THE AMOUNTS AVAILABLE FOR INVESTMENT IN SHORT- AND LONG-TERM INVESTMENTS FROM THE PUBLIC EMPLOYEES', HIGHWAY PATROL OFFICERS', SHERIFFS', AND GAME WARDENS' RETIREMENT SYSTEMS; AMENDING SECTIONS 19-3-602, 19-6-405, 19-7-405, AND 19-8-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.... *504*

222 *(House Bill No. 160; Gilbert)* AN ACT ESTABLISHING A SOLID WASTE REDUCTION TARGET; ESTABLISHING INTEGRATED WASTE MANAGEMENT PRIORITIES; ESTABLISHING A STATE GOVERNMENT SOURCE REDUCTION AND RECYCLING PROGRAM; DIRECTING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP PROCUREMENT GUIDELINES FOR RECYCLED MATERIALS; AUTHORIZING THE PREPARATION OF A STATE SOLID WASTE MANAGEMENT PLAN; AND AMENDING SECTION 75-10-104, MCA. *506*

223 *(House Bill No. 193; Toole)* AN ACT RELATING TO THE EXEMPTIONS FROM STATE INHERITANCE TAXES; ELIMINATING THE 10-YEAR TIME PERIOD REQUIREMENT FOR AN ACKNOWLEDGED PARENT-CHILD RELATIONSHIP BETWEEN A NONLINEAL DESCENDANT AND A DECEDENT; REQUIRING THAT THE RELATIONSHIP MUST BEGIN ON OR BEFORE THE CHILD'S 18TH BIRTHDAY; CLARIFYING THAT THE RELATIONSHIP MAY BE ONE OF A STEPCHILD TO A STEPPARENT; AMENDING SECTION 72-16-313, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE. *511*

224 *(House Bill No. 230; Larson)* AN ACT ALLOWING THE TRUSTEES OF A FIRE DISTRICT TO ESTABLISH A CAPITAL IMPROVEMENT FUND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *512*

225 *(House Bill No. 232; Clark)* AN ACT TO ALLOW A HIGHWAY PATROL OFFICER COVERED BY A COLLECTIVE BARGAINING AGREEMENT TO APPEAL A SUSPENSION, DEMOTION, OR DISCHARGE PURSUANT TO A GRIEVANCE PROCEDURE CONTAINED IN A COLLECTIVE BARGAINING AGREEMENT; AND AMENDING SECTIONS 44-1-901, 44-1-902, AND 44-1-903, MCA. *512*

226 *(House Bill No. 236; Gilbert)* AN ACT TO DELETE THE 200-MILE SAFETY STANDARD EXEMPTION FOR DRIVERS WHO ARE NOT MOTOR CARRIERS; AND AMENDING SECTION 44-1-1005, MCA. *513*

227 *(House Bill No. 237; Ellison)* AN ACT TO EXPAND THE PERMISSIBLE PROJECTS FINANCED BY HARD-ROCK MINING IMPACT BONDS; TO CLARIFY THE PROCEDURE FOR THE ISSUANCE OF BONDS; TO PROVIDE

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228 *(House Bill No. 248; R. Johnson)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SECURITIES REGULATION; PROVIDING FOR THE REGULATION OF VARIABLE ANNUITY PRODUCTS; ESTABLISHING AN EXEMPTION FOR CERTAIN INSURANCE SECURITIES; AND AMENDING SECTIONS 30-10-103 AND 30-10-104, MCA. 525

229 *(House Bill No. 258; Bachini)* AN ACT REQUIRING THAT COMPENSATION PAID BY MOTOR VEHICLE MANUFACTURERS TO MOTOR VEHICLE DEALERS FOR PARTS AND SERVICES PERFORMED UNDER WARRANTY MUST BE AT THE SAME RATE CHARGED BY THE DEALER FOR RETAIL WORK; PROVIDING ADMINISTRATIVE PENALTIES; AND AMENDING SECTIONS 61-4-204 AND 61-4-210, MCA. 532

230 *(House Bill No. 279; Schye)* AN ACT PROHIBITING THE USE OF AUTOMATED TELEPHONE SYSTEMS, DEVICES, OR FACSIMILE MACHINES FOR SPECIFIC PURPOSES; PROVIDING EXCEPTIONS; AND IMPOSING A FINE. 534

231 *(House Bill No. 286; Strizich)* AN ACT TO CHANGE THE DEFINITION OF A YOUTH IN NEED OF SUPERVISION FOR PURPOSES OF THE MONTANA YOUTH COURT ACT; TO PROVIDE THAT IN INFORMAL PROCEEDINGS REGARDING A YOUTH, THE PROBATION OFFICER SHALL BELIEVE THAT THE PARENTS OR OTHER GUARDIAN EXERTED ALL REASONABLE EFFORTS TO CONTROL THE YOUTH AND THE YOUTH REMAINS BEYOND CONTROL; AND AMENDING SECTIONS 41-5-103 AND 41-5-401, MCA. 535

232 *(House Bill No. 295; Benedict)* AN ACT ALLOWING A COUNTY OFFICER TO BE ABSENT FROM THE STATE FOR UP TO 15 DAYS WITHOUT THE PERMISSION OF THE COUNTY COMMISSIONERS; AND AMENDING SECTION 7-4-2208, MCA. 539

233 *(House Bill No. 296; Benedict)* AN ACT ALLOWING A COUNTY GOVERNING BODY TO ENTER INTO AN INSTALLMENT PURCHASE CONTRACT FOR A TERM OF UP TO 10 YEARS; AND AMENDING SECTION 7-5-2306, MCA. 539

234 *(House Bill No. 304; Clark)* AN ACT ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE DEPARTMENT OF LIVESTOCK TO DISPOSE OF SURPLUS HANDGUNS; AMENDING SECTIONS 18-4-226 AND 18-6-101, MCA; AND PROVIDING A TERMINATION DATE. 540

235 *(House Bill No. 307; Quilici)* AN ACT TO EXTEND THE FILING TIME REQUIREMENTS AND TO EXCEPT THE REPORTING LIMITATIONS FOR OBTAINING CRIME VICTIM COMPENSATION IN CASES INVOLVING SEXUAL OFFENSES AGAINST MINORS; AND AMENDING SECTION 53-9-125, MCA. 542

236 *(House Bill No. 331; Kilpatrick)* AN ACT AUTHORIZING THE DEPARTMENT OF JUSTICE TO RESTRICT THE DISCLOSURE OF INFORMATION RELATING TO A VEHICLE OWNER UPON REQUEST OF THE VEHICLE OWNER; AND AMENDING SECTION 61-3-101, MCA. 543

237 *(House Bill No. 341; Bradley)* AN ACT REVISING THE LICENSURE OF PHYSICAL THERAPISTS AND THE PRACTICE OF PHYSICAL THERAPY; AUTHORIZING A LICENSED PHYSICAL THERAPIST TO APPLY AND ADMINISTER PRESCRIBED TOPICAL MEDICATIONS AS PART OF THE PRACTICE OF PHYSICAL THERAPY; DEFINING AND DESCRIBING TOPICAL

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238 *(House Bill No. 347; Gervais)* AN ACT REVISING THE NEPOTISM LAW TO AUTHORIZE SCHOOL DISTRICT TRUSTEES TO APPOINT A TRUSTEE'S RELATIVE; AMENDING SECTION 2-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *548*

239 *(House Bill No. 356; G. Beck)* AN ACT TO REQUIRE APPOINTMENT TO THE BOARD OF PERSONNEL APPEALS OF TWO PERSONS WHO ARE FULL-TIME EMPLOYEES OR ELECTED OFFICIALS OF A LABOR UNION OR AN ASSOCIATION RECOGNIZED BY THE BOARD; TO REQUIRE APPOINTMENT OF TWO FULL-TIME MANAGEMENT EMPLOYEES TO THE BOARD OF PERSONNEL APPEALS; AMENDING SECTION 2-15-1705, MCA; AND PROVIDING AN APPLICABILITY DATE. *549*

240 *(House Bill No. 379; Brooke)* AN ACT PROVIDING FOR GOOD TIME CREDIT FOR PERSONS ON PAROLE; AMENDING SECTION 53-30-105, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. *550*

241 *(House Bill No. 389; Gould)* AN ACT TO REDEFINE AND CLARIFY THE TERMS "MENTAL HANDICAP" AND "PHYSICAL HANDICAP", AS USED IN THE DISCRIMINATION LAWS, TO INCLUDE AN IMPAIRMENT THAT LIMITS A MAJOR LIFE ACTIVITY, A RECORD OF SUCH AN IMPAIRMENT, OR A CONDITION REGARDED AS SUCH AN IMPAIRMENT AND TO INCLUDE THE REQUIREMENT OF REASONABLE ACCOMMODATION; AND AMENDING SECTIONS 49-2-101 AND 49-3-101, MCA. *551*

242 *(House Bill No. 392; Hoffman)* AN ACT REQUIRING A COUNTY TAX APPEAL BOARD TO HOLD AN ANNUAL ORGANIZATIONAL MEETING ON THE DATE OF ITS FIRST SCHEDULED HEARING; AMENDING SECTION 15-15-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. .. *555*

243 *(House Bill No. 403; Spring)* AN ACT REQUIRING THE FISH AND GAME COMMISSION TO REGULATE CERTAIN ASPECTS OF THE USE AND BREEDING OF RAPTORS AND THE SPORT OF FALCONRY BY ADMINISTRATIVE RULE, IN ORDER TO MAINTAIN CONFORMITY WITH FEDERAL LAW; AMENDING SECTIONS 87-5-204, 87-5-208, AND 87-5-210, MCA; AND REPEALING SECTION 87-5-206, MCA. *556*

244 *(House Bill No. 410; Cobb)* AN ACT TO CLARIFY THAT CERTIFICATE OF NEED REQUIREMENTS DO NOT APPLY TO OFFICES OF PRIVATE PHYSICIANS, DENTISTS, OR OTHER HEALTH CARE PROFESSIONALS; AND AMENDING SECTION 50-5-301, MCA. *559*

245 *(House Bill No. 413; Connelly)* AN ACT REDUCING THE INTERNSHIP PERIOD FOR DENTURISTS TO 1 YEAR; AMENDING THE PROCEDURE FOR APPROVING CONTINUING EDUCATION REQUIREMENTS; AUTHORIZING A DENTURIST TO APPLY TISSUE CONDITIONING AGENTS; AND AMENDING SECTIONS 37-29-303, 37-29-306, AND 37-29-402, MCA. *561*

246 *(House Bill No. 420; J. Rice)* AN ACT CHANGING FROM TRANSACTIONAL IMMUNITY TO USE IMMUNITY THE TYPE OF IMMUNITY MANDATED WHEN TESTIMONY IS COMPELLED IN A PROCEEDING HELD BY OR UNDER THE AUTHORITY OF THE COMMISSIONER OF INSURANCE; ALLOWING THE COMMISSIONER TO IN ADDITION GRANT TRANSAC-

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247 (*House Bill No. 422; Hoffman*) AN ACT AUTHORIZING THE STATE TAX APPEAL BOARD TO USE HEARING OFFICERS TO EXPEDITE ITS WORK; AMENDING SECTION 15-2-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 564

248 (*House Bill No. 429; Kasten*) AN ACT PROVIDING FOR MEDICAL PAROLE OF INCARCERATED PERSONS; AND AMENDING SECTION 46-23-201, MCA. 566

249 (*House Bill No. 436; Peck*) AN ACT TO GENERALLY REVISE THE DEFINITIONS AND PROVISIONS RELATED TO SPECIAL EDUCATION OF CHILDREN WITH DISABILITIES; AMENDING SECTIONS 20-3-103, 20-5-102, 20-7-401, 20-7-411, 20-7-412, 20-7-414, 20-7-461, 20-9-321, AND 53-4-101, MCA; AND PROVIDING AN EFFECTIVE DATE. 568

250 (*House Bill No. 462; Peck*) AN ACT TO REVISE AND TO PHASE IN THE METHOD OF CALCULATING THE AVERAGE NUMBER BELONGING OF CERTAIN SCHOOL DISTRICTS FOR SCHOOL FUNDING PURPOSES; AMENDING SECTION 20-9-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES. 577

251 (*House Bill No. 479; Hayne*) AN ACT TO REQUIRE THE BOARD OF INVESTMENTS TO ALLOW CERTAIN NONPROFIT CORPORATIONS TO QUALIFY FOR IN-STATE INVESTMENTS OF STATE FUNDS; AMENDING SECTION 17-6-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. ... 580

252 (*House Bill No. 507; Cobb*) AN ACT CLARIFYING THAT EXHAUSTION OF ADMINISTRATIVE REMEDIES IS A PREREQUISITE TO FILING AN ACTION IN DISTRICT COURT CONCERNING A SCHOOL BOARD OF TRUSTEES' DECISION; AND AMENDING SECTION 20-3-210, MCA. 581

253 (*House Bill No. 515; Lee*) AN ACT TO CLARIFY THE REQUIREMENT THAT CHILDREN RECEIVE A MEDICAL EXAMINATION PRIOR TO ADMISSION TO THE MOUNTAIN VIEW SCHOOL, THE PINE HILLS SCHOOL, OR OTHER FACILITY UNDER AN ORDER OF COMMITMENT TO THE DEPARTMENT OF FAMILY SERVICES; AMENDING SECTIONS 53-30-203 AND 53-30-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 582

254 (*House Bill No. 562; Cohen*) AN ACT AUTHORIZING THE COPYING OF ELECTRONIC INFORMATION IN THE CUSTODY OF PUBLIC AGENCIES; PROVIDING THAT THE PUBLIC AGENCY MAY CHARGE FOR THE COST OF ELECTRONIC MEDIA USED TO COPY THE INFORMATION AND MAY CHARGE AN HOURLY RATE FOR TIME SPENT BY AGENCY EMPLOYEES AFTER ONE-HALF HOUR OF COPY SERVICE HAS BEEN PROVIDED; AND AMENDING SECTION 2-6-103, MCA. 583

255 (*House Bill No. 587; R. Johnson*) AN ACT TO PROVIDE THAT THE DATE FOR ANNUAL RENEWAL OF A NUTRITIONIST LICENSE BE SET BY THE BOARD OF MEDICAL EXAMINERS; TO AMEND THE DATE FOR IMPOSING AN ADDITIONAL FEE FOR LATE RENEWAL OF APPLICATIONS; AND AMENDING SECTION 37-25-307, MCA. 585

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257 (*House Bill No. 654; Ellis*) AN ACT TO ELIMINATE THE REQUIREMENT THAT A PERSON OBTAIN A CERTIFICATE FROM A PHYSICIAN ATTEST-

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ING TO SATISFACTORY HEALTH TO QUALIFY FOR TEACHER CERTIFICATION; TO REMOVE UNCONSTITUTIONAL LANGUAGE REGARDING AGE DISCRIMINATION FOR TEACHER CERTIFICATION; AND AMENDING SECTION 20-4-104, MCA. *586*

258 *(House Bill No. 663; Dowell)* AN ACT TO EXPAND THE APPLICATION OF THE UNIFORM ARBITRATION ACT BY PROVIDING THAT THE CONFIRMATION OF A COURT AWARD AND THE ENFORCEMENT OF AN AWARD PROVISIONS OF THE ACT APPLY TO ALL LABOR AGREEMENTS; AMENDING SECTION 27-5-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *587*

259 *(House Bill No. 675; Squires)* AN ACT REVISING TEMPORARY INJUNCTION PROCEDURES IN DOMESTIC CASES; ALLOWING ISSUANCE OF A TEMPORARY INJUNCTION UPON THE THREAT OF PHYSICAL ABUSE, HARM, OR BODILY INJURY; AND AMENDING SECTION 40-4-121, MCA. *588*

260 *(House Bill No. 794; McCulloch)* AN ACT CLARIFYING THE DEFINITION OF A PAID HOLIDAY; AND AMENDING SECTION 2-18-601, MCA. *589*

261 *(House Bill No. 812; Wanzenried)* AN ACT TO INCLUDE CERTAIN EMPLOYEE EXPENSE REIMBURSEMENTS IN THE EXCLUSION FROM WAGES FOR WORKERS' COMPENSATION AND UNEMPLOYMENT COMPENSATION PURPOSES; AND AMENDING SECTIONS 39-51-201 AND 39-71-123, MCA. *591*

262 *(House Bill No. 848; Bardanouve)* AN ACT CHANGING THE NAME OF THE DEPARTMENT OF INSTITUTIONS AND THE DIRECTOR OF INSTITUTIONS TO THE DEPARTMENT AND DIRECTOR OF CORRECTIONS AND HUMAN SERVICES; DEFINING THE COMPONENTS, PURPOSE, POWERS, AND DUTIES OF THE DEPARTMENT; AMENDING SECTIONS 2-15-104, 2-15-2301, 53-1-201, 53-1-202, AND 53-1-203, MCA; AND PROVIDING AN EFFECTIVE DATE. *595*

263 *(House Bill No. 863; D. Brown)* AN ACT TO GENERALLY REVISE THE MONTANA CAPITAL COMPANY ACT BY PROVIDING FOR THE DESIGNATION OF A MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY TO BE ALLOCATED A PORTION OF THE UNUSED TAX CREDITS; LIMITING THE ALLOCATIONS OF TAX CREDITS TO CAPITAL COMPANIES; AMENDING SECTIONS 30-10-105, 90-8-102, 90-8-104, 90-8-201, 90-8-202, 90-8-203, 90-8-204, 90-8-205, 90-8-301, 90-8-302, 90-8-303, 90-8-304, 90-8-305, 90-8-311, 90-8-312, 90-8-313, AND 90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *600*

264 *(House Bill No. 902; Grady)* AN ACT AUTHORIZING THE SALE OF STATE LAND TO OR THE EXCHANGE OF STATE LAND WITH OTHER PUBLIC ENTITIES. *615*

265 *(House Bill No. 920; Darko)* AN ACT AMENDING THE PATERNITY STATUTE OF LIMITATIONS TO RETROACTIVELY REVIVE ACTIONS THAT WERE BARRED OR COULD HAVE BEEN BARRED BY A SHORTER LIMITATION PERIOD; AMENDING SECTION 40-6-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *616*

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267 *(Senate Bill No. 86; Eck)* AN ACT TO CLARIFY THE TAXATION OF OIL AND NATURAL GAS BY DELETING OBSOLETE REFERENCES TO INTERIM PRODUCTION; TO CLARIFY THE ALLOCATION OF NEW PRODUC-

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271 *(Senate Bill No. 152; Towe)* AN ACT TO CLARIFY THE EXTENT OF THE TAX EXEMPTION ACCORDED PROPERTY OF NONPROFIT MUSEUMS, ART GALLERIES, ZOOS, AND OBSERVATORIES; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 646

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277 *(Senate Bill No. 240; Van Valkenburg)* AN ACT TO GENERALLY REVISE THE LAW REGARDING FISH AND GAME MISDEMEANOR PENALTIES; AMENDING SECTIONS 45-1-205, 87-1-102, 87-2-106, 87-3-102, 87-3-103, 87-3-104, AND 87-3-111, MCA; AND PROVIDING AN EFFECTIVE DATE. . *665*

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279 *(Senate Bill No. 254; Keating)* AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO CONSIDER AS ELIGIBLE FOR LICENSURE ANY HEALTH CARE FACILITY, OTHER THAN A HOSPITAL, THAT IS ACCREDITED BY THE JOINT COMMISSION ON ACCREDITATION OF HEALTH CARE ORGANIZATIONS; AMENDING SECTION 50-5-103, MCA; AND PROVIDING AN EFFECTIVE DATE. *676*

280 *(Senate Bill No. 257; Gage)* AN ACT CLARIFYING THE PEACE OFFICER STATUS OF CRIMINAL INVESTIGATION AGENTS OF THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 44-2-111, 44-2-113, AND 44-2-115, MCA; AND REPEALING SECTION 44-2-112, MCA. *677*

281 *(Senate Bill No. 260; Aklestad)* AN ACT TO REQUIRE THE PROPRIETOR OR MANAGER OF AN INTRASTATE BUS THAT IS NOT CHARTERED TO PROHIBIT SMOKING IN ALL PARTS OF THE BUS; AMENDING SECTION 50-40-105, MCA; AND PROVIDING AN EFFECTIVE DATE. *678*

282 *(Senate Bill No. 261; Lynch)* AN ACT TO GENERALLY REVISE THE LAW RELATING TO CONSOLIDATED GOVERNMENT AND MUNICIPAL WATER SUPPLY SYSTEMS; PROVIDING THAT A CONSOLIDATED LOCAL GOVERNMENT MAY SUPPLY SANITARY SEWER OR STORM SEWER SERVICES OR WATER TO A DISTRICT; AND PROVIDING THAT A CONSOLIDATED LOCAL GOVERNMENT OR A CITY OR TOWN COUNCIL MAY PURCHASE A PRIVATE WATER SUPPLY SYSTEM OR TAKE THE SYSTEM BY EMINENT DOMAIN. *679*

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284 *(Senate Bill No. 304; Stimatz)* AN ACT EXTENDING THE VALIDATION OF CONVEYANCES RECORDED AFTER DEFECTIVE EXECUTION; AND AMENDING SECTION 70-21-309, MCA. *691*

285 *(Senate Bill No. 315; Doherty)* AN ACT ALLOWING THE EXECUTION OF A JUSTICE'S COURT JUDGMENT OUTSIDE THE COUNTY IN WHICH THE JUDGMENT WAS OBTAINED WITHOUT HAVING TO FILE AN ABSTRACT OF THE JUDGMENT IN DISTRICT COURT; DISAPPROVING RULES 21C AND 23(2), MONTANA JUSTICE AND CITY COURT RULES OF CIVIL PROCEDURE; AMENDING SECTIONS 25-31-913 AND 25-31-914, MCA; REPEAL-

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289 (*Senate Bill No. 423; Lynch*) AN ACT AUTHORIZING THE SECRETARY OF STATE TO SELL COPIES OF THE CORPORATE INFORMATION LIST; AUTHORIZING THE SECRETARY OF STATE TO ADOPT RULES SPECIFYING THE FEE TO BE CHARGED FOR THE LIST; EXEMPTING THE LIST FROM THE MAILING LIST PROHIBITION OF STATE LAW; AND AMENDING SECTION 2-6-109, MCA. 697

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322	*(Senate Bill No. 322; Fritz)* AN ACT TO CREATE AN EXEMPTION TO MOTOR CARRIER LAWS FOR PRIVATE, NONPROFIT ORGANIZATIONS PROVIDING TRANSPORTATION OF HANDICAPPED AND ELDERLY PERSONS; AND AMENDING SECTION 69-12-102, MCA.	778

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323 *(Senate Bill No. 383; Weeding)* AN ACT TO REVISE CERTAIN PROVISIONS OF THE WORKERS' COMPENSATION ACT; AMENDING SECTIONS 39-71-116, 39-71-117, 39-71-118, 39-71-414, 39-71-431, 39-71-2311, AND 39-71-2339, MCA; REPEALING SECTION 39-71-2338, MCA; AND PROVIDING AN EFFECTIVE DATE. *780*

324 *(Senate Bill No. 7; Mazurek)* AN ACT REPLACING THE UNIFORM FRAUDULENT CONVEYANCES ACT WITH THE UNIFORM FRAUDULENT TRANSFER ACT; EXTENDING FRAUDULENT CONVEYANCE LAWS TO PERSONAL PROPERTY TRANSFERS; DEFINING TRANSFERS CONSIDERED FRAUDULENT; PROVIDING REMEDIES AND DEFENSES; PROVIDING FOR LIMITATIONS OF CAUSES OF ACTION; AMENDING SECTION 53-5-401, MCA; AND REPEALING SECTIONS 31-2-301, 31-2-302, 31-2-303, 31-2-311, 31-2-312, 31-2-313, 31-2-314, 31-2-315, 31-2-316, 31-2-317, 31-2-321, 31-2-322, 31-2-323, 31-2-324, AND 31-2-325, MCA. *788*

325 *(Senate Bill No. 84; Jacobson)* AN ACT TO PROHIBIT A PERSON EMPLOYED OR ENGAGED BY A SCHOOL DISTRICT FROM INFLICTING CORPORAL PUNISHMENT ON A PUPIL; TO DEFINE CORPORAL PUNISHMENT OF PUPILS; TO CLARIFY SITUATIONS IN WHICH A PERSON WHO IS EMPLOYED OR ENGAGED BY A SCHOOL DISTRICT MAY USE PHYSICAL RESTRAINT ON A PUPIL; TO PROVIDE A FINE FOR UNREASONABLE OR UNNECESSARY PHYSICAL RESTRAINT; TO PROVIDE AN AFFIRMATIVE DEFENSE; AMENDING SECTION 20-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *795*

326 *(Senate Bill No. 87; B. Brown)* AN ACT CLARIFYING THE JURISDICTION OF THE SMALL CLAIMS DIVISION OF DISTRICT COURTS AND ALLOWING INTERPLEADER ACTIONS TO BE FILED IN JUSTICES' COURTS AND IN THE SMALL CLAIMS DIVISION OF JUSTICES' COURTS; AMENDING SECTIONS 25-34-106 AND 25-35-502, MCA; AND PROVIDING AN APPLICABILITY DATE. *797*

327 *(Senate Bill No. 132; Tveit)* AN ACT ALLOWING A MOTOR VEHICLE TO DRAW NOT MORE THAN THREE VEHICLES ATTACHED BY THE TRIPLE SADDLE-MOUNT METHOD UP TO 75 FEET IN OVERALL LENGTH; AND AMENDING SECTION 61-10-104, MCA. *802*

328 *(Senate Bill No. 198; B. Brown)* AN ACT AMENDING THE DISCRIMINATION LAWS TO CORRECT AN INCORRECT CITATION TO FEDERAL LAW; AMENDING SECTION 49-2-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *804*

329 *(Senate Bill No. 239; Van Valkenburg)* AN ACT ESTABLISHING AS FELONIES THE SALE OF UNLAWFULLY TAKEN WILDLIFE AND THE POSSESSION OF UNLAWFULLY TAKEN WILDLIFE HAVING A VALUE OF MORE THAN $1,000; REVISING THE RESTITUTION PENALTIES FOR THE ILLEGAL KILLING OR POSSESSION OF CERTAIN WILDLIFE; DEFINING "LAWFULLY TAKEN WILDLIFE" AND "UNLAWFULLY TAKEN WILDLIFE"; AMENDING SECTIONS 87-1-111 AND 87-3-111, MCA; AND PROVIDING AN EFFECTIVE DATE. *805*

330 *(Senate Bill No. 293; Doherty)* AN ACT INCREASING THE JURISDICTION OF MUNICIPAL COURTS; AND AMENDING SECTION 3-6-103, MCA. *809*

331 *(Senate Bill No. 307; Franklin)* AN ACT EXPANDING THE MEMBERSHIP OF THE BOARD OF DENTISTRY TO INCLUDE A FIFTH DENTIST; REQUIRING THAT EACH DENTIST APPOINTED TO THE BOARD SERVE THE FIRST YEAR OF ANY 5-YEAR STATUTORY TERM AS A NONVOTING MEMBER; AMENDING SECTION 2-15-1842, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. *810*

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332 *(Senate Bill No. 320; Fritz)* AN ACT DESIGNATING THE CAMPUS OF THE UNIVERSITY OF MONTANA AS THE STATE ARBORETUM; AND PROVIDING AN EFFECTIVE DATE. 811

333 *(Senate Bill No. 329; Pipinich)* AN ACT AUTHORIZING THE DEPARTMENT OF HIGHWAYS TO ISSUE SOFT BODY ARMOR TO EMPLOYEES UPON APPOINTMENT AS PEACE OFFICERS; AND AMENDING SECTION 61-12-204, MCA. 811

334 *(Senate Bill No. 398; Towe)* AN ACT PROVIDING THAT A MINOR CONVICTED OF UNLAWFUL POSSESSION OF AN INTOXICATING SUBSTANCE MAY BE SENTENCED TO PERFORM COURT-ORDERED COMMUNITY SERVICE; AND AMENDING SECTION 45-5-624, MCA. 812

335 *(Senate Bill No. 402; Yellowtail)* AN ACT REQUIRING THE MONTANA MEMBERS OF THE PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL TO HOLD AT LEAST ONE PUBLIC HEARING IN A GEOGRAPHIC AREA AFFECTED BY THE PROPOSED ACQUISITION OF MAJOR RESOURCES FROM THAT AREA. 813

336 *(Senate Bill No. 449; Grosfield)* AN ACT TO CLARIFY THAT WARDENS OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS HAVE AUTHORITY TO ENFORCE STATUTES AND RULES RELATING TO THE REGULATION OF OUTFITTERS AND GUIDES IN THE STATE; AMENDING SECTION 87-1-506, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.... 814

337 *(House Bill No. 65; Whalen)* AN ACT MAKING NOVEMBER AND DECEMBER THE 11TH AND 12TH REGISTRATION PERIODS FOR MOTOR VEHICLES; AND AMENDING SECTION 61-3-314, MCA. 815

338 *(House Bill No. 117; J. Brown)* AN ACT ALLOWING A FUNERAL PROCESSION THE RIGHT-OF-WAY THROUGH STREET AND HIGHWAY INTERSECTIONS; REGULATING THE CONDUCT OF A FUNERAL PROCESSION; PROVIDING THAT AN OPERATOR OF A VEHICLE IN A FUNERAL PROCESSION IS NOT NEGLIGENT IF HE FOLLOWS THE REQUIREMENTS OF THIS ACT; PROVIDING THAT NEGLIGENCE MAY NOT BE IMPUTED TO A FUNERAL DIRECTOR OR MORTICIAN IF NO NEGLIGENCE EXISTS ON THE PART OF THE OPERATOR OF A VEHICLE IN A FUNERAL PROCESSION; AND AMENDING SECTION 61-8-201, MCA. 816

339 *(House Bill No. 164; Cobb)* AN ACT TO EXEMPT THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FROM THE REQUIREMENTS FOR DEPOSIT OF CERTAIN MONEY WITH THE STATE TREASURER; AMENDING SECTIONS 17-6-105, 23-1-105, AND 87-1-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 820

340 *(House Bill No. 174; Grady)* AN ACT TO EXEMPT CERTAIN SEASONAL RULES ADOPTED BIENNIALLY BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FROM THE PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 2-4-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 822

341 *(House Bill No. 263; Driscoll)* AN ACT TO CLARIFY THE PUBLIC SERVICE COMMISSION'S AUTHORITY TO REGULATE THE TRANSPORTATION OF RECYCLABLES; AND AMENDING SECTIONS 69-12-101, 69-12-301, 69-12-302, AND 69-12-406, MCA. 824

342 *(House Bill No. 284; Foster)* AN ACT TO PROVIDE THAT CHILD SUPPORT IS TERMINATED BY A CHILD'S EMANCIPATION OR GRADUATION FROM HIGH SCHOOL, WHICHEVER OCCURS LATER, BUT IN NO EVENT LATER THAN THE CHILD'S 19TH BIRTHDAY; AMENDING SECTION 40-4-208,

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MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 827

343 *(House Bill No. 361; Harper)* AN ACT CLARIFYING THE ADJUDICATION PROCESS FOR FEDERAL RESERVED WATER RIGHTS WITH A PRIORITY DATE OF JULY 1, 1973, OR LATER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 829

344 *(House Bill No. 423; Kadas)* AN ACT PROVIDING THAT FEES OR PARTS OF FEES REQUIRED BY LAW TO BE TRANSFERRED TO THE PUBLIC EMPLOYEES' RETIREMENT DIVISION OF THE DEPARTMENT OF ADMINISTRATION FOR DEPOSIT IN THE MONTANA JUDGES' RETIREMENT SYSTEM PENSION TRUST FUND ARE APPROPRIATED TO THE SUPREME COURT FOR DEPOSIT IN THE FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 19-5-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 830

345 *(House Bill No. 536; Bradley)* AN ACT ALLOWING A FIRE SERVICE AREA TO PROVIDE EMERGENCY RESPONSE AND EMERGENCY MEDICAL SERVICES; AND AMENDING SECTIONS 7-33-2401, 7-33-2402, AND 7-33-2404, MCA. 831

346 *(House Bill No. 581; Strizich)* AN ACT ALLOWING ANY LAW ENFORCEMENT AGENCY IN A JUDICIAL DISTRICT TO USE FINGERPRINT RECORDS AND PHOTOGRAPHS OF YOUTHS FOR CERTAIN PURPOSES; AND AMENDING SECTION 41-5-304, MCA. 833

347 *(House Bill No. 602; Driscoll)* AN ACT PROVIDING THAT, WITH RESPECT TO TAX AND FEE MONEY, THE PROPOSED BUDGET OF AND THE NUMBER OF MILLS TO BE ASSESSED BY ANY BOARD, COMMISSION, OR GOVERNING ENTITY, EXCEPT A BOARD OF TRUSTEES OF A PUBLIC LIBRARY, APPOINTED BY A LOCAL GOVERNMENT ARE SUBJECT TO APPROVAL BY THAT LOCAL GOVERNMENT; PROVIDING AN EXEMPTION FOR TAXES LEVIED FOR BOND PAYMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 834

348 *(House Bill No. 606; O'Keefe)* AN ACT ESTABLISHING A YOUTH VOTING PROGRAM TO EDUCATE MONTANA'S YOUTH IN THE DEMOCRATIC PROCESS; PROVIDING THAT THE SECRETARY OF STATE AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION DEVELOP AND COORDINATE THE PROGRAM; AND ALLOWING STUDENTS FROM PARTICIPATING SCHOOLS TO CAST MOCK BALLOTS AT DESIGNATED POLLING PLACES DURING ELECTIONS IF THE STUDENTS ARE ACCOMPANIED BY A PARENT OR ELIGIBLE VOTER. 835

349 *(House Bill No. 625; L. Nelson)* AN ACT REVISING HOSPITAL DISTRICT FINANCING; ALLOWING A COUNTY TO INVEST IN HOSPITAL DISTRICT WARRANTS; ALLOWING A HOSPITAL DISTRICT TO BORROW MONEY BY ISSUING NOTES; AND AMENDING SECTIONS 7-6-2701, 7-34-2122, AND 7-34-2131, MCA. 837

350 *(House Bill No. 655; Grady)* AN ACT TO PERMIT THE INSTALLATION AND USE OF BELOW-GRADE LIQUEFIED PETROLEUM GAS APPLIANCES; AND AMENDING SECTION 50-60-203, MCA. 840

351 *(House Bill No. 697; McCaffree)* AN ACT ALLOWING A JUDGE OF A COURT OF LIMITED JURISDICTION TO SUMMON JURORS BY MAIL; AND AMENDING SECTIONS 3-15-701 AND 3-15-702, MCA. 841

352 *(House Bill No. 745; Swysgood)* AN ACT ESTABLISHING A PARTIAL BASIN CLOSURE IN THE BEAVERHEAD RIVER BASIN AND THE RED ROCK RIVER BASIN; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE. 842

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353 *(House Bill No. 791; Benedict)* AN ACT ALLOWING A COUNTY SHERIFF OR HIS DESIGNEE TO EXERCISE SUPERVISION WITHIN REASONABLE LIMITS OVER SEARCH AND RESCUE PERSONNEL; AND AMENDING SECTION 7-32-235, MCA. *843*

354 *(House Bill No. 798; Quilici)* AN ACT AMENDING THE CRIME VICTIMS COMPENSATION ACT OF MONTANA TO ALLOW THE USE OF FUNDS TO ESTABLISH A GENERAL VICTIMS' ASSISTANCE COORDINATING AND PLANNING PROGRAM; AND AMENDING SECTIONS 53-9-102, 53-9-104, AND 53-9-109, MCA. *844*

355 *(House Bill No. 813; O'Keefe)* AN ACT CREATING A COUNTY RECORDS PRESERVATION FUND; INCREASING THE FEE FOR RECORDING A DOCUMENT BY MECHANICAL MEANS; AMENDING SECTION 7-4-2632, MCA; AND PROVIDING AN EFFECTIVE DATE. *845*

356 *(House Bill No. 817; R. Johnson)* AN ACT ALLOWING A LIBRARY CREATED UNDER TITLE 7 TO RECEIVE STATE AID; REVISING THE DEFINITION OF A "STATE MULTILIBRARY CARD"; AMENDING SECTIONS 22-1-301 AND 22-1-326, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *846*

357 *(Senate Bill No. 136; T. Beck)* AN ACT PROVIDING FOR THE ESTABLISHMENT OF LOCAL WATER QUALITY DISTRICTS; AUTHORIZING ESTABLISHMENT OF FEES; AUTHORIZING GOVERNING BODIES OF COUNTIES, CITIES, AND TOWNS THAT PARTICIPATE IN A LOCAL WATER QUALITY DISTRICT TO ADOPT LOCAL LAWS RELATED TO WATER QUALITY PROTECTION; AUTHORIZING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO APPROVE LOCAL WATER QUALITY PROGRAMS; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO MONITOR IMPLEMENTATION OF LOCAL WATER QUALITY PROGRAMS; AND AMENDING SECTION 75-5-106, MCA. *847*

358 *(Senate Bill No. 142; T. Beck)* AN ACT REQUIRING THAT A PERSON WHO IS ISSUED A SPECIAL ELK PERMIT TO HUNT ANTLERLESS ELK DURING THE REGULAR HUNTING SEASON IS LIMITED TO THE HUNTING AND TAKING OF ONLY AN ANTLERLESS ELK IN THE HUNTING DISTRICT WHERE THE PERMIT IS VALID; AMENDING SECTION 87-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *858*

359 *(Senate Bill No. 156; Doherty)* AN ACT TO GENERALLY REVISE AND CLARIFY THE STATE AND LOCAL REFERENDUM AND INITIATIVE PETITION PROCESSES; AMENDING SECTIONS 7-1-4130, 7-5-132, 7-5-134, 13-27-104, 13-27-202, 13-27-301, 13-27-312, AND 13-27-403, MCA; AND REPEALING SECTION 7-3-4334, MCA. *859*

360 *(Senate Bill No. 165; Harp)* AN ACT TO INCREASE THE MAXIMUM ALLOWABLE FIRE PROTECTION ASSESSMENT FOR FOREST LAND IN A FIRE PROTECTION DISTRICT; AMENDING SECTION 76-13-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *866*

361 *(Senate Bill No. 173; Blaylock)* AN ACT REVISING THE CAMPAIGN FINANCE LAWS; EXCEPTING CERTAIN SPECIAL DISTRICTS FROM CAMPAIGN FINANCE REQUIREMENTS; REQUIRING A SEPARATE CAMPAIGN ACCOUNT FOR MONEY DISPENSED FROM THE PUBLIC CAMPAIGN FUND; REQUIRING RECORDS TO BE FILED WITH THE COMMISSIONER OF POLITICAL PRACTICES; AMENDING SECTIONS 13-37-206, 13-37-304, AND 13-37-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *867*

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362 *(Senate Bill No. 188; Harding)* AN ACT ADDING ACUPUNCTURISTS TO THE GROUP OF HEALTH CARE PROVIDERS FOR WHICH FREEDOM OF CHOICE IN SELECTION MUST BE PROVIDED TO INSURED PERSONS UNDER DISABILITY INSURANCE POLICIES; ADDING SERVICES OF A LICENSED ACUPUNCTURIST TO THE LIST OF HEALTH SERVICES FOR WHICH A HEALTH SERVICE CORPORATION MAY BE ORGANIZED; AMENDING SECTIONS 33-22-111 AND 33-30-101, MCA; AND PROVIDING AN APPLICABILITY DATE. *869*

363 *(Senate Bill No. 225; Gage)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE ADMINISTRATION OF THE OIL AND GAS CONSERVATION LAWS BY THE BOARD OF OIL AND GAS CONSERVATION; CLARIFYING THE AUTHORITY OF THE BOARD TO CONDUCT REHEARINGS ON RULES OR ORDERS ISSUED BY THE BOARD; REVISING THE CIVIL PENALTY TO AT LEAST $75 AND NOT MORE THAN $10,000 A DAY FOR A VIOLATION OF A RULE OR ORDER OF THE BOARD OR OF A PROVISION OF TITLE 82, CHAPTER 11, MCA; AMENDING SECTIONS 82-11-143 AND 82-11-149, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. .. *870*

364 *(Senate Bill No. 243; Mazurek)* AN ACT MAKING THE CHIEF WATER JUDGE A MEMBER OF THE JUDGES' RETIREMENT SYSTEM; PROVIDING FUNDING; AMENDING SECTION 19-5-301, MCA; AND PROVIDING AN EFFECTIVE DATE. *871*

365 *(Senate Bill No. 264; Fritz)* AN ACT DIRECTING THE LEGISLATIVE AUDITOR TO DETERMINE THE VALUE OF PAST SERVICE LIABILITY OF TEACHERS' RETIREMENT SYSTEM MEMBERS OF THE MONTANA UNIVERSITY SYSTEM; AMENDING SECTION 19-21-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *872*

366 *(House Bill No. 382; Swysgood)* AN ACT TO GENERALLY REVISE THE DAM SAFETY ACT; CLARIFYING THE DEFINITIONS OF DAM AND RESERVOIR; EXEMPTING NONFEDERAL DAMS AND RESERVOIRS ON FEDERAL LANDS THAT ARE SUBJECT TO DAM SAFETY REVIEW BY A FEDERAL AGENCY FROM STATE DAM SAFETY REVIEW; AMENDING SECTIONS 85-15-106 AND 85-15-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION. *873*

367 *(House Bill No. 495; Harper)* AN ACT ESTABLISHING A POLICY FOR ADDRESSING IMPROVEMENTS IN STATE PARKS AND FISHING ACCESS SITES; AND REQUIRING THE FISH AND GAME COMMISSION TO ADOPT RULES TO IMPLEMENT THE POLICY. *875*

368 *(House Bill No. 552; Cromley)* AN ACT TO GENERALLY REVISE MONTANA BUSINESS CORPORATION LAW; AMENDING SECTIONS 15-31-103, 20-5-303, 20-5-313, 33-3-103, 33-3-601, 33-3-602, 33-3-603, 33-17-204, 33-17-211, 33-31-201, 35-1-515, 35-1-604, 35-2-202, 35-5-201, 35-6-104, 35-6-201, 35-9-103, 35-9-201, 35-9-205, 35-9-302, 35-9-303, 35-9-305, 35-9-402, 35-9-404, 35-9-501, 35-9-504, 35-12-1204, 35-15-201, 35-16-202, 35-17-202, 35-18-203, 35-20-103, 69-14-501, 80-12-203, MCA; REPEALING SECTIONS 35-1-102 THROUGH 35-1-108, 35-1-110, 35-1-111, 35-1-201 THROUGH 35-1-214, 35-1-301 THROUGH 35-1-307, 35-1-401 THROUGH 35-1-411, 35-1-413 THROUGH 35-1-415, 35-1-501 THROUGH 35-1-514, 35-1-601 THROUGH 35-1-603, 35-1-605 THROUGH 35-1-607, 35-1-609 THROUGH 35-1-612, 35-1-617, 35-1-711, 35-1-801, 35-1-803 THROUGH 35-1-810, 35-1-812, 35-1-901 THROUGH 35-1-912, 35-1-921 THROUGH 35-1-927, 35-1-929, 35-1-930, 35-1-1001 THROUGH 35-1-1013, 35-1-1015 THROUGH 35-1-1020, 35-1-1025, 35-1-1101 THROUGH 35-1-1103, 35-1-1201 THROUGH 35-1-1205, AND 35-1-1301 THROUGH 35-1-1306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. *876*

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369 *(House Bill No. 573; J. Rice)* AN ACT TO CLARIFY THE MOTOR VEHICLE CODE DEFINITION OF "CONVICTION"; AND AMENDING SECTION 61-5-213, MCA. 992

370 *(House Bill No. 586; Swysgood)* AN ACT ALLOCATING HYDROELECTRIC POWER GENERATION REVENUES DERIVED FROM STATE WATER CONSERVATION PROJECTS TO REPAIR AND REHABILITATE STATE WATER CONSERVATION PROJECTS; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO TRANSFER FUNDS FROM THE STATE WATER PROJECT HYDROELECTRIC POWER GENERATION SPECIAL REVENUE ACCOUNT AND THE BROADWATER REPLACEMENT AND RENEWAL ACCOUNT FOR PAYMENT OF DEBT SERVICE ON WATER PROJECT BONDS; AMENDING SECTIONS 17-7-502 AND 85-1-510, MCA; AND PROVIDING AN EFFECTIVE DATE. 993

371 *(House Bill No. 615; Thoft)* AN ACT PROVIDING FOR ISSUANCE OF A 3-DAY NONRESIDENT SHOOTING PRESERVE BIRD HUNTING STAMP FOR USE ONLY ON A SHOOTING PRESERVE; REVISING THE RESTRICTION ON SHOOTING PRESERVE SEASONS; REVISING SHOOTING PRESERVE HARVEST PROVISIONS; AND AMENDING SECTIONS 87-4-504, 87-4-521, AND 87-4-527, MCA. 995

372 *(House Bill No. 724; Elliott)* AN ACT PROHIBITING THE USE OF UNPROCESSED TIMBER FROM STATE LANDS AS A SUBSTITUTE FOR UNPROCESSED TIMBER EXPORTED FROM THE UNITED STATES; AND DIRECTING THE AMENDMENT OF RULE 26.6.411, ADMINISTRATIVE RULES OF MONTANA. 996

373 *(House Bill No. 726; Bergsagel)* AN ACT TO GENERALLY REVISE AND CLARIFY THE UNEMPLOYMENT INSURANCE LAWS; TO DEFINE "TAXES"; TO CLARIFY THE TERM "WAGES"; TO REVISE THE EXCLUSIONS FROM THE DEFINITION OF EMPLOYMENT RELATING TO AGRICULTURAL LABOR AND DOMESTIC SERVICES; TO ALLOCATE WAGES TO PERIODS OF TIME FOR THE PURPOSE OF DETERMINING ELIGIBILITY AND BENEFITS; TO CLARIFY THE AUTHORITY OF THE DEPARTMENT OF LABOR AND INDUSTRY TO AUDIT EMPLOYER RECORDS; TO CLARIFY EMPLOYER LIABILITY FOR TAXES, PENALTIES, AND INTEREST; TO CLARIFY PAYMENT OF BENEFITS TO ALIENS; TO REVISE APPROVED TRAINING UNDER FEDERAL PROGRAMS THAT IS ALLOWED WHILE A PERSON IS RECEIVING BENEFITS; TO REVISE THE CHARGING AND CLASSIFICATION OF EMPLOYERS; TO PLACE A JUDGMENT LIEN ON THE PERSONAL PROPERTY OF EMPLOYERS WHO OWE UNPAID TAXES, PENALTIES, AND INTEREST; TO PROVIDE FOR A PENALTY FOR MAKING FALSE STATEMENTS IN ORDER TO OBTAIN OR INCREASE BENEFITS; TO REVISE REQUALIFYING WAGES THAT MUST BE EARNED AS A CONDITION OF RECEIVING BENEFITS IN A SECOND BENEFIT YEAR; TO REVISE DISQUALIFICATION FOR BENEFITS FOR LEAVING WORK WITHOUT GOOD CAUSE; TO REPEAL DISQUALIFICATION FOR BENEFITS BECAUSE OF SELF-EMPLOYMENT; AMENDING SECTIONS 39-51-201, 39-51-202, 39-51-203, 39-51-204, 39-51-206, 39-51-602, 39-51-603, 39-51-1101, 39-51-1104, 39-51-1105, 39-51-1110, 39-51-1121, 39-51-1125, 39-51-1212, 39-51-1213, 39-51-1214, 39-51-1217, 39-51-1218, 39-51-1301, 39-51-1302, 39-51-1303, 39-51-1304, 39-51-1305, 39-51-1306, 39-51-2107, 39-51-2110, 39-51-2302, 39-51-2602, 39-51-3201, AND 39-51-3202, MCA; REPEALING SECTION 39-51-2308, MCA; AND PROVIDING AN EFFECTIVE DATE. 998

374 *(House Bill No. 732; Cohen)* AN ACT REQUIRING SECURED LOADS ON VEHICLES. 1024

375 *(House Bill No. 742; Wanzenried)* AN ACT REVISING THE LAW REGARDING BOAT DEALERS; REQUIRING A DEALER TO HAVE A PRINCIPAL PLACE OF BUSINESS AND PROVIDING FOR SIGNING AND INSPECTION

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376 *(House Bill No. 749; Ellison)* AN ACT CLARIFYING THE LAWS RELATING TO THE OPERATIONS OF THE HARD-ROCK MINING IMPACT BOARD; MODIFYING PROVISIONS REGARDING THE TRANSFER OF FUNDS FROM THE HARD-ROCK MINING IMPACT TRUST ACCOUNT TO COUNTIES; AMENDING SECTIONS 90-6-305 AND 90-6-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1029*

377 *(House Bill No. 881; R. Johnson)* AN ACT REVISING THE LAWS RELATING TO CERTIFICATION OF EMERGENCY MEDICAL TECHNICIANS; AUTHORIZING THE BOARD OF MEDICAL EXAMINERS TO ADOPT RULES ESTABLISHING VARIOUS LEVELS OF EMERGENCY MEDICAL TECHNICIAN CERTIFICATION AND PRESCRIBING THE TRAINING AND CERTIFICATION REQUIREMENTS FOR EACH LEVEL, AS WELL AS THE TYPES OF EMERGENCY MEDICAL SERVICES EACH MAY PERFORM; AMENDING SECTIONS 50-6-202, 50-6-203, AND 50-6-207, MCA; REPEALING SECTIONS 50-6-204 AND 50-6-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1030*

378 *(House Bill No. 897; Zook)* AN ACT CONSOLIDATING STATE RECORDS MANAGEMENT IN THE OFFICE OF THE SECRETARY OF STATE; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP STANDARDS FOR COMPUTER AND TELECOMMUNICATIONS SYSTEMS; AMENDING SECTIONS 2-6-203, 2-6-206, 2-6-211, 2-6-213, 2-6-302, 2-6-304, AND 2-15-1013, MCA; AND PROVIDING AN EFFECTIVE DATE. *1031*

379 *(House Bill No. 915; Cody)* AN ACT TO AMEND THE UNIFORM CRIMINAL EXTRADITION ACT TO APPLY TO INDIAN RESERVATIONS WITHIN THE STATE OF MONTANA; AMENDING SECTIONS 46-30-101 AND 46-30-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1036*

380 *(House Bill No. 962; Boharski)* AN ACT TO CLARIFY ELEMENTARY AND HIGH SCHOOL TUITION STATUTES; AMENDING SECTIONS 20-5-305 AND 20-5-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. ... *1037*

381 *(Senate Bill No. 250; Keating)* AN ACT AMENDING THE LAWS RELATING TO COMMITMENT OF PERSONS WHO ARE DEVELOPMENTALLY DISABLED; PROVIDING AN ADMINISTRATIVE SCREENING PROCESS PRIOR TO COMMITMENT; CLARIFYING TERMINOLOGY; PROVIDING FOR A NEW DEFINITION OF SERIOUSLY DEVELOPMENTALLY DISABLED; AMENDING SECTIONS 53-20-102, 53-20-104, 53-20-106, 53-20-111, 53-20-112, 53-20-113, 53-20-116, 53-20-121, 53-20-125, 53-20-127, 53-20-128, 53-20-129, 53-20-131, 53-20-132, 53-20-141, 53-20-142, 53-20-145, 53-20-146, 53-20-148, 53-20-161, 53-20-162, 53-20-163, AND 53-20-164, MCA; REPEALING SECTIONS 53-20-115, 53-20-117, 53-20-120, 53-20-122, 53-20-123, AND 53-20-124, MCA; AND PROVIDING A TERMINATION DATE. *1039*

382 *(Senate Bill No. 308; Eck)* AN ACT TO ELIMINATE ADVANCED AGE FROM THE DEFINITION OF "INCAPACITATED PERSON" FOR PURPOSES OF THE LAW RELATING TO GUARDIANSHIP AND CONSERVATORSHIP; AMENDING SECTION 72-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1061*

383 *(Senate Bill No. 323; T. Beck)* AN ACT REMOVING THE REQUIREMENT THAT ONLY LICENSED MOTOR VEHICLE DEALERS MAY OFFER, SOLICIT, OR ADVERTISE THE SALE OF MOTOR VEHICLES; PROVIDING A NUMERICAL QUALIFICATION OF VEHICLE SALES FOR PERSONS ACTING AS DEALERS OF MOTOR VEHICLES; PROVIDING FOR THE LICENS-

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384 *(Senate Bill No. 392; Keating)* AN ACT ALLOWING PUBLIC ACCESS TO DEATH CERTIFICATES WHEN CONDUCTING A TITLE SEARCH; AND AMENDING SECTIONS 50-15-112 AND 50-15-114, MCA. *1075*

385 *(House Bill No. 116; Cody)* AN ACT REPEALING AN ADMINISTRATIVE RULE, ADOPTED BY THE BOARD OF PUBLIC EDUCATION, THAT REQUIRES EACH SCHOOL TO HAVE A GIFTED AND TALENTED CHILDREN PROGRAM; REPEALING RULE 10.55.804, ADMINISTRATIVE RULES OF MONTANA; AND PROVIDING AN EFFECTIVE DATE. *1077*

386 *(House Bill No. 173; Pavlovich)* AN ACT CLARIFYING CERTAIN PROCEDURES OF THE JUDICIAL STANDARDS COMMISSION; CLARIFYING PUBLIC DISCLOSURE REQUIREMENTS; AMENDING SECTIONS 3-1-1106, 3-1-1109, AND 3-1-1122, MCA; AND PROVIDING AN EFFECTIVE DATE. . *1077*

387 *(House Bill No. 260; Barnhart)* AN ACT REQUIRING INSURERS, HEALTH SERVICE CORPORATIONS, AND HEALTH MAINTENANCE ORGANIZATIONS TRANSACTING HEALTH INSURANCE BUSINESS IN THIS STATE TO PROVIDE COVERAGE FOR ADOPTED CHILDREN TO THE SAME EXTENT AS FOR NATURAL CHILDREN OF THE INSURED; REQUIRING COVERAGE OF AN ADOPTED CHILD'S CONDITIONS THAT EXIST PRIOR TO PLACEMENT OF THE ADOPTED CHILD IN THE ADOPTIVE HOME; AND PROVIDING AN APPLICABILITY DATE. *1079*

388 *(House Bill No. 545; T. Nelson)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE MONTANA MEDICAID PROGRAM; REQUIRING FEDERALLY QUALIFIED HEALTH CENTER SERVICES TO BE INCLUDED AS A MEDICAID SERVICE; REVISING AND EXTENDING AUTHORIZATION FOR HOSPICE CARE; PROVIDING FOR THE PURCHASE OF MEDICARE BENEFITS FOR QUALIFIED DISABLED AND WORKING INDIVIDUALS; ALLOWING PAYMENT OF HEALTH INSURANCE EXPENSES FOR MEDICAID-ELIGIBLE PERSONS; REAUTHORIZING AMBULATORY PRENATAL CARE FOR PREGNANT WOMEN DURING A PRESUMPTIVE ELIGIBILITY PERIOD; AMENDING SECTIONS 53-6-101 AND 53-6-131, MCA; AMENDING SECTION 15, CHAPTER 649, LAWS OF 1989; AND PROVIDING AN EFFECTIVE DATE. *1081*

389 *(House Bill No. 485; Raney)* AN ACT REVISING THE AUTHORITY OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD; REVISING CERTAIN DEFINITIONS IN TITLE 75, CHAPTER 11, PART 3; CLARIFYING THE RESPONSIBILITIES OF A PETROLEUM STORAGE TANK OWNER OR OPERATOR AND AN AGENT DESIGNATED FOR REIMBURSEMENT; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO WAIVE NOTIFICATION OF THE EXISTENCE OF A PETRO-

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390 *(House Bill No. 571; J. Rice)* AN ACT TO PROVIDE REFERENCES TO THE DRIVER IMPROVEMENT PROGRAM WITHIN THE STATUTES CONCERNING HABITUAL TRAFFIC OFFENDERS; TO PROVIDE FOR AN ADDITIONAL REVOCATION OF THE DRIVER'S LICENSE OR DRIVING PRIVILEGE OF A PERSON CONVICTED AS A HABITUAL OFFENDER OPERATING A MOTOR VEHICLE; TO REPEAL THE REQUIREMENT THAT CERTAIN HIGH MISDEMEANORS BE CERTIFIED TO DISTRICT COURT; AMENDING SECTIONS 61-11-211, 61-11-212, AND 61-11-213, MCA; AND REPEALING SECTION 61-11-214, MCA. *1091*

391 *(House Bill No. 635; Measure)* AN ACT TO GENERALLY REVISE THE MONTANA LIVING WILL ACT TO CONFORM TO THE UNIFORM RIGHTS OF THE TERMINALLY ILL ACT; PROVIDING THAT OTHER INDIVIDUALS MAY AUTHORIZE THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT; CLARIFYING WHEN A DECLARATION RELATING TO THE USE OF LIFE-SUSTAINING TREATMENT IS OPERATIVE; PROVIDING FOR THE PRESUMPTION OF THE VALIDITY OF DECLARATIONS RELATING TO THE USE OF LIFE-SUSTAINING TREATMENT; AMENDING SECTIONS 50-9-101, 50-9-102, 50-9-103, 50-9-104, 50-9-201, 50-9-202, 50-9-203, 50-9-204, 50-9-205, AND 50-9-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1093*

392 *(House Bill No. 639; Hansen)* AN ACT TO AUTHORIZE A LATE FEE FOR LATE RENEWAL OF A LICENSE TO ENGAGE IN THE BUSINESS OF CLEANING SEPTIC TANKS, CESSPOOLS, AND PRIVIES; TO ALLOCATE PROCEEDS FROM LATE FEES AND THE STATE'S SHARE OF ANNUAL LICENSE FEES TO FUND PROGRAMS TO ENFORCE THE LAWS REGULATING THE BUSINESS OF CLEANING SEPTIC TANKS, CESSPOOLS, AND PRIVIES; AND AMENDING SECTION 37-41-202, MCA. *1101*

393 *(House Bill No. 831; J. Brown)* AN ACT AUTHORIZING THE DEPARTMENT OF INSTITUTIONS TO ADOPT STANDARDS GOVERNING THE APPROVAL OF CHEMICAL DEPENDENCY TREATMENT PROGRAMS AND RULES GOVERNING THE USE OF COUNTYWIDE TREATMENT PLANS IN DETERMINING COUNTY NEEDS FOR TREATMENT, REHABILITATION, AND PREVENTION OF CHEMICAL DEPENDENCY; AND AMENDING SECTIONS 53-24-208 AND 53-24-211, MCA. *1102*

394 *(House Bill No. 974; Peck)* AN ACT ESTABLISHING A RURAL PHYSICIAN INCENTIVE PROGRAM; CREATING A RURAL PHYSICIAN INCENTIVE TRUST FUND; PROVIDING FUNDING FOR THE RURAL PHYSICIAN INCENTIVE TRUST FUND; PROVIDING EDUCATIONAL DEBT PAYMENT PROVISIONS FOR ELIGIBLE RURAL PHYSICIANS; AUTHORIZING THE BOARD OF REGENTS OF HIGHER EDUCATION TO CHARGE CERTAIN STUDENTS FEES FOR PURPOSES OF FUNDING THE PROGRAM; STATUTORILY APPROPRIATING THE RURAL PHYSICIAN INCENTIVE TRUST FUND TO THE BOARD OF REGENTS; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. *1104*

395 *(Senate Bill No. 107; Bengtson)* AN ACT REVISING THE AMOUNT OF MONEY A LOCAL GOVERNMENT MAY APPROPRIATE TO FINANCE A STUDY COMMISSION; AND AMENDING SECTION 7-3-184, MCA. *1106*

396 *(Senate Bill No. 276; Fritz)* AN ACT REQUIRING PAYMENT OF A PARTIAL SALARY TO A FIREFIGHTER INJURED IN THE PERFORMANCE OF DUTY. *1107*

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397 *(Senate Bill No. 321; Fritz)* AN ACT REVISING THE CRIME VICTIMS COMPENSATION ACT OF MONTANA TO PROVIDE COMPENSATION TO INNOCENT VICTIMS OF DUI OFFENDERS; PROVIDING BENEFITS TO VICTIMS INJURED OR KILLED IN STATES THAT DO NOT HAVE VICTIMS COMPENSATION PROGRAMS THAT COMPENSATE RESIDENTS OF THIS STATE; REMOVING THE FAMILY EXCLUSION AND PROVIDING BENEFITS TO AN INNOCENT VICTIM REGARDLESS OF RESIDENCE WITH THE OFFENDER OR HIS ACCOMPLICE; AMENDING SECTIONS 53-9-102, 53-9-103, AND 53-9-125, MCA; AND PROVIDING AN EFFECTIVE DATE. *1108*

398 *(Senate Bill No. 346; Harp)* AN ACT ESTABLISHING A SOLID WASTE MANAGEMENT FEE ON WASTE GENERATED OUT OF STATE; AMENDING SECTIONS 75-10-104, 75-10-105, 75-10-116, AND 75-10-117, MCA; REPEALING SECTION 75-10-110, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. *1111*

399 *(House Bill No. 175; D. Brown)* AN ACT TO PROVIDE THAT THE TRUSTEES OF AN ELEMENTARY SCHOOL DISTRICT SHALL ESTABLISH OR MAKE AVAILABLE A KINDERGARTEN PROGRAM IN THE DISTRICT; AMENDING SECTION 20-7-117, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. *1113*

400 *(House Bill No. 383; Raney)* AN ACT TO ALLOW THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO REGULATE INDUSTRIAL FURNACES AND INDUSTRIAL BOILERS THAT BURN HAZARDOUS WASTES IF THERE ARE NO FEDERAL REGULATIONS OR TO REGULATE THEM MORE STRINGENTLY THAN FEDERAL REGULATIONS; AMENDING SECTION 75-10-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1114*

401 *(House Bill No. 390; Ream)* AN ACT ELIMINATING THE SALE OF SPECIAL WILD BUFFALO LICENSES; ESTABLISHING THE WILD BUFFALO OR BISON AS A SPECIES IN NEED OF MANAGEMENT; ESTABLISHING DEPARTMENTAL MANAGEMENT DUTIES; URGING THE STATE AND THE NATIONAL PARK SERVICE TO ENTER INTO AN AGREEMENT FOR THE LONG-TERM MANAGEMENT OF THE YELLOWSTONE NATIONAL PARK HERD; REQUIRING A REPORT ON THE PROGRESS OF BISON MANAGEMENT TO THE 53RD LEGISLATURE; AMENDING SECTION 87-2-701, MCA; REPEALING SECTION 87-2-723, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1117*

402 *(House Bill No. 640; J. Brown)* AN ACT TO REVISE THE DEFINITION OF "FETAL DEATH" TO INCLUDE THE BIRTH OF A DEAD FETUS BEFORE 20 WEEKS OF GESTATION IF THE FETUS WEIGHS MORE THAN 500 GRAMS AT THE TIME OF DELIVERY; AND AMENDING SECTION 50-15-101, MCA. *1120*

403 *(House Bill No. 641; Knox)* AN ACT MODIFYING REQUIREMENTS FOR AN APPLICATION FOR A PERMIT UNDER THE METAL MINE RECLAMATION STATUTES; AND AMENDING SECTION 82-4-335, MCA. *1121*

404 *(House Bill No. 642; Cocchiarella)* AN ACT TO REVISE THE MONTANA CHILD CARE ACT; TO CHANGE THE DEFINITION OF "CHILD" TO MEAN A PERSON UNDER 13 YEARS OF AGE; TO LIMIT THE TYPE OF GROUP EDUCATION FACILITIES THAT ARE EXCLUDED FROM LICENSURE OR REGISTRATION AS A DAY-CARE FACILITY; TO DEFINE THE TERM "RELATED BY BLOOD OR MARRIAGE" FOR THE PURPOSE OF CLARIFYING THOSE PERSONS WHO MAY PROVIDE DAY CARE TO CHILDREN WITHOUT MEETING STATE LICENSING AND REGISTRATION REQUIREMENTS; AMENDING SECTION 52-2-703, MCA; AND PROVIDING AN EFFECTIVE DATE. *1123*

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405 *(House Bill No. 700; T. Nelson)* AN ACT TO ALLOW THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ISSUE HEALTH CARE FACILITY LICENSES FOR A PERIOD OF 1 TO 3 YEARS IN DURATION; ALLOWING THE DEPARTMENT TO INSPECT HEALTH CARE FACILITIES LESS OFTEN THAN ANNUALLY; AND AMENDING SECTIONS 50-5-201, 50-5-203, AND 50-5-204, MCA. *1125*

406 *(House Bill No. 765; Russell)* AN ACT REQUIRING THAT A VOTER REGISTRATION FORM BE ATTACHED TO DRIVER'S LICENSE APPLICATIONS; PROVIDING FOR VOTER REGISTRATION AT THE TIME OF APPLICATION; AMENDING SECTION 61-5-107, MCA. *1126*

407 *(House Bill No. 858; Gilbert)* AN ACT ESTABLISHING A STATEWIDE HOUSEHOLD HAZARDOUS WASTE PUBLIC EDUCATION PROGRAM; DEFINING HOUSEHOLD HAZARDOUS WASTE; AND AMENDING SECTION 75-10-203, MCA. *1127*

408 *(House Bill No. 952; Raney)* AN ACT REQUIRING SAND AND GRAVEL OPENCUT MINES AND CONCRETE AND ASPHALT PROCESSING FACILITIES TO COMPLY WITH APPLICABLE LOCAL ZONING REGULATIONS; AMENDING SECTIONS 76-1-113, 76-2-209, 82-4-431, AND 82-4-432, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION. *1129*

409 *(Senate Bill No. 8; Mazurek)* AN ACT REGULATING THE PRACTICE OF REAL ESTATE APPRAISING; ESTABLISHING THE BOARD OF REAL ESTATE APPRAISERS; PROVIDING FOR LICENSURE AND CERTIFICATION OF REAL ESTATE APPRAISERS; PROVIDING PENALTIES; ESTABLISHING FEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1133*

410 *(Senate Bill No. 1; Mazurek)* AN ACT TO GENERALLY REVISE THE UNIFORM COMMERCIAL CODE; REVISING THE UNIFORM COMMERCIAL CODE PROVISIONS GOVERNING NEGOTIABLE INSTRUMENTS TO REFLECT TECHNOLOGICAL CHANGES AND TO CONFORM TO COURT DECISIONS; LIMITING THE APPLICATION OF THE PROVISIONS GOVERNING NEGOTIABLE INSTRUMENTS TO CHECKS, BEARER INSTRUMENTS, AND ORDER INSTRUMENTS; ELIMINATING THE SUM CERTAIN REQUIREMENT FOR NEGOTIABLE INSTRUMENTS; PROVIDING CONTRIBUTION RULES FOR MULTIPLE PARTIES TO A DRAFT OR NOTE; PROVIDING STATUTES OF LIMITATION FOR AN ACTION BASED ON A NEGOTIABLE INSTRUMENT; REVISING THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE GOVERNING BANK DEPOSITS AND COLLECTIONS TO CONFORM TO THE REVISIONS GOVERNING NEGOTIABLE INSTRUMENTS; ADOPTING THE PROVISIONS GOVERNING FUNDS TRANSFERS; ADOPTING THE UNIFORM COMMERCIAL CODE PROVISIONS ON LEASES; PROVIDING GENERAL RULES PERTAINING TO THE CONSTRUCTION OF LEASING CONTRACTS; DEFINING THE RIGHTS AND REMEDIES OF LESSORS AND LESSEES; PROVIDING RULES FOR PERFORMANCE OF LEASING CONTRACTS; MAKING CERTAIN LEASES SECURED TRANSACTIONS; REVISING THE LAWS GOVERNING BULK SALES; AMENDING SECTIONS 27-1-717, 30-1-105, 30-1-201, 30-1-207, 30-2-103, 30-2-403, 30-2-511, 30-3-101, 30-3-102, 30-3-104, 30-3-105, 30-3-107, 30-3-108, 30-3-109, 30-3-111, 30-3-114, 30-3-115, 30-3-119, 30-3-122, 30-3-202, 30-3-203, 30-3-204, 30-3-205, 30-3-208, 30-3-301, 30-3-302, 30-3-303, 30-3-304, 30-3-305, 30-3-306, 30-3-307, 30-3-401, 30-3-403, 30-3-404, 30-3-405, 30-3-406, 30-3-407, 30-3-409, 30-3-410, 30-3-412, 30-3-413, 30-3-414, 30-3-415, 30-3-417, 30-3-419, 30-3-504, 30-3-508, 30-3-510, 30-3-601, 30-3-603, 30-3-604, 30-3-605, 30-4-102, 30-4-103, 30-4-104, 30-4-105, 30-4-106, 30-4-108, 30-4-201, 30-4-202, 30-4-203, 30-4-204, 30-4-205, 30-4-206, 30-4-207, 30-4-208, 30-4-209, 30-4-210, 30-4-211, 30-4-212, 30-4-213, 30-4-214, 30-4-301, 30-4-302, 30-4-303, 30-4-401, 30-4-402, 30-4-403, 30-4-406, 30-4-407, 30-4-503, AND 30-9-113, MCA; AND REPEALING SECTIONS 30-3-103, 30-3-106, 30-3-110, 30-3-112, 30-3-113,

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411 *(House Bill No. 741; Cromley)* AN ACT TO GENERALLY REVISE NONPROFIT CORPORATE LAW; AMENDING SECTIONS 15-1-101, 33-17-211, 35-6-104, AND 35-6-201, MCA; REPEALING SECTIONS 35-2-102 THROUGH 35-2-112, 35-2-201 THROUGH 35-2-211, 35-2-301 THROUGH 35-2-304, 35-2-401 THROUGH 35-2-413, 35-2-501 THROUGH 35-2-509, 35-2-601 THROUGH 35-2-607, 35-2-701 THROUGH 35-2-706, 35-2-711 THROUGH 35-2-719, 35-2-801 THROUGH 35-2-819, 35-2-901 THROUGH 35-2-903, 35-2-1001, 35-2-1002, 35-2-1101 THROUGH 35-2-1106, AND 35-2-1201 THROUGH 35-2-1203, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE. *1291*

412 *(House Bill No. 926; Hoffman)* AN ACT PROVIDING FOR VOLUNTARY FILING OF PERFORMANCE BONDS FOR PROJECTS AND ACTIVITIES AUTHORIZED BY WATER POLLUTION DISCHARGE PERMITS; AMENDING SECTIONS 75-5-401 AND 75-5-402, MCA; AND PROVIDING EFFECTIVE DATES. *1378*

413 *(House Bill No. 404; Grinde)* AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE X, SECTION 11, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE STATE MAY TRANSFER PUBLIC LANDS OF THE STATE THAT ARE NOT SUBJECT TO RESTRICTION BY A GRANT FROM THE UNITED STATES TO A LOCAL GOVERNMENT FOR LESS THAN FULL MARKET VALUE AS PROVIDED BY GENERAL LAWS; AND PROVIDING AN EFFECTIVE DATE. *1380*

414 *(House Bill No. 301; Wanzenried)* AN ACT REMOVING THE 1-YEAR RESIDENCY AND MONTANA CITIZENSHIP REQUIREMENTS FOR HIGHWAY PATROL OFFICER APPOINTMENT; REPEALING THE REQUIREMENT THAT HIGHWAY PATROL OFFICERS BE APPOINTED IN EQUAL NUMBERS FROM THE FIVE HIGHWAY DISTRICTS; AMENDING SECTION 44-1-401, MCA; REPEALING SECTION 44-1-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1381*

415 *(House Bill No. 487; Wyatt)* AN ACT PROTECTING SHOOTING RANGE LOCATIONS; EXEMPTING SHOOTING RANGES FROM CERTAIN LAWS RELATING TO LITTER CONTROL, COMMUNITY DECAY, DISORDERLY CONDUCT, AND PUBLIC NUISANCE; AMENDING SECTIONS 7-5-2109, 7-5-2110, 45-8-101, AND 45-8-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1382*

416 *(House Bill No. 543; Darko)* AN ACT CLARIFYING THAT THE ELIGIBILITY FOR THE CREDIT FOR DEPENDENT CARE ASSISTANCE APPLIES TO THE AMOUNT PAID OR INCURRED BY THE EMPLOYER THAT IS NOT PART OF A SALARY REDUCTION PLAN; INCREASING THE AMOUNT OF THE CREDIT TO 20 PERCENT; AMENDING SECTION 15-31-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *1386*

417 *(House Bill No. 547; M. Hanson)* AN ACT EXEMPTING CERTAIN NONPROFIT GROUPS AND STUDENT GROUPS FROM STORE LICENSE REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.... *1388*

418 *(House Bill No. 563; Knox)* AN ACT REVISING THE ELK LICENSE AND SPECIAL ELK PERMIT LANDOWNER PREFERENCE SYSTEM BY REQUIR-

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ING THAT A PERSON ISSUED A LICENSE OR PERMIT UNDER THE PREFERENCE SHALL OWN OR BE CONTRACTING TO PURCHASE THE LAND RATHER THAN THAT THE LAND BE HELD IN FEE TITLE; AND AMENDING SECTIONS 87-2-501 AND 87-2-705, MCA. *1389*

419 *(House Bill No. 570; J. Rice)* AN ACT TO REVISE VARIOUS DRIVER LICENSING STATUTES TO PROVIDE EITHER AN EXAMINATION OR AN INVESTIGATION IN CASES OF DRIVER'S LICENSE REEXAMINATION; TO REQUIRE THAT COURT ABSTRACTS OR REPORTS OF CONVICTION RECEIVED BY THE DEPARTMENT NAMING INDIVIDUALS LICENSED IN ANOTHER JURISDICTION BE FORWARDED TO THE JURISDICTION OF LICENSURE WITHOUT ACTION AGAINST THE DRIVER'S LICENSE OR DRIVING PRIVILEGE; TO CLARIFY AND SIMPLIFY THE RESPONSIBILITY OF PERSONS SIGNING DRIVER'S LICENSE APPLICATIONS FOR MINORS; AND AMENDING SECTIONS 37-2-311, 61-5-108, 61-5-207, AND 61-5-405, MCA. *1391*

420 *(House Bill No. 591; Southworth)* AN ACT TO REQUIRE THAT A CONTRACT LET FOR A PROJECT COSTING MORE THAN $25,000 AND FINANCED IN WHOLE OR IN PART BY TAX-EXEMPT INDUSTRIAL REVENUE BONDS CONTAIN A PROVISION REQUIRING THE CONTRACTOR TO PAY THE STANDARD PREVAILING WAGE; AND PROVIDING AN EFFECTIVE DATE. *1393*

421 *(House Bill No. 594; Gould)* AN ACT ESTABLISHING THE FIRST WEEK OF MARCH AS AN OFFICIAL WEEK OF OBSERVANCE IN MONTANA OF THE RIGHT TO KEEP AND BEAR ARMS. *1393*

422 *(House Bill No. 638; Schye)* AN ACT REPEALING THE REGULATORY POWERS OF THE BOARD OF AERONAUTICS; AND REPEALING SECTIONS 67-3-421, 67-3-422, 67-3-423, 67-3-424, 67-3-425, 67-3-426, 67-3-427, 67-3-428, AND 67-3-429, MCA. *1394*

423 *(House Bill No. 659; T. Nelson)* AN ACT TO PROVIDE LIMITED EXEMPTIONS FROM THE OFF-HIGHWAY DECAL REQUIREMENT OF SECTION 23-2-804, MCA, WHEN THE OFF-HIGHWAY VEHICLE IS OTHERWISE LICENSED UNDER SECTION 61-3-321, MCA, WHICH GOVERNS VEHICLE AND LICENSE FEES; AND AMENDING SECTIONS 23-2-802 AND 23-2-804, MCA. *1394*

424 *(House Bill No. 690; Harper)* AN ACT REVISING THE LAW REGARDING CRUELTY TO ANIMALS BY ADDING CRUEL CONFINEMENT AND FAILURE TO PROVIDE LICENSED VETERINARY OR MEDICAL CARE AS PUNISHABLE OFFENSES; ADDING AN EXCEPTION FOR SANCTIONED ENDURANCE RACES, COMMONLY ACCEPTED AGRICULTURAL AND LIVESTOCK PRACTICES, AND FOR HUMANE DESTRUCTION OF AN ANIMAL FOR JUST CAUSE; ESTABLISHING A PENALTY FOR REPEAT OFFENSES; AND AMENDING SECTION 45-8-211, MCA. *1396*

425 *(House Bill No. 814; Thoft)* AN ACT CLARIFYING THE LAW PROVIDING FOR THE DISPOSITION OF STATE-OWNED WATER PROJECTS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; ESTABLISHING A DATE FOR THE DEPARTMENT TO ATTEMPT TO DISPOSE OF ITS CANAL PROJECTS; INCREASING THE PERCENTAGE OF AFFECTED WATER USERS REQUIRED TO VETO A DEPARTMENT DECISION TO DISPOSE OF A PROJECT; AMENDING SECTIONS 85-1-211 AND 85-6-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1397*

426 *(House Bill No. 875; Whalen)* AN ACT TO REQUIRE REPRESENTATION OF ORGANIZED LABOR ON THE STATE EMPLOYEE GROUP BENEFITS ADVISORY COUNCIL; AND AMENDING SECTION 2-15-1016, MCA.......... *1400*

427 *(House Bill No. 893; Kasten)* AN ACT REVISING THE LAW RELATING TO THE FILING OF THRESHERS' LIENS; REQUIRING A STATEMENT OF AG-

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RICULTURAL LIEN TO BE FILED WITHIN 30 DAYS OF PERFORMANCE; PROVIDING THAT A COPY OF THE STATEMENT OF LIEN SENT BY CERTIFIED MAIL IS SUFFICIENT NOTICE TO PRIVATE PURCHASERS; AND AMENDING SECTION 71-3-802, MCA. *1401*

428 *(House Bill No. 899; Cocchiarella)* AN ACT TO EXPAND THE DEFINITION OF TRAFFIC EDUCATION TO INCLUDE INSTRUCTION IN BICYCLE, PEDESTRIAN, AND SCHOOL BUS TRAFFIC LAWS AND THE SAFE OPERATION OF BICYCLES IN ORDER TO INCREASE PUBLIC AWARENESS OF MOTOR VEHICLE, PEDESTRIAN, AND SCHOOL BUS SAFETY WITH REGARD TO PROTECTING SCHOOL-AGE CHILDREN; AMENDING SECTION 20-7-501, MCA; AND PROVIDING A TERMINATION DATE. *1401*

429 *(Senate Bill No. 105; Thayer)* AN ACT AMENDING THE FORMULA PERTAINING TO FEDERAL AND STATE MATCHING FUNDS FOR MEDICAL RESEARCH FACILITY CONSTRUCTION, EQUIPMENT, AND STARTUP OPERATING COSTS; EXTENDING THE TERMINATION DATE OF THE APPROPRIATION OF FUNDS FROM THE COAL SEVERANCE TAX PERMANENT FUND TO BE USED FOR THE MEDICAL RESEARCH FACILITY PROJECTS TO JUNE 30, 1993; AMENDING SECTION 90-3-901, MCA, AND SECTION 1, CHAPTER 634, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1402*

430 *(Senate Bill No. 117; Pipinich)* AN ACT REMOVING THE STATUTORY LIMITS ON UNIVERSITY SECURITY GUARDS CARRYING FIREARMS; AND AMENDING SECTION 20-25-324, MCA. *1404*

431 *(Senate Bill No. 253; Bengtson)* AN ACT TO GENERALLY REVISE THE OPENCUT MINING ACT; PROHIBITING MINING OF PREVIOUSLY RECLAIMED LAND WITHOUT AN OPENCUT CONTRACT; AUTHORIZING THE DEPARTMENT OF STATE LANDS TO SPEND MONEY FOR RECLAMATION OF LAND AND REHABILITATION OF WATER AFFECTED BY OPENCUT MINING; AUTHORIZING ACCEPTANCE OF LETTERS OF CREDIT AS BOND; PROVIDING ADMINISTRATIVE PROCEDURES FOR AND APPEALS OF ASSESSMENT OF CIVIL PENALTIES; AND AMENDING SECTIONS 82-4-424, 82-4-431, 82-4-433, AND 82-4-441, MCA. *1404*

432 *(Senate Bill No. 336; Pipinich)* AN ACT TO CLARIFY WHEN HEALTH CARE INFORMATION IN THE POSSESSION OF LOCAL HEALTH OFFICERS OR BOARDS OR THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES IS SUBJECT TO THE UNIFORM HEALTH CARE INFORMATION ACT, RATHER THAN THE GOVERNMENT HEALTH CARE INFORMATION ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1408*

433 *(Senate Bill No. 377; Jergeson)* AN ACT EXEMPTING UNDERGROUND STORAGE TANK INSTALLERS WHO ARE EMPLOYEES FROM CIVIL PENALTY PROVISIONS; AMENDING SECTION 75-11-223, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE. *1408*

434 *(Senate Bill No. 385; Keating)* AN ACT TO ESTABLISH INDUSTRIES PROGRAMS AT STATE YOUTH CORRECTIONAL FACILITIES; TO GRANT THE DEPARTMENT OF FAMILY SERVICES RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE. *1409*

435 *(Senate Bill No. 386; Bengtson)* AN ACT CLARIFYING THAT A WATER RIGHT MAY BE TEMPORARILY CHANGED; AND AMENDING SECTION 85-2-404, MCA. *1411*

436 *(House Bill No. 667; Darko)* AN ACT TO ALLOW THE BOARD OF MEDICAL EXAMINERS TO FUND ADDITIONAL STAFF, HIRED BY THE DEPARTMENT OF COMMERCE, THROUGH AN INCREASE IN THE LICENSE FEES PAID BY LICENSED PHYSICIANS; AMENDING SECTION 37-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1414*

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437 *(House Bill No. 785; Messmore)* AN ACT TO GENERALLY REVISE THE MONTANA HEALTH MAINTENANCE ORGANIZATION ACT; TO ELIMINATE THE REQUIREMENT FOR CERTIFICATION BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES BEFORE A CERTIFICATE OF AUTHORITY IS ISSUED TO A HEALTH MAINTENANCE ORGANIZATION; TO ELIMINATE OTHER REQUIREMENTS RELATING TO THE DEPARTMENT; AMENDING SECTIONS 33-31-102, 33-31-103, 33-31-201, 33-31-202, 33-31-212, 33-31-401, 33-31-402, 33-31-404, AND 33-31-405, MCA; REPEALING SECTION 33-31-104, MCA; AND PROVIDING AN EFFECTIVE DATE. *1415*

438 *(House Bill No. 849; Bradley)* AN ACT PROVIDING FOR A REFERENDUM IN OCTOBER 1991 FOR MONTANA STUDENTS ENROLLED IN GRADES 7 THROUGH 12 TO DECIDE WHETHER RETAILERS SHOULD REFUSE TO SELL CIGARETTES AND TOBACCO TO PERSONS UNDER 18 YEARS OF AGE; PROVIDING FOR PROCEDURES AND SUPERVISION OF THE REFERENDUM BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION; PROVIDING FOR THE POSTING OF SIGNS BY RETAILERS WHO REFUSE TO SELL TOBACCO TO MINORS IN ACCORDANCE WITH THE REFERENDUM, IF APPROVED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1428*

439 *(Senate Bill No. 120; B. Brown)* AN ACT TO REQUIRE THAT TRUSTEES OF A SCHOOL DISTRICT PROVIDE A NONTENURE TEACHER WITH A TRUE STATEMENT OF REASONS UPON TERMINATION; TO PROVIDE A NONTENURE TEACHER WITH A HEARING IF THE NONTENURE TEACHER BELIEVES THE REASONS ARE NOT TRUE; AMENDING SECTIONS 20-3-210 AND 20-4-206, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION. *1429*

440 *(Senate Bill No. 123; Jergeson)* AN ACT PROVIDING THAT PROCEEDS IN THE NOXIOUS WEED MANAGEMENT TRUST FUND MAY BE GRANTED TO THE AGRICULTURAL EXPERIMENT STATION AND THE COOPERATIVE EXTENSION SERVICE FOR RESEARCH, EVALUATION, AND EDUCATION ON CROP WEED MANAGEMENT; REQUIRING ANNUAL REPORTS ON WEED CONTROL RESEARCH; AMENDING SECTIONS 80-7-508 AND 80-7-814, MCA; AND PROVIDING AN EFFECTIVE DATE. *1431*

441 *(Senate Bill No. 236; Harp)* AN ACT REVISING THE URBAN RENEWAL LAWS; CHANGING THE PERIOD OF THE ANNUAL REPORT; PROVIDING FOR CERTAIN REDEVELOPMENT ACTIVITIES TO BE UNDERTAKEN IN ACCORDANCE WITH A DEVELOPMENT AGREEMENT; REVISING THE TERMINATION OF TAX INCREMENT FINANCING; PROVIDING FOR THE REDUCTION IN TAX INCREMENT DISTRIBUTIONS UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 7-15-4237, 7-15-4258, 7-15-4286, AND 7-15-4292, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. .. *1433*

442 *(Senate Bill No. 269; Aklestad)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO GENERAL RELIEF MEDICAL ASSISTANCE; TO LIMIT ELIGIBILITY FOR GENERAL RELIEF MEDICAL ASSISTANCE TO PERSONS WHO ARE CHRONICALLY ILL, HAVE AN ACUTE MEDICAL NEED, ARE CHILDREN LESS THAN 18 YEARS OF AGE, OR REQUIRE MEDICAL SERVICES IN ORDER TO OBTAIN OR RETAIN EMPLOYMENT; TO LIMIT GENERAL RELIEF MEDICAL ASSISTANCE TO THOSE SERVICES MEDICALLY NECESSARY TO TREAT CERTAIN SERIOUS MEDICAL CONDITIONS; TO AUTHORIZE A MANAGED-CARE SYSTEM; AMENDING SECTIONS 53-3-109, 53-3-206, AND 53-3-310, MCA; AND PROVIDING AN EFFECTIVE DATE. *1437*

443 *(Senate Bill No. 277; Gage)* AN ACT TO MODIFY THE MEMBERSHIP OF THE DEVELOPMENTAL DISABILITIES PLANNING AND ADVISORY COUNCIL; AND AMENDING SECTION 2-15-2204, MCA. *1442*

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444 *(Senate Bill No. 287; Gage)* AN ACT TO RECOGNIZE RESPONSIBILITIES AND RIGHTS OF A PARENT WHO PROVIDES A HOME SCHOOL AND RIGHTS OF A CHILD IN HOME SCHOOL. *1444*

445 *(Senate Bill No. 310; Yellowtail)* AN ACT ALLOWING CONTRACT PHYSICIANS AT URBAN INDIAN CLINICS TO DISPENSE DRUGS; AND AMENDING SECTION 37-2-104, MCA. *1444*

446 *(Senate Bill No. 311; Weeding)* AN ACT REVISING THE LAW REGARDING THE LICENSURE AND PRACTICE OF PHYSICIAN ASSISTANTS-CERTIFIED; CLARIFYING METHODS AVAILABLE TO THE BOARD OF MEDICAL EXAMINERS FOR DISCIPLINING A SUPERVISING PHYSICIAN OR A PHYSICIAN ASSISTANT-CERTIFIED; ELIMINATING THE TIME RESTRICTION ON LOCUM TENENS PRACTICE; REQUIRING THE BOARD TO DEVELOP RULES REGARDING PHYSICIAN ASSISTANT STUDENTS; AMENDING SECTIONS 37-20-104, 37-20-202, AND 37-20-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1445*

447 *(Senate Bill No. 330; Manning)* AN ACT AUTHORIZING THE EXECUTIVE SECRETARY OF THE BOARD OF HORSERACING, SUBJECT TO BOARD OF HORSERACING RULES, TO PRESCRIBE THE DUTIES AND SALARY OF INDIVIDUALS EMPLOYED AS STATE STEWARDS AT AUTHORIZED MONTANA RACE MEETS; EXEMPTING STATE STEWARDS FROM THE STATE COMPENSATION AND PAY PLAN; AMENDING SECTIONS 2-18-103 AND 23-4-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.... *1448*

448 *(House Bill No. 62; Stang)* AN ACT AUTHORIZING THE REQUIREMENT OF PARTICULAR TIRES, CHAINS, OR TRACTION EQUIPMENT FOR VEHICLES ON A DESIGNATED DANGEROUS OR UNSAFE HIGHWAY; PROVIDING A PENALTY; AND AMENDING SECTION 61-9-406, MCA. *1450*

449 *(House Bill No. 133; Galvin)* AN ACT REVISING THE REQUIREMENTS THAT CERTAIN VEHICLES STOP AT RAILROAD GRADE CROSSINGS BY CLARIFYING THAT A RAILROAD GRADE CROSSING SIGNAL IS NOT A TRAFFIC-CONTROL SIGNAL; DELETING THE PROVISION FOR STREET-RAILWAY GRADE CROSSINGS IN BUSINESS OR RESIDENCE DISTRICTS; AND AMENDING SECTION 61-8-349, MCA. *1452*

450 *(House Bill No. 150; Whalen)* AN ACT TO ALLOW FOR REREGISTRATION OF MOTOR HOMES AND TRAVEL TRAILERS BY MAIL; TO ALLOW APPLICATION TO THE COUNTY TREASURER FOR CAMPER DECALS BY MAIL; AND AMENDING SECTIONS 61-3-525, 61-3-526, AND 61-3-535, MCA. *1453*

451 *(House Bill No. 176; T. Nelson)* AN ACT INCREASING THE FEE FOR OBTAINING CERTIFIED COPIES OF BIRTH AND DEATH CERTIFICATES AND FOR FILING CERTAIN INSTRUMENTS REQUIRED BY LAW TO BE FILED WITH THE COUNTY CLERK; AMENDING SECTION 7-4-2631, MCA; AND PROVIDING AN EFFECTIVE DATE. *1455*

452 *(House Bill No. 303; Bradley)* AN ACT PROVIDING THAT IT IS LAWFUL FOR A TELEPHONE COMPANY TO RELEASE IN GOOD FAITH TO PERSONNEL OF EMERGENCY COMMUNICATIONS SYSTEMS INFORMATION NOT IN THE PUBLIC RECORD, INCLUDING BUT NOT LIMITED TO UNPUBLISHED OR UNLISTED TELEPHONE NUMBERS; PROVIDING IMMUNITY TO LOCAL EXCHANGE TELEPHONE COMPANIES WITH LESS THAN 15,000 SUBSCRIBERS THAT PROVIDE EMERGENCY COMMUNICATIONS SYSTEMS AND RELATED SERVICES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1456*

453 *(House Bill No. 325; Simpkins)* AN ACT TO REVISE THE LAWS RELATING TO HOSPITAL DISTRICTS; TO EXPAND THE DEFINITION OF HOSPITAL FACILITIES TO INCLUDE HEALTH CARE FACILITIES; TO PROVIDE EDU-

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CATION INCENTIVES FOR PERSONS IN EXCHANGE FOR PROVIDING SERVICES TO HOSPITAL DISTRICTS; AND AMENDING SECTIONS 7-34-2101, 7-34-2102, AND 7-34-2122, MCA. 1457

454 *(House Bill No. 596; O'Keefe)* AN ACT PROHIBITING DISCRIMINATION IN PUBLIC ACCOMMODATIONS AND HOUSING ON THE BASIS OF MARITAL STATUS; AND AMENDING SECTIONS 49-2-304 AND 49-2-305, MCA. 1459

455 *(House Bill No. 613; Ellison)* AN ACT ESTABLISHING THE THIRD WEEK OF SEPTEMBER AS AN OFFICIAL WEEK OF OBSERVANCE OF MONTANA'S HUNTING HERITAGE. 1461

456 *(House Bill No. 646; Madison)* AN ACT ALLOWING ADDITIONAL PARKING PRIVILEGE DISPLAY CARDS TO BE ISSUED TO A HANDICAPPED PERSON WHO OWNS MORE THAN ONE MOTOR VEHICLE; AND AMENDING SECTION 49-4-304, MCA. 1462

457 *(House Bill No. 877; Ream)* AN ACT TO REMOVE THE REQUIREMENT THAT VOTER APPROVAL FOR AN ECONOMIC DEVELOPMENT LEVY MUST HAVE OCCURRED PRIOR TO DECEMBER 31, 1990, FOR THE LEVY TO BE EXEMPT FROM THE PROPERTY TAX LIMITATIONS OF TITLE 15, CHAPTER 10, PART 4, MCA; AMENDING SECTION 90-5-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1463

458 *(House Bill No. 953; S. Rice)* AN ACT REQUIRING THE DEPARTMENT OF COMMERCE TO CONDUCT ANNUAL INSPECTIONS OF ESTABLISHMENTS LICENSED BY THE BOARD OF COSMETOLOGISTS; PROVIDING AN APPROPRIATION; AMENDING SECTION 37-31-312, MCA; AND PROVIDING AN EFFECTIVE DATE. 1464

459 *(Senate Bill No. 10; Bengtson)* AN ACT AUTHORIZING RURAL FIRE DISTRICTS TO SELL BONDS TO PROVIDE FUNDS FOR THE PURCHASE AND MAINTENANCE OF FIRE AND EMERGENCY RESPONSE EQUIPMENT AND FACILITIES; ESTABLISHING RESPONSIBILITY FOR BONDED INDEBTEDNESS IF MUNICIPAL ANNEXATION OCCURS; AND AMENDING SECTION 7-33-2109, MCA. 1465

460 *(Senate Bill No. 391; Keating)* AN ACT TO PROVIDE INCREASED MANAGEMENT OF THE COST AND DELIVERY OF MEDICAL SERVICES UNDER THE MEDICAID AND GENERAL RELIEF MEDICAL ASSISTANCE PROGRAMS; TO AUTHORIZE MANAGED-CARE SYSTEMS FOR THE MEDICAID AND GENERAL RELIEF MEDICAL ASSISTANCE PROGRAMS; TO AUTHORIZE CASE MANAGEMENT SERVICES UNDER THE MEDICAID PROGRAM; TO GRANT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AUTHORITY TO ADOPT RULES; AMENDING SECTIONS 53-6-101 AND 53-6-113, MCA; AND PROVIDING AN EFFECTIVE DATE. 1466

461 *(Senate Bill No. 400; Van Valkenburg)* AN ACT IMPOSING ABSOLUTE LIABILITY ON THE OWNER OR FORMER OWNER OF SOLID WASTE DISPOSED OF IN VIOLATION OF STATE LAW; IMPOSING A CIVIL PENALTY FOR PERSONS FOUND ABSOLUTELY LIABLE; CLARIFYING THE PROHIBITION AGAINST DUMPING SOLID WASTE ON PUBLIC PROPERTY; AND AMENDING SECTIONS 75-10-212 AND 75-10-233, MCA. 1471

462 *(House Bill No. 144; Foster)* AN ACT REQUIRING AGENCIES OF STATE GOVERNMENT TO TAKE ALL REASONABLE STEPS TO ENSURE THAT GASOHOL IS USED IN STATE VEHICLES; REQUIRING RECORDS TO BE KEPT ON THE USE OF GASOHOL; AND REQUIRING REVIEW OF THE RECORDS BY THE LEGISLATIVE AUDITOR. 1473

463 *(House Bill No. 209; Wallin)* AN ACT PROVIDING THAT A SECURITY INTEREST IN A MOTOR VEHICLE, BOAT, SNOWMOBILE, OR OFF-HIGHWAY

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VEHICLE IS PERFECTED ON THE DATE THE LIEN NOTICE IS DELIVERED TO THE COUNTY TREASURER; AND AMENDING SECTIONS 23-2-508, 23-2-611, 23-2-811, AND 61-3-103, MCA. *1474*

464 *(House Bill No. 228; Larson)* AN ACT ALLOWING AN EMERGENCY RESPONDER TO RECOVER FROM THE RESPONSIBLE PARTY COSTS DIRECTLY RELATED TO A HAZARDOUS MATERIAL INCIDENT. *1485*

465 *(House Bill No. 251; Driscoll)* AN ACT EXTENDING THE LIFE OF THE JOINT SELECT COMMITTEE ON WORKERS' COMPENSATION; PROVIDING AN APPROPRIATION; AMENDING SECTION 10, CHAPTER 12, SPECIAL LAWS OF JUNE 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1485*

466 *(House Bill No. 292; Benedict)* AN ACT REQUIRING A GOVERNMENTAL ENTITY THAT IS PARTY TO A COURT ACTION TO PREPAY CERTAIN FEES; AND AMENDING SECTION 25-10-405, MCA. *1486*

467 *(House Bill No. 338; Ream)* AN ACT AMENDING THE LAWS RELATING TO TAX CREDIT FOR THE PURCHASE AND INSTALLATION OF LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICES; INCREASING THE ALTERNATIVE ENERGY TAX CREDIT FOR CERTAIN TAXPAYERS; REDEFINING A LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICE; EXTENDING THE DATE FOR CERTAIN TAXPAYERS FOR WHICH THE ALTERNATIVE ENERGY TAX CREDIT MAY BE TAKEN TO DECEMBER 31, 1995; REDEFINING THE TAX-EXEMPT STATUS OF LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICES; REDEFINING THE INVESTMENTS THAT QUALIFY FOR VENTURE CAPITAL AND OTHER INCENTIVES FOR BUSINESSES INVOLVED WITH NONFOSSIL FORMS OF ENERGY GENERATION TO INCLUDE LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICES; AMENDING SECTIONS 15-6-201, 15-32-102, 15-32-201, AND 90-8-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. *1487*

468 *(House Bill No. 377; Raney)* AN ACT ESTABLISHING A CERTIFICATION AND LICENSING PROCESS FOR MEGALANDFILLS; PROVIDING FOR CONTRACTS FOR INFORMATION; REQUIRING THE SUBMISSION OF LONG-RANGE PLANS; REQUIRING A CERTIFICATE OF SITE ACCEPTABILITY; SPECIFYING ENVIRONMENTAL FACTORS TO BE EVALUATED; REQUIRING A FILING FEE; PROVIDING A CONTESTED CASE HEARINGS PROCESS; SPECIFYING DECISIONMAKING CRITERIA; REQUIRING A LICENSE; REQUIRING MONITORING; PROVIDING FOR ENFORCEMENT BY RESIDENTS; PROVIDING A MECHANISM TO RECOVER DAMAGES FOR CONTAMINATION OF A DRINKING WATER SUPPLY; PROVIDING FOR JUDICIAL REVIEW; PROVIDING PENALTIES FOR VIOLATIONS; PROVIDING A SURETY BOND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1493*

469 *(House Bill No. 405; Wallin)* AN ACT PROVIDING THAT BENEFITS PAYABLE BY HEALTH SERVICE CORPORATIONS ARE SUBJECT TO THE PHYSICIAN, NURSE, PHYSICAL THERAPIST, OCCUPATIONAL THERAPIST, CHIROPRACTOR, DENTIST, AND HOSPITAL LIEN ACT; AMENDING SECTIONS 71-3-1113 AND 71-3-1118, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. *1510*

470 *(House Bill No. 618; Bergsagel)* AN ACT CONFORMING THE PROCEDURE FOR AN APPEAL OF A CRIMINAL DECISION FROM A JUSTICE'S OR CITY COURT TO THE APPEAL OF A CIVIL DECISION; CLARIFYING THE DUTY TO FILE THE APPEAL AND TO TRANSMIT THE APPEAL RECORD; PROVIDING FOR A FINE FOR FAILURE TO TRANSMIT THE APPEAL RECORD; AND AMENDING SECTION 46-17-311, MCA. *1511*

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471 *(House Bill No. 751; Boharski)* AN ACT TO PROVIDE FOR SUSPENSION OF THE DRIVER'S LICENSE OF A PERSON UNDER 21 YEARS OF AGE WHO ALTERS A DRIVER'S LICENSE OR IDENTIFICATION CARD TO OBTAIN ALCOHOL; TO PROVIDE FOR SUSPENSION OF THE DRIVER'S LICENSE OF A PERSON WHO AUTHORIZES ANOTHER TO USE HIS DRIVER'S LICENSE OR IDENTIFICATION CARD TO OBTAIN ALCOHOL; AND AMENDING SECTIONS 61-5-206 AND 61-5-302, MCA. *1512*

472 *(House Bill No. 776; Bergsagel)* AN ACT PROVIDING THAT THE CONTENTS OF A STORAGE UNIT MAY BE SOLD WHEN THE OWNER OF THE CONTENTS DEFAULTS IN PAYING RENTAL FEES ON THE STORAGE UNIT. *1514*

473 *(House Bill No. 847; Lee)* AN ACT EXEMPTING SENIOR CITIZEN CENTERS FROM CERTAIN LAWS GOVERNING LIVE CARD GAMES AND LIVE BINGO GAMES; AND AMENDING SECTIONS 23-5-112 AND 23-5-177, MCA. *1515*

474 *(House Bill No. 947; McCaffree)* AN ACT TO ESTABLISH A MINIMUM PROPERTY TAX PAYMENT FOR PROPERTY TAXES DUE; AND PROVIDING AN APPLICABILITY DATE. *1520*

475 *(House Bill No. 353; Strizich)* AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 8, OF THE MONTANA CONSTITUTION TO GENERALLY REVISE THE LAW RELATING TO THE SELECTION OF SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES; TO REQUIRE THAT ELECTION, CONFIRMATION, AND RETENTION OF JUSTICES OR JUDGES MUST BE AS PROVIDED BY LAW; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1521*

476 *(House Bill No. 37; Davis)* AN ACT TO EXTEND FOR 2 YEARS THE PROVISION THAT PREVENTS THE DEPARTMENT OF HIGHWAYS AND LOCAL AUTHORITIES FROM RESTRICTING THE OPERATION OF VEHICLES CARRYING PERISHABLE SEED POTATOES ON A PUBLIC HIGHWAY IF CERTAIN CONDITIONS ARE MET; TO REQUIRE THAT A PERMIT BE OBTAINED; AMENDING SECTION 61-10-128, MCA, AND SECTION 1, CHAPTER 237, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1522*

477 *(House Bill No. 110; Gilbert)* AN ACT AMENDING THE LAW RELATING TO THE REGULATION OF BLOOD AND URINE TESTING; ALLOWING BLOOD AND URINE TESTING OF EMPLOYEES AND JOB APPLICANTS IN JOBS INVOLVING THE INTRASTATE COMMERCIAL TRANSPORTATION OF PERSONS AND COMMODITIES; ALLOWING THE RELEASE OF TEST RESULTS AS REQUIRED BY LAW; DEFINING "INTRASTATE" AND "COMMERCIAL MOTOR CARRIER"; AMENDING SECTION 39-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1524*

478 *(House Bill No. 159; Connelly)* AN ACT TO ALLOW A PERSON WHO LOSES A COMPETITIVE BID ON A CONSTRUCTION CONTRACT TO MAINTAIN AN ACTION FOR DAMAGES AGAINST A SUCCESSFUL BIDDER WHO FAILS TO PAY STANDARD PREVAILING WAGES OR UNEMPLOYMENT INSURANCE OR TO CARRY WORKERS' COMPENSATION INSURANCE. . *1526*

479 *(House Bill No. 162; Gilbert)* AN ACT REQUIRING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO ESTABLISH MINIMUM STANDARDS FOR THE CONTROL AND DISPOSAL OF SEWAGE FROM PRIVATE AND PUBLIC BUILDINGS; REQUIRING LOCAL BOARDS OF HEALTH TO ADOPT REGULATIONS THAT ARE NO LESS STRINGENT THAN STATE STANDARDS FOR THE CONTROL AND DISPOSAL OF SEWAGE FROM PRIVATE AND PUBLIC BUILDINGS; PROVIDING FOR APPEAL OF A LOCAL VARIANCE DECISION TO THE DEPARTMENT OF HEALTH

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AND ENVIRONMENTAL SCIENCES; AMENDING SECTIONS 50-2-116 AND 75-5-305, MCA; AND PROVIDING AN APPLICABILITY DATE. *1527*

480 *(House Bill No. 187; Driscoll)* AN ACT REQUIRING THAT INVESTMENT INCOME EARNED OR REALIZED BY CERTAIN WORKERS' COMPENSATION INSURERS BE CONSIDERED WHEN DETERMINING PREMIUM RATES; DEFINING "CONSTRUCTION INDUSTRY"; REQUIRING A METHOD OF COMPUTING WORKERS' COMPENSATION PREMIUM RATES FOR THE CONSTRUCTION INDUSTRY THAT DOES NOT IMPOSE A HIGHER PREMIUM SOLELY BECAUSE OF AN EMPLOYER'S HIGHER RATE OF WAGES; AMENDING SECTIONS 33-16-1004, 39-71-116, 39-71-402, 39-71-426, 39-71-721, 39-71-723, 39-72-102, AND 39-73-108, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. *1530*

481 *(House Bill No. 192; Wanzenried)* AN ACT TO INCLUDE THE TRANSPORTATION OF LOGS AS A REGULATED COMMODITY UNDER THE LAWS RELATED TO MOTOR CARRIERS; TO ESTABLISH A NEW CLASS E MOTOR CARRIER CLASSIFICATION FOR TRANSPORTING LOGS; PROVIDING QUALIFICATIONS FOR CERTIFICATION OF CLASS E MOTOR CARRIERS; PROVIDING FOR CLASS E MOTOR CARRIER CONTRACT PROVISIONS AND CONTRACT FORMS; AMENDING SECTIONS 69-12-101, 69-12-102, 69-12-201, 69-12-205, 69-12-301, 69-12-321, 69-12-322, 69-12-407, AND 69-12-611, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. *1537*

482 *(House Bill No. 195; Kilpatrick)* AN ACT REQUIRING CERTAIN ELECTION MATERIALS TO INCLUDE A CANDIDATE'S PARTY AFFILIATION; AND AMENDING SECTION 13-35-225, MCA. *1546*

483 *(House Bill No. 239; Raney)* AN ACT TO CREATE THE INFECTIOUS WASTE MANAGEMENT ACT; TO ESTABLISH MANAGEMENT STANDARDS FOR THE STORAGE, TRANSPORTATION, TREATMENT, AND DISPOSAL OF INFECTIOUS WASTE; AND TO GRANT PROFESSIONAL AND OCCUPATIONAL BOARDS RULEMAKING AUTHORITY AND THE AUTHORITY TO IMPOSE ANNUAL FEES. *1546*

484 *(House Bill No. 252; Forrester)* AN ACT REVISING THE CONSTRUCTION LIEN LAW; ALLOWING 45 DAYS TO GIVE NOTICE OF THE RIGHT TO CLAIM A CONSTRUCTION LIEN TO A REGULATED LENDER PROVIDING FUNDS FOR SERVICES OR MATERIALS; PROVIDING AN EXCEPTION; AMENDING SECTIONS 71-3-531 AND 71-3-532, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1550*

485 *(House Bill No. 256; Driscoll)* AN ACT TO CHANGE THE CRITERIA FOR QUALIFYING WAGES USED TO DETERMINE ELIGIBILITY FOR UNEMPLOYMENT INSURANCE BENEFITS; TO CHANGE THE FORMULA USED TO CALCULATE THE AMOUNT OF WEEKLY UNEMPLOYMENT INSURANCE BENEFITS; AMENDING SECTIONS 39-51-2105, 39-51-2201, AND 39-51-2204, MCA; AND PROVIDING AN EFFECTIVE DATE. *1554*

486 *(House Bill No. 261; Kilpatrick)* AN ACT PROHIBITING A BUSINESS FROM DISCRIMINATING IN THE PRICE CHARGED TO DIFFERENT PURCHASERS OF COMMODITIES OF LIKE GRADE AND QUALITY; PROVIDING A METHOD OF ENFORCEMENT; PROVIDING REMEDIES FOR PRICE DISCRIMINATION; AND PROVIDING AN APPLICABILITY DATE. *1556*

487 *(House Bill No. 271; Driscoll)* AN ACT ALLOWING THE PUBLIC SERVICE COMMISSION TO REQUIRE A REAR-END TELEMETRY SYSTEM ON CERTAIN RAILROAD TRAINS; PROVIDING AN EXEMPTION FOR A CABOOSE-EQUIPPED TRAIN; AND AMENDING SECTION 69-14-116, MCA. *1558*

488 *(House Bill No. 300; O'Keefe)* AN ACT ELIMINATING SALES OF STATE LAND ON AN INSTALLMENT BASIS; AUTHORIZING THE BOARD OF

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INVESTMENTS TO PURCHASE CONTRACTS FOR DEED AND MORTGAGES ON STATE CABINSITES; REQUIRING CASH SALES; AND AMENDING SECTION 77-2-329, MCA. *1560*

489 *(House Bill No. 328; Cobb)* AN ACT ADOPTING THE STATE SINGLE AUDIT ACT; GENERALLY REVISING AND CLARIFYING THE LAW RELATING TO AUDITS OF LOCAL GOVERNMENT ENTITIES; REQUIRING COMPLIANCE WITH GOVERNMENT AUDITING STANDARDS; AUTHORIZING THE CHARGING OF FEES COMMENSURATE WITH COSTS FOR STATE AUDIT SERVICES; AUTHORIZING AN INTERFUND LOAN FROM THE GENERAL FUND; AMENDING SECTIONS 2-7-501, 2-7-502, 2-7-503, 2-7-504, 2-7-505, 2-7-506, 2-7-507, 2-7-508, 2-7-511, 2-7-512, 2-7-513, 2-7-514, 2-7-515, 2-7-516, 2-7-517, 2-7-518, 2-7-521, 3-5-902, 7-6-2352, 7-6-4113, 19-11-204, 19-11-205, 20-9-203, 20-9-213, AND 20-10-202, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE. *1562*

490 *(House Bill No. 336; Simpkins)* AN ACT REVISING THE STATE WAGE PROTECTION LAWS; REQUIRING AN EMPLOYER TO PAY A PENALTY TO AN EMPLOYEE FOR FAILURE TO PAY WAGES DUE; REQUIRING AN EMPLOYER TO PAY THE EMPLOYEE ANNUALIZED INTEREST ON UNPAID WAGES; AUTHORIZING THE DEPARTMENT TO ENTER A DEFAULT ORDER IN A WAGE CLAIM AND TO ENFORCE THE DEFAULT ORDER; ESTABLISHING A PRIORITY FOR BOND PAYMENT UNDER THE RESTAURANT, BAR, AND TAVERN WAGE PROTECTION ACT; PROHIBITING BOND PAYMENT TO THE STATE COMPENSATION MUTUAL INSURANCE FUND; AMENDING SECTIONS 39-3-206, 39-3-208, 39-3-212, 39-3-216, 39-3-604, AND 39-3-605, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. *1583*

491 *(House Bill No. 359; Harper)* AN ACT PROHIBITING THE OPERATION OF MOTOR VEHICLES OR OFF-HIGHWAY VEHICLES BELOW THE ORDINARY HIGH-WATER MARK ON CERTAIN STATE OR FEDERAL LANDS; AND PROVIDING EXCEPTIONS. *1586*

492 *(House Bill No. 417; Elliott)* AN ACT TO PROHIBIT ACTIVITIES DESIGNED TO FURTHER CIVIL DISORDER; PROHIBITING CERTAIN TRAINING INVOLVING TECHNIQUES CAPABLE OF INJURING PERSONS OR PROPERTY; PROVIDING PENALTIES FOR VIOLATIONS; AND PROVIDING EXEMPTIONS FOR CERTAIN LAWFUL ACTIVITIES. *1587*

493 *(House Bill No. 418; Madison)* AN ACT CLARIFYING THAT ALL MONEY COLLECTED UNDER TITLE 37, CHAPTER 43, MCA, MUST BE RESERVED FOR USE BY THE BOARD OF WATER WELL CONTRACTORS; CLARIFYING THAT THE BOARD MAY EXPEND FUNDS FROM BONDS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1589*

494 *(House Bill No. 419; Mercer)* AN ACT DELETING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION MAIL CLAIM GRANTS AND DENIALS BY CERTIFIED MAIL; AMENDING SECTION 2-9-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. *1590*

495 *(House Bill No. 431; Schye)* AN ACT TO INCREASE THE FEES FOR TEACHER AND SPECIALIST CERTIFICATION AND FOR EMERGENCY AUTHORIZATION OF EMPLOYMENT WITH A SCHOOL DISTRICT; TO STATUTORILY APPROPRIATE PART OF THE REVENUE FROM THE FEES FOR USE BY THE CERTIFICATION STANDARDS AND PRACTICES ADVISORY COUNCIL FOR RESEARCH IN ACCORDANCE WITH ITS DUTIES; AMENDING SECTIONS 17-7-502, 20-4-109, AND 20-4-111, MCA; AND PROVIDING AN EFFECTIVE DATE. *1591*

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496 *(House Bill No. 446; T. Nelson)* AN ACT TO REQUIRE THAT IF THE PROPERTY AT A TAX-DEED AUCTION IS PURCHASED BY THE DELINQUENT TAXPAYER, THE MINIMUM PURCHASE PRICE MUST COVER ALL COSTS, DELINQUENCIES, INTEREST, AND PENALTIES; AMENDING SECTION 7-8-2301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. ... *1593*

497 *(House Bill No. 470; McCarthy)* AN ACT TO PROVIDE FOR PROTECTION OF TEACHER TENURE RIGHTS AND FOR A HIRING PREFERENCE FOR EMPLOYEES WHENEVER DISTRICTS CONSOLIDATE OR JOIN THROUGH ANNEXATION; AND PROVIDING AN EFFECTIVE DATE. *1594*

498 *(House Bill No. 472; J. Debruycker)* AN ACT CLARIFYING THAT THE LOBBYING DISCLOSURE LAW DOES NOT REQUIRE AN INDIVIDUAL TO BE A CITIZEN; CLARIFYING THE DEFINITIONS RELATING TO LOBBYING; REVISING LOBBYING REPORTING DATES; AND AMENDING SECTIONS 5-7-101, 5-7-102, 5-7-103, 5-7-208, AND 5-7-212, MCA. *1595*

499 *(House Bill No. 538; Bradley)* AN ACT REGULATING THE PRICE OF RETAIL MOTOR FUEL AT WHOLESALE AND RETAIL LEVELS; PROVIDING FOR PENALTIES AND REMEDIES FOR SALES IN VIOLATION OF ESTABLISHED PRICES; PROHIBITING UNFAIR PRACTICES IN THE SALE OF RETAIL MOTOR FUEL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. *1600*

500 *(House Bill No. 557; Ream)* AN ACT TO PROVIDE THAT A DISABLED VETERAN HAS THE OPTION OF RECEIVING HANDICAPPED LICENSE PLATES, PERSONALIZED LICENSE PLATES, OR, IF HE WAS A PRISONER OF WAR, PRISONER OF WAR LICENSE PLATES; AMENDING SECTIONS 61-3-444, 61-3-451, 61-3-453, AND 61-3-455, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1604*

501 *(House Bill No. 576; Harper)* AN ACT REVISING THE LAW REGARDING THE TRANSPLANTATION OR INTRODUCTION OF WILDLIFE BY REQUIRING AN ENVIRONMENTAL REVIEW PRIOR TO TRANSPLANTATION OR INTRODUCTION OF A FISH SPECIES IN MONTANA; INCREASING THE PENALTY FOR THE ILLEGAL IMPORTATION, INTRODUCTION, OR TRANSPLANTATION OF FISH; AND AMENDING SECTIONS 87-5-711 AND 87-5-721, MCA. *1606*

502 *(House Bill No. 668; Darko)* AN ACT TO ALLOW SUSPENSION OF A DRIVER'S LICENSE FOR A PERSON UNDER 18 YEARS OF AGE CONVICTED OF MULTIPLE OFFENSES OF POSSESSION OF AN INTOXICATING SUBSTANCE; AND AMENDING SECTION 45-5-624, MCA. *1608*

503 *(House Bill No. 739; J. Rice)* AN ACT REVISING THE LAW RELATING TO REDEMPTION OF REAL PROPERTY; CHANGING THE RATE OF INTEREST THAT ACCRUES ON REDEMPTION; PROVIDING FOR RECOVERY OF REASONABLE REPAIR AND MAINTENANCE EXPENSES PAID BY A PURCHASER AT A SHERIFF'S SALE; AND AMENDING SECTIONS 25-13-802, 25-13-803, 25-13-804, 25-13-805, AND 25-13-822, MCA. *1609*

504 *(House Bill No. 761; Peck)* AN ACT AUTHORIZING SEXUALLY TRANSMITTED DISEASE TESTING OF PERSONS CONVICTED OF A SEXUAL OFFENSE; REQUIRING RELEASE OF THE TEST RESULTS TO THE VICTIM AND THE CONVICTED PERSON; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *1612*

505 *(House Bill No. 767; Measure)* AN ACT TO GENERALLY REVISE AND AMEND THE LAW GOVERNING RESIDENTIAL TENANTS' SECURITY DEPOSITS; PROVIDING FOR TIMELY SECURITY DEPOSIT REFUNDS; AMENDING SECTIONS 70-25-101, 70-25-201, 70-25-202, 70-25-204, AND 70-25-206, MCA; AND PROVIDING AN APPLICABILITY DATE. *1613*

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506 *(House Bill No. 882; Russell)* AN ACT TO REQUIRE THAT A STATE AGENCY THAT OPERATES WITHIN OR CONTRACTS FOR A STATE CONSTRUCTION PROJECT WITHIN AN INDIAN RESERVATION GIVE A PREFERENCE IN HIRING TO QUALIFIED INDIAN RESIDENTS OF THE RESERVATION; AMENDING SECTIONS 49-2-303, 49-2-403, AND 49-3-103, MCA; AND PROVIDING AN APPLICABILITY DATE. *1616*

507 *(House Bill No. 888; L. Nelson)* AN ACT REVISING THE MONTANA WHEAT AND BARLEY COMMITTEE; EXPANDING THE GROUPS THAT MAY NOMINATE MEMBERS FOR APPOINTMENT TO THE COMMITTEE; REVISING THE TIME PERIOD IN WHICH NAMES OF NOMINEES MUST BE SUBMITTED; DELETING THE PROVISION THAT THE REPRESENTATIVE OF THE GRAIN TRADE ON THE COMMITTEE SERVES AT THE PLEASURE OF THE COMMITTEE; EXEMPTING THE EXECUTIVE DIRECTOR OF THE COMMITTEE FROM THE STATE EMPLOYEE CLASSIFICATION PLAN; ALLOWING THE COMMITTEE TO CONTRACT WITH ALL THE UNITS OF THE MONTANA UNIVERSITY SYSTEM; AMENDING SECTIONS 2-15-3002, 2-18-103, 80-11-202, AND 80-11-205, MCA; AND PROVIDING AN EFFECTIVE DATE. *1620*

508 *(House Bill No. 909; D. Brown)* AN ACT RELATING TO CERTIFICATION OF CHEMICAL DEPENDENCY COUNSELORS AND PERSONS PROVIDING COUNSELING FOR GAMBLING ADDICTIONS; ESTABLISHING REQUIREMENTS FOR CERTIFICATION OF CHEMICAL DEPENDENCY COUNSELORS; PROVIDING FOR SUSPENSION OR REVOCATION OF CERTIFICATION FOR VIOLATION OF PROFESSIONAL ETHICS STANDARDS; REQUIRING A STUDY OF THE MINIMUM REQUIREMENTS FOR CERTIFICATION OF PERSONS PROVIDING COUNSELING FOR GAMBLING ADDICTIONS; PROVIDING AN APPROPRIATION TO FUND THE STUDY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION. *1623*

509 *(House Bill No. 924; Measure)* AN ACT REQUIRING THE DEPARTMENT OF COMMERCE TO ASSIST PERSONS REPRESENTING RECREATIONAL, TRANSPORTATION, AND UTILITY INTERESTS AND OTHER INTERESTED PERSONS, INCLUDING ADJACENT LANDOWNERS, IN ACQUIRING OWNERSHIP OR EASEMENT OF ABANDONED RAILBEDS; AND AMENDING SECTION 60-11-111, MCA. *1626*

510 *(House Bill No. 948; R. Johnson)* AN ACT TO PROVIDE FOR THE CREATION OF A COUNTY INTERDISCIPLINARY CHILD INFORMATION TEAM TO FACILITATE THE SHARING OF INFORMATION BY PERSONS AND ENTITIES DEALING WITH ABUSED, NEGLECTED, DEPENDENT, AND DELINQUENT CHILDREN AND YOUTH IN NEED OF SUPERVISION; AMENDING SECTIONS 41-3-205, 41-5-602, AND 41-5-603, MCA; AND PROVIDING AN EFFECTIVE DATE. *1628*

511 *(Senate Bill No. 56; Yellowtail)* AN ACT TO RESTRICT PLACEMENT OR EVALUATION OF PREDISPOSITIONAL YOUTH AT A STATE YOUTH CORRECTIONAL FACILITY; TO ELIMINATE THE REQUIREMENT THAT THE DEPARTMENT OF FAMILY SERVICES PROVIDE ADDITIONAL YOUTH EVALUATION PROGRAMS TO REPLACE SERVICES PERFORMED AT STATE INSTITUTIONS; TO CLARIFY THE RESPONSIBILITY OF COUNTIES TO PAY THE COST OF YOUTH EVALUATIONS ORDERED BY THE COURT; TO REQUIRE PARENTS WHO ARE FINANCIALLY ABLE TO CONTRIBUTE TO THE COST OF YOUTH EVALUATIONS; AMENDING SECTION 41-5-523, MCA; REPEALING SECTION 53-30-225, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. *1632*

512 *(Senate Bill No. 164; Harp)* AN ACT TO CREATE A DEPARTMENT OF TRANSPORTATION; TO ABOLISH THE DEPARTMENT OF HIGHWAYS AND TRANSFER ITS FUNCTIONS AND CERTAIN FUNCTIONS OF THE

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DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF TRANSPORTATION; TO GENERALLY REVISE THE LAWS TO CONFORM TO THE ABOLISHMENT OF THE DEPARTMENT OF HIGHWAYS AND TRANSFER OF FUNCTIONS TO THE DEPARTMENT OF TRANSPORTATION; AMENDING SECTIONS 2-15-104, 2-15-1812, 2-15-2501, 2-15-2502, 15-1-701, AND 60-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE. *1637*

513 *(Senate Bill No. 274; Tvelt)* AN ACT ALLOCATING REVENUE FROM RAILROADS OWNED BY THE STATE OF MONTANA FOR THE IMPROVEMENT OF THOSE RAILROADS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION. *1644*

514 *(Senate Bill No. 284; Eck)* AN ACT TO ALLOW THE MONTANA CHILDREN'S TRUST FUND BOARD TO HIRE ITS OWN STAFF; AND AMENDING SECTION 2-15-2402, MCA. *1645*

515 *(Senate Bill No. 314; Grosfield)* AN ACT TO GENERALLY REVISE AND CLARIFY THE WATER RESERVATION PROCESS; ALLOWING AVAILABLE WATER FROM A REVOKED OR MODIFIED RESERVATION TO BE APPROPRIATED; REQUIRING APPROVAL BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION OF CHANGES IN RESERVATIONS; ALLOWING TRANSFERS OF WATER RESERVATIONS AND ESTABLISHING CRITERIA FOR SUCH TRANSFERS; AMENDING SECTION 85-2-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION. *1645*

516 *(Senate Bill No. 363; Manning)* AN ACT REVISING THE LAW GOVERNING HORSERACING; EXPANDING THE TYPES OF SIMULCAST RACES THAT THE BOARD OF HORSERACING MAY APPROVE; AUTHORIZING LICENSEES TO WITHHOLD AN ADDITIONAL 1 PERCENT ON EXOTIC WAGERING; AMENDING SECTIONS 23-4-301 AND 23-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1650*

517 *(Senate Bill No. 395; Pinsoneault)* AN ACT TO REVISE THE LAWS RELATED TO THE TRANSFER OF TERRITORY FROM ONE ELEMENTARY OR HIGH SCHOOL DISTRICT TO ANOTHER; AMENDING SECTIONS 20-6-213 AND 20-6-320, MCA; AND PROVIDING AN EFFECTIVE DATE. *1652*

518 *(Senate Bill No. 19; Jergeson)* AN ACT TO REQUIRE THAT CONTRACTS FOR AGRICULTURAL COMMODITIES SOLD BY CREDIT SALE CONTRACT CONTAIN A NOTICE OF FINANCIAL RISK IN A FORM ESTABLISHED BY DEPARTMENT OF AGRICULTURE RULE; AMENDING SECTION 80-4-422, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. *1656*

519 *(Senate Bill No. 49; Waterman)* AN ACT CREATING THE OFFENSE OF CRIMINAL SALE OF DANGEROUS DRUGS ON OR NEAR SCHOOL PROPERTY; PROVIDING PENALTIES; CREATING AN AFFIRMATIVE DEFENSE; AND AMENDING SECTIONS 46-18-231 AND 46-23-201, MCA. *1657*

520 *(Senate Bill No. 93; Gage)* AN ACT REVISING THE RESOURCE INDEMNITY TRUST TAX BY CHANGING THE RATE OF TAX ON COAL AND THE METHOD OF VALUING COAL; AMENDING SECTIONS 15-38-103 AND 15-38-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *1660*

521 *(Senate Bill No. 148; Svrcek)* AN ACT PROVIDING FOR CONFIDENTIALITY OF INFORMATION FROM A GASOLINE DISTRIBUTOR THAT IS IDENTIFIABLE AS PERTAINING TO AN INDIVIDUAL; AND AMENDING SECTIONS 15-70-205 AND 15-70-209, MCA. *1661*

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522 *(Senate Bill No. 158; Jergeson)* AN ACT ESTABLISHING A SYSTEM FOR TRANSFER OF A FARM IMPLEMENT DEALERSHIP TO A DESIGNATED FAMILY MEMBER OR DESIGNATED SUCCESSOR; ESTABLISHING RIGHTS AND DUTIES OF THE DEALER, GRANTOR, AND SUCCESSOR; PROVIDING A PROCEDURE TO DETERMINE THE RIGHT TO SUCCEED IN DEALERSHIP OWNERSHIP; PROVIDING THAT A GRANTOR MAY NOT CANCEL A DEALERSHIP BASED ON A NATURAL DISASTER; PROVIDING FOR REPURCHASE OF DEALERSHIP INVENTORY AT 100 PERCENT OF NET COST UPON CANCELLATION OF A DEALERSHIP; PROVIDING FOR DAMAGES; AMENDING SECTIONS 30-11-702 AND 30-11-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1663*

523 *(Senate Bill No. 270; Williams)* AN ACT ALLOWING AND REGULATING AMUSEMENT GAMES; AMENDING SECTION 23-5-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1667*

524 *(Senate Bill No. 381; Jacobson)* AN ACT ESTABLISHING AN ALTERNATIVE HEALTH CARE BOARD; PROVIDING FOR THE COMPOSITION OF THE BOARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1678*

525 *(House Bill No. 59; Harrington)* AN ACT PROHIBITING RELEASE OF A PERSON'S DRIVING RECORD WITHOUT THAT PERSON'S APPROVAL; PROVIDING CERTAIN EXCEPTIONS; AND AMENDING SECTION 61-11-105, MCA. *1680*

526 *(House Bill No. 142; Swysgood)* AN ACT CREATING A STATUTORY JOINT COMMITTEE ON POSTSECONDARY EDUCATION POLICY AND BUDGET; APPROPRIATING FUNDS FOR THE COMMITTEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. *1681*

527 *(House Bill No. 497; Darko)* AN ACT REVISING SALARIES OR COMPENSATION FOR CERTAIN COUNTY OFFICERS; AMENDING SECTIONS 7-4-2107, 7-4-2503, AND 7-4-2504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1684*

528 *(House Bill No. 534; Spring)* AN ACT TO CHANGE THE METHOD FOR ESTABLISHING A HIGH SCHOOL TRUSTEE POSITION FOR REPRESENTATION FOR ANY TERRITORY OF THE DISTRICT THAT IS WITHOUT EQUITABLE REPRESENTATION ON THE DISTRICT BOARD OF TRUSTEES; AND AMENDING SECTIONS 20-3-302, 20-3-351, AND 20-3-352, MCA. *1688*

529 *(House Bill No. 544; Gould)* AN ACT TO ALLOW PROCEEDS FROM THE SALE OF DEPARTMENT OF JUSTICE EQUIPMENT TO BE DEPOSITED TO THE CREDIT OF THE ACCOUNTING ENTITY FROM WHICH IT WAS ORIGINALLY PURCHASED; AMENDING SECTION 44-1-106, MCA; AND PROVIDING AN EFFECTIVE DATE. *1692*

530 *(House Bill No. 549; Grady)* AN ACT TO GENERALLY REVISE THE COUNTY NOXIOUS WEED CONTROL LAWS; REQUIRING TRAINING FOR WEED DISTRICT SUPERVISORS; ESTABLISHING NEW TERMINATION DATES FOR INFORMATION AND LIABILITY RESTRICTIONS ON HERBICIDE USE; AMENDING SECTIONS 7-22-2121, 7-22-2142, 7-22-2143, 7-22-2145, AND 7-22-2148, MCA, AND SECTION 7, CHAPTER 516, LAWS OF 1987; AND PROVIDING AN EFFECTIVE DATE. *1692*

531 *(House Bill No. 556; Ream)* AN ACT REVISING THE LAW REGARDING GAME FARMS AND GAME FARM ANIMALS, INCLUDING THE IDENTIFICATION, TRANSPORTATION, AND INSPECTION OF GAME FARM ANIMALS AND REPORTS REQUIRED OF GAME FARM LICENSEES; PROVIDING THAT IMPORTATION PERMITS AND HEALTH CERTIFICATES ARE REQUIRED OF GAME FARM ANIMALS; RESTRICTING THE IMPORTATION OF CERTAIN SPECIES FOR GAME FARM PURPOSES; AND

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AMENDING SECTIONS 81-2-702, 87-4-408, 87-4-414, 87-4-415, 87-4-417, AND 87-4-423, MCA. *1695*

532 *(House Bill No. 620; Squires)* AN ACT REGULATING THE PRACTICE OF RESPIRATORY CARE; ESTABLISHING A QUASI-JUDICIAL BOARD OF RESPIRATORY CARE PRACTITIONERS WITH RULEMAKING AUTHORITY; REQUIRING LICENSURE OR A TEMPORARY PERMIT FOR RESPIRATORY CARE PRACTITIONERS; REQUIRING FEES FOR A TEMPORARY PERMIT AND A LICENSE; PROVIDING THAT THE FEES ARE DEPOSITED TO THE SPECIAL REVENUE FUND FOR THE BOARD'S USE; PROVIDING PENALTIES; REQUIRING PRACTITIONERS TO REPORT CERTAIN CONDUCT AND PROVIDING IMMUNITY FOR REPORTING; AND PROVIDING EFFECTIVE DATES. *1698*

533 *(House Bill No. 629; McCulloch)* AN ACT TO REQUIRE PERIODIC RENEWALS OF A CERTIFICATE OF LIMITED PARTNERSHIP. *1705*

534 *(House Bill No. 665; Barnhart)* AN ACT TO REQUIRE SCHOOL DISTRICTS IN CERTAIN COUNTIES TO ESTABLISH AND IMPLEMENT EARTHQUAKE EMERGENCY PLANS AND PROCEDURES IN COOPERATION WITH THE DISASTER AND EMERGENCY SERVICES DIVISION OF THE DEPARTMENT OF MILITARY AFFAIRS AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION; AND TO ADVISE SCHOOL DISTRICTS IN OTHER COUNTIES TO ESTABLISH SUCH PLANS AND PROCEDURES. *1707*

535 *(House Bill No. 678; Stang)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE OPERATION OF THE STATE MOTOR POOL AND TO STATE-OWNED AND LEASED MOTOR VEHICLES; AND AMENDING SECTIONS 2-17-402, 2-17-411, 2-17-412, 2-17-413, 2-17-421, 2-17-422, 2-17-423, 2-17-431, AND 2-17-432, MCA. *1708*

536 *(House Bill No. 705; Galvin)* AN ACT EXEMPTING CERTAIN RAILROAD EMPLOYEES FROM THE DRIVER'S LICENSE LAW WHILE ENGAGED IN TRAIN OPERATIONS; AMENDING SECTION 61-5-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1711*

537 *(House Bill No. 773; Stickney)* AN ACT RELATING TO THE RIGHTS OF A PERSON WHO IS INVOLUNTARILY DETAINED UNDER THE INVOLUNTARY COMMITMENT STATUTES TO BE INFORMED OF HIS RIGHTS; PROVIDING THAT THE PERSON MUST BE INFORMED OF HIS RIGHTS AT THE TIME OF HIS DETENTION; REMOVING THE REQUIREMENT THAT HE BE INFORMED OF HIS RIGHTS AT THE TIME OF EXAMINATION; AND AMENDING SECTION 53-21-114, MCA. *1713*

538 *(House Bill No. 856; Foster)* AN ACT TO FURTHER LIMIT THE EXEMPTION FROM TAXATION FOR TELEVISION DISTRICT SERVICES BY INCLUDING SUBSCRIBERS TO A COMMUNITY ANTENNA SYSTEM THAT DOES NOT DIRECTLY OR INDIRECTLY USE ANY SIGNAL REPEATED BY THE TELEVISION DISTRICT; TO PROVIDE AN EXEMPTION FROM TAXATION FOR SUBSCRIBERS OF A COMMUNITY ANTENNA TELEVISION SYSTEM WHO DO NOT RECEIVE THE TRANSLATOR SIGNAL OR A TAXPAYER WHO RECEIVES THE SIGNAL FROM A COMMUNITY ANTENNA TELEVISION SYSTEM THAT HAS A WRITTEN AGREEMENT WITH THE TELEVISION DISTRICT; AMENDING SECTION 7-13-2529, MCA; AND PROVIDING AN EFFECTIVE DATE. *1713*

539 *(House Bill No. 860; Dowell)* AN ACT DECLARING ALL STATE BUILDINGS TO BE SMOKE-FREE; REQUIRING AN AGENCY HEAD TO ESTABLISH AT LEAST ONE DESIGNATED SMOKING AREA IN EACH STATE BUILDING; AMENDING SECTIONS 50-40-107 AND 50-40-201, MCA; AND PROVIDING AN EFFECTIVE DATE. *1714*

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540 *(House Bill No. 870; R. Johnson)* AN ACT TO REVISE THE PROCESS FOR MAKING A COMPLAINT AGAINST A PHYSICIAN OR PODIATRIST BY PROVIDING THAT THE COMPLAINT MAY BE IN WRITING RATHER THAN BY SWORN AFFIDAVIT; TO REQUIRE THE BOARD OF MEDICAL EXAMINERS TO SET A DATE FOR THE RENEWAL OF PODIATRY LICENSES; TO REQUIRE THE BOARD OF MEDICAL EXAMINERS TO PROVIDE NOTICE OF THE RENEWAL DATE FOR PODIATRY LICENSES; TO CHANGE THE DATE OF REVOCATION OF A PODIATRY LICENSE FOR FAILURE TO PAY THE LICENSE RENEWAL FEE; TO REQUIRE THE BOARD OF MEDICAL EXAMINERS TO SET A DATE FOR THE RENEWAL OF ACUPUNCTURE LICENSES; TO ELIMINATE THE REQUIREMENT THAT THE BOARD OF MEDICAL EXAMINERS PROVIDE NOTICE OF THE RENEWAL DATE FOR ACUPUNCTURE LICENSES TO LICENSED ACUPUNCTURISTS; TO CHANGE THE DATE OF REVOCATION OF AN ACUPUNCTURE LICENSE FOR FAILURE TO PAY THE LICENSE RENEWAL FEE; TO REMOVE THE LIMIT ON THE FEE THAT THE BOARD OF MEDICAL EXAMINERS MAY SET FOR APPROVAL OF PHYSICIAN ASSISTANT-CERTIFIED UTILIZATION PLANS; TO REVISE THE REQUIREMENTS AND PROCEDURES FOR THE ANNUAL RENEWAL OF PHYSICIAN ASSISTANT-CERTIFIED UTILIZATION PLANS; TO GRANT RULEMAKING AUTHORITY RELATING TO PODIATRY TO THE BOARD OF MEDICAL EXAMINERS; AND AMENDING SECTIONS 37-3-323, 37-6-304, 37-6-311, 37-13-306, AND 37-20-302, MCA. .. *1717*

541 *(House Bill No. 891; Stickney)* AN ACT REQUIRING FINANCIAL ASSURANCE AS A CONDITION OF A LICENSE TO OPERATE A MEGALANDFILL; PROVIDING FOR THE RELEASE OF AN OPERATOR FROM FINANCIAL ASSURANCE; PROVIDING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES WITH THE AUTHORITY TO RECLAIM, RESTORE, OR REPLACE DAMAGED OR IMPAIRED NATURAL RESOURCES; ESTABLISHING A MEGALANDFILL RECLAMATION ACCOUNT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1724*

542 *(House Bill No. 894; Kimberley)* AN ACT PROVIDING A TAX CREDIT FOR CONTRIBUTIONS MADE TO THE GENERAL ENDOWMENT FUNDS OF THE MONTANA UNIVERSITY SYSTEM FOUNDATIONS AND MONTANA PRIVATE COLLEGES OR THEIR FOUNDATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *1728*

543 *(House Bill No. 908; Harper)* AN ACT REQUIRING THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES REQUIRING THE ACQUISITION, INSTALLATION, AND MAINTENANCE OF WATER MEASURING DEVICES ON CHRONICALLY DEWATERED WATERCOURSES OR PORTIONS OF WATERCOURSES; PROVIDING GUIDELINES FOR THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO IDENTIFY CHRONICALLY DEWATERED WATERCOURSES; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONSIDER WATER DEVELOPMENT PROGRAM GRANT AND LOAN APPLICATIONS FOR THE INSTALLATION OF REQUIRED MEASURING DEVICES; AND AMENDING SECTIONS 85-1-602, 85-1-604, 85-2-102, AND 85-2-113, MCA. *1729*

544 *(House Bill No. 917; Toole)* AN ACT TO GENERALLY REVISE THE AIDS PREVENTION ACT; CHANGING THE DEFINITION OF "HEALTH CARE PROVIDER" TO CONFORM WITH THE UNIFORM HEALTH CARE INFORMATION ACT; CLARIFYING THE KIND OF COUNSELING THAT A HEALTH CARE PROVIDER IS REQUIRED TO GIVE IN ADMINISTERING AN HIV-RELATED TEST; ALLOWING NEXT-OF-KIN, A SIGNIFICANT OTHER, OR A DESIGNATED INDIVIDUAL TO CONSENT TO AN HIV-RELATED TEST ADMINISTERED TO AN UNCONSCIOUS OR MENTALLY INCAPACITATED PERSON; ESTABLISHING THAT AN ORDER TO PERFORM AN HIV-RELATED TEST ALSO CERTIFIES THAT PRIOR INFORMED CONSENT WAS

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OBTAINED; REQUIRING A HEALTH CARE PROVIDER WHO DOES NOT PROVIDE HIV-RELATED TESTS ON AN ANONYMOUS BASIS TO INFORM ALL THOSE WISHING TO BE TESTED THAT ANONYMOUS TESTING IS AVAILABLE ELSEWHERE; REQUIRING THE SUBJECT OF AN HIV-RELATED TEST TO DESIGNATE A HEALTH CARE PROVIDER TO RECEIVE THE RESULTS OF THE TEST; REQUIRING INSURANCE COMPANIES TO INFORM APPLICANTS OF POSITIVE HIV TEST RESULTS AND ALLOW THEM ACCESS TO NEGATIVE HIV TEST RESULTS; CLARIFYING WHEN CONSENT TO A TEST MAY BE WITHDRAWN AND WHEN IT IS NOT REQUIRED; PROVIDING FOR HIV TESTING OF PATIENTS POTENTIALLY INFECTING HEALTH CARE FACILITY OR EMERGENCY SERVICES PERSONNEL; ALLOWING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT STANDARDS FOR HIV-RELATED TESTING OF ORGAN, TISSUE, AND SEMEN DONORS; CLARIFYING WHEN THE IDENTITY OF THE SUBJECT OF AN HIV-RELATED TEST AND TEST RESULTS MAY BE DISCLOSED BY GOVERNMENT HEALTH CARE WORKERS; REVISING THE UNIFORM HEALTH CARE INFORMATION ACT TO ALLOW HEALTH CARE PROVIDERS TO RELEASE HEALTH CARE INFORMATION WITHOUT CONSENT WHEN DISCLOSURE WILL AVOID OR MINIMIZE DANGER TO THE HEALTH OR SAFETY OF A PERSON; MAKING IT A MISDEMEANOR FOR A PERSON TO UNLAWFULLY DISCLOSE CONFIDENTIAL HEALTH CARE INFORMATION; INCREASING THE CIVIL PENALTIES FOR VIOLATION OF THE AIDS PREVENTION ACT; AMENDING SECTIONS 50-16-529, 50-16-702, 50-16-1003, 50-16-1007, 50-16-1008, 50-16-1009, AND 50-16-1013, MCA; AND PROVIDING AN EFFECTIVE DATE. *1737*

545 *(House Bill No. 943; Davis)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE LICENSURE AND REGULATION OF SANITARIANS; AUTHORIZING THE BOARD OF SANITARIANS TO MEET FOUR TIMES ANNUALLY; CLARIFYING THE DEFINITION OF PRACTICE OF THE PROFESSION OF SANITARIAN; PROVIDING FOR THE STATUS OF SANITARIAN-IN-TRAINING; EXEMPTING CERTAIN STATE EMPLOYEES FROM REGULATION; CLARIFYING AND DETAILING THE RULEMAKING AUTHORITY OF THE BOARD OF SANITARIANS; AUTHORIZING RULES FOR EDUCATIONAL EQUIVALENCY, CONTINUING EDUCATION, AND DISCIPLINE; AUTHORIZING THE ADOPTION OF A SCHEDULE OF FEES; AUTHORIZING ENFORCEMENT BY INJUNCTION AND OTHER RELIEF; AMENDING SECTIONS 37-40-101, 37-40-102, 37-40-201, 37-40-301, 37-40-302, 37-40-303, 37-40-304, 37-40-305, 37-40-311, AND 37-40-312, MCA; REPEALING SECTIONS 37-40-306 AND 37-40-307, MCA; AND PROVIDING AN EFFECTIVE DATE. *1746*

546 *(House Bill No. 966; Steppler)* AN ACT CREATING A COMMITTEE ON THE MONTANA STATE HOSPITAL AT GALEN AND AT WARM SPRINGS; DIRECTING THAT THE COMMITTEE CONDUCT A STUDY OF THE PAST, CURRENT, AND POTENTIAL FUTURE USES OF THE MONTANA STATE HOSPITAL; REQUIRING THE COMMITTEE TO REPORT THE STUDY'S FINDINGS TO THE 53RD LEGISLATURE; APPROPRIATING FUNDS FOR CONDUCTING THE STUDY; AND PROVIDING EFFECTIVE DATES. *1752*

547 *(Senate Bill No. 38; Halligan)* AN ACT TO REVISE THE 24-HOUR STATUTORY PERIOD FOR HOLDING A YOUTH IN JAIL; TO PROHIBIT THE DETENTION OF A YOUTH IN JAIL EXCEPT UNDER CERTAIN CIRCUMSTANCES; TO ALLOW A 6-HOUR EXCEPTION FOR HOLDING A YOUTH IN JAIL FOR THE PURPOSE OF IDENTIFICATION, PROCESSING, OR TRANSFER OF THE YOUTH TO A DETENTION FACILITY OR SHELTER CARE FACILITY; TO PROVIDE A LIMITED 24-HOUR EXCEPTION FOR THE DETENTION OF A YOUTH IN JAIL PENDING A PROBABLE CAUSE HEARING; TO CLARIFY DETENTION PROCEDURES FOLLOWING A PROBABLE CAUSE HEARING; AMENDING SECTIONS 7-32-2244, 41-5-103, 41-5-206, 41-5-303, 41-5-306, 41-5-307, 41-5-309, 41-5-502, AND 53-30-229, MCA; AMENDING SECTIONS 14 AND 17, CHAPTER 434, LAWS OF 1989; REPEALING SECTION 41-5-308, MCA; AND PROVIDING EFFECTIVE DATES. *1754*

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548 *(Senate Bill No. 59; Yellowtail)* AN ACT PROHIBITING THE PLACEMENT OF YOUTH IN NEED OF SUPERVISION IN A JAIL, SECURE DETENTION FACILITY, OR CORRECTIONAL FACILITY; PROVIDING CRITERIA FOR THE DETENTION OF YOUTH IN SECURE DETENTION FACILITIES AND SHELTER CARE FACILITIES; PROVIDING CRITERIA FOR THE DETENTION OF YOUTH IN LAW ENFORCEMENT FACILITIES THAT INCLUDE A JAIL; AMENDING SECTIONS 41-5-103, 41-5-305, 41-5-306, AND 53-30-202, MCA; AND PROVIDING EFFECTIVE DATES. *1768*

549 *(Senate Bill No. 128; Halligan)* AN ACT ALLOWING AN UNINCORPORATED RESORT AREA TO IMPOSE A RESORT TAX; DEFINING "RESORT AREA"; EXTENDING THE TAX TO DESTINATION SKI RESORTS AND OTHER DESTINATION RECREATIONAL FACILITIES; AMENDING SECTIONS 7-6-4461, 7-6-4463, 7-6-4464, AND 7-6-4465, MCA; AND PROVIDING AN EFFECTIVE DATE. *1776*

550 *(Senate Bill No. 172; Svrcek)* AN ACT PROVIDING FOR THE LICENSING AND REGULATION OF DIRECT-ENTRY MIDWIVES; CREATING A BOARD OF DIRECT-ENTRY MIDWIFERY; PROVIDING FOR LICENSING, INCLUDING PROVISIONAL LICENSES AND APPRENTICE LICENSES; ESTABLISHING LICENSE EXEMPTION REQUIREMENTS; CREATING A COMMUNICATIONS PRIVILEGE; PROVIDING FOR LICENSING RECIPROCITY; REQUIRING INFORMED CONSENT; ESTABLISHING CLIENT SCREENING PROCEDURES; PROVIDING FOR PHYSICIAN CONSULTATION; REQUIRING THE FILING OF BIRTH CERTIFICATES AND REPORTS; PROVIDING FOR AN ADMINISTRATIVE FINE, A CRIMINAL PENALTY, AND AN INJUNCTION; GRANTING THE BOARD RULEMAKING AUTHORITY; AMENDING SECTIONS 27-1-734 AND 37-3-103, MCA; AND PROVIDING EFFECTIVE DATES. *1780*

551 *(House Bill No. 6; Connelly)* AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS AND GRANTS UNDER THE WATER DEVELOPMENT PROGRAM AND THE RENEWABLE RESOURCE DEVELOPMENT PROGRAM; TO AUTHORIZE LOANS FROM WATER DEVELOPMENT BOND PROCEEDS, RENEWABLE RESOURCE DEVELOPMENT BOND PROCEEDS, AND APPROPRIATE FUNDS FOR DEBT SERVICE; TO REAUTHORIZE GRANTS AND LOANS APPROVED BY THE 51ST LEGISLATURE; TO REALLOCATE CERTAIN RESOURCE INDEMNITY TRUST ACCOUNT INTEREST INCOME FOR WATER DEVELOPMENT PROGRAM GRANTS DURING THE BIENNIUM ENDING JUNE 30, 1993; TO PLACE CERTAIN CONDITIONS UPON GRANTS AND LOANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1792*

552 *(House Bill No. 8; Connelly)* AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; REAUTHORIZING CERTAIN PREVIOUS GRANTS; AND ESTABLISHING CONDITIONS FOR GRANTS. *1800*

553 *(House Bill No. 10; Bardanouve)* AN ACT APPROPRIATING OIL OVERCHARGE MONEY FOR PROGRAMS ADMINISTERED BY THE STATE OF MONTANA; AND PROVIDING AN EFFECTIVE DATE. *1804*

554 *(House Bill No. 272; Bradley)* AN ACT CREATING THE MONTANA COMMUNITY CORRECTIONS ACT; AUTHORIZING LOCAL GOVERNMENTS, TRIBAL GOVERNMENTS, AND PRIVATE AGENCIES TO ESTABLISH AND OPERATE COMMUNITY CORRECTIONS FACILITIES AND PROGRAMS; PROVIDING FOR CREATION OF COMMUNITY CORRECTIONS BOARDS;

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ALLOWING SENTENCING COURTS TO SENTENCE NONVIOLENT FELONY OFFENDERS TO A COMMUNITY CORRECTIONS FACILITY OR PROGRAM; GRANTING THE DEPARTMENT OF INSTITUTIONS AUTHORITY TO ADOPT RULES GOVERNING OPERATION OF COMMUNITY CORRECTIONS FACILITIES AND PROGRAMS; ESTABLISHING PENALTIES FOR OFFENDERS WHO ESCAPE FROM COMMUNITY CORRECTIONS FACILITIES; AUTHORIZING PLACEMENT OF OFFENDERS IN A COMMUNITY CORRECTIONS FACILITY OR PROGRAM AS A CONDITION OF THE DEFERRED IMPOSITION OR SUSPENDED EXECUTION OF SENTENCES; AMENDING SECTIONS 45-7-306 AND 46-18-201, MCA; AND PROVIDING AN EFFECTIVE DATE. *1809*

555 *(House Bill No. 335; J. Johnson)* AN ACT TO ALLOW AN ELEMENTARY DISTRICT TO ATTACH TO A HIGH SCHOOL DISTRICT WITH THE SAME BOUNDARIES TO FORM A K-12 SCHOOL DISTRICT; AMENDING SECTIONS 20-6-101, 20-7-705, 20-9-314, 20-9-406, AND 20-9-502, MCA; AND PROVIDING AN EFFECTIVE DATE. *1820*

556 *(House Bill No. 371; Menahan)* AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF FAMILY SERVICES FOR IN-HOME SERVICES. *1830*

557 *(House Bill No. 441; Pavlovich)* AN ACT ALLOWING THE HOLDER OF A PERFECTED SECURITY INTEREST IN A MOBILE HOME OR HOUSETRAILER TO FILE A NOTICE OF THE INTEREST WITH THE COUNTY TREASURER; REQUIRING NOTICE OF AN IMPENDING SHERIFF'S SALE OF A MOBILE HOME OR HOUSETRAILER TO THE HOLDERS OF PERFECTED SECURITY INTERESTS IN THE MOBILE HOME OR HOUSETRAILER; ALLOWING A MOVING DECLARATION FOR A MOBILE HOME OR HOUSETRAILER PURSUANT TO A REPOSSESSION; LIMITING THE DELINQUENT TAX LIABILITY OF THE HOLDER OF A PERFECTED SECURITY INTEREST IN A MOBILE HOME OR HOUSETRAILER; AND AMENDING SECTIONS 15-24-202 AND 15-24-206, MCA. *1830*

558 *(House Bill No. 465; Thomas)* AN ACT TO PROVIDE THAT STATUTORY AND COMMON-LAW RULES OF EVIDENCE DO NOT APPLY TO DEPARTMENT OF LABOR AND INDUSTRY WORKERS' COMPENSATION HEARINGS; TO CHANGE THE IMPAIRMENT EVALUATION PROCEDURE; TO CHANGE PROVISIONS RELATING TO THE YEARLY MEDICAL SERVICES FEE SCHEDULES; TO CHANGE APPLICATION REQUIREMENTS FOR VOCATIONALLY HANDICAPPED BENEFITS; TO CLARIFY THAT WORKERS' COMPENSATION STATUTES RELATING TO THE VOCATIONALLY HANDICAPPED ALSO APPLY TO OCCUPATIONAL DISEASES; GRANTING THE DEPARTMENT DISCRETION AS TO THE SIZE OF THE SECURITY DEPOSITED BY AN EMPLOYER THAT SELF-INSURES; AMENDING SECTIONS 39-71-201, 39-71-306, 39-71-604, 39-71-605, 39-71-704, 39-71-711, 39-71-905, 39-71-2106, 39-71-2401, 39-71-2410, AND 39-72-402, MCA; REPEALING SECTION 39-72-304, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. *1833*

559 *(House Bill No. 491; O'Keefe)* AN ACT REQUIRING THE DEPARTMENT OF FAMILY SERVICES TO PROVIDE RESPITE CARE FOR CHILDREN IN LICENSED YOUTH FOSTER HOMES; ESTABLISHING REQUIREMENTS FOR RESPITE CARE; PROVIDING FOR THE RECRUITMENT, TRAINING, AND EMPLOYMENT OF RESPITE CARE PROVIDERS; APPROPRIATING FUNDS TO THE DEPARTMENT OF FAMILY SERVICES; AMENDING SECTION 41-3-1102, MCA; AND PROVIDING AN EFFECTIVE DATE. *1841*

560 *(House Bill No. 513; Simpkins)* AN ACT REQUIRING THE BOARD OF COUNTY COMMISSIONERS TO ORDER A REFUND OF CERTAIN TAXES; ALLOWING A TAXPAYER TO FILE A CLAIM FOR A REFUND ON TAXES PAID DURING THE IMMEDIATELY PRECEDING 10 YEARS; PROVIDING THAT THE REFUND MAY BE PAID IN ANNUAL INSTALLMENTS FOR A PERIOD NOT TO EXCEED 10 YEARS; AMENDING SECTION 15-16-601,

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MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *1843*

561 *(House Bill No. 520; Cocchiarella)* AN ACT INCREASING REIMBURSABLE PER DIEM AND LODGING EXPENSES FOR STATE EMPLOYEES; AND AMENDING SECTION 2-18-501, MCA. *1846*

562 *(House Bill No. 524; Raney)* AN ACT APPROPRIATING OIL OVERCHARGE MONEY FOR PROGRAMS ADMINISTERED BY THE STATE OF MONTANA; FUNDING A WIND FARM TRANSMISSION STUDY; AND PROVIDING AN EFFECTIVE DATE. *1848*

563 *(House Bill No. 572; J. Rice)* AN ACT CHANGING THE COMMERCIAL MOTOR VEHICLE OPERATOR LICENSING STATUTES TO COMPLY WITH FEDERAL MANDATES; REMOVING THE AUTHORITY OF A PERSON WITH A COMMERCIAL VEHICLE OPERATOR'S ENDORSEMENT TO HAUL HAZARDOUS MATERIALS; RAISING FROM 10 YEARS TO LIFE THE MAXIMUM ADMINISTRATIVE SUSPENSION FOR OPERATING A COMMERCIAL MOTOR VEHICLE WITH A BLOOD ALCOHOL CONTENT OF OVER 0.04; REDUCING FROM 0.04 TO ANY MEASURABLE AMOUNT THE MINIMUM BLOOD ALCOHOL CONTENT LEVEL FOR TEMPORARILY REMOVING A COMMERCIAL MOTOR VEHICLE OPERATOR FROM SERVICE; PROVIDING THAT THE SUSPENSIONS CALLED FOR IN THE COMMERCIAL OPERATOR STATUTES FOR SECOND OR SUBSEQUENT OFFENSES BE IMPOSED FOR ANY COMBINATION OF OFFENSES CALLING FOR SUSPENSION; PROVIDING FOR SEPARATE OFFENSES OF DRIVING UNDER THE INFLUENCE, OPERATING WITH A BLOOD ALCOHOL CONTENT OF 0.04 OR MORE, LEAVING THE SCENE OF AN ACCIDENT WHILE OPERATING A COMMERCIAL MOTOR VEHICLE, OR USING A COMMERCIAL MOTOR VEHICLE IN THE COMMISSION OF A FELONY; AND AMENDING SECTIONS 61-1-135, 61-5-208, 61-8-805, AND 61-8-806, MCA. *1849*

564 *(House Bill No. 631; McCulloch)* AN ACT INCREASING THE MINIMUM SENTENCE FOR SEXUAL ASSAULT INVOLVING A PERSON UNDER 16 YEARS OF AGE; PROVIDING, WITH AN EXCEPTION, THAT A MANDATORY SENTENCE OF IMPRISONMENT FOR SEXUAL ASSAULT INVOLVING A PERSON UNDER 16 YEARS OF AGE MAY NOT BE DEFERRED OR SUSPENDED; AND AMENDING SECTIONS 45-5-502, 46-18-201, AND 46-18-222, MCA. *1854*

565 *(House Bill No. 660; Cohen)* AN ACT SPECIFYING THAT THE EXCLUSION IN THE MONTANA SOLID WASTE MANAGEMENT ACT APPLIES ONLY TO A PERSON DISPOSING OF SOLID WASTE THAT WAS GENERATED IN REASONABLE ASSOCIATION WITH THE PERSON'S HOUSEHOLD OR AGRICULTURAL OPERATIONS; PROVIDING A CIVIL PENALTY FOR VIOLATIONS OF SOLID WASTE DISPOSAL LAWS AND RULES; AMENDING SECTION 75-10-214, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE. *1857*

566 *(House Bill No. 703; Bradley)* AN ACT AUTHORIZING THE MONTANA SCIENCE AND TECHNOLOGY ALLIANCE TO USE UP TO $2 MILLION TO MAKE LOANS OF NOT MORE THAN $1 MILLION FROM THE IN-STATE INVESTMENT FUND TO PRIVATE VENTURE CAPITAL COMPANIES FOR INVESTMENT IN NEW OR EXPANDING BUSINESS; PROVIDING CRITERIA FOR THE INVESTMENT LOANS; PROVIDING TERMS FOR THE INVESTMENT LOANS; AMENDING SECTIONS 90-3-102, 90-3-501, 90-3-522, AND 90-3-523, MCA; AND PROVIDING AN EFFECTIVE DATE. *1858*

567 *(House Bill No. 711; Connelly)* AN ACT TO PROVIDE A SUPPLEMENTAL HIGHWAY PATROL BENEFIT PAYMENT FOR CERTAIN RETIREES RECEIVING MONTHLY BENEFITS PRIOR TO JULY 1, 1991; TO PROVIDE FOR AN INCREASE IN MOTOR VEHICLE FEES; TO PROVIDE A STATUTORY

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APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 61-3-321, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. . *1863*

568 *(House Bill No. 715; Peck)* AN ACT TO GENERALLY REVISE LAWS RELATED TO SCHOOL DISTRICT ACCOUNTING PROCEDURES; AMENDING SECTIONS 2-9-212, 20-3-331, 20-6-604, 20-7-457, 20-7-705, 20-7-713, 20-9-133, 20-9-201, 20-9-435, 20-9-512, AND 20-10-147, MCA; AND PROVIDING EFFECTIVE DATES. *1867*

569 *(House Bill No. 728; Ream)* AN ACT PROVIDING FOR ACCESSIBILITY TO FOOD PROGRAMS AND NUTRITIONAL SERVICES; ESTABLISHING A STATE ADVISORY COUNCIL ON FOOD AND NUTRITION; CREATING THE POSITION OF PUBLIC HEALTH NUTRITIONIST; MANDATING THAT A PLAN BE SUBMITTED TO THE 1993 LEGISLATURE FOR THE EXTENSION OF THE WIC PROGRAM TO EVERY COUNTY; APPROPRIATING MONEY TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR FOOD PROGRAMS AND NUTRITIONAL SERVICES; AND PROVIDING AN EFFECTIVE DATE. *1874*

570 *(House Bill No. 757; Kadas)* AN ACT TO PROVIDE A PROCESS FOR ASSESSING AND COLLECTING TAXES ON REAL PROPERTY AND IMPROVEMENTS THAT CHANGED FROM AN EXEMPT STATUS TO A TAXABLE STATUS DURING THE TAXABLE YEAR; AMENDING SECTION 15-8-201, MCA; AND PROVIDING AN APPLICABILITY DATE.,.......... *1877*

571 *(House Bill No. 777; Quilici)* AN ACT AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 1992-93; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS TO BE ISSUED; APPROPRIATING STRIPPER-WELL PAYMENTS CONTAINED IN THE FEDERAL SPECIAL REVENUE FUND; REMOVING THE STATUTORY APPROPRIATION FROM SECTION 90-4-613, MCA; WITHDRAWING AUTHORIZATION FOR THE BONDS AUTHORIZED BY CHAPTER 473, LAWS OF 1989; AMENDING SECTIONS 17-7-502 AND 90-4-613, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.... *1878*

572 *(House Bill No. 782; Hansen)* AN ACT CLARIFYING THE REQUIREMENTS RELATING TO MOTOR VEHICLE RECYCLING AND DISPOSAL; AMENDING SECTIONS 75-10-501, 75-10-503, 75-10-521, 75-10-534, AND 75-10-541, MCA; AND PROVIDING AN EFFECTIVE DATE. *1882*

573 *(House Bill No. 807; R. Johnson)* AN ACT TO MAKE CONSISTENT THE EXCLUSIONS FROM THE DEFINITIONS OF EMPLOYMENT IN THE UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION ACTS; TO REQUIRE THAT AN INDIVIDUAL FOUND TO BE AN INDEPENDENT CONTRACTOR UNDER TITLE 39, CHAPTER 71, PART 4, MCA, IS AN INDEPENDENT CONTRACTOR FOR PURPOSES OF TITLE 39, CHAPTER 51, MCA; TO REQUIRE THE DEPARTMENT OF LABOR AND INDUSTRY TO REPORT INDEPENDENT CONTRACTOR AND EMPLOYMENT EXEMPTIONS TO THE STATE COMPENSATION MUTUAL INSURANCE FUND; AMENDING SECTIONS 39-51-204 AND 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. *1885*

574 *(House Bill No. 837; Driscoll)* AN ACT REVISING THE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE ACTS; AMENDING SECTIONS 39-71-116, 39-71-414, 39-71-702, 39-71-703, 39-71-704, 39-71-741, 39-71-1003, 39-71-1011, 39-71-1013, 39-71-1025, AND 39-71-1032, MCA; REPEALING SECTIONS 39-71-1012, 39-71-1015, 39-71-1016, 39-71-1017, 39-71-1018, 39-71-1019, 39-71-1023, 39-71-1024, 39-71-1026, AND 39-71-1033, MCA; AND PROVIDING AN EFFECTIVE DATE. *1892*

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575 *(House Bill No. 841; Bergsagel)* AN ACT STATUTORILY APPROPRIATING MONEY COLLECTED UNDER THE ALFALFA SEED INDUSTRY ACT TO THE MONTANA ALFALFA SEED COMMITTEE; AMENDING SECTIONS 17-7-502 AND 80-11-310, MCA; AND PROVIDING AN EFFECTIVE DATE... *1906*

576 *(House Bill No. 901; Bardanouve)* AN ACT TO GENERALLY REVISE THE MONTANA CAPITAL COMPANY ACT; TRANSFERRING ADMINISTRATION OF THE ACT TO THE DEPARTMENT OF COMMERCE; EXPANDING THE DEFINITION OF QUALIFIED INVESTMENT; LIMITING TAX CREDITS UNDER THE ACT; PROVIDING THAT INVESTORS ARE SUBJECT TO A PENALTY, UNDER CERTAIN CONDITIONS, FOR FAILURE TO MAKE QUALIFIED INVESTMENTS; PROVIDING FOR A LIMITATION ON INVESTMENTS TO PROMOTE DILIGENCE IN INVESTMENT DECISIONS; PROVIDING THE DEPARTMENT WITH PROPOSED INVESTMENT INFORMATION; PROVIDING FOR DECERTIFICATION FOR NONCOMPLIANCE; PROVIDING FOR DECERTIFICATION UPON MEETING AN INVESTMENT SCHEDULE, HAVING 70 PERCENT OF THE INVESTMENT IN A QUALIFIED INVESTMENT, AND HAVING BEEN A QUALIFIED MONTANA CAPITAL COMPANY FOR AT LEAST 5 YEARS FROM THE DATE OF QUALIFICATION; PROVIDING THE DEPARTMENT OF COMMERCE WITH THE AUTHORITY TO CHARGE FEES FOR ADMINISTRATION OF THE ACT; AMENDING SECTIONS 90-8-104, 90-8-105, 90-8-201, 90-8-202, 90-8-203, 90-8-301, 90-8-303, 90-8-311, 90-8-312, 90-8-313, AND 90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1907*

577 *(House Bill No. 906; Connelly)* AN ACT INCREASING THE FEES PAID UNDER FIRE HAZARD REDUCTION AGREEMENTS AND MASTER FIRE HAZARD REDUCTION AGREEMENTS; ESTABLISHING A FORESTRY EXTENSION SERVICE SPECIAL REVENUE ACCOUNT FOR THE MONTANA UNIVERSITY SYSTEM; AMENDING SECTIONS 76-13-408 AND 76-13-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. *1916*

578 *(House Bill No. 927; Harrington)* AN ACT TO REVISE THE LAWS RELATING TO GENERAL RELIEF; TO REQUIRE A VOCATIONAL SPECIALIST TO CONDUCT A REASSESSMENT TO DETERMINE THE EMPLOYABILITY OF EACH APPLICANT FOR GENERAL RELIEF; AMENDING SECTION 53-3-109, MCA; AND PROVIDING AN EFFECTIVE DATE. *1919*

579 *(House Bill No. 930; Whalen)* AN ACT INCORPORATING INTO MONTANA LAW THE FEDERAL PROVISIONS REGARDING PROTECTION AND ADVOCACY FOR THE MENTALLY ILL; OUTLINING THE GOALS AND AUTHORITY OF AN ELIGIBLE PROTECTION AND ADVOCACY SYSTEM FOR THE MENTALLY ILL IN MONTANA; AND AMENDING SECTIONS 53-21-141, 53-21-142, 53-21-144, 53-21-146, 53-21-147, 53-21-162, 53-21-166, AND 53-21-181, MCA. *1921*

580 *(House Bill No. 942; G. Beck)* AN ACT CREATING A STATUTORY SHORT FORM POWER OF ATTORNEY; PROVIDING FOR THE FORM, CONSTRUCTION, AND MODIFICATION OF THE POWER OF ATTORNEY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1930*

581 *(House Bill No. 968; Brooke)* AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT A STANDARD MEANS OF IDENTIFICATION FOR PERSONS FOR WHOM A MEDICAL ORDER NOT TO PERFORM CARDIOPULMONARY RESUSCITATION EXISTS IN ORDER TO PREVENT THE APPLICATION OF LIFE-SUSTAINING PROCEDURES; PROVIDING FOR CIVIL AND CRIMINAL IMMUNITY FOR HEALTH CARE PROFESSIONALS WITHHOLDING LIFE-SUSTAINING PROCEDURES PURSUANT TO A DO NOT RESUSCITATE ORDER OR TO PERSONS POSSESSING THE IDENTIFICATION; REQUIRING THE TRANSFER TO ANOTHER CAREGIVER UNDER CERTAIN CIRCUMSTANCES OF PA-

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TIENTS POSSESSING THE STANDARD IDENTIFICATION; REQUIRING EMERGENCY MEDICAL PERSONNEL OTHER THAN PHYSICIANS TO COMPLY WITH DO NOT RESUSCITATE ORDERS; PROVIDING FOR THE EFFECT ON INSURANCE POLICIES; REQUIRING THE DEPARTMENT TO ADOPT RULES; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1953*

582 *(House Bill No. 9; Connelly)* AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE. *1956*

583 *(House Bill No. 498; Steppler)* AN ACT AUTHORIZING USE OF UNEXPENDED PROCEEDS FROM 1985 SERIES C RENEWABLE RESOURCE DEVELOPMENT BONDS FOR WATER DEVELOPMENT LOANS TO PRIVATE PERSONS; AUTHORIZING DEPOSIT OF LOAN PAYMENTS IN THE RENEWABLE RESOURCE DEVELOPMENT DEBT SERVICE FUND; INCREASING THE LOAN LIMIT ON RENEWABLE RESOURCE DEVELOPMENT LOANS; AMENDING SECTION 90-2-108, MCA; AND PROVIDING EFFECTIVE DATES. *1962*

584 *(House Bill No. 560; Stang)* AN ACT TO CREDIT REVENUE FROM THE DRIVER'S LICENSE MOTORCYCLE ENDORSEMENT FEE TO THE MOTORCYCLE SAFETY TRAINING ACCOUNT ADMINISTERED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION; AMENDING SECTIONS 61-2-406 AND 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE. *1964*

585 *(House Bill No. 645; L. Nelson)* AN ACT PROVIDING FOR LONG-TERM LOANS TO SCHOOL DISTRICTS THAT EXPERIENCE A DISASTER THAT DESTROYS SCHOOL PROPERTY TO THE EXTENT OF RENDERING THE PROPERTY UNFIT FOR ITS PRESENT SCHOOL USE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1966*

586 *(House Bill No. 651; Harrington)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO FRATERNAL BENEFIT SOCIETIES; AMENDING SECTIONS 31-2-106 AND 33-22-1703, MCA; REPEALING SECTIONS 33-7-101, 33-7-102, 33-7-103, 33-7-104, 33-7-111, 33-7-112, 33-7-113, 33-7-114, 33-7-115, 33-7-116, 33-7-201, 33-7-202, 33-7-203, 33-7-204, 33-7-205, 33-7-206, 33-7-207, 33-7-211, 33-7-212, 33-7-213, 33-7-301, 33-7-302, 33-7-303, 33-7-304, 33-7-305, 33-7-401, 33-7-402, 33-7-403, 33-7-404, 33-7-405, 33-7-406, 33-7-407, 33-7-501, 33-7-502, 33-7-503, 33-7-504, 33-7-505, 33-7-506, 33-7-507, 33-7-508, 33-7-509, 33-7-510, 33-7-511, 33-7-512, 33-7-513, 33-7-514, 33-7-515, 33-7-516, 33-7-517, 33-7-518, AND 33-7-519, MCA; AND PROVIDING AN EFFECTIVE DATE. . *1966*

587 *(House Bill No. 842; Connelly)* AN ACT REVISING THE APPLICATION AND AWARD PROCEDURE FOR CULTURAL AND AESTHETIC PROJECT GRANTS; AND AMENDING SECTIONS 22-2-301 AND 22-2-308, MCA. *1988*

588 *(House Bill No. 964; O'Keefe)* AN ACT AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO DEPOSIT CERTAIN FEES IN THE STATE SPECIAL REVENUE FUND AND DIRECTING THE BOARD OF INVESTMENTS TO INVEST THE MONEY; ESTABLISHING A PESTICIDE MANAGEMENT ACCOUNT; CHANGING THE AMOUNTS OF PESTICIDE REGISTRATION FEES; AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO ISSUE COMPLIANCE ORDERS; TERMINATING THE SURCHARGE ON RETAIL SALES OF HERBICIDES; AMENDING SECTIONS 80-7-810, 80-7-812, 80-7-815, 80-8-116, 80-8-201, 80-8-212, 80-8-305, AND 80-15-302, MCA; AND PROVIDING EFFECTIVE DATES. *1989*

589 *(Senate Bill No. 26; Manning)* AN ACT TO GENERALLY REVISE THE AUTHORITY OF THE BOARD OF INVESTMENTS TO INVEST THE PERMANENT COAL TAX TRUST FUND; ELIMINATING THE AUTHORITY OF THE BOARD OF INVESTMENTS TO GUARANTEE LOANS; ELIMINATING THE

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ECONOMIC DEVELOPMENT GUARANTY FUND AND THE IN-STATE INVESTMENT FUND; ALLOWING THE BOARD OF INVESTMENTS TO INVEST UP TO 25 PERCENT OF THE PERMANENT COAL TAX TRUST FUND IN THE MONTANA ECONOMY; REQUIRING THE BOARD OF INVESTMENTS TO REPORT BIENNIALLY TO THE LEGISLATURE; ELIMINATING THE LOAN LOSS RESERVE FUND; AUTHORIZING MONTANA CAPITAL COMPANIES TO ISSUE AND SELL DEBENTURES TO THE PERMANENT COAL TAX TRUST FUND; ALLOWING AN INTEREST RATE REDUCTION INCENTIVE FOR JOB CREATION BY SMALL BUSINESSES; ALLOWING AN ADDITIONAL SERVICE FEE DISCOUNT TO FINANCIAL INSTITUTIONS ON CERTAIN SMALL BUSINESS LOAN PARTICIPATIONS; AMENDING SECTIONS 17-5-1506, 17-5-1525, 17-5-1526, 17-5-1527, 17-6-302, 17-6-305, 17-6-308, 17-6-310, 17-6-311, 17-6-314, 17-6-322, 90-3-101, 90-3-525, 90-6-104, 90-8-102, AND 90-8-305, MCA; REPEALING SECTIONS 17-5-1519, 17-5-1520, 17-6-306, AND 17-6-315, MCA; AND PROVIDING AN EFFECTIVE DATE. .. *1997*

590 *(Senate Bill No. 69; Eck)* AN ACT CLARIFYING THAT PARCELS OF LAND LARGER THAN 20 ACRES WITH STATED RESTRICTIONS EFFECTIVELY PROHIBITING USE FOR AGRICULTURAL PURPOSES MAY NOT BE CLASSIFIED OR VALUED AS AGRICULTURAL LAND; AMENDING SECTION 15-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2010*

591 *(Senate Bill No. 157; Vaughn)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO ELECTIONS; REVISING THE LAWS RELATING TO COUNTY WATER AND SEWER DISTRICT ELECTIONS; PROHIBITING INDEPENDENT CANDIDATES FROM BEING ASSOCIATED WITH A POLITICAL PARTY FOR 1 YEAR PRIOR TO SEEKING OFFICE; ALLOWING FOR INSPECTION OF BALLOTS DURING A CANVASS; PROVIDING FOR STAGGERED TERMS FOR FIRE DISTRICT TRUSTEES; AMENDING SECTIONS 7-4-2611, 7-13-2214, 7-13-2225, 7-13-2241, 7-13-2247, 7-33-2106, 13-4-106, 13-10-503, 13-13-114, 13-13-115, 13-13-212, 13-14-115, 13-15-111, 13-15-403, 13-19-106, 13-19-206, 13-19-306, 13-19-308, 13-19-311, 13-19-312, 13-37-201, AND 13-37-225, MCA; AND REPEALING SECTIONS 7-13-2237, 7-13-2238, 7-13-2239, 7-13-2240, 7-13-2242, 7-13-2244, AND 7-13-2245, MCA. *2011*

592 *(Senate Bill No. 171; Svrcek)* AN ACT INCREASING CERTAIN FISHING AND HUNTING LICENSE FEES AND THE LICENSE AGENT COMMISSION; REVISING THE PROVISIONS OF THE CLASS B-10 NONRESIDENT BIG GAME COMBINATION LICENSE; AND AMENDING SECTIONS 87-2-113, 87-2-202, 87-2-301, 87-2-302, 87-2-304, 87-2-306, 87-2-402, 87-2-403, 87-2-501, 87-2-505, 87-2-508, 87-2-510, 87-2-701, 87-2-704, 87-2-708, 87-2-711, AND 87-2-903, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. *2022*

593 *(Senate Bill No. 238; Crippen)* AN ACT REVISING THE MUNICIPAL FINANCE CONSOLIDATION ACT OF 1983 TO ALLOW PARTICIPATION BY THE MONTANA UNIVERSITY SYSTEM BOARD OF REGENTS; AMENDING SECTION 17-5-1604, MCA; AND PROVIDING AN EFFECTIVE DATE. *2030*

594 *(Senate Bill No. 242; Crippen)* AN ACT PROVIDING FUNDING FROM THE IN-STATE INVESTMENT FUND FOR RESEARCH AND DEVELOPMENT PROJECT LOANS; PROVIDING FOR MEDICAL FACILITY RESEARCH AND DEVELOPMENT PROJECT LOANS; REQUIRING AT LEAST THREE MEMBERS OF THE BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO HAVE KNOWLEDGE OF EARLY STAGE FINANCING OF PRIVATE BUSINESSES; CHANGING MATCHING FUND REQUIREMENTS FOR RESEARCH AND DEVELOPMENT PROJECTS; REQUIRING THE UNIVERSITY SYSTEM TO ASSESS INTELLECTUAL PROPERTY MANAGEMENT; AMENDING SECTIONS 2-15-1818, 17-6-308, 17-6-310, 90-3-101, 90-3-102, 90-3-301, 90-3-305, 90-3-524, AND 90-3-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2031*

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595 *(Senate Bill No. 278; Gage)* AN ACT TO REPEAL CERTAIN NUISANCE TAXES; REPEALING THE EXPRESS COMPANY LICENSE TAX AND THE SLEEPING CAR COMPANY LICENSE TAX; REPEALING SECTIONS 15-54-101, 15-54-102, 15-54-103, 15-54-104, 15-54-105, 15-54-111, 15-54-112, 15-54-113, 15-56-101, 15-56-102, 15-56-103, 15-56-104, 15-56-105, 15-56-106, 15-56-107, 15-56-108, 15-56-111, 15-56-112, AND 15-56-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES. *2038*

596 *(Senate Bill No. 288; Williams)* AN ACT TO CREATE AN ASBESTOS CONTROL ACCOUNT IN THE STATE SPECIAL REVENUE FUND; TO REQUIRE MONEY RECEIVED FROM THE COLLECTION OF CERTAIN FEES AND PENALTIES TO BE DEPOSITED IN THE ACCOUNT; TO ALLOCATE MONEY IN THE ACCOUNT TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO FUND ASBESTOS CONTROL PROGRAMS; AMENDING SECTION 75-2-514, MCA; REPEALING SECTION 75-2-512, MCA; AND PROVIDING AN EFFECTIVE DATE. *2039*

597 *(Senate Bill No. 468; Gage)* AN ACT RELATING TO THE TAXATION OF OIL AND NATURAL GAS FOR STATE SEVERANCE TAX AND LOCAL GOVERNMENT SEVERANCE TAX PURPOSES; CLARIFYING THE DEFINITION OF GROSS VALUE FOR COMPUTATION OF THE LOCAL GOVERNMENT SEVERANCE TAX; CONFORMING THE ADMINISTRATION OF THE LOCAL GOVERNMENT SEVERANCE TAX TO THE STATE SEVERANCE TAX; AMENDING SECTIONS 15-23-603, 15-36-101, 15-36-105, 15-36-107, 15-36-108, 15-36-113, 15-36-114, AND 15-36-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . *2041*

598 *(House Bill No. 4; Bardanouve)* AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1991, THAT WOULD USUALLY BE MADE BY BUDGET AMENDMENT; PROVIDING FOR CERTAIN APPROPRIATIONS TO CONTINUE FROM FISCAL YEAR 1991 TO FISCAL YEARS 1992 AND 1993; PROVIDING DIRECTION CONCERNING CONSIDERATION OF BUDGET AMENDMENT APPROPRIATIONS FOR FISCAL YEAR 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. Page 2049 ....

599 *(House Bill No. 299; S. Rice)* AN ACT PROVIDING FOR PERMANENT PLACEMENT OF CHILDREN IN FOSTER CARE; AUTHORIZING PERMANENT DISPOSITION BY THE COURT WITHIN CERTAIN TIME LIMITS; IMPLEMENTING A PERMANENCY PLANNING PROJECT FOR CHILDREN IN FOSTER CARE; AMENDING SECTION 41-3-609, MCA; AND PROVIDING AN EFFECTIVE DATE. *2055*

600 *(House Bill No. 414; Cohen)* AN ACT ESTABLISHING A WATER QUALITY REHABILITATION ACCOUNT; REQUIRING THAT FINES AND CIVIL PENALTIES COLLECTED FOR VIOLATIONS OF TITLE 75, CHAPTER 5, MCA, BE DEPOSITED IN THE WATER QUALITY REHABILITATION ACCOUNT; PROVIDING FOR A STATUTORY APPROPRIATION OF THE ACCOUNT TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; REQUIRING THAT CERTAIN COSTS AND EXPENSES RECOVERED BY THE DEPARTMENT FOR ACTIONS FINANCED BY THE WATER QUALITY REHABILITATION ACCOUNT BE DEPOSITED IN THE ACCOUNT; AMENDING SECTIONS 17-7-502, 75-5-634, AND 75-5-635, MCA; AND PROVIDING AN EFFECTIVE DATE. *2058*

601 *(House Bill No. 467; Lee)* AN ACT TO CREATE CRIMINAL PENALTIES FOR PERSONS ILLEGALLY CARRYING FIREARMS OR DANGEROUS DRUGS ON TRAINS. *2061*

602 *(House Bill No. 477; Kadas)* AN ACT ESTABLISHING THE MICROBUSINESS DEVELOPMENT ACT; CREATING THE MICROBUSINESS FINANCE PROGRAM; CREATING THE MICROBUSINESS ADVISORY COUNCIL;

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CREATING A NONVOTING LEGISLATIVE CONSULTING PANEL; PROVIDING A STATUTORY APPROPRIATION; PROVIDING AN APPROPRIATION FROM THE IN-STATE INVESTMENT FUND; PROVIDING AN APPROPRIATION FROM THE GENERAL FUND; AMENDING SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES. *2062*

603 *(Senate Bill No. 558; Ream)* AN ACT TO REVISE PROCEDURES OF ESTIMATING REVENUES BY THE REVENUE OVERSIGHT COMMITTEE; TO CLARIFY THAT THE REVENUE ESTIMATES OF THE LEGISLATURE ARE INTENDED TO BE USED BY ALL AGENCIES; AMENDING SECTION 5-18-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. ... *2072*

604 *(House Bill No. 579; Driscoll)* AN ACT TO GENERALLY REVISE THE MOTOR VEHICLE LAWS; INCREASING THE NUMBER OF REGISTRATION PERIODS FROM 10 TO 12; PROVIDING FOR MAIL RENEWAL CARDS FOR LIGHT VEHICLES, MOTOR HOMES, CAMPERS, TRAVEL TRAILERS, BOATS, SNOWMOBILES, MOTORCYCLES, QUADRICYCLES, AND OFF-HIGHWAY VEHICLES; REQUIRING PROCEDURES FOR AUTOMATED HANDLING OF MAIL RENEWAL CARDS; REQUIRING THAT ALL TAXES AND FEES BE PAID BEFORE A 60-DAY STICKER MAY BE ISSUED AND AUTHORIZING AN ADDITIONAL 60-DAY PERIOD; PROVIDING THAT ALL STATUTES AFFECTING MOTOR VEHICLES BE EFFECTIVE JANUARY 1 OF THE FOLLOWING YEAR; PROVIDING FOR THE DEVELOPMENT OF A STATEWIDE COMPUTER SYSTEM; INCREASING THE REGISTRATION FEES FOR MOTOR VEHICLES, BOATS, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES TO IMPLEMENT THE STATEWIDE COMPUTER SYSTEM; ESTABLISHING A COUNTY MOTOR VEHICLE COMPUTER COMMITTEE; APPROPRIATING MONEY TO THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 1-2-201, 61-3-101, 61-3-201, 61-3-202, 61-3-314, 61-3-342, 61-3-503, AND 61-3-535, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION. *2074*

605 *(House Bill No. 607; Raney)* AN ACT AMENDING THE LAWS RELATING TO PERMIT REQUIREMENTS FOR SOLID WASTE INCINERATORS; EXTENDING THE PERMIT REQUIREMENTS TO HAZARDOUS WASTE INCINERATORS; AMENDING SECTION 75-2-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2088*

606 *(House Bill No. 693; Thomas)* AN ACT TO PROMOTE HEALTH INSURANCE FOR UNINSURED MONTANANS; ALLOWING INSURERS AND HEALTH SERVICE CORPORATIONS TO ISSUE LIMITED BENEFIT DISABILITY INSURANCE POLICIES; PROVIDING REQUIREMENTS FOR LIMITED BENEFIT DISABILITY INSURANCE POLICIES; AUTHORIZING A TAX CREDIT FOR SMALL EMPLOYERS WHO MAKE DISABILITY INSURANCE AVAILABLE TO THEIR EMPLOYEES; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE. *2090*

607 *(House Bill No. 706; Cohen)* AN ACT ESTABLISHING A LICENSING PROCESS FOR MOTOR VEHICLE WRECKING FACILITIES AND MOTOR VEHICLE GRAVEYARDS; ALLOWING THE GOVERNING BODY OF A COUNTY TO CONDUCT A HEARING; AND ESTABLISHING CRITERIA FOR THE DECISION BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO LICENSE A FACILITY. *2093*

608 *(House Bill No. 731; Ream)* AN ACT PROVIDING MANAGEMENT STANDARDS FOR THE CONDUCT OF FOREST PRACTICES IN STREAMSIDE MANAGEMENT ZONES; AUTHORIZING THE DEPARTMENT OF STATE LANDS TO ADOPT AND ENFORCE RULES IMPLEMENTING THE STREAMSIDE MANAGEMENT STANDARDS; ALLOWING ALTERNATIVE FOREST PRACTICES IN CERTAIN CIRCUMSTANCES; AUTHORIZING THE DEPARTMENT OF STATE LANDS TO ISSUE ADMINISTRATIVE ORDERS FOR SITE REHABILITATION; PROVIDING PENALTIES FOR NONCOMPLIANCE

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WITH STREAMSIDE MANAGEMENT STANDARDS; AND ESTABLISHING A FOREST STEWARDSHIP SPECIAL REVENUE ACCOUNT. *2094*

609 *(House Bill No. 778; D. Brown)* AN ACT REVISING THE LAWS RELATING TO USE OF STATE LANDS; PROVIDING THAT ALLOWABLE USE OF STATE LANDS INCLUDES GENERAL RECREATIONAL USE BY THE PUBLIC; REQUIRING THE BOARD OF LAND COMMISSIONERS TO ADOPT RULES TO AUTHORIZE AND GOVERN THE RECREATIONAL USE AND CLOSURE OF STATE LANDS; REQUIRING PURCHASE AND POSSESSION OF A RECREATIONAL USE LICENSE BY PERSONS 12 YEARS OF AGE OR OLDER FOR THE GENERAL RECREATIONAL USE OF STATE LANDS; PROVIDING FOR ENFORCEMENT OF THE LICENSE REQUIREMENT BY THE WARDENS OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; PROVIDING PENALTIES; PROVIDING FOR THE STATUTORY APPROPRIATION OF THE LICENSE FEES AND PENALTIES; PROVIDING COMPENSATION FOR DAMAGE TO A LESSEE'S IMPROVEMENTS, GROWING CROPS, AND LIVESTOCK; AMENDING SECTIONS 17-7-502, 19-8-504, 77-1-101, 77-1-202, 77-1-203, 77-1-204, 77-1-402, 87-1-102, 87-1-502, 87-1-504, AND 87-1-601, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. *2100*

610 *(House Bill No. 793; M. Hanson)* AN ACT ALLOWING THE BOARD OF COUNTY COMMISSIONERS OF A COUNTY TO DIRECT THE COUNTY TREASURER TO REDISTRIBUTE COAL GROSS PROCEEDS TAXES OR LOCAL GOVERNMENT SEVERANCE TAX MONEY FROM ONE TAXING UNIT IN THE COUNTY TO ANOTHER TAXING UNIT OR UNITS IN THE COUNTY UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 15-23-703 AND 15-36-112, MCA; AND PROVIDING AN EFFECTIVE DATE. *2112*

611 *(House Bill No. 883; R. DeBruycker)* AN ACT REVISING THE PROVISIONS RELATING TO THE PRIOR TAX LIEN ON REAL PROPERTY FOR TAXES OWED ON PERSONAL PROPERTY; PROVIDING THAT AN OWNER OR HOLDER OF A MORTGAGE OR OTHER LIEN MAY FILE TO REMOVE THE PRIOR TAX LIEN ON REAL PROPERTY ONLY WHEN THE TAXABLE VALUE OF PERSONAL PROPERTY ON WHICH PERSONAL PROPERTY TAXES ARE DELINQUENT EXCEEDS $10,000; AND AMENDING SECTION 15-16-402, MCA. *2116*

612 *(House Bill No. 904; Kasten)* AN ACT EXCLUDING SOCIAL SECURITY INCOME PAID DIRECTLY TO A NURSING HOME FROM THE DEFINITIONS OF INCOME USED TO CALCULATE THE LOW-INCOME PROPERTY TAX REDUCTION AND THE RESIDENTIAL PROPERTY TAX CREDIT FOR THE ELDERLY; AMENDING SECTIONS 15-6-134, 15-6-142, AND 15-30-171, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2118*

613 *(House Bill No. 949; Tunby)* AN ACT TO ALLOW A STATE INCOME TAX DEDUCTION FOR THE COST OF PURCHASING LONG-TERM CARE INSURANCE; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2121*

614 *(House Bill No. 978; Phillips)* AN ACT REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO SEEK A WAIVER FROM THE U.S. SECRETARY OF HEALTH AND HUMAN SERVICES TO ESTABLISH A PILOT PROGRAM TO TEST THE FEASIBILITY OF PROVIDING MEDICAID REIMBURSEMENT FOR SERVICES TO THE ELDERLY AND DISABLED IN PERSONAL-CARE FACILITIES; GRANTING THE DEPARTMENT AUTHORITY TO ADOPT RULES; APPROPRIATING FUNDS; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.......... *2124*

615 *(House Bill No. 1008; Bardanouve)* AN ACT ALLOCATING TO SEPARATE TRUST FUNDS THE COAL SEVERANCE TAX MONEY THAT WOULD BE DEPOSITED IN A NONEXPENDABLE TRUST FUND FOR PARKS MANAGE-

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MENT, PROTECTION OF WORKS OF ART IN THE STATE CAPITOL, AND OTHER CULTURAL AND AESTHETIC PROJECTS; ALLOWING THE EXPENDITURE OF COAL SEVERANCE TAX REVENUE FOR PARKS FOR 2 YEARS; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. *2127*

616 *(House Bill No. 1010; D. Brown)* AN ACT ESTABLISHING A HARD-ROCK MINING IMPACT TRUST RESERVE ACCOUNT; AUTHORIZING AND LIMITING EXPENDITURES FROM THE RESERVE ACCOUNT; APPROPRIATING MONEY TO THE HARD-ROCK MINING IMPACT BOARD FROM THE RESERVE ACCOUNT; AMENDING SECTIONS 90-6-304 AND 90-6-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2130*

617 *(House Bill No. 760; Kimberley)* AN ACT EQUALIZING THE AMOUNT OF CERTAIN DISABILITY RETIREMENT ALLOWANCE PAYMENTS TO MEMBERS OF THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM HIRED AFTER JULY 1, 1981, WITH THE ALLOWANCE PAYMENTS TO MEMBERS HIRED BEFORE JULY 1, 1981; INCREASING THE STATE CONTRIBUTION RATE; AMENDING SECTIONS 19-13-604 AND 19-13-803, MCA; AND PROVIDING AN EFFECTIVE DATE. *2132*

618 *(House Bill No. 937; Stickney)* AN ACT TO REVISE THE MONTANA CHILD CARE ACT; TO CONTINUE THE STATE GRANT PROGRAM FOR LOCAL CHILD-CARE RESOURCE AND REFERRAL PROGRAMS; REPEALING SECTION 52-2-712, MCA, AND SECTION 18, CHAPTER 692, LAWS OF 1989; AND PROVIDING AN EFFECTIVE DATE. *2133*

619 *(Senate Bill No. 279; B. Brown)* AN ACT PROVIDING A TAXPAYER BILL OF RIGHTS; GUARANTEEING TO ALL MONTANA TAXPAYERS SPECIFIED PROCEDURAL RIGHTS IN THE ADMINISTRATION AND COLLECTION OF TAXES BY THE DEPARTMENT OF REVENUE; AND CREATING AN OFFICE OF TAXPAYER ASSISTANCE. *2133*

620 *(Senate Bill No. 299; Halligan)* AN ACT CLARIFYING THE PROCEDURE FOR AN INTERLOCUTORY ADJUDICATION OF AN APPEAL PENDING BEFORE THE STATE TAX APPEAL BOARD; AND AMENDING SECTIONS 15-2-304 AND 15-2-305, MCA. *2136*

621 *(Senate Bill No. 438; B. Brown)* AN ACT EXEMPTING FROM BENEFICIAL USE TAXATION RAILROAD TRACKS AND RIGHT-OF-WAY OWNED BY THE UNITED STATES; AMENDING SECTION 15-24-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2137*

622 *(House Bill No. 30; Peck)* AN ACT TO ESTABLISH A MONTANA EDUCATIONAL TELECOMMUNICATIONS NETWORK TO SUPPORT EDUCATION, ECONOMIC DEVELOPMENT, AND GOVERNMENT SERVICES IN THE STATE; TO DESIGNATE DUTIES AND RESPONSIBILITIES FOR THE NETWORK TO THE DEPARTMENT OF ADMINISTRATION, THE SUPERINTENDENT OF PUBLIC INSTRUCTION, AND THE COMMISSIONER OF HIGHER EDUCATION; TO PROVIDE AN APPROPRIATION AND OTHER FUNDING MECHANISMS FOR THE PROGRAM; AMENDING SECTIONS 20-9-343 AND 20-9-344, MCA; REPEALING SECTION 20-7-1001, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2138*

623 *(House Bill No. 145; Grady)* AN ACT REQUIRING OIL RETAILERS AND WHOLESALERS TO DISPLAY A SIGN INDICATING THE LOCATION OF THE NEAREST WASTE OIL RECYCLING COLLECTION CENTERS. *2145*

624 *(House Bill No. 234; Pavlovich)* AN ACT APPROPRIATING MONEY FROM THE CAPITAL PROJECTS FUND FOR THE LAND PURCHASE FOR AND CONSTRUCTION AND REMODELING OF A STATE NURSING HOME OR DOMICILIARY HOME AT GLENDIVE, MONTANA, FOR VETERANS. *2145*

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625 *(House Bill No. 298; Cobb)* AN ACT ELIMINATING THE REQUIREMENT FOR THE DEPARTMENT OF ADMINISTRATION TO INCLUDE IN ITS BUDGET APPROPRIATION REQUESTS FOR THE CUSTODIAL CARE OF THE CAPITOL BUILDINGS AND EQUIPMENT; AMENDING SECTION 2-17-111, MCA; AND PROVIDING AN EFFECTIVE DATE. *2146*

626 *(House Bill No. 321; Ream)* AN ACT REQUIRING THAT INTEREST AND PENALTIES ASSESSED AND COLLECTED ON CERTAIN TAXES BE DEPOSITED IN THE STATE GENERAL FUND; CLARIFYING THE ALLOCATION OF REFUNDS; AMENDING SECTIONS 15-1-501 AND 15-31-702, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. *2147*

627 *(House Bill No. 334; Swysgood)* AN ACT REVISING THE TAXATION OF CERTAIN LIVESTOCK; ALLOWING A LIVESTOCK OWNER TO ELECT TO BE TAXED ON A PRORATED BASIS FOR LIVESTOCK MOVED INTERSTATE DURING THE TAX YEAR; PROVIDING FOR A REFUND OF PROPERTY TAXES PAID ON LIVESTOCK FOR A PERIOD LONGER THAN THE ACTUAL NUMBER OF MONTHS THE LIVESTOCK ARE IN THE STATE; PROVIDING FOR AN ADDITIONAL ASSESSMENT OF TAXES ON LIVESTOCK FOR THE ACTUAL NUMBER OF MONTHS THE LIVESTOCK ARE IN THE STATE; PROVIDING FOR A REFUND OF THE PER CAPITA LEVY FOR LIVESTOCK MOVED OUT OF STATE; EXPANDING THE DEFINITION OF LIVESTOCK TO INCLUDE LLAMAS, DOMESTIC BISON, AND DOMESTIC UNGULATES; AMENDING SECTIONS 15-24-921, 15-24-922, AND 15-24-926, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2149*

628 *(House Bill No. 393; Cobb)* AN ACT ALLOWING THE DEPARTMENT OF ADMINISTRATION TO APPROVE LONG-TERM LOANS TO ACCOUNTING ENTITIES IN THE FEDERAL AND STATE SPECIAL REVENUE FUNDS UNDER SPECIFIED CIRCUMSTANCES; AUTHORIZING THE DEPARTMENT TO APPROVE THE LOANS IF THE LOANS ARE NECESSARY TO PROVIDE CASH FOR DISBURSEMENTS MADE PENDING RECEIPT OF REIMBURSEMENT FROM FEDERAL, PRIVATE, OR OTHER GOVERNMENTAL ENTITY SOURCES; AMENDING SECTION 17-2-107, MCA; AND PROVIDING AN EFFECTIVE DATE. *2151*

629 *(House Bill No. 489; O'Keefe)* AN ACT TO DEFINE THE REQUIREMENTS FOR PAYMENT OF CLOTHING FOR CHILDREN PLACED IN FOSTER HOMES; TO APPROPRIATE FUNDS TO THE DEPARTMENT OF FAMILY SERVICES; AMENDING SECTION 41-3-1103, MCA; AND PROVIDING AN EFFECTIVE DATE. *2154*

630 *(House Bill No. 508; Kadas)* AN ACT ESTABLISHING MONTANA AS A MEMBER OF THE PACIFIC NORTHWEST ECONOMIC REGION; PROVIDING FOR THE APPOINTMENT OF MEMBERS TO THE PACIFIC NORTHWEST ECONOMIC REGION AND ITS COMMITTEES; APPROPRIATING FUNDS FOR PARTICIPATION IN THE PACIFIC NORTHWEST ECONOMIC REGION; AMENDING SECTIONS 5-11-301 AND 85-3-213, MCA; AND PROVIDING EFFECTIVE DATES. *2156*

631 *(House Bill No. 595; Strizich)* AN ACT ALLOWING EMPLOYEES COVERED UNDER THE STATEWIDE POLICE OFFICERS' RETIREMENT SYSTEM TO RETIRE AFTER 20 YEARS OF SERVICE; REMOVING THE REQUIREMENT THAT A POLICE OFFICER BE 50 YEARS OF AGE TO BE ELIGIBLE FOR RETIREMENT; AMENDING SECTIONS 19-9-104, 19-9-601, 19-9-702, 19-9-703, 19-9-801, 19-9-802, 19-9-804, AND 19-9-903, MCA; AND PROVIDING AN EFFECTIVE DATE. *2161*

632 *(House Bill No. 723; Phillips)* AN ACT CREATING SPECIAL LICENSE PLATES FOR VETERANS OF MILITARY SERVICE AND FOR HOLDERS OF THE PURPLE HEART MEDAL; ALLOCATING PART OF THE LICENSE FEES

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633 *(House Bill No. 830; Phillips)* AN ACT PROVIDING THAT THE CALCULATION FOR A SUPPLEMENTAL BENEFIT FOR A PERSON RETIRED PRIOR TO JULY 1, 1975, UNDER THE STATEWIDE POLICE RETIREMENT SYSTEM BE DETERMINED BY THE BASE SALARY OF THE EMPLOYEE DURING THE CURRENT FISCAL YEAR, RATHER THAN THE PREVIOUS CALENDAR YEAR; AMENDING SECTION 19-9-1007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2176

634 *(House Bill No. 876; Wyatt)* AN ACT TO REVISE AND CONTINUE THE MIAMI PROJECT; TO EXPAND THE MEMBERSHIP OF THE MIAMI PROJECT ADVISORY COUNCIL TO INCLUDE AN INDIAN TRIBAL MEMBER; TO REQUIRE MORBIDITY REVIEWS OF BIRTHS INVOLVING LOW BIRTHWEIGHT BABIES; TO REQUIRE AMBULATORY PRENATAL CARE FOR PREGNANT WOMEN DURING A PRESUMPTIVE ELIGIBILITY PERIOD; TO AUTHORIZE TARGETED CASE MANAGEMENT SERVICES FOR HIGH-RISK PREGNANT WOMEN; TO PROVIDE MEDICAID ELIGIBILITY TO INFANTS AND PREGNANT WOMEN WHOSE FAMILY INCOME DOES NOT EXCEED 133 PERCENT OF THE FEDERAL POVERTY THRESHOLD; TO MANDATE CONTINUOUS ELIGIBILITY FOR INFANTS AND PREGNANT WOMEN; TO APPROPRIATE FUNDS TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTIONS 2-15-2109, 50-19-311, 50-19-312, 53-6-101, AND 53-6-131, MCA; REPEALING SECTION 15, CHAPTER 649, LAWS OF 1989; AND PROVIDING AN EFFECTIVE DATE. 2178

635 *(House Bill No. 923; Darko)* AN ACT TO REVISE PROCEDURES PERTAINING TO INCOME WITHHOLDING FOR THE PAYMENT OF CHILD SUPPORT TO CONFORM THOSE PROCEDURES TO FEDERAL REGULATIONS; TO PROVIDE FOR ENFORCEMENT OF HEALTH INSURANCE OBLIGATIONS THROUGH INCOME WITHHOLDING; AMENDING SECTIONS 40-4-204, 40-5-226, 40-5-304, 40-5-309, 40-5-402, 40-5-403, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-421, 40-5-433, AND 40-6-116, MCA; REPEALING SECTION 40-5-425, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2184

636 *(House Bill No. 103; Russell)* AN ACT PROHIBITING THE DETENTION OF MENTALLY ILL PERSONS IN JAIL PENDING A CIVIL COMMITMENT HEARING; REQUIRING SHERIFFS AND JAIL ADMINISTRATORS TO SCREEN AND DIVERT FROM JAIL CERTAIN PERSONS WHO APPEAR TO BE SERIOUSLY MENTALLY ILL; PROVIDING ALTERNATIVES TO THE PLACEMENT OF MENTALLY ILL PERSONS IN JAIL; REQUIRING THE DEPARTMENT OF INSTITUTIONS TO ESTABLISH CRISIS INTERVENTION PROGRAMS AND TO ASSIST COUNTIES IN DEVELOPING COUNTY PLANS; AUTHORIZING TARGETED CASE MANAGEMENT SERVICES UNDER THE MEDICAID PROGRAM FOR ADULTS WHO ARE SERIOUSLY MENTALLY ILL; AMENDING SECTIONS 53-6-101, 53-21-120, AND 53-21-124, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. 2208

637 *(House Bill No. 448; Ream)* AN ACT AMENDING THE METAL MINE RECLAMATION LAWS; IMPLEMENTING THE RECOMMENDATIONS OF THE GOVERNOR'S MINE PERMITTING IMPROVEMENT ADVISORY COUNCIL; AMENDING SECTIONS 82-4-303, 82-4-305, 82-4-306, 82-4-335, 82-4-337, 82-4-338, 82-4-339, AND 82-4-355, MCA; AND PROVIDING AN EFFECTIVE DATE. 2214

638 *(House Bill No. 696; J. Rice)* AN ACT EXTENDING THE FUNDING FOR THE STATEWIDE GENETICS PROGRAM FOR 2 YEARS; INCREASING THE FEE ON HEALTH INSURERS TO FUND THE PROGRAM; APPROPRIATING

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FUNDING FOR THE PROGRAM TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTION 33-2-712, MCA; REPEALING SECTIONS 33-2-712 AND 33-2-713, MCA, SECTION 7, CHAPTER 554, LAWS OF 1987, AND SECTIONS 2 AND 5, CHAPTER 155, LAWS OF 1989, MCA; AND PROVIDING EFFECTIVE DATES. *2227*

639 *(House Bill No. 704; Wanzenried)* AN ACT TO APPROPRIATE MONEY FROM THE FEDERAL SPECIAL REVENUE FUND IN FISCAL YEARS 1992 AND 1993 TO THE DEPARTMENT OF LABOR AND INDUSTRY TO FUND APPRENTICESHIP INSTRUCTION PROGRAMS; AMENDING SECTION 39-51-1301, MCA, AND SECTION 1, CHAPTER 600, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2228*

640 *(House Bill No. 853; Scott)* AN ACT CLARIFYING THE POWERS OF A PORT AUTHORITY; REQUIRING THE APPOINTMENT OR ELECTION OF LOCAL PORT AUTHORITY COMMISSIONERS; GRANTING THE LOCAL GOVERNING BODY DISCRETION IN ESTABLISHING MILL LEVIES FOR A PORT AUTHORITY; AND AMENDING SECTIONS 7-14-1101, 7-14-1103, 7-14-1104, 7-14-1111, 7-14-1112, 7-14-1125, 7-14-1126, 7-14-1131, AND 7-14-1133, MCA. *2230*

641 *(House Bill No. 868; Steppler)* AN ACT TO GENERALLY REVISE THE DISTRIBUTION OF COAL GROSS PROCEEDS; REQUIRING THE DEPARTMENT OF REVENUE TO CALCULATE UNIT VALUES FOR COAL PRODUCTION BASED ON 1988 PRODUCTION; EXCLUDING COAL MINES THAT BEGAN PRODUCTION AFTER DECEMBER 31, 1988, FROM THE UNIT VALUE CALCULATION; REQUIRING COUNTY TREASURERS TO DISTRIBUTE COAL GROSS PROCEEDS BASED ON UNIT VALUE; PROVIDING A SEPARATE DISTRIBUTION OF COAL GROSS PROCEEDS TAXES FOR COAL MINES THAT BEGAN PRODUCTION AFTER DECEMBER 31, 1988; REQUIRING COUNTY TREASURERS TO SEND EXCESS REVENUE TO THE DEPARTMENT OF REVENUE; REQUIRING THE DEPARTMENT OF REVENUE TO REDISTRIBUTE EXCESS REVENUE TO THE COUNTIES; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-23-703 AND 17-7-502; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2235*

642 *(House Bill No. 934; Thomas)* AN ACT CREATING THE 21ST JUDICIAL DISTRICT; AMENDING SECTION 3-5-101, MCA; AND PROVIDING AN APPLICABILITY DATE. *2239*

643 *(Senate Bill No. 209; Yellowtail)* AN ACT TO REQUIRE A SOLID WASTE MANAGEMENT SYSTEM TO BE LICENSED ANNUALLY BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; TO REQUIRE AN APPLICANT FOR A LICENSE TO PAY AN APPLICATION FEE; TO AUTHORIZE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO COLLECT FEES; AMENDING SECTIONS 7-13-231, 75-10-102, 75-10-104, 75-10-115, 75-10-204, AND 75-10-221, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2241*

644 *(Senate Bill No. 211; Harp)* AN ACT INCREASING THE MAXIMUM PENALTIES THAT MAY BE ASSESSED FOR VIOLATIONS OF TITLE 75, CHAPTER 5, PART 6, MCA; ESTABLISHING FACTORS THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES SHALL CONSIDER IN REACHING A SETTLEMENT; AND AMENDING SECTIONS 75-5-631 AND 75-5-633, MCA. *2247*

645 *(Senate Bill No. 407; Waterman)* AN ACT CLARIFYING THE DEFINITION OF "PUBLIC WATER SUPPLY SYSTEM"; ENABLING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO REVIEW A PUBLIC WATER SUPPLY SYSTEM OR PUBLIC SEWAGE SYSTEM TO DETERMINE IF THAT SYSTEM HAS THE FINANCIAL CAPABILITY TO COMPLY WITH THE PUBLIC WATER SUPPLY LAWS; DESCRIBING A PROCESS TO BE USED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

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TO ADMINISTRATIVELY ENFORCE THE LAWS PROTECTING PUBLIC WATER SUPPLIES; PROVIDING AN ADMINISTRATIVE PENALTY AND CIVIL PENALTY FOR VIOLATION OF PUBLIC WATER SUPPLY LAWS OR OF A RULE, ORDER, OR CONDITION OF APPROVAL ISSUED UNDER THOSE LAWS; PROVIDING FOR ASSESSMENT OF FEES ESTABLISHED THROUGH RULEMAKING TO RECOVER COSTS OF DEPARTMENT SERVICES UNDER THE LAWS RELATING TO PUBLIC WATER SUPPLIES AND TO SANITATION IN SUBDIVISIONS; PROVIDING FOR APPEAL OF THE FEE ASSESSMENT; ALLOWING A MUNICIPALITY TO RAISE WATER RATES TO COVER COSTS ASSOCIATED WITH FEES WITHOUT A PUBLIC HEARING; PROVIDING THAT LOCAL SEWER DISTRICTS MAY SELL SEWER SERVICE TO MUNICIPALITIES OR TOWNS OR CONSUMERS LOCATED WITHIN OR OUTSIDE THE DISTRICT; ESTABLISHING A PUBLIC DRINKING WATER SPECIAL REVENUE FUND TO RECEIVE REVENUES FROM FEES, ADMINISTRATIVE PENALTIES, AND CIVIL PENALTIES RECEIVED PURSUANT TO THIS ACT; ALLOCATING A PORTION OF THE REVENUES TO THE GROUND WATER ASSESSMENT ACCOUNT; AMENDING SECTIONS 7-13-2218, 69-7-111, 75-6-102, 75-6-103, 75-6-104, 75-6-111, AND 76-4-105, MCA; AND PROVIDING A TERMINATION DATE. *2248*

646 *(Senate Bill No. 416; Williams)* AN ACT ALLOWING A TAX CREDIT FOR THE INSTALLATION OF A GEOTHERMAL SYSTEM; AMENDING SECTION 15-32-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2258*

647 *(Senate Bill No. 427; Gage)* AN ACT TO GENERALLY REVISE THE PUBLIC GAMBLING LAWS OF MONTANA; REVISING THE DEFINITIONS OF ILLEGAL GAMBLING DEVICE AND ILLEGAL GAMBLING ENTERPRISE; DEFINING A PROMOTIONAL GAME OF CHANCE; PERMITTING LIMITED RELEASE OF LICENSE AND TAX INFORMATION; ESTABLISHING A ONE-TIME FEE FOR PROCESSING AN OPERATOR'S LICENSE APPLICATION; PROVIDING REQUIREMENTS FOR PREMISES APPROVAL; REQUIRING NOTIFICATION BEFORE THE TRANSFER OF AN OWNERSHIP INTEREST IN AN OPERATOR'S PREMISES; PROVIDING FOR INSPECTION OF PREMISES; CREATING A MANUFACTURER'S LICENSE FOR ELECTRONIC BINGO AND KENO EQUIPMENT; LEGALIZING LIMITED CASINO NIGHTS; EXPANDING PROVISIONS GOVERNING SPORTS POOLS; PRORATING VIDEO GAMBLING MACHINE PERMIT FEES; ALLOWING A DEDUCTION FOR THEFT FOR PURPOSES OF CALCULATING THE VIDEO GAMBLING MACHINE TAX; AUTHORIZING FANTASY SPORTS LEAGUES, FISHING DERBIES, AND WAGERING ON NATURAL OCCURRENCES; REQUIRING BIENNIAL REPORTS FROM THE DEPARTMENT OF JUSTICE AND GAMING ADVISORY COUNCIL; REVISING CERTAIN GAMBLING DEFINITIONS; CLARIFYING CERTAIN CRIMINAL GAMBLING OFFENSES; ESTABLISHING A PENALTY FOR SALE, ASSIGNMENT, LEASE, OR TRANSFER OF A LICENSE OR PERMIT; STATUTORILY APPROPRIATING VIDEO GAMBLING MACHINE TESTING FEES TO THE DEPARTMENT OF JUSTICE; REVISING PROVISIONS CONCERNING ANTIQUE SLOT MACHINES; CLARIFYING PROHIBITED ACTIVITIES FOR DEPARTMENT OF JUSTICE EMPLOYEES; CLARIFYING DISPOSITION OF PENALTIES, FINES, AND FORFEITURES; AUTHORIZING THE DEPARTMENT OF JUSTICE TO ISSUE WARRANTS FOR DISTRAINT; ESTABLISHING THE CRIME OF SOLICITING ANOTHER PERSON TO PARTICIPATE IN AN ILLEGAL GAMBLING ENTERPRISE AND ESTABLISHING A PENALTY; PROHIBITING A MINOR FROM PARTICIPATING IN CERTAIN FORMS OF GAMBLING; REQUIRING LICENSE AND PERMIT REVOCATION UPON CONVICTION OF A FELONY GAMBLING OFFENSE; CREATING ADDITIONAL EXEMPTIONS FROM THE LIVE CARD GAMES AND LIVE BINGO AND KENO LAWS; CLARIFYING RAFFLE PROVISIONS; PROVIDING FOR SALE OF VIDEO GAMBLING MACHINES; REVISING CARD DEALER PROVISIONS; AUTHORIZING WAY TICKETS IN KENO GAMES; REMOVING THE 10-MACHINE LIMIT ON VIDEO DRAW POKER MACHINES; REVISING LICENSURE QUALIFICATIONS; PROVIDING FOR CARD GAME TOURNA-

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MENTS; CLARIFYING PLACEMENT OF VIDEO GAMBLING MACHINES; ELIMINATING NET TAX ON LIVE BINGO AND KENO GAMES AND REVISING THE PERMIT FEE; AUTHORIZING SPORTS TAB GAMES PURSUANT TO THE RULES GOVERNING SPORTS POOLS; AMENDING SECTIONS 2-15-2021, 17-7-502, 23-5-112, 23-5-113, 23-5-114, 23-5-115, 23-5-136, 23-5-152, 23-5-153, 23-5-154, 23-5-156, 23-5-158, 23-5-162, 23-5-176, 23-5-177, 23-5-308, 23-5-309, 23-5-406, 23-5-407, 23-5-409, 23-5-412, 23-5-413, 23-5-501, 23-5-502, 23-5-503, 23-5-602, 23-5-603, 23-5-610, 23-5-611, 23-5-612, 23-5-625, AND 23-5-631, MCA; AND PROVIDING EFFECTIVE DATES. *2260*

648 *(Senate Bill No. 437; B. Brown)* AN ACT ALLOWING A LOCAL GOVERNMENT TO ESTABLISH REASONABLE FEES FOR LAKE-RELATED CONSTRUCTION PERMITS; CLARIFYING THAT A PERMIT IS REQUIRED FOR CONSTRUCTION ON A LAKESHORE; AND AMENDING SECTION 75-7-210, MCA. *2292*

649 *(House Bill No. 139; Raney)* AN ACT TO EXTEND THE MORATORIUM ON CERTAIN INTERSTATE TRANSPORT OF SOLID WASTE; AND AMENDING SECTION 75-10-209, MCA. *2293*

650 *(House Bill No. 152; Harrington)* AN ACT TO REVISE THE STATE MINIMUM WAGE LAW TO REQUIRE THAT THE STATE MINIMUM WAGE BE SET IN ACCORDANCE WITH FEDERAL LAW; TO PROVIDE AN EXCEPTION FOR CERTAIN BUSINESSES; TO REPEAL THE NEW HIRE WAGE STATUTE; AMENDING SECTION 39-3-409, MCA; REPEALING SECTION 39-3-410, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.... *2294*

651 *(House Bill No. 528; Brooke)* AN ACT REQUIRING THE DEPARTMENT OF INSTITUTIONS TO DEVELOP A REQUEST FOR PROPOSALS TO SOLICIT PROPOSALS FROM MONTANA LOCAL GOVERNMENTAL UNITS FOR THE SITING OF A WOMEN'S CORRECTIONAL CENTER; REQUIRING THE DEPARTMENT TO SOLICIT PROPOSALS ACCORDING TO THE REQUEST; SPECIFYING CERTAIN CRITERIA FOR THE SITE OF THE CENTER; CREATING A COMMITTEE TO EVALUATE THE PROPOSALS; PROVIDING FOR THE EVALUATION OF THE PROPOSALS AND SELECTION OF A CENTER SITE; APPROPRIATING MONEY FOR THE PURPOSES OF THE SITE SELECTION COMMITTEE; AMENDING SECTIONS 53-1-202, 53-30-101, AND 53-30-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. *2295*

652 *(House Bill No. 781; Kimberley)* AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES FOR THE COLLECTION OF FEES FOR THE ISSUANCE AND RENEWAL OF AIR QUALITY CONSTRUCTION AND OPERATING PERMITS; PROVIDING FOR THE EXPIRATION OF THE PERMITS; ALLOWING FEE ASSESSMENTS TO FUND DEPARTMENTAL AIR QUALITY ACTIVITIES FOR PARTICULAR GEOGRAPHIC AREAS IF THE LEGISLATURE AUTHORIZES THE ACTIVITIES AND APPROPRIATES THE FUNDS FOR THE ACTIVITIES; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ISSUE AN OPERATING PERMIT; AMENDING SECTIONS 75-2-111 AND 75-2-211, MCA; AND PROVIDING AN EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES........ *2302*

653 *(Senate Bill No. 384; Lynch)* AN ACT IMPOSING A 2-MILL LEVY UPON THE TAXABLE VALUE OF ALL REAL AND PERSONAL PROPERTY SUBJECT TO TAXATION IN MONTANA FOR THE SUPPORT AND MAINTENANCE OF VOCATIONAL AND TECHNICAL EDUCATION; REPLACING REVENUE FROM THE SCHOOL DISTRICT LEVY FOR VOCATIONAL-TECHNICAL CENTERS; SUBMITTING THE LEVY TO THE QUALIFIED ELECTORS OF MONTANA; PROVIDING FOR THE RESTRICTED USE OF THE STATEWIDE MILL LEVY AT COMMUNITY COLLEGES; AMENDING SECTIONS 15-10-402, 15-10-412, 20-15-311, AND 20-16-205, MCA; REPEALING SECTION

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20-16-207, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 2308

654 *(Senate Bill No. 177; Mazurek)* AN ACT RELATING TO THE ADMINISTRATION OF ABANDONED PROPERTY BY THE DEPARTMENT OF REVENUE; ESTABLISHING PRESUMPTIONS OF ABANDONMENT FOR INTANGIBLE PROPERTY; REQUIRING A DETAILED REPORT OF ABANDONED PROPERTY ONLY IF THE PROPERTY HAS A VALUE OF $25 OR MORE; REQUIRING DELIVERY OF ALL ABANDONED PROPERTY AT THE TIME IT IS REPORTED TO THE DEPARTMENT; PROVIDING THAT A STATUTE OF LIMITATIONS MAY NOT BE RAISED AS A DEFENSE AGAINST THE STATE BY THE FEDERAL GOVERNMENT, A STATE GOVERNMENT, A LOCAL GOVERNMENT, OR AN AGENCY OF THE FEDERAL, STATE, OR LOCAL GOVERNMENT; CLARIFYING THE DEPARTMENT'S AUTHORITY TO ESTIMATE UNCLAIMED PROPERTY ASSESSMENTS BY PROVIDING THAT THE DEPARTMENT'S AUTHORITY COINCIDES WITH THE TIME PERIOD FOR REPORTING UNCLAIMED PROPERTY; AMENDING SECTIONS 70-9-301, 70-9-302, 70-9-303, AND 70-9-307, MCA, AND SECTION 3, CHAPTER 14, LAWS OF 1989; REPEALING SECTION 70-9-313, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE. 2314

655 *(Senate Bill No. 205; Eck)* AN ACT TO REQUIRE STATE AGENCIES TO ENTER INTO A COOPERATIVE AGREEMENT REGARDING THE PROVISION OF CHILDREN'S SERVICES; TO SPECIFY THE REQUIREMENTS FOR A COOPERATIVE AGREEMENT BETWEEN STATE AGENCIES; TO REQUIRE ESTABLISHMENT OF LOCAL INTERAGENCY STAFFING GROUPS; TO DESIGNATE THE DEPARTMENT OF FAMILY SERVICES AS THE LEAD AGENCY IN COORDINATING AND PLANNING SERVICES TO CHILDREN; TO PROVIDE FOR ACCESS BY THE INTERAGENCY STAFFING GROUP TO CERTAIN RECORDS; AMENDING SECTIONS 41-3-107, 41-3-205, 41-5-602, 41-5-603, AND 52-1-103, MCA; AND PROVIDING AN EFFECTIVE DATE. .. 2318

656 *(Senate Bill No. 228; Yellowtail)* AN ACT INCREASING THE SALARIES PAID SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES; PROVIDING ADDITIONAL REVENUE TO FUND A PORTION OF THE INCREASE; AMENDING SECTIONS 2-16-404, 3-5-211, AND 25-1-201, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. 2325

657 *(Senate Bill No. 229; Fritz)* AN ACT RELATING TO THE STATE BUDGET PROCESS AND THE CONSTITUTIONAL SEPARATION OF POWERS AMONG THE SEPARATE BRANCHES OF STATE GOVERNMENT; PROVIDING THAT JUDICIAL BRANCH BUDGET PROPOSALS MUST BE SUBMITTED TO THE LEGISLATURE; AND AMENDING SECTION 17-7-122, MCA. . 2331

658 *(Senate Bill No. 275; Gage)* AN ACT REPEALING CERTAIN NUISANCE FEES AND TAXES; ELIMINATING THE REQUIREMENT FOR A $1 FEE TO OBTAIN A TAX CLEARANCE CERTIFICATE; REPEALING THE COAL RETAILERS' LICENSE TAX; REPEALING THE LAWS ON STATE STORE LICENSES; AMENDING SECTION 15-31-552, MCA; REPEALING SECTIONS 15-57-101, 15-57-102, 15-57-103, 15-57-104, 15-57-105, 15-57-106, 15-57-107, 15-57-108, 15-57-109, 15-57-110, 15-58-101, 15-58-102, 15-58-103, 15-58-104, 15-58-105, 15-58-106, 15-58-107, 15-58-108, 15-58-109, 15-58-110, 15-58-111, 15-58-121, 15-58-122, 15-58-123, 15-58-124, 15-58-125, AND 15-58-126, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE. 2332

659 *(Senate Bill No. 313; Grosfield)* AN ACT CLARIFYING STATE WATER STORAGE POLICY AND THE ROLE OF STORAGE IN SOLVING WATER PROBLEMS; ESTABLISHING GUIDELINES FOR SETTING PRIORITIES AMONG NEW STORAGE AND REHABILITATION STORAGE PROJECTS; REQUIRING A STUDY OF THE FEASIBILITY OF ASSESSING RECREATIONAL USER FEES TO REPAY WATER STORAGE PROJECT COSTS; REQUIRING A STUDY OF THE FEASIBILITY OF COLLECTING LARGER FEES

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660 *(Senate Bill No. 331; Franklin)* AN ACT TO GENERALLY REVISE PROVISIONS RELATED TO THE DUTIES OF COUNTY CORONERS AND JURORS IN CORONER'S INQUESTS; TO PROVIDE FOR THE DUTIES OF A CORONER IN INQUIRIES AND INQUESTS, INCLUDING THE POWER TO SEARCH AND SEIZE AND TO SUBPOENA; TO REQUIRE REPORTING OF ALL FETAL DEATHS; AMENDING SECTIONS 3-15-203, 7-4-2911, 7-4-2915, 44-3-404, 46-4-101, 46-4-103, 46-4-201, 46-4-202, 46-4-205, AND 46-4-206, MCA; AND REPEALING SECTIONS 7-4-2912, 7-4-2916, 44-3-403, 46-4-102, AND 46-4-204, MCA. *2342*

661 *(Senate Bill No. 343; Rye)* AN ACT TO GRANT THE DEPARTMENT OF LABOR AND INDUSTRY DISCRETIONARY AUTHORITY IN DETERMINING THE AMOUNT OWED THE UNINSURED EMPLOYERS' FUND BY AN UNINSURED EMPLOYER; AND AMENDING SECTION 39-71-504, MCA. .. *2350*

662 *(Senate Bill No. 362; Grosfield)* AN ACT CREATING PARK RANGERS AND ESTABLISHING THEIR POWERS AND DUTIES; APPLYING PEACE OFFICER EMPLOYMENT, EDUCATION, AND CERTIFICATION STANDARDS TO PARK RANGERS; EXPANDING AND CLARIFYING THE AUTHORITY OF WARDENS, EX OFFICIO WARDENS, AND PARK RANGERS TO ENFORCE LAWS CONTAINED IN TITLE 23, MCA, RELATING TO STATE PARKS; ESTABLISHING RESPONSIBILITY FOR PARK FEE VIOLATIONS INVOLVING VEHICLES; AMENDING SECTIONS 7-32-303, 23-1-105, 23-1-106, 23-2-410, 23-2-506, 23-2-641, 23-2-806, 77-5-104, 87-1-502, AND 87-1-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2351*

663 *(Senate Bill No. 366; Franklin)* AN ACT REQUIRING HEALTH INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS TRANSACTING BUSINESS IN THIS STATE TO PROVIDE COVERAGE FOR MINIMUM MAMMOGRAPHY EXAMINATIONS; AMENDING SECTIONS 33-31-102 AND 53-6-101, MCA; AND PROVIDING AN APPLICABILITY DATE. *2360*

664 *(Senate Bill No. 393; Kennedy)* AN ACT AUTHORIZING THE BOARD OF PHARMACY TO ESTABLISH STANDARDS FOR DRUG UTILIZATION REVIEW AND PATIENT COUNSELING BY PHARMACISTS; REQUIRING OUT-OF-STATE MAIL SERVICE PHARMACIES TO BE LICENSED BY THE BOARD AND TO COMPLY WITH PATIENT COUNSELING REQUIREMENTS THROUGH TOLL-FREE TELEPHONE NUMBERS; PROVIDING ADDITIONAL STANDARDS FOR OUT-OF-STATE MAIL SERVICE PHARMACIES; AND PROVIDING A PENALTY. *2365*

665 *(Senate Bill No. 394; Svrcek)* AN ACT TO REGULATE THE CONDUCT OF UTILIZATION REVIEWS BY HEALTH INSURERS AND OTHER THIRD-PARTY PAYORS; TO PROHIBIT A PERSON FROM CONDUCTING UTILIZATION REVIEWS UNLESS THE PERSON MAINTAINS WITH THE COMMISSIONER OF INSURANCE A UTILIZATION REVIEW PLAN; TO PROTECT PATIENTS AND HEALTH CARE PROVIDERS IN THE CONDUCT OF UTILIZATION REVIEWS BY REQUIRING CONCURRENCE OF A

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666 *(Senate Bill No. 420; Svrcek)* AN ACT CHANGING FROM PERMISSIVE TO MANDATORY THE PROVISION FOR A MEDICAL DEDUCTIBLE CLAUSE IN A WORKERS' COMPENSATION INSURANCE POLICY; AMENDING SECTION 39-71-434, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. *2372*

667 *(House Bill No. 155; Strizich)* AN ACT GENERALLY REVISING THE SALARY OF COUNTY ATTORNEYS; REQUIRING THE DEPARTMENT OF JUSTICE TO ADMINISTER THE STATE PORTION OF THE COUNTY ATTORNEYS' PAYROLL; MAKING THE BASE SALARY FOR A FULL-TIME COUNTY ATTORNEY $50,000 PER YEAR; INCREASING THE MONETARY CHARGE FOR A MISDEMEANOR CONVICTION; REALLOCATING JUSTICES' COURTS FEES; AMENDING SECTIONS 3-10-601, 7-4-2502, 7-4-2503, AND 46-18-236, MCA; AND PROVIDING AN EFFECTIVE DATE. . *2373*

668 *(House Bill No. 738; Elliott)* AN ACT TO AUTHORIZE A COUNTY, CITY, OR TOWN TO LEVY AN ADDITIONAL 2 MILLS FOR THE SUPPORT OF AMBULANCE SERVICES IF AUTHORIZED BY THE ELECTORATE; PROVIDING THAT THE ADDITIONAL MILLS AUTHORIZED BY THE ELECTORATE ARE NOT SUBJECT TO THE PROPERTY TAX LIMITATIONS OF TITLE 15, CHAPTER 10, PART 4; AMENDING SECTIONS 7-34-102 AND 15-10-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2378*

669 *(House Bill No. 753; Harrington)* AN ACT TO REVISE RESTRICTIONS ON GRANTING PROPERTY TAX EXEMPTIONS FOR BUSINESS INCUBATOR PROPERTY; AMENDING SECTION 15-24-1802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2382*

670 *(House Bill No. 790; Messmore)* AN ACT REVISING THE MONTANA INDIVIDUAL INCOME TAX CREDIT FOR ELDERLY FAMILY MEMBERS; LOWERING THE QUALIFYING AGE LIMIT TO 65 YEARS; DELETING THE PHYSICAL REQUIREMENT FOR AFFLICTION WITH ALZHEIMER'S DISEASE AND SUBSTITUTING THAT THE INDIVIDUAL MUST BE DETERMINED DISABLED FOR SOCIAL SECURITY PURPOSES; ESTABLISHING A HIGHER INCOME QUALIFICATION FOR A MARRIED INDIVIDUAL; PROVIDING THAT PAYMENTS FOR CARE IN A LICENSED LONG-TERM HEALTH CARE FACILITY ARE A QUALIFYING EXPENSE; ALLOWING PREMIUMS PAID FOR LONG-TERM HEALTH CARE INSURANCE AS A QUALIFYING EXPENSE; CLARIFYING THAT A CHARITABLE INSTITUTION HAS AN INSURABLE INTEREST IN CERTAIN INDIVIDUALS; AMENDING SECTIONS 15-30-121, 15-30-128, AND 33-15-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2383*

671 *(Senate Bill No. 174; Franklin)* AN ACT PROVIDING FOR CONTINUING EDUCATION FOR PSYCHOLOGISTS; AUTHORIZING A FEE FOR ADMINISTERING THE CONTINUING EDUCATION PROGRAM; CHANGING THE LENGTH OF TERM FOR MEMBERS OF THE BOARD OF PSYCHOLOGISTS; REQUIRING 2 YEARS OF SUPERVISED EXPERIENCE PRIOR TO APPLICATION FOR LICENSURE AS A PSYCHOLOGIST; AMENDING SECTIONS 2-15-1851, 37-17-202, 37-17-302, 37-17-306, AND 37-17-307, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE. *2388*

672 *(Senate Bill No. 178; Williams)* AN ACT TO CONFORM CERTAIN VEHICLE LENGTH LIMIT LAWS TO THE RECOMMENDATIONS OF THE WESTERN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFI-

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673 *(Senate Bill No. 215; Harp)* AN ACT CREATING A CAPITAL RESERVE ACCOUNT TO PROVIDE ADDITIONAL FINANCING FOR THE MONTANA HEALTH FACILITY AUTHORITY; ESTABLISHING REQUIREMENTS FOR ADMINISTRATION OF THE ACCOUNT; AUTHORIZING THE BOARD OF INVESTMENTS TO PROVIDE LOANS TO THE AUTHORITY AND TO PURCHASE BONDS AND NOTES ISSUED BY THE AUTHORITY; AMENDING SECTION 90-7-102, MCA; AND PROVIDING AN EFFECTIVE DATE. *2396*

674 *(Senate Bill No. 262; Williams)* AN ACT ALLOWING THE BOARD OF COUNTY COMMISSIONERS TO SET THE INTEREST RATE ON CONTRACTS FOR THE SALE OF TAX-DEED LAND; PROVIDING THAT THE INTEREST RATE MAY NOT EXCEED MORE THAN 4 PERCENTAGE POINTS ABOVE THE PRIME RATE; AMENDING SECTION 7-8-2304, MCA; AND PROVIDING AN EFFECTIVE DATE. *2398*

675 *(Senate Bill No. 263; Williams)* AN ACT TO PROVIDE THAT THE GENERAL FUND OF A COUNTY IS TO BE REIMBURSED FOR TAX SALE EXPENSES BEFORE ANY DISTRIBUTION OF THE PROCEEDS OF A TAX-DEED SALE IS MADE; AMENDING SECTION 7-8-2306, MCA; AND PROVIDING AN EFFECTIVE DATE. *2399*

676 *(Senate Bill No. 280; B. Brown)* AN ACT TO REVISE AND STANDARDIZE THE ADMINISTRATION AND COLLECTION OF CERTAIN TAXES AND FEES BY THE DEPARTMENT OF REVENUE BY PROVIDING FOR UNIFORM DEFICIENCY ASSESSMENTS, UNIFORM STATUTES OF LIMITATION, AND CREDIT FOR OVERPAYMENTS FOR THE STATE EMERGENCY TELEPHONE SYSTEM FEE, THE TELEPHONE COMPANY LICENSE TAX, THE FREIGHT LINE COMPANY LICENSE TAX, THE LODGING FACILITY USE TAX, THE ANNUAL FEE ON RURAL COOPERATIVE UTILITIES, AND THE FEE ON REGULATED COMPANIES FOR THE OFFICE OF THE CONSUMER COUNSEL; AMENDING SECTIONS 10-4-211, 15-53-105, 15-53-111, 15-55-108, 15-65-112, 15-65-115, 35-18-503, 69-1-225, AND 69-1-226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. *2400*

677 *(Senate Bill No. 368; Jergeson)* AN ACT ESTABLISHING ENFORCEMENT PROVISIONS FOR VIOLATIONS OF THE MONTANA WATER USE LAWS; PROVIDING FOR DISPOSITION OF PENALTIES; AMENDING SECTIONS 85-2-114, 85-2-122, AND 85-2-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2410*

678 *(Senate Bill No. 389; VanValkenburg)* AN ACT EXTENDING THE AUTHORITY OF THE LEGISLATIVE AUDITOR TO CONDUCT AUDITS OF ORGANIZATIONS REFERRED TO IN SECTION 2-3-203(2), MCA; REQUIRING THAT PRIOR TO TRANSFERRING FUNDS TO THE ORGANIZATION, THAT THE MEMBER REQUIRE A WRITTEN AUTHORIZATION OF CONSENT TO AUDIT; PROVIDING FOR PAYMENT OF THE AUDIT COSTS; PROVIDING CRITERIA FOR THE AUDIT; AND PROVIDING AN EFFECTIVE DATE. ... *2412*

679 *(Senate Bill No. 409; Mazurek)* AN ACT CLARIFYING THE PROCEDURE FOR FORECLOSING ON MORTGAGES AND PLEDGES OF LEASEHOLD INTERESTS IN STATE LANDS; AMENDING SECTION 77-6-403, MCA. ... *2413*

680 *(Senate Bill No. 412; Crippen)* AN ACT TO PROVIDE FOR THE EQUALIZATION OF RESIDENTIAL PROPERTY BY PROVIDING THAT PROPERTY MEETING CERTAIN CONDITIONS WILL BE SUBJECT TO REAPPRAISAL; TO PROVIDE THAT THE DEPARTMENT'S SALES ASSESSMENT AREA AND PERCENTAGE ADJUSTMENTS WILL BE SUBJECT TO JUDICIAL REVIEW; TO REQUIRE THE DEPARTMENT OF REVENUE TO HOLD A PUBLIC

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HEARING IF THE PERCENTAGE ADJUSTMENT IS GREATER THAN 10 PERCENT; TO REQUIRE THE COUNTY ASSESSOR TO PROVIDE ADDITIONAL INFORMATION IF VALUATION OF PROPERTY INCREASES AS A RESULT OF THE SALES ASSESSMENT RATIO STUDY; TO REQUIRE THE BOARD OF COUNTY COMMISSIONERS TO APPOINT AN ADVISORY BOARD; TO PROVIDE THAT FOR TAX YEAR 1994 AND THEREAFTER, SALES ASSESSMENT RATIO ADJUSTMENTS WILL BE ELIMINATED AND ALL PROPERTY WILL BE REAPPRAISED EVERY 3 YEARS; AMENDING SECTIONS 15-1-101, 15-6-143, 15-7-102, 15-7-111, 15-7-201, AND 15-10-412, MCA, AND SECTION 10, CHAPTER 681, LAWS OF 1985; REPEALING SECTIONS 15-7-132 AND 15-7-133, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A PARTIAL TERMINATION DATE. *2413*

681 *(Senate Bill No. 440; Bengtson)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO BOARDS APPOINTED BY COUNTY COMMISSIONERS; AMENDING SECTIONS 7-16-2203, 7-16-2302, 7-16-2303, 7-21-3401, 7-22-2103, 7-22-2215, AND 7-22-2411, MCA; AND REPEALING SECTIONS 7-16-2304, 7-21-3402, 7-22-2104, AND 7-22-2412, MCA. *2431*

682 *(House Bill No. 24; Cody)* AN ACT ESTABLISHING THE BEST INTERESTS OF THE CHILD AS THE STANDARD IN ADOPTION PROCEEDINGS; ALLOWING THE DEPARTMENT OF FAMILY SERVICES AND LICENSED CHILD-PLACING AGENCIES TO CONSIDER AGE, MARITAL STATUS, AND RELIGION IN ADOPTION PROCEEDINGS; AMENDING THE LAWS RELATING TO DISCRIMINATION TO ALLOW THE CONSIDERATION IN ADOPTION PROCEEDINGS OF INFORMATION CONCERNING FACTORS THAT MIGHT OTHERWISE BE PROHIBITED; AMENDING SECTIONS 49-1-102, 49-2-308, 49-3-204, AND 49-3-205, MCA; AND PROVIDING AN EFFECTIVE DATE. *2434*

683 *(House Bill No. 25; Cody)* AN ACT AMENDING THE LAWS RELATING TO ADOPTIONS TO REQUIRE A 72-HOUR PERIOD AFTER BIRTH BEFORE A RELINQUISHMENT OF PARENTAL RIGHTS MAY BE EXECUTED; AMENDING SECTIONS 40-6-125, 40-6-135, AND 40-8-109, MCA; AND PROVIDING AN EFFECTIVE DATE. *2437*

684 *(House Bill No. 26; Cody)* AN ACT RELATING TO PRIVATE, NONAGENCY ADOPTIONS; AUTHORIZING COUNSELING FOR THE BIRTH MOTHER IN AN ADOPTION BY A NONRELATIVE; REQUIRING A PREPLACEMENT INVESTIGATION OR HOME STUDY OF A NONRELATIVE, PROSPECTIVE ADOPTIVE PARENT AND HOME; DELETING THE REQUIREMENT THAT A PARENT RELINQUISH PARENTAL RIGHTS PRIOR TO PLACEMENT OF A CHILD IN A NONRELATIVE, PROSPECTIVE ADOPTIVE HOME; INCREASING THE MAXIMUM PENALTY FOR PAYING OR CHARGING EXCESSIVE ADOPTION PROCESS FEES FROM $1,000 TO $10,000; REQUIRING NONRELATIVE ADOPTIVE PARENTS AND THEIR REPRESENTATIVES TO FILE A REPORT OF AGREEMENTS AND DISBURSEMENTS RELATED TO THE ADOPTION PROCESS; AMENDING SECTIONS 40-8-103, 40-8-109, 40-8-135, AND 40-8-136, MCA; AND PROVIDING AN EFFECTIVE DATE. *2441*

685 *(House Bill No. 244; Thomas)* AN ACT TO CLARIFY THE PROCEDURE FOR POLLING THE LEGISLATURE FOLLOWING VETO OF A BILL WHEN THE LEGISLATURE IS NOT IN SESSION; TO CLARIFY THE USE OF FACSIMILE SIGNATURES; AMENDING SECTIONS 5-2-105 AND 5-4-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2447*

686 *(House Bill No. 306; Barnett)* AN ACT AMENDING WHEN A LOCAL AUTHORITY MAY ALTER SPEED LIMITS IN AREAS NEAR SCHOOLS OR DESIGNATED CROSSWALKS NEAR SCHOOLS; AMENDING SECTION 61-8-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. ... *2448*

687 *(House Bill No. 451; Brooke)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SEXUAL CRIMES; DEFINING FORCE FOR PURPOSES OF

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SEXUAL INTERCOURSE WITHOUT CONSENT; REMOVING SPOUSAL EXEMPTIONS; INCREASING PENALTIES; CLARIFYING THE BASIS FOR A PROSECUTION FOR THE CRIME OF DEVIATE SEXUAL CONDUCT; AMENDING SECTIONS 45-5-501, 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, AND 45-5-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2449*

688 *(House Bill No. 471; R. Johnson)* AN ACT TO GENERALLY REVISE THE LAW RELATING TO TRUSTS TO CLARIFY THAT A TRUST INCLUDES A TRUST CREATED IN CONNECTION WITH CERTAIN BONDS; CLARIFYING THAT THE DESIGNATION OF A TRUST IN A CONVEYANCE VESTS THE ESTATE IN THE TRUSTEE; AMENDING SECTIONS 72-33-108 AND 72-36-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE... *2453*

689 *(House Bill No. 500; Whalen)* AN ACT CREATING A CAPITOL RESTORATION COMMISSION TO RAISE MONEY FOR THE ONGOING RESTORATION OF THE CAPITOL, TO SUGGEST CAPITOL IMPROVEMENTS, AND TO PLAN CAPITOL CENTENNIAL EVENTS. *2455*

690 *(House Bill No. 511; R. Johnson)* AN ACT PROVIDING THAT PROCEEDS FROM THE SEIZURE OR FORFEITURE OF PROPERTY RELATED TO CONTROLLED SUBSTANCES ARE STATUTORILY APPROPRIATED; AMENDING SECTIONS 17-7-502, 44-12-206, AND 44-13-102, MCA; AND PROVIDING AN EFFECTIVE DATE. *2457*

691 *(House Bill No. 567; Fagg)* AN ACT TO MODERNIZE THE DUTIES OF THE ATTORNEY GENERAL; AMENDING SECTION 2-15-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2459*

692 *(House Bill No. 650; Squires)* AN ACT REQUIRING CERTAIN EMPLOYERS TO RESTORE EMPLOYEES ELECTED TO A CITY, COUNTY, OR STATE OFFICE TO THE SAME POSITION WITH THE SAME SENIORITY, STATUS, COMPENSATION, HOURS, LOCALITY, AND BENEFITS AS EXISTED PRIOR TO THE EMPLOYEES' PERIODS OF PUBLIC SERVICE; AND AMENDING SECTION 2-18-620, MCA. *2462*

693 *(House Bill No. 914; S. Rice)* AN ACT AUTHORIZING A LOCAL GOVERNMENT TO EXEMPT FROM PROPERTY TAXES A BUILDING AND LAND SOLD OR DONATED TO A LOCAL ECONOMIC DEVELOPMENT ORGANIZATION FOR LATER SALE OR LEASE TO A PROFIT-ORIENTED, EMPLOYMENT-STIMULATING BUSINESS. *2462*

694 *(House Bill No. 970; Cocchiarella)* AN ACT TO GENERALLY REVISE THE TAX TREATMENT OF NEW AND EXPANDING INDUSTRY; REVISING THE DEFINITION OF A NEW INDUSTRY THAT QUALIFIES AS CLASS FIVE PROPERTY TO INCLUDE COMPANIES THAT ENGAGE IN TRANSPORTATION, WAREHOUSING, OR DISTRIBUTION OF COMMERCIAL PRODUCTS OR MATERIALS IF 50 PERCENT OR MORE OF THE INDUSTRY'S GROSS SALES OR RECEIPTS ARE EARNED FROM OUTSIDE THE STATE AND BUSINESSES THAT EARN 50 PERCENT OR MORE OF THEIR ANNUAL GROSS INCOME FROM OUT-OF-STATE SALES; REVISING THE DEFINITION OF A NEW OR EXPANDING INDUSTRY THAT QUALIFIES FOR CERTAIN PROPERTY TAX BENEFITS; REVISING THE DEFINITION OF A NEW CORPORATION QUALIFYING FOR THE NEW OR EXPANDED INDUSTRY CREDIT; REQUIRING THAT A GOVERNING BODY NOTIFY AFFECTED TAXING JURISDICTIONS BY CERTIFIED MAIL PRIOR TO APPROVAL OF A TAX BENEFIT; AMENDING SECTIONS 15-6-135, 15-24-1401, 15-24-1402, AND 15-31-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. *2464*

695 *(House Bill No. 976; Swysgood)* AN ACT ESTABLISHING THE VALUE OF VERMICULITE FOR NET PROCEEDS PROPERTY TAX PURPOSES AND FOR RESOURCE INDEMNITY TRUST TAX PURPOSES; ESTABLISHING A SPE-

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CIFIC RESOURCE INDEMNITY TRUST TAX RATE FOR VERMICULITE; REVISING THE INFLATION ADJUSTMENT FOR THE NET PROCEEDS TAX ON TALC TO CONFORM WITH THAT FOR VERMICULITE; AMENDING SECTIONS 15-6-131, 15-8-111, 15-23-103, 15-23-106, 15-23-115, 15-23-502, 15-23-503, 15-23-515, 15-23-521, 15-38-103, AND 15-38-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES. *2469*

696 *(House Bill No. 993; Zook)* AN ACT TO REQUIRE A YOUTH'S PARENTS OR GUARDIANS TO PAY A CONTRIBUTION TOWARD THE COST OF OUT-OF-HOME CARE PROVIDED BY THE DEPARTMENT OF FAMILY SERVICES IF THEY ARE FINANCIALLY ABLE TO PAY; TO REQUIRE CONTRIBUTIONS BY A YOUTH'S PARENTS OR GUARDIANS TO BE BASED ON UNIFORM CHILD SUPPORT GUIDELINES; TO AUTHORIZE THE COLLECTION OF CONTRIBUTIONS BY MEANS OF AUTOMATIC INCOME WITHHOLDING; TO ALLOCATE PROCEEDS FROM THE CONTRIBUTIONS OF PARENTS AND GUARDIANS TO THE DEPARTMENT OF FAMILY SERVICES; AMENDING SECTIONS 41-3-208, 41-3-403, 41-3-406, 41-3-408, 41-4-102, 41-5-403, 41-5-522, 41-5-523, AND 41-5-524, MCA; REPEALING SECTIONS 41-3-1123, 41-3-1124, AND 41-3-1125, MCA; AND PROVIDING AN EFFECTIVE DATE. *2477*

697 *(House Bill No. 1012; Elliott)* AN ACT REQUIRING NEGOTIATIONS BETWEEN THE STATE AND TRIBAL GOVERNMENTS FOR COLLECTION OF A CIGARETTE SALES TAX FROM NON-INDIAN PURCHASERS FOR CIGARETTES SOLD ON INDIAN RESERVATIONS; REQUIRING THE DEPARTMENT OF REVENUE TO REPORT FINDINGS CONCERNING NEGOTIATIONS TO THE INTERIM COMMITTEE ON INDIAN AFFAIRS; REQUIRING THE INTERIM COMMITTEE ON INDIAN AFFAIRS TO PROPOSE LEGISLATION TO THE 53RD LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. *2491*

698 *(House Bill No. 309; D. Brown)* AN ACT ALLOCATING A PORTION OF THE DISTRIBUTOR'S GASOLINE LICENSE TAX FOR OFF-HIGHWAY VEHICLE PROGRAMS; AMENDING SECTION 60-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE. *2492*

699 *(House Bill No. 672; Fagg)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO INSURANCE; ESTABLISHING CONSUMER PROTECTION MEASURES RELATING TO RELATIONSHIPS WITH LONG-TERM CARE FACILITIES, PREMIUM INCREASES, DISCRIMINATION IN INSURANCE, AND PREEXISTING CONDITIONS; AND AMENDING SECTIONS 33-1-502, 33-15-1106, 33-18-210, 33-20-101, 33-20-121, 33-20-131, AND 33-22-508, MCA. *2494*

700 *(House Bill No. 699; Ellison)* AN ACT TO EXEMPT TRAVERTINE AND BUILDING STONE FROM MINES NET PROCEEDS TAXATION; AMENDING SECTIONS 15-6-131 AND 15-23-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE. *2501*

701 *(House Bill No. 763; Stang)* AN ACT TO MAKE PERMANENT THE MOTORCYCLE SAFETY TRAINING PROGRAM; TO CONSOLIDATE THE MOTORCYCLE SAFETY TRAINING PROGRAM WITH THE TRAFFIC EDUCATION PROGRAM; TO PROVIDE FOR TRANSFER OF MONEY FROM THE MOTORCYCLE SAFETY TRAINING ACCOUNT TO THE STATE TRAFFIC EDUCATION ACCOUNT; AMENDING SECTIONS 17-7-502, 20-7-501, 20-7-502, 20-7-504, 61-2-404, AND 61-2-405, MCA; REPEALING SECTION 61-2-406, MCA, AND SECTION 10, CHAPTER 324, LAWS OF 1989; AND PROVIDING AN EFFECTIVE DATE. *2503*

702 *(House Bill No. 787; Quilici)* AN ACT TO REVISE RESTRICTIONS ON GRANTING PROPERTY TAX EXEMPTIONS FOR INDUSTRIAL PARK PROPERTY; AMENDING SECTION 15-24-1902, MCA; AND PROVIDING AN IM-

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MEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2507*

703 *(House Bill No. 809; Peterson)* AN ACT INCREASING THE TAX ON FIRE INSURANCE PREMIUMS FOR MAINTENANCE OF STATE FIRE PREVENTION AND INVESTIGATION ACTIVITIES; AMENDING SECTION 50-3-109, MCA; AND PROVIDING AN EFFECTIVE DATE. *2509*

704 *(House Bill No. 864; Gould)* AN ACT TRANSFERRING THE STATE DISTRICT COURT FUNDING ADMINISTRATION FROM THE DEPARTMENT OF COMMERCE TO THE STATE TO BE ADMINISTERED BY THE SUPREME COURT ADMINISTRATOR; AMENDING SECTIONS 3-1-702, 3-5-604, 3-5-901, 3-5-902, 3-5-903, 7-6-2352, 46-8-201, 46-15-104, AND 46-18-235, MCA; AND PROVIDING AN EFFECTIVE DATE. *2509*

705 *(House Bill No. 869; Simpkins)* AN ACT TO AMEND THE DEFINITION OF "AGRICULTURAL" IN RELATION TO TAX LAWS TO INCLUDE SOD, ORNAMENTAL, NURSERY, AND HORTICULTURAL CROPS RAISED ON PROPERTY THAT CONSISTS OF AT LEAST 10 ACRES; AMENDING SECTIONS 15-1-101 AND 15-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2514*

706 *(House Bill No. 896; Peterson)* AN ACT TO GENERALLY REVISE CERTAIN STATUTES PERTAINING TO THE POWERS AND DUTIES OF THE STATE FIRE MARSHAL; CHANGING CERTAIN STATUTORY REFERENCES TO THE STATE FIRE MARSHAL TO THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 2-15-1519, 2-15-2005, 2-15-2108, 50-3-101, 50-3-102, 50-3-103, 50-3-106, 50-39-101, 50-39-102, 50-39-103, 50-39-104, 50-39-105, 50-61-101, 50-61-102, 50-61-106, 50-61-114, 50-61-115, 50-61-117, 50-61-118, 50-61-121, 50-62-101, 50-62-102, 50-62-103, 50-62-104, 50-62-105, 50-62-106, 50-62-107, 50-62-110, 50-62-111, 50-63-101, 50-63-201, 50-63-203, 50-78-301, 52-2-733, AND 52-2-734, MCA; REPEALING SECTIONS 50-3-104, 50-3-105, 50-3-107, 50-3-108, 50-39-201, 50-39-202, 50-39-203, 50-61-104, 50-61-105, 50-61-107, 50-61-108, 50-61-109, 50-61-110, 50-61-111, 50-62-108, 50-62-109, 50-63-301, 50-63-302, 50-63-303, 50-63-304, 50-63-305, 50-63-306, 50-63-307, AND 50-63-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. .. *2518*

707 *(House Bill No. 903; Cobb)* AN ACT APPROPRIATING FUNDS TO THE SUPREME COURT FOR COURT AUTOMATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2533*

708 *(House Bill No. 994; Hansen)* AN ACT REQUIRING THE LICENSING OF PUBLIC SWIMMING POOLS AND PUBLIC BATHING PLACES; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER A LICENSING PROGRAM AND TO ADOPT RULES; ESTABLISHING LICENSE FEES; PROVIDING FOR THE VALIDATION OF LICENSES BY LOCAL HEALTH OFFICERS OR BOARDS; AUTHORIZING THE DEPARTMENT TO ENTER INTO COOPERATIVE AGREEMENTS FOR THE INSPECTION OF PUBLIC SWIMMING POOLS AND PUBLIC BATHING PLACES AND FOR ENFORCEMENT; PROVIDING FOR THE PAYMENT OF A PORTION OF THE FEES TO LOCAL GOVERNMENTS FOR INSPECTION AND ENFORCEMENT; PROVIDING FOR ADMINISTRATIVE AND JUDICIAL ENFORCEMENT; PROVIDING FOR THE RECOVERY OF ENFORCEMENT COSTS AND FOR CIVIL PENALTIES; AMENDING SECTIONS 50-2-118, 50-53-102, 50-53-103, AND 50-53-104, MCA; AND PROVIDING EFFECTIVE DATES. *2534*

709 *(Senate Bill No. 53; Devlin)* AN ACT LEGALIZING THE SHAKING OR CHOOSING OF ONE OR MORE DICE FOR A DRINK OR FOR THE PLAYING OF A JUKEBOX; AND LEGALIZING THE DICE GAME COMMONLY KNOWN AS SHAKE-A-DAY. *2542*

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710 *(Senate Bill No. 57; Yellowtail)* AN ACT ALLOWING THE USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION IN CERTAIN CRIMINAL PROCEDURES; ALLOWING TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION IN INITIAL APPEARANCES, BAIL HEARINGS, PRELIMINARY EXAMINATIONS, AND ARRAIGNMENTS; AND AMENDING SECTIONS 46-7-101, 46-9-201, 46-9-202, 46-10-202, 46-12-103, AND 46-12-201, MCA. *2543*

711 *(Senate Bill No. 82; Van Valkenburg)* AN ACT STANDARDIZING THE FUNDING MECHANISM FOR ELEMENTARY AND HIGH SCHOOL DISTRICT TRANSPORTATION SCHEDULES BY DIVIDING THE COSTS BETWEEN THE STATE AND COUNTY; REQUIRING A REPORT TO THE 1993 LEGISLATURE; AMENDING SECTIONS 15-23-607, 15-23-703, 17-3-213, 20-7-422, 20-9-212, 20-9-334, 20-9-366, 20-9-367, 20-9-368, 20-10-141, 20-10-142, 20-10-143, 20-10-144, 20-10-145, AND 20-10-146, MCA; AND PROVIDING AN EFFECTIVE DATE. *2546*

712 *(Senate Bill No. 111; Halligan)* AN ACT ENCOURAGING BUSINESS INVOLVEMENT IN THE RECLAMATION AND RECYCLING OF MATERIALS; PROVIDING TAX CREDITS FOR INVESTMENTS IN DEPRECIABLE PROPERTY TO COLLECT OR PROCESS RECLAIMABLE MATERIAL OR TO MANUFACTURE A PRODUCT FROM RECLAIMED MATERIAL; PROVIDING A LIMITATION TO THE TAX CREDIT; PROVIDING AN ADDITIONAL 5 PERCENT TAX DEDUCTION FOR BUSINESS-RELATED USE OF RECYCLED MATERIALS; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE. *2562*

713 *(Senate Bill No. 251; Gage)* AN ACT ALLOWING THE DEPARTMENT OF JUSTICE TO IMPOSE A SUSPENSION WITHOUT PAY FOR UP TO 10 DAYS ON HIGHWAY PATROL OFFICERS WITHOUT REQUIRING A PRESUSPENSION HEARING; ALLOWING 30 DAYS FOR A DECISION IN DISCIPLINARY HEARINGS; REQUIRING REPRESENTATION AT THE OFFICER'S EXPENSE AT A HEARING; PROVIDING FOR WAIVER OF A HEARING; AND AMENDING SECTIONS 44-1-701, 44-1-803, 44-1-804, AND 44-1-806, MCA. *2566*

714 *(Senate Bill No. 256; Gage)* AN ACT AMENDING THE PREFERRED PROVIDER AGREEMENTS ACT TO REQUIRE HEALTH CARE INSURERS TO ENTER INTO PREFERRED PROVIDER AGREEMENTS WITH ALL HEALTH CARE PROVIDERS WILLING TO PROVIDE HEALTH CARE SERVICES UNDER A PREFERRED PROVIDER AGREEMENT; AMENDING SECTION 33-22-1704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. *2567*

715 *(Senate Bill No. 318; Weeding)* AN ACT SUBJECTING PICKUP CAMPERS TO THE SAME IDENTIFICATION AND TITLE PROVISIONS AS OTHER RECREATIONAL VEHICLES; ALLOWING A PURCHASER OF A CAMPER A GRACE PERIOD FOR THE PAYMENT OF THE TAX OR FEE; AMENDING SECTIONS 61-1-102, 61-1-129, 61-3-107, 61-3-524, AND 61-3-525, MCA; AND PROVIDING AN APPLICABILITY DATE. *2568*

716 *(Senate Bill No. 348; Eck)* AN ACT AUTHORIZING THE DEPARTMENT OF FAMILY SERVICES TO PROVIDE PROTECTIVE SERVICES TO CERTAIN OLDER AND DEVELOPMENTALLY DISABLED PERSONS; ESTABLISHING AUTHORITY FOR GATHERING AND SUBMITTING EVIDENCE OF ABUSE OR NEGLECT OF OLDER AND DEVELOPMENTALLY DISABLED PERSONS; AND AMENDING SECTIONS 53-5-503 AND 53-5-504, MCA. *2571*

717 *(Senate Bill No. 390; Van Valkenburg)* AN ACT MAKING CERTAIN PERSONAL PROPERTY ELIGIBLE FOR PROPERTY TAX RELIEF WHEN DESTROYED BY NATURAL DISASTER; DEFINING A FIRE CAUSED BY OTHER THAN THE TAXPAYER'S ARSON TO BE A NATURAL DISASTER;

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718 *(Senate Bill No. 415; Vaughn)* AN ACT ESTABLISHING A STATE PARKS RECREATIONAL VEHICLE FEE ON ALL RECREATIONAL VEHICLES, CAMPERS, MOTOR HOMES, AND TRAVEL TRAILERS; SETTING THE FEE; AND PROVIDING THAT FEE PROCEEDS MAY BE EARMARKED FOR STATE PARKS TO PROVIDE RECREATIONAL VEHICLE SERVICES AND FACILITIES. *2575*

719 *(Senate Bill No. 456; Yellowtail)* AN ACT TO REMOVE THE LIMITATION ON SCHOOL DISTRICT TRUSTEES FOR THE ISSUANCE OF SHORT-TERM OBLIGATIONS TO THE BOARD OF INVESTMENTS; AMENDING SECTION 20-9-471, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.... *2576*

720 *(House Bill No. 509; Swysgood)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO STATE EMPLOYEE COMPENSATION; ARTICULATING A MARKET-BASED PAY PHILOSOPHY; PROVIDING PAY ADJUSTMENTS TO EMPLOYEES IN THE STATEWIDE, TEACHERS', LIQUOR STORE OCCUPATIONS, AND BLUE-COLLAR PAY PLANS; PROVIDING PAY ADJUSTMENTS FOR CERTAIN ELECTED AND APPOINTED OFFICIALS AND CERTAIN OTHER STATE EMPLOYEES; REQUIRING THAT EACH AGENCY NEGOTIATE SHIFT DIFFERENTIALS AND HAZARDOUS DUTY PAY WITH EMPLOYEES; PROVIDING GROUP BENEFITS ADJUSTMENTS; PROVIDING AN APPROPRIATION TO FUND THE PAY ADJUSTMENTS; AMENDING SECTIONS 2-16-405, 2-18-101, 2-18-301, 2-18-303, 2-18-304, 2-18-305, 2-18-312, 2-18-313, 2-18-314, 2-18-315, 2-18-703, 5-2-301, 13-37-106, AND 15-2-102, MCA; AND PROVIDING EFFECTIVE DATES.... *2577*

721 *(House Bill No. 698; Scott)* AN ACT REVISING THE TAPROOM EXCEPTION TO INCLUDE ANY BREWER LICENSED BY THE UNITED STATES WHO MANUFACTURES LESS THAN 60,000 BARRELS OF BEER A YEAR; AND AMENDING SECTION 16-3-214, MCA. *2598*

722 *(House Bill No. 701; Driscoll)* AN ACT PROVIDING STATE FUNDING FOR CLEAN COAL TECHNOLOGY PROJECTS; AUTHORIZING PROPERTY TAX EXEMPTIONS FOR CLEAN COAL TECHNOLOGY PROJECTS; CREATING A CLEAN COAL TECHNOLOGY DEMONSTRATION FUND IN THE COAL SEVERANCE TAX TRUST FUND; AUTHORIZING INVESTMENT LOANS FOR CLEAN COAL TECHNOLOGY PROJECTS AUTHORIZED BY THE LEGISLATURE; AUTHORIZING THE FIRST PROJECT TO BE ELIGIBLE FOR A LOAN; AMENDING SECTION 17-5-703, MCA; AND PROVIDING AN EFFECTIVE DATE. *2599*

723 *(Senate Bill No. 77; Koehnke)* AN ACT EXTENDING THE TERMINATION OF THE TAX INCENTIVE FOR PRODUCTION OF ALCOHOL FOR BLENDING WITH GASOLINE UNTIL 2001; REVISING THE DEFINITION OF ALCOHOL DISTRIBUTOR; INCREASING THE MAXIMUM TOTAL INCENTIVE PAYMENTS IN ANY CONSECUTIVE 12-MONTH PERIOD TO $6 MILLION; INCREASING THE MAXIMUM INCENTIVE PAYMENT TO AN ALCOHOL DISTRIBUTOR IN ANY CONSECUTIVE 12-MONTH PERIOD TO $1.5 MILLION; PROVIDING FOR THE RESERVATION OF TAX INCENTIVES; AMENDING SECTIONS 15-70-503 AND 15-70-522, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT RETROACTIVE APPLICABIITY DATE. *2603*

724 *(Senate Bill No. 191; T. Beck)* AN ACT TO GENERALLY REVISE MOTOR VEHICLE REGISTRATION AND TITLING LAWS; PROVIDING FOR THE ISSUANCE OF SPECIAL-PURPOSE LICENSE PLATES, INCLUDING LI-

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CENSE PLATES ISSUED TO SURVIVORS OF THE PEARL HARBOR ATTACK, BY CREATING A GENERIC PLATE WITH A DESIGN OR DECAL INDICATING THE SPECIAL PURPOSE; PROVIDING THAT A DISABLED VETERAN HAS THE OPTION OF RECEIVING A HANDICAPPED LICENSE PLATE OR, IF QUALIFIED, AN EX-PRISONER OF WAR LICENSE PLATE; CREATING A NEW CLASS OF DEALER PLATE FOR RECREATIONAL VEHICLE DEALERS; ALLOWING FOR REPLACEMENT PLATES INSTEAD OF ISSUING DUPLICATE LICENSE PLATES; REMOVING THE EXCEPTION FOR ELECTRICALLY DRIVEN VEHICLES IN THE VEHICLE IDENTIFICATION NUMBER STATUTE; TRANSFERRING THE DUTY OF INSPECTING DEALERS FROM THE HIGHWAY PATROL TO THE MOTOR VEHICLE DIVISION; PROVIDING THAT EXEMPT PLATES BE REISSUED ONLY WHEN DAMAGED OR DESTROYED; INCREASING THE PENALTY FOR VIOLATING VEHICLE TITLING, REGISTRATION, OR TAXATION LAWS; VOIDING HOUSE BILL NO. 98; AMENDING SECTIONS 61-1-130, 61-3-101, 61-3-201, 61-3-205, 61-3-206, 61-3-303, 61-3-305, 61-3-332, 61-3-333, 61-3-465, 61-3-510, 61-3-601, 61-3-604, AND 61-4-101, MCA; AND REPEALING SECTIONS 10-1-110, 61-3-304, 61-3-444, 61-3-445, 61-3-447, 61-3-451, AND 61-3-505, MCA. *2606*

725 *(Senate Bill No. 232; Doherty)* AN ACT TO REQUIRE SURRENDER TO THE DEPARTMENT OF JUSTICE THE CERTIFICATE OF OWNERSHIP OF A VEHICLE THAT IS LESS THAN 5 YEARS OF AGE DETERMINED TO BE A SALVAGE VEHICLE; TO ALLOW THE DEPARTMENT TO ISSUE A SALVAGE CERTIFICATE FOR A SALVAGE VEHICLE CAPABLE OF BEING REBUILT; TO PROVIDE FOR THE RETITLING OF A SALVAGE VEHICLE; TO CREATE A VEHICLE IDENTIFICATION NUMBER INSPECTION PROGRAM; TO IMPOSE A VEHICLE IDENTIFICATION NUMBER INSPECTION FEE; TO AUTHORIZE THE DEPARTMENT TO INSPECT THE RECORDS OF LICENSED MOTOR VEHICLE WRECKING FACILITIES; TO ALLOW THE DEPARTMENT TO SUE TO COLLECT CIVIL PENALTIES FOR CERTAIN VIOLATIONS; TO PROVIDE AN APPROPRIATION; AND AMENDING SECTIONS 61-3-202, 75-10-512, AND 75-10-541, MCA. *2625*

726 *(House Bill No. 568; J. Rice)* AN ACT INCREASING THE FEES FOR REGULAR DRIVER'S LICENSES AND COMMERCIAL VEHICLE OPERATOR'S ENDORSEMENTS; REVISING THE DISPOSITION OF FEES; AMENDING SECTIONS 61-5-111 AND 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE. *2631*

727 *(House Bill No. 719; D. Brown)* AN ACT RESTRICTING PERSONS WHO MAY CONDUCT A PHYSICAL EXAMINATION OR REVIEW OF CHIROPRACTIC RECORDS ON BEHALF OF AN INSURER; AMENDING SECTION 33-1-102, MCA; AND PROVIDING AN EFFECTIVE DATE. *2635*

728 *(House Bill No. 833; Lee)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO WATERCRAFT; REVISING THE LAWS ON MARINE NOISE, SAFETY, AND SEWAGE REQUIREMENTS; INCREASING THE FEE FOR A CERTIFICATE OF NUMBER; PROVIDING AN APPROPRIATION; LIMITING WHO MAY OPERATE A WATERCRAFT; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES ON VESSEL PUMPOUT STATIONS; AUTHORIZING THE FISH AND GAME COMMISSION TO ADOPT RULES ON THE PROPER OBSERVATION AND SAFE TOWING OF PERSONS ON WATER SKIS OR SIMILAR DEVICES; AMENDING SECTIONS 23-2-502, 23-2-512, 23-2-521, 23-2-523, 23-2-526, 23-2-529, AND 23-2-530, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. *2637*

729 *(House Bill No. 913; J. Johnson)* AN ACT TO ALLOW THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO SPEND FUNDS APPROPRIATED TO THE STATE EQUALIZATION AID ACCOUNT FOR CERTAIN COSTS FOR THE SCHOOL DISTRICTS OF THE STATE; AMENDING SECTIONS 20-9-343

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AND 20-9-361, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. 2648

730 *(House Bill No. 987; Cromley)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO REGULATION OF HOTELS, MOTELS, ROOMINGHOUSES, BOARDINGHOUSES, RETIREMENT HOMES, AND TOURIST HOMES; INCREASING THE FEE FOR LICENSING OF HOTELS, MOTELS, ROOMINGHOUSES, RETIREMENT HOMES, AND TOURIST HOMES; REQUIRING PAYMENT OF THE FEE FOR LICENSING OF BOARDINGHOUSES; CREATING A SPECIAL REVENUE ACCOUNT FOR THE DEPOSIT OF A PORTION OF LICENSE FEES; ALLOCATING MONEY IN THE ACCOUNT TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; CLARIFYING WHO MAY CONDUCT INVESTIGATIONS AND INSPECTIONS; REQUIRING MINIMUM PERFORMANCE STANDARDS THAT MUST BE MET IN ORDER FOR THE LOCAL BOARD OF HEALTH TO RECEIVE PAYMENTS FROM THE LOCAL BOARD INSPECTION FUND ACCOUNT; REQUIRING PAYMENTS FROM THE ACCOUNT TO BE USED ONLY FOR THE PURPOSE OF INSPECTION AND ENFORCEMENT; PROHIBITING FUNDS FROM THE LOCAL BOARD INSPECTION FUND ACCOUNT FROM BEING USED TO SUPPLANT OTHER FUNDS RECEIVED BY THE LOCAL BOARD OF HEALTH; PROVIDING CIVIL PENALTIES FOR VIOLATION OF THE LAWS REGULATING HOTELS, MOTELS, ROOMINGHOUSES, BOARDINGHOUSES, RETIREMENT HOMES, AND TOURIST HOMES; AUTHORIZING INJUNCTIONS TO ENJOIN VIOLATIONS OF THE LAWS; ALLOWING THE DEPARTMENT AND COUNTIES TO RECOVER THE COSTS OF INVESTIGATIONS AND OTHER EXPENSES IN ENFORCING THE LAWS REGULATING HOTELS, MOTELS, ROOMINGHOUSES, BOARDINGHOUSES, RETIREMENT HOMES, AND TOURIST HOMES; AND AMENDING SECTIONS 50-51-102, 50-51-201, 50-51-204, 50-51-301, 50-51-302, AND 50-51-303, MCA. 2650

731 *(House Bill No. 988; Cromley)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO REGULATION OF CAMPGROUNDS, TRAILER COURTS, WORK CAMPS, AND YOUTH CAMPS; INCREASING THE FEE FOR LICENSING OF CAMPGROUNDS, TRAILER COURTS, WORK CAMPS, AND YOUTH CAMPS; CREATING A SPECIAL REVENUE ACCOUNT FOR THE DEPOSIT OF A PORTION OF LICENSE FEES; ALLOCATING MONEY IN THE ACCOUNT TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; CLARIFYING WHO MAY CONDUCT INVESTIGATIONS AND INSPECTIONS; CLARIFYING THAT HEALTH OFFICERS AND SANITARIANS HAVE FREE ACCESS TO CAMPGROUNDS, TRAILER COURTS, WORK CAMPS, AND YOUTH CAMPS FOR THE PURPOSE OF CONDUCTING INVESTIGATIONS AND INSPECTIONS; REQUIRING MINIMUM PERFORMANCE STANDARDS THAT MUST BE MET IN ORDER FOR THE LOCAL BOARD OF HEALTH TO RECEIVE PAYMENTS FROM THE LOCAL BOARD INSPECTION FUND ACCOUNT; REQUIRING PAYMENTS RECEIVED FROM THE ACCOUNT TO BE USED ONLY FOR THE PURPOSE OF INSPECTION AND ENFORCEMENT; PROHIBITING FUNDS FROM THE LOCAL BOARD INSPECTION FUND ACCOUNT FROM BEING USED TO SUPPLANT OTHER FUNDS RECEIVED BY THE LOCAL BOARD OF HEALTH; PROVIDING CIVIL PENALTIES FOR THE VIOLATION OF LAWS REGULATING CAMPGROUNDS, TRAILER COURTS, WORK CAMPS, AND YOUTH CAMPS; ALLOWING THE DEPARTMENT AND COUNTIES TO RECOVER THE COSTS OF INVESTIGATIONS AND OTHER EXPENSES IN ENFORCING THE LAWS; AND AMENDING SECTIONS 50-52-202, 50-52-301, AND 50-52-302, MCA. . 2655

732 *(House Bill No. 989; Cromley)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO REGULATION OF FOOD ESTABLISHMENTS; INCREASING THE FEE FOR LICENSING OF FOOD ESTABLISHMENTS; CREATING A SPECIAL REVENUE ACCOUNT FOR THE DEPOSIT OF A PORTION OF LICENSE FEES; ALLOCATING MONEY IN THE ACCOUNT TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; CLARIFYING WHO MAY CONDUCT INVESTIGATIONS AND INSPECTIONS OF

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733 *(House Bill No. 354; Schye)* AN ACT ALLOWING COUNTY COMMISSIONERS TO LEVY UP TO 2 MILLS FOR FIRE CONTROL ACTIVITIES; AMENDING SECTION 7-33-2209, MCA; AND PROVIDING AN EFFECTIVE DATE. . *2662*

734 *(Senate Bill No. 18; Gage)* AN ACT TO GENERALLY REVISE OIL AND GAS LAWS; AUTHORIZING CERTAIN POOLING AND UNIT AGREEMENTS; CLARIFYING RESPONSIBILITY FOR MITIGATION OF DAMAGES; AND AMENDING SECTIONS 82-11-101, 82-11-103, 82-11-104, 82-11-161, AND 82-11-164, MCA. *2662*

735 *(Senate Bill No. 192; Farrell)* AN ACT ENDING FUTURE ELIGIBILITY FOR THE SUPPLEMENTAL RETIREMENT ALLOWANCE PROVIDED IN THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM; PROVIDING THAT MONEY NOT USED TO MAINTAIN EXISTING SUPPLEMENTAL BENEFITS BE TRANSFERRED TO THE GENERAL FUND; ELIMINATING VEHICLE REGISTRATION FEES AS A SOURCE OF REVENUE FOR THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-6-506 AND 61-3-321, MCA; AND PROVIDING AN EFFECTIVE DATE. *2667*

736 *(Senate Bill No. 196; T. Beck)* AN ACT TO PROVIDE FOR THE CONFINEMENT OF PERSONS COMMITTED TO THE DEPARTMENT OF INSTITUTIONS WHEN A DEPARTMENT CORRECTIONAL INSTITUTION OR SYSTEM EXCEEDS ITS EMERGENCY CAPACITY; AND AMENDING SECTION 53-30-106, MCA. *2670*

737 *(Senate Bill No. 272; Farrell)* AN ACT CLARIFYING THE MEANING OF THE TERMS "INDUSTRIAL INFRASTRUCTURE" AND "INFRASTRUCTURE" AS USED IN THE TAX INCREMENT FINANCING INDUSTRIAL DEVELOPMENT ACT; PROVIDING THAT DIRECT ASSISTANCE TO SECONDARY VALUE-ADDED INDUSTRIES BE THROUGH AN INDUSTRIAL INFRASTRUCTURE DEVELOPMENT PROJECT; AND AMENDING SECTION 7-15-4288, MCA. *2671*

738 *(Senate Bill No. 301; Blaylock)* AN ACT ALLOWING FORMER LEGISLATORS TO CONTINUE MEMBERSHIP IN THE STATE GROUP HEALTH INSURANCE PLAN; AMENDING SECTION 2-18-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2672*

739 *(Senate Bill No. 327; Noble)* AN ACT TO GENERALLY REVISE THE LAWS PERTAINING TO SHOPLIFTING; INCREASING THE CIVIL PENALTY FOR SHOPLIFTING; INCREASING THE CRIMINAL PENALTY FOR SECOND AND SUBSEQUENT THEFT CONVICTIONS; ALLOWING PHOTOGRAPHS OF STOLEN MERCHANDISE TO BE SUBMITTED INTO EVIDENCE; AND AMENDING SECTIONS 27-1-718 AND 45-6-301, MCA. *2674*

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740 *(Senate Bill No. 425; Grosfield)* AN ACT EXTENDING THE PERIOD OF INITIAL WATER LEASES; MODIFYING THE INITIAL AND FINAL WATER LEASING STUDY REPORT PROCESS; INCREASING THE NUMBER OF DESIGNATED STREAM REACHES; EXTENDING THE TERM OF THE WATER LEASING STUDY; EXTENDING THE AUTHORITY FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ACCEPT CONTRIBUTIONS TO LEASE WATER; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 85-2-436 AND 85-2-437, MCA, AND SECTION 11, CHAPTER 658, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. *2677*

741 *(Senate Bill No. 434; T. Beck)* AN ACT TEMPORARILY CLOSING A DESIGNATED PORTION OF THE UPPER CLARK FORK RIVER BASIN TO FURTHER APPROPRIATIONS, EXCEPT APPROPRIATIONS FOR GROUND WATER; SUSPENDING ACTION ON APPLICATIONS FOR RESERVATIONS IN THE UPPER CLARK FORK RIVER BASIN; MODIFYING PRIORITY DATES FOR PENDING WATER RESERVATIONS IN THE UPPER CLARK FORK RIVER BASIN; REQUIRING AN APPLICANT FOR A GROUND WATER PERMIT TO SUBMIT A REPORT REGARDING THE SOURCE OF THE GROUND WATER AND DEPARTMENT FINDINGS REGARDING THE SOURCE; CREATING AND ESTABLISHING DUTIES FOR AN UPPER CLARK FORK RIVER BASIN STEERING COMMITTEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. ... *2680*

742 *(Senate Bill No. 462; Mazurek)* AN ACT CLARIFYING THE TELEPHONE COMPANY LICENSE TAX; EXCLUDING CARRIER ACCESS SERVICE REVENUE FROM THE TAX; REVISING THE TAX RATE; DEFINING "CARRIER ACCESS SERVICE" AND "TELEPHONE BUSINESS"; AMENDING SECTIONS 15-53-101, 15-53-102, 15-53-105, AND 15-53-111, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. *2683*

743 *(House Bill No. 33; O'Keefe)* AN ACT CREATING THE OFFENSE OF ILLEGAL POSTING OF STATE AND FEDERAL LAND; PROVIDING THAT A PERSON WHO KNOWINGLY POSTS STATE OR FEDERAL LAND AS PRIVATE PROPERTY OR AS BEING CLOSED TO HUNTING OR TRESPASSING IS GUILTY OF A CRIME; AND PROVIDING A PENALTY. *2686*

744 *(House Bill No. 46; Galvin)* AN ACT REVISING THE MONTANA SMALL BUSINESS LICENSING COORDINATION ACT; AMENDING SECTIONS 30-16-102, 30-16-103, AND 30-16-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2686*

745 *(House Bill No. 74; Strizich)* AN ACT TO AUTHORIZE A LEVY FOR JUVENILE DETENTION PROGRAMS; TO EXCLUDE THE LEVY FROM THE PROPERTY TAX LIMITATIONS OF INITIATIVE MEASURE NO. 105; AMENDING SECTIONS 15-10-402 AND 15-10-412, MCA; AND PROVIDING AN EFFECTIVE DATE. *2689*

746 *(House Bill No. 93; Cobb)* AN ACT TO IMPOSE A UTILIZATION FEE ON NURSING FACILITIES FOR BED DAYS REIMBURSED BY THIRD-PARTY PAYORS BEGINNING IN FISCAL YEAR 1992; TO AUTHORIZE THE DEPARTMENT OF REVENUE TO COLLECT THE FEE; TO PROVIDE FOR THE ASSESSMENT, COLLECTION, AND REFUND OF THE FEE; TO REQUIRE PROCEEDS FROM THE FEE TO BE DEPOSITED IN THE GENERAL FUND; TO PROVIDE AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE. *2694*

747 *(House Bill No. 125; Gervais)* AN ACT APPROPRIATING MONEY TO THE COMMISSIONER OF HIGHER EDUCATION FOR AMERICAN INDIAN/MINORITY ACHIEVEMENT PURPOSES; AND PROVIDING A TERMINATION DATE. *2701*

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748 *(House Bill No. 131; Brooke)* AN ACT CREATING THE HUMAN SKELETAL REMAINS AND BURIAL SITE PROTECTION ACT; CREATING A BURIAL PRESERVATION BOARD; ESTABLISHING REPORTING AND NOTIFICATION PROCEDURES REGARDING DISTURBANCE OF A BURIAL SITE; PROVIDING FOR FIELD REVIEW AND SCIENTIFIC ANALYSIS; PROVIDING DISINTERMENT AND REINTERMENT PROCEDURES; PROVIDING FOR FEES AND CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR DISPOSITION OF FEES, GRANTS, AND DONATIONS; EXEMPTING PARTS OF MEETINGS FROM THE OPEN MEETING LAWS UNDER CERTAIN CONDITIONS; PROVIDING FOR CONFIDENTIALITY OF RECORDS; GRANTING THE BOARD RULEMAKING AUTHORITY; PROVIDING FOR A 2-YEAR STATUTORY APPROPRIATION; APPROPRIATING MONEY FROM THE GENERAL FUND; AMENDING SECTIONS 2-6-101, 2-6-102, AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. *2702*

749 *(House Bill No. 312; Hoffman)* AN ACT TO PROVIDE STATE REIMBURSEMENT PAYMENTS FOR DISTRICT COURT EXPENSES TO COUNTIES THAT HAVE EXPENDED THE REVENUE FROM THE MAXIMUM PERMISSIBLE MILL LEVY FOR DISTRICT COURT FUNDING; TO AUTHORIZE THE COUNTY COMMISSIONERS TO USE A PORTION OF THE LOCAL OPTION VEHICLE TAX FOR COUNTY PURPOSES; TO PROVIDE FOR THE DISTRIBUTION OF A PORTION OF THE TAX TO THE COUNTY AND MUNICIPALITIES; AMENDING SECTIONS 7-6-2427 AND 61-3-537, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE. *2711*

750 *(House Bill No. 365; Swysgood)* AN ACT TO APPROPRIATE MONEY TO MONTANA STATE UNIVERSITY TO PROVIDE SUPPORT FOR APPLIED GENETIC ENGINEERING TECHNOLOGY RESEARCH AND DEVELOPMENT TO ENHANCE MONTANA AGRICULTURAL PRODUCTS. *2713*

751 *(House Bill No. 494; O'Keefe)* AN ACT INCREASING THE DRIVER'S LICENSE REINSTATEMENT FEE; PROVIDING THAT A PORTION OF THE FEES BE ALLOCATED TO INCORPORATED CITIES OR TOWNS FOR PROGRAMS AND FACILITIES FOR MINORS, ADULT CHEMICAL DEPENDENCY TREATMENT PROGRAMS, LAW ENFORCEMENT TRAINING PROGRAMS, AND LAW ENFORCEMENT EQUIPMENT; ELIMINATING THE REQUIREMENT THAT THE ANNUAL REPORT CONTAIN INFORMATION REQUESTED BY THE DEPARTMENT; AND AMENDING SECTIONS 61-2-106, 61-2-107, AND 61-2-108, MCA. *2713*

752 *(House Bill No. 539; Daily)* AN ACT TO GENERALLY REVISE THE STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY TAKE REMEDIAL ACTION AT A SITE THAT IS SUBJECT TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980; PROVIDING FOR FINANCIAL ASSURANCE TO ENSURE COMPLIANCE WITH AGREEMENTS AND TO PROVIDE FOR LONG-TERM MAINTENANCE OF REMEDIAL ACTION SITES; REQUIRING A RESPONSE TO WRITTEN COMMENTS OR COMMENTS RECEIVED AT A PUBLIC MEETING ON A PROPOSED ORDER OR DECREE; AMENDING SECTIONS 75-10-704, 75-10-711, 75-10-713, 75-10-719, AND 75-10-721, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE. *2715*

753 *(House Bill No. 569; J. Rice)* AN ACT APPROPRIATING GENERAL FUND AND FEDERAL MONEY TO THE DEPARTMENT OF FAMILY SERVICES FOR THE PURCHASE AND DEVELOPMENT OF A MANAGEMENT INFORMATION SYSTEM. *2722*

754 *(House Bill No. 589; Peck)* AN ACT TO CHANGE THE SCHOOL DISTRICT ACCUMULATED SICK LEAVE RESERVE FUND TO THE COMPENSATED

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ABSENCE LIABILITY FUND; TO INCLUDE IN THE FUND THE ACCUMULATED AMOUNTS OF SICK LEAVE AND VACATION LEAVE FOR NON-TEACHING AND ADMINISTRATIVE SCHOOL DISTRICT EMPLOYEES; AMENDING SECTION 20-9-512, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. 2723

755 *(House Bill No. 746; Russell)* AN ACT REQUIRING THE STATE TO ERECT A MONUMENT AND FLAG CIRCLE AT THE CAPITOL COMPLEX TO HONOR AMERICAN INDIANS; ESTABLISHING AN ADVISORY COMMITTEE TO COORDINATE THE PROJECT; APPROPRIATING FUNDS FOR THE ADVISORY COMMITTEE; AND PROVIDING AN EFFECTIVE DATE. 2724

756 *(House Bill No. 758; Barnhart)* AN ACT DIRECTING THE DEPARTMENT OF ADMINISTRATION TO PERMIT PARENTAL LEAVE FOR STATE EMPLOYEES WHO ARE BIRTH FATHERS OR ARE ADOPTING CHILDREN; AND AMENDING SECTION 2-18-601, MCA. 2725

757 *(House Bill No. 803; Menahan)* AN ACT PROTECTING EMPLOYEES AND COMMUNITIES FROM THE EFFECTS OF CLOSURES OR LAYOFFS AT A GOVERNMENTAL FACILITY; AND PROVIDING AN EFFECTIVE DATE. . 2727

758 *(House Bill No. 804; Menahan)* AN ACT TO ALLOW THE STATE TO PROVIDE SEVERANCE PAY AND A RETRAINING ALLOWANCE FOR A STATE EMPLOYEE TERMINATED TO ACHIEVE A REDUCTION IN FORCE; TO PROVIDE THAT CONTRIBUTIONS PAYABLE TO A STATE EMPLOYEE TERMINATED TO ACHIEVE A REDUCTION IN FORCE ARE SUBJECT TO NEGOTIATION; AMENDING SECTIONS 2-18-618 AND 2-18-703, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 2729

759 *(House Bill No. 825; D. Brown)* AN ACT REVISING THE LAW RELATING TO THE CARRYING OF CONCEALED WEAPONS; AMENDING SECTIONS 45-8-315, 45-8-317, AND 45-8-351, MCA; AND REPEALING SECTION 45-8-319, MCA. 2731

760 *(House Bill No. 832; Ellison)* AN ACT ALLOCATING 20 PERCENT OF AN INCREASE IN GROSS PROCEEDS TAX TO THE LOCAL GOVERNMENT UNIT IN WHICH THE ORE WAS LOCATED IF CERTAIN CRITERIA ARE MET; ALLOCATING THE APPLICABLE METAL MINES LICENSE TAX TO THOSE COUNTIES IDENTIFIED AS EXPERIENCING IMPACTS IF AN IMPACT PLAN HAS BEEN PREPARED; AMENDING SECTIONS 15-37-117 AND 90-6-404, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE. 2738

761 *(House Bill No. 846; Menahan)* AN ACT TO ALLOW PUBLIC INSPECTION OF COMPETITIVE SEALED BIDS AND PROPOSALS FOR THE PRIVATIZATION OF STATE SERVICES WHEN THE BIDS OR PROPOSALS ARE OPENED; AMENDING SECTIONS 18-4-301 AND 18-4-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2741

762 *(House Bill No. 857; O'Keefe)* AN ACT TO PROVIDE A REVIEW PROCEDURE FOR PROPOSALS TO PRIVATIZE STATE PROGRAMS; TO PROVIDE FOR REVIEW OF CURRENTLY PRIVATIZED STATE PROGRAMS; TO REQUIRE PREPARATION OF A PRIVATIZATION PLAN; TO PROVIDE FOR A PRIVATIZATION REVIEW BY THE LEGISLATIVE AUDIT COMMITTEE; AND PROVIDING AN EFFECTIVE DATE. 2743

763 *(House Bill No. 973; Stang)* AN ACT TO PROVIDE EXPENSE REIMBURSEMENT TO CERTAIN TANK OWNERS AND OPERATORS; AMENDING SECTIONS 75-11-301, 75-11-302, 75-11-307, 75-11-308, AND 75-11-318, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2746

764 *(House Bill No. 977; Bradley)* AN ACT REVISING THE LAWS RELATING TO RESIDENTIAL TREATMENT FACILITIES; ALLOWING MEDICAID REIMBURSEMENT FOR INPATIENT PSYCHIATRIC SERVICES FOR PERSONS

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UNDER 21 YEARS OF AGE IN A RESIDENTIAL TREATMENT FACILITY; REQUIRING LICENSURE OF A RESIDENTIAL TREATMENT FACILITY IN ORDER TO QUALIFY FOR MEDICAID REIMBURSEMENT; AMENDING SECTIONS 50-5-101, 50-5-301, AND 53-6-101, MCA; REPEALING SECTION 50-5-317, MCA; AND PROVIDING AN EFFECTIVE DATE. *2752*

765 *(House Bill No. 999; Peck)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO OUT-OF-DISTRICT PLACEMENT OF CHILDREN WITH DISABILITIES; TO PROVIDE STATE FUNDING FOR THE EDUCATIONAL PROGRAMS FOR ELIGIBLE CHILDREN PLACED IN IN-STATE RESIDENTIAL TREATMENT FACILITIES OR CHILDREN'S PSYCHIATRIC HOSPITALS; TO PROVIDE AN APPROPRIATION; AMENDING SECTIONS 20-5-301, 20-5-311, 20-7-403, 20-7-420, 20-7-421, 20-7-422, 20-7-431, AND 20-9-334, MCA; REPEALING SECTION 20-7-423, MCA; AND PROVIDING AN EFFECTIVE DATE. *2766*

766 *(House Bill No. 1013; Whalen)* AN ACT TO PROHIBIT THE LIQUOR DIVISION OF THE DEPARTMENT OF REVENUE FROM REQUIRING LOW-VOLUME LIQUOR, AS USED IN SECTION 16-1-401, MCA, OR LOW-VOLUME TABLE WINE COMPANIES FROM MAINTAINING LIQUOR OR WINE IN THE STATE WAREHOUSE WHILE THE COMPANY MAINTAINS OWNERSHIP OF THE LIQUOR OR WINE; AMENDING SECTION 16-1-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2780*

767 *(Senate Bill No. 17; Blaylock)* AN ACT TO GENERALLY REVISE SCHOOL LAW IN COMPLIANCE WITH NEW SCHOOL FUNDING PROVISIONS AND GENERALLY ACCEPTED ACCOUNTING PRINCIPLES FOR SCHOOL DISTRICTS; TO ALLOW A DISTRICT TO AMEND THE ADOPTED GENERAL FUND BUDGET AND TO EXCEED ANY APPLICABLE BUDGET LIMITATION IN CERTAIN CIRCUMSTANCES; TO ALLOW SCHOOL DISTRICTS TO TRANSPORT PRESCHOOL SPECIAL EDUCATION STUDENTS; TO LIMIT STATE TRANSPORTATION REIMBURSEMENT TO 180 PUPIL-INSTRUCTION DAYS; TO ADJUST THE SCHOOL DISTRICT BONDING LIMITATION TO COMPENSATE FOR CHANGES IN DISTRICT TAXABLE VALUATION; TO EXTEND THE ALLOCATION OF PERCENTAGES OF THE INDIVIDUAL INCOME TAX AND THE CORPORATE LICENSE AND INCOME TAX TO THE STATE GENERAL FUND, THE DEBT SERVICE ACCOUNT FOR LONG-RANGE BUILDING PROGRAM BONDS, AND THE STATE EQUALIZATION AID ACCOUNT FOR PUBLIC SCHOOLS; AMENDING SECTIONS 15-1-501, 15-24-1402, 20-3-106, 20-3-205, 20-3-324, 20-5-307, 20-5-312, 20-7-713, 20-9-104, 20-9-141, 20-9-142, 20-9-145, 20-9-161, 20-9-162, 20-9-163, 20-9-164, 20-9-165, 20-9-166, 20-9-201, 20-9-206, 20-9-208, 20-9-209, 20-9-210, 20-9-214, 20-9-221, 20-9-231, 20-9-301, 20-9-315, 20-9-321, 20-9-344, 20-9-353, 20-9-360, 20-9-366, 20-9-367, 20-9-368, 20-9-406, 20-9-435, 20-9-438, 20-9-439, 20-9-471, 20-9-501, 20-9-504, 20-9-505, 20-9-507, 20-10-101, 20-10-143, 20-10-144, 20-10-145, AND 20-15-404, MCA; REPEALING SECTIONS 15-10-103, 20-9-111, AND 20-9-167, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE. *2781*

768 *(Senate Bill No. 58; Yellowtail)* AN ACT REVISING THE LAW RELATING TO PAYMENT OF MEDICAL AND CONFINEMENT COSTS OF INCARCERATED PERSONS; CLARIFYING THAT MEDICAL AND CONFINEMENT COSTS OF INCARCERATED PERSONS MUST BE BORNE BY THE ARRESTING AGENCY, WITH AN EXCEPTION FOR CITIES AND TOWNS AND AN EXCEPTION FOR THE DEPARTMENT OF INSTITUTIONS; REQUIRING OUT-OF-STATE JURISDICTIONS TO PAY THE CONFINEMENT COSTS OF INMATES HELD ON THEIR BEHALF; AND AMENDING SECTIONS 7-32-2222 AND 7-32-2242, MCA. *2831*

769 *(Senate Bill No. 94; T. Beck)* AN ACT CREATING A GROUND WATER MONITORING PROGRAM AND A GROUND WATER CHARACTERIZATION PROGRAM; ESTABLISHING A GROUND WATER ASSESSMENT ACCOUNT; INCREASING THE FILING FEE FOR NOTICE OF COMPLETION OF

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770 *(Senate Bill No. 189; T. Beck)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SOLID WASTE MANAGEMENT BY LOCAL GOVERNMENTS; AUTHORIZING MULTICOUNTY SOLID WASTE DISTRICTS; AMENDING SECTIONS 7-5-2306, 7-5-4304, 7-5-4321, 7-7-2501, 7-7-4402, 7-13-202, 7-13-204, 7-13-209, 7-13-210, 7-13-212, 7-13-215, 7-13-232, 7-13-233, AND 7-13-235, MCA; REPEALING SECTIONS 7-13-241, 7-13-242, 7-13-243, 7-13-2401, 7-13-2402, 7-13-2403, 7-13-2404, 7-13-2405, AND 7-13-2406, MCA; AND PROVIDING AN EFFECTIVE DATE. *2843*

771 *(Senate Bill No. 359; Nathe)* AN ACT CREATING A $5,000 A YEAR TAX CREDIT AGAINST INDIVIDUAL INCOME TAXES FOR CERTAIN PHYSICIANS WHO COMMENCE PRACTICE IN A RURAL AREA; ALLOWING THE TAX CREDIT FOR 4 SUCCESSIVE YEARS; PROVIDING FOR REPAYMENT OF THE CREDIT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2853*

772 *(Senate Bill No. 428; Nathe)* AN ACT PROVIDING FOR THE NEGOTIATION OF COOPERATIVE AGREEMENTS FOR THE ALLOCATION OF MOTOR FUELS TAXES TO TRIBAL GOVERNMENTS THAT ENACT MOTOR FUELS TAXES AT RATES THAT ARE IDENTICAL TO THE RATES IMPOSED BY THE STATE; ALLOWING THE AGREEMENTS TO PROVIDE FOR THE COLLECTION, USE, AND DISTRIBUTION OF THE TAX; PROVIDING FOR STATUS REPORTS TO THE REVENUE OVERSIGHT COMMITTEE AND PROVIDING AN OPPORTUNITY FOR THE COMMITTEE TO REVIEW AND COMMENT BEFORE APPROVAL OF AN AGREEMENT BY THE ATTORNEY GENERAL; AND PROVIDING AN EFFECTIVE DATE. *2855*

773 *(Senate Bill No. 436; B. Brown)* AN ACT RESTRUCTURING THE PROPERTY TAX CLASSIFICATION SYSTEM BY CONSOLIDATING CLASSES; ELIMINATING CLASS TWELVE PROPERTY AND INCLUDING TRAILERS AND MOBILE HOMES IN CLASS FOUR PROPERTY; CLARIFYING THE COMPUTATION OF INCOME FOR PURPOSES OF THE LOW-INCOME PROPERTY TAX CREDIT; PROVIDING THAT AN ELIGIBLE HEAD OF HOUSEHOLD MAY QUALIFY FOR THE LOW-INCOME PROPERTY TAX CREDIT; ELIMINATING CLASS EIGHTEEN (NONPRODUCTIVE MINING CLAIMS) BY COMBINING IT WITH CLASS THREE PROPERTY; ELIMINATING CLASS NINETEEN (NONPRODUCTIVE REAL ESTATE) AND CLASS TWENTY (OUT-OF-PRODUCTION AGRICULTURAL LAND AND TIMBERLAND), BOTH OF WHICH BECOME TAXABLE AS CLASS FOUR PROPERTY; CONSOLIDATING RAILROAD PROPERTY AND AIRLINE PROPERTY INTO ONE CLASS; DELETING THE FORMULA FOR COMPUTING THE VALUE OF OTHER COMMERCIAL PROPERTY NECESSARY FOR TAXATION OF RAILROAD PROPERTY AND AIRLINE PROPERTY BY DELETING NET AND GROSS PROCEEDS; DELETING IN CLASS SIX PROPERTY THE SEPARATE PROVISION FOR MALTING BARLEY FACILITIES; AMENDING SECTIONS 7-13-2527, 15-1-111, 15-6-133, 15-6-134, 15-6-136, 15-6-141, 15-6-144, 15-6-145, 15-6-155, 15-8-205, 15-10-402, 15-10-412, 15-16-611, AND 67-3-204, MCA; REPEALING SECTIONS 15-6-142, 15-6-147, 15-6-148, 15-6-149, 15-6-150, 15-6-153, 15-6-154, AND 15-6-155, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE. *2857*

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774 *(House Bill No. 5; Bardanouve)* AN ACT TO APPROPRIATE MONEY FOR CAPITAL PROJECTS; TO AUTHORIZE THE ISSUANCE AND SALE OF GENERAL OBLIGATION LONG-RANGE BUILDING PROGRAM BONDS; TO APPROPRIATE THE PROCEEDS OF THE BONDS FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1993; TO PROVIDE FOR AN AGREEMENT BETWEEN THE BOARD OF EXAMINERS AND THE BOARD OF REGENTS; TO PROVIDE FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. .. *2871*

775 *(House Bill No. 7; Connelly)* AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE WATER DEVELOPMENT PROGRAM; TO APPROVE THE ISSUANCE OF COAL SEVERANCE TAX BONDS TO PROVIDE FUNDS FOR LOANS TO POLITICAL SUBDIVISIONS AND LOCAL GOVERNMENTS FOR CERTAIN APPROVED WATER DEVELOPMENT PROJECTS; TO REAUTHORIZE COAL SEVERANCE TAX BONDS FOR CERTAIN PROJECTS APPROVED BY THE 51ST LEGISLATURE; TO APPROPRIATE COAL SEVERANCE TAX INCOME FOR DEBT SERVICE; TO AUTHORIZE THE CREATION OF A STATE DEBT; TO AUTHORIZE THE ISSUANCE OF REVENUE BONDS; TO PLACE CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2879*

776 *(House Bill No. 20; Pavlovich)* AN ACT TO APPROPRIATE $25,000 FROM THE LONG-RANGE BUILDING PROGRAM FUND TO THE DEPARTMENT OF MILITARY AFFAIRS AS MONTANA'S CONTRIBUTION TOWARD THE CONSTRUCTION OF THE NATIONAL WOMEN IN MILITARY SERVICE FOR AMERICA MEMORIAL AT ARLINGTON NATIONAL CEMETERY. ... *2885*

777 *(House Bill No. 29; Kimberley)* AN ACT RESTRICTING THE USE OF TINTING OR SUNSCREENING MATERIAL ON THE WINDSHIELD OR SIDE OR REAR WINDOWS OF A MOTOR VEHICLE; AND AMENDING SECTION 61-9-405, MCA. *2886*

778 *(House Bill No. 151; Stang)* AN ACT REVISING THE PROPERTY TAXATION OF MIGRATORY PROPERTY; PROVIDING FOR A REFUND ON PROPERTY TAXES PAID ON MIGRATORY PROPERTY FOR A PERIOD LONGER THAN THE ACTUAL NUMBER OF MONTHS THE PROPERTY IS IN THE STATE; AMENDING SECTION 15-16-613, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2889*

779 *(House Bill No. 179; Phillips)* AN ACT APPROPRIATING FUNDS TO THE DEPARTMENT OF MILITARY AFFAIRS FOR THE UPGRADING AND MAINTENANCE OF THE STATE VETERANS' CEMETERY; AND PROVIDING AN EFFECTIVE DATE. *2890*

780 *(House Bill No. 240; Raney)* AN ACT CLARIFYING THAT PROJECTS PROPOSED BY PUBLIC ENTITIES TO RESEARCH AND DEMONSTRATE LOW AGRICULTURAL CHEMICAL INPUT FARMING PRACTICES ARE ELIGIBLE FOR GRANTS FROM THE RENEWABLE RESOURCE DEVELOPMENT GRANT PROGRAM; AND AMENDING SECTION 90-2-111, MCA. *2890*

781 *(House Bill No. 268; Measure)* AN ACT CREATING AN APPELLATE DEFENDER SYSTEM; CREATING AN APPELLATE DEFENDER COMMISSION AND THE OFFICE OF APPELLATE DEFENDER; ESTABLISHING DUTIES OF THE COMMISSION; ESTABLISHING DUTIES OF AND QUALIFICATIONS FOR THE APPELLATE DEFENDER; PROVIDING AN APPROPRIATION TO FUND THE COMMISSION AND THE OFFICE OF APPELLATE DEFENDER FOR THE BIENNIUM; AMENDING SECTION 3-5-901, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE. *2891*

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782 *(House Bill No. 285; Schye)* AN ACT ALLOWING COUNTY COMMISSIONERS TO CHARGE FEES ON STRUCTURES FOR THE OPERATION OF A MOSQUITO CONTROL DISTRICT; AMENDING SECTION 7-22-2432, MCA; AND PROVIDING AN EFFECTIVE DATE. *2895*

783 *(House Bill No. 340; Ream)* AN ACT TO GENERALLY REVISE THE TAXATION OF PRIVATE FOREST LANDS; DEFINING FOREST LAND AND FOREST PRODUCTIVITY VALUE; REQUIRING THE DEPARTMENT OF REVENUE TO VALUE FOREST LANDS OF 15 ACRES OR MORE ON THE BASIS OF PRODUCTIVITY BY CAPITALIZING THE NET INCOME OF FOREST LAND; AUTHORIZING THE DEPARTMENT OF REVENUE TO ESTABLISH FOREST VALUATION ZONES; PROVIDING FOR A TRANSITION PERIOD IN THE TAXATION OF FOREST LANDS BY EXTENDING THE TERMINATION DATE OF CLASS THIRTEEN PROPERTY; PROVIDING THAT CLASS THIRTEEN WILL APPLY TO THE TAXATION OF FOREST LANDS BEGINNING JANUARY 1, 1994; EXEMPTING TIMBER FROM AD VALOREM PROPERTY TAXATION; IMPOSING AN ASSESSMENT ON ALL PRIVATELY OWNED TIMBERLAND; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-1-101, 15-6-143, 15-6-201, AND 15-8-111, MCA, AND SECTION 10, CHAPTER 681, LAWS OF 1985; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE. ... *2897*

784 *(House Bill No. 360; Harper)* AN ACT PROVIDING TERMS FOR MEMBERS OF THE RESERVED WATER RIGHTS COMPACT COMMISSION; EXTENDING THE TERMINATION DATE FOR THE SUSPENSION OF ADJUDICATION REQUIREMENTS; AMENDING SECTIONS 2-15-212, 85-2-217, AND 85-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2911*

785 *(House Bill No. 391; Darko)* AN ACT TO INCLUDE CLERGY IN THE LIST OF PERSONS REQUIRED TO REPORT SUSPECTED CHILD ABUSE; AND AMENDING SECTION 41-3-201, MCA. *2913*

786 *(House Bill No. 452; Larson)* AN ACT PROVIDING A 7-YEAR TAXABLE VALUE DECREASE FOR QUALIFYING MACHINERY AND EQUIPMENT OF EXPANDING INDUSTRIES THAT PROCESS MONTANA RAW MATERIALS OR USE MONTANA SEMIFINISHED PRODUCTS IN MANUFACTURING; DEFINING QUALIFYING PROPERTY; PROVIDING FOR GOVERNING BODY APPROVAL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. *2915*

787 *(House Bill No. 454; Cobb)* AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO APPROPRIATIONS; CODIFYING CONDITIONS FOR APPROPRIATIONS USUALLY CONTAINED IN EACH GENERAL APPROPRIATIONS ACT; PROVIDING FOR A STATUTORY APPROPRIATION OF THE INCOME AND EARNINGS OF COAL SEVERANCE TAX FUNDS; AMENDING SECTIONS 5-12-303, 17-1-102, 17-2-108, 17-5-704, 17-6-305, 17-6-306, 17-7-102, 17-7-304, 17-7-502, 20-9-343, AND 75-10-621, MCA; REPEALING SECTION 17-7-401, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY PROVISION, AND A TERMINATION DATE. *2918*

788 *(House Bill No. 551; O'Keefe)* AN ACT AMENDING THE WASTEWATER TREATMENT REVOLVING FUND ACT TO ALLOW NET PROCEEDS OF BONDS TO BE DEPOSITED IN THE STATE ALLOCATION ACCOUNT; REMOVING THE REQUIREMENT THAT PRINCIPAL REPAYMENTS MUST BE CREDITED PROPORTIONATELY TO THE STATE ALLOCATION ACCOUNT AND THE FEDERAL ALLOCATION ACCOUNT; AUTHORIZING BONDS TO BE ISSUED BY RESOLUTION OR TRUST INDENTURE; REQUIRING LOCAL GOVERNMENTS TO ESTABLISH AND MAINTAIN RESERVES; AMENDING SECTIONS 75-5-1106, 75-5-1113, AND 75-5-1121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2929*

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789 *(House Bill No. 559; Fagg)* AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO OPERATING MOTOR VEHICLES, BOATS, AND AIRCRAFT WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTIONS 23-2-523, 23-2-535, 45-5-205, 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406, 61-8-714, 61-8-722, 61-8-805, 61-8-806, 61-11-101, AND 67-1-211, MCA. *2934*

790 *(House Bill No. 580; Schye)* AN ACT REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO USE THE PREVIOUS YEAR'S STATE, COUNTY, AND SCHOOL DISTRICT TAXABLE VALUE, INCLUDING A MULTIPLIER FOR NONTAX REVENUE, FOR DETERMINING MILL VALUES PER AVERAGE NUMBER BELONGING FOR THE PURPOSE OF CALCULATING GUARANTEED TAX BASE AID; REQUIRING THE DEPARTMENT OF REVENUE TO REPORT COUNTY AND SCHOOL DISTRICT TAXABLE VALUE BY DECEMBER 1 OF EACH YEAR; PROVIDING FOR A TRANSITION PERIOD TO REQUIRE THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO USE 1990 TAXABLE VALUES FOR GUARANTEED TAX BASE PURPOSES FOR THE SCHOOL YEAR BEGINNING JULY 1, 1991; AMENDING SECTIONS 15-23-607, 15-23-703, 20-9-366, AND 20-9-369, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, APPLICABILITY DATES, AND A TERMINATION DATE. *2946*

791 *(House Bill No. 597; Galvin)* AN ACT REQUIRING RECREATIONAL VEHICLES AND VANS TO BE EQUIPPED WITH MUD FLAPS; AND AMENDING SECTION 61-9-407, MCA. *2950*

792 *(House Bill No. 677; Benedict)* AN ACT AUTHORIZING A COUNTY TO LEVY UP TO 1 MILL FOR THE SUPPORT OF COUNTY LITERACY PROGRAMS THAT GIVE FIRST PRIORITY TO PROVIDING DIRECT INSTRUCTION TO ADULTS, WHICH LEVY IS SUBJECT TO LIMITATIONS ON PROPERTY TAXES SET FORTH IN TITLE 15, CHAPTER 10, PART 4, MCA; PROVIDING FOR THE ADMINISTRATION OF A COUNTY ADULT LITERACY FUND BY A COUNTY ADULT LITERACY BOARD; AND ESTABLISHING CONDITIONS FOR THE USE OF COUNTY LITERACY FUNDS. *2952*

793 *(House Bill No. 684; Driscoll)* AN ACT PROVIDING AN APPROPRIATION OF $500,000 FOR A CLEAN FUELS INFORMATION CENTER; PROVIDING AN APPROPRIATION TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO MAKE A LOAN TO THE MHD-CORETTE PROJECT; PROVIDING FOR MATCHING REQUIREMENTS; DESIGNATING THE PURPOSE FOR WHICH THE LOAN MUST BE USED; PROVIDING FOR LOAN REPAYMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2953*

794 *(House Bill No. 747; Lee)* AN ACT TO PROVIDE ALTERNATIVES TO SENTENCING OFFENDERS TO THE STATE PRISON OR A WOMEN'S CORRECTIONAL FACILITY; TO CLARIFY THE CORRECTIONAL POLICY OF THE STATE REGARDING THE SENTENCING OF OFFENDERS; TO ALLOW THE COURTS TO SENTENCE OFFENDERS TO A COMMUNITY CORRECTIONS FACILITY OR PROGRAM; TO REQUIRE COURTS TO CONSIDER ALTERNATIVES TO SENTENCING NONVIOLENT FELONY OFFENDERS TO THE STATE PRISON OR A WOMEN'S CORRECTIONAL FACILITY, INCLUDING SENTENCING THE OFFENDER TO A COMMUNITY CORRECTIONS FACILITY OR PROGRAM; TO PROVIDE CRITERIA FOR SENTENCING NONVIOLENT FELONY OFFENDERS; TO AUTHORIZE THE DEPARTMENT OF INSTITUTIONS TO PROVIDE COMMUNITY CORRECTIONS FACILITIES AND PROGRAMS; AMENDING SECTIONS 46-18-101 AND 46-18-201, MCA; AND PROVIDING AN EFFECTIVE DATE. *2954*

795 *(House Bill No. 752; Toole)* AN ACT TO ESTABLISH A PROCEDURE FOR SUMMARY DISSOLUTION OF MARRIAGE; AND PROVIDING A DELAYED EFFECTIVE DATE. *2959*

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796 *(House Bill No. 959; Harrington)* AN ACT TO GENERALLY REVISE THE INDIVIDUAL INCOME TAX LAWS OF THE STATE; PROVIDING THAT TO BE ELIGIBLE TO APPLY FOR AN EXTENSION OF TIME FOR FILING A RETURN, A TAXPAYER MUST HAVE PAID BY ESTIMATED TAX PAYMENTS, WITHHOLDING TAX, OR A COMBINATION OF ESTIMATED TAX PAYMENTS AND WITHHOLDING TAX 90 PERCENT OF THE CURRENT YEAR'S TAX LIABILITY OR 100 PERCENT OF THE PREVIOUS YEAR'S TAX LIABILITY; PROVIDING AN APPROPRIATION; AMENDING SECTION 15-30-144, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE. *2962*

797 *(House Bill No. 995; Harper)* AN ACT AUTHORIZING THE BOARD OF INVESTMENTS TO ISSUE BONDS PAYABLE BY THE EMPLOYER'S PAYROLL TAX TO PAY OFF THE UNFUNDED LIABILITY IN THE STATE'S WORKERS' COMPENSATION INSURANCE PROGRAM; CREATING A STATE DEBT; ALLOWING MUTUALLY AGREEABLE LUMP-SUM SETTLEMENTS; AMENDING SECTIONS 39-71-2321, 39-71-2351, 39-71-2352, 39-71-2503, AND 39-71-2504, MCA; REPEALING SECTION 39-71-2353, MCA; AND PROVIDING AN EFFECTIVE DATE. *2963*

798 *(Senate Bill No. 16; Gage)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE REGULATION OF INSURERS AND MOTOR CLUB SERVICE COMPANIES; DIRECTING THE CODE COMMISSIONER TO CHANGE ANY REFERENCE TO THE TERM "SOLICITOR" TO "INSURANCE PRODUCER" WHEREVER IT APPEARS IN THE MONTANA CODE ANNOTATED; AMENDING SECTIONS 33-1-704, 33-1-711, 33-2-705, 33-2-708, 33-2-709, 33-3-401, 33-3-431, 33-17-102, 33-17-208, 33-17-603, 33-20-303, 33-20-305, 33-22-229, 33-22-502, 33-22-921, 33-22-923, 33-22-924, 33-22-1501, 33-22-1504, 33-22-1511, 33-22-1512, 33-22-1513, 33-22-1514, 33-22-1515, 33-22-1516, 33-22-1521, 33-23-302, 61-12-303, 61-12-304, AND 61-12-305, MCA; AND REPEALING SECTION 33-22-1522, MCA. *2969*

799 *(Senate Bill No. 37; Halligan)* AN ACT REQUIRING COUNTIES TO PROVIDE YOUTH DETENTION SERVICES; AUTHORIZING ESTABLISHMENT OF REGIONAL DETENTION FACILITIES; DEFINING COUNTY RESPONSIBILITIES FOR THE COST OF PLACING A YOUTH IN A COUNTY OR REGIONAL DETENTION FACILITY; PROVIDING STATE GRANTS TO FUND COUNTY YOUTH DETENTION SERVICES, INCLUDING YOUTH DETENTION FACILITIES, HOLDOVERS, SHORT-TERM DETENTION CENTERS, AND PROGRAMS FOR THE TRANSPORTATION OF YOUTH TO REGIONAL DETENTION FACILITIES; REQUIRING STATE APPROVAL OF COUNTY PLANS FOR PROVIDING YOUTH DETENTION SERVICES AS A CONDITION OF PROVIDING STATE GRANTS TO COUNTIES; LIMITING STATE GRANTS FOR COUNTY YOUTH DETENTION SERVICES; PROVIDING THE BOARD OF CRIME CONTROL AUTHORITY TO ADOPT RULES; CLARIFYING USE OF THE TAX ON DANGEROUS DRUGS TO FUND YOUTH DETENTION SERVICES; STATUTORILY APPROPRIATING A PORTION OF LOTTERY PROCEEDS TO FUND STATE GRANTS TO COUNTIES FOR YOUTH DETENTION SERVICES; AMENDING SECTIONS 15-25-122, 23-5-1007, 23-5-1027, 41-3-1103, 41-5-103, 41-5-105, 41-5-306, 41-5-308, 41-5-802, AND 41-5-809, MCA; AMENDING SECTIONS 14 AND 17, CHAPTER 434, LAWS OF 1989; REPEALING SECTIONS 41-5-315, 41-5-316, AND 41-5-808, MCA; AND PROVIDING EFFECTIVE DATES. *2994*

800 *(Senate Bill No. 51; Van Valkenburg)* AN ACT TO GENERALLY REVISE THE LAWS RELATING TO CRIMINAL PROCEDURE; AMENDING SECTIONS 46-3-101, 46-3-102, 46-3-104, 46-3-105, 46-3-106, 46-4-101, 46-4-102, 46-4-103, 46-4-104, 46-4-201, 46-4-202, 46-4-203, 46-4-204, 46-4-205, 46-4-206, 46-4-301, 46-4-302, 46-4-303, 46-4-304, 46-4-305, 46-6-404, 46-6-302, 46-6-303, 46-6-304, 46-6-401, 46-6-202, 46-6-203, 46-6-106, 46-6-104, 46-6-105, 46-6-421, 46-6-403, 46-6-402, 46-6-411, 46-6-502, 46-5-401, 46-5-402, 46-5-502, 46-5-101, 46-5-103, 46-5-202, 46-5-203, 46-5-205, 46-5-206, 46-5-208, 46-5-209, 46-5-301, 46-5-207,

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801 *(Senate Bill No. 199; B. Brown)* AN ACT AMENDING THE HOUSING DISCRIMINATION LAWS TO MAKE THEM SUBSTANTIALLY EQUIVALENT TO FEDERAL DISCRIMINATION LAW; PROVIDING PROCEDURES AND REMEDIES FOR ENFORCEMENT OF HOUSING DISCRIMINATION LAWS; PROHIBITING INTIMIDATION OR INTERFERENCE IN THE RIGHT TO BE FREE FROM HOUSING DISCRIMINATION; PROVIDING PENALTIES; AMENDING SECTIONS 49-2-305, 49-2-501, 49-2-503, 49-2-506, 49-2-509, 49-3-106, 49-3-306, AND 49-4-212, MCA; AND REPEALING SECTIONS 49-2-401 AND 49-3-105, MCA. *3117*

802 *(Senate Bill No. 204; Gage)* AN ACT PROVIDING ADDITIONAL ALTERNATIVE SENTENCING AUTHORITY FOR FELONY OFFENSES RELATED TO DANGEROUS DRUGS; PROVIDING GOVERNMENTAL IMMUNITY UNDER CERTAIN CIRCUMSTANCES; PROVIDING AN EXEMPTION FROM MANDATORY MINIMUM SENTENCES; AND AMENDING SECTIONS 45-9-202 AND 46-18-201, MCA. *3129*

803 *(Senate Bill No. 246; Nathe)* AN ACT EXTENDING THE TERMINATION DATE FOR LIMITATIONS ON GOVERNMENTAL LIABILITY FOR DAMAGES IN TORT ACTIONS; AMENDING SECTION 1, CHAPTER 228, LAWS OF 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *3133*

804 *(Senate Bill No. 249; Svrcek)* AN ACT AMENDING THE MONTANA CRIMINAL JUSTICE INFORMATION ACT BY EXPANDING THE DEFINITION OF CRIMINAL JUSTICE AGENCY TO INCLUDE FEDERAL LAW ENFORCEMENT AGENCIES; CLARIFYING THE DEFINITION OF PUBLIC CRIMINAL JUSTICE INFORMATION; CLARIFYING THE PROVISION CONCERNING DISSEMINATION OF CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; LIMITING THE CIRCUMSTANCES UNDER WHICH THE STATE REPOSITORY SHALL RETURN ALL COPIES OF AN INDIVIDUAL'S

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805 *(Senate Bill No. 266; Grosfield)* AN ACT REVISING THE MONTANA WATER USE LAWS; DEFINING THE TERM "GROUND WATER"; CLARIFYING OBJECTIONS; MAKING PERMISSIVE AND AUTHORIZING FEES FOR THE SUBMISSION OF DEPARTMENT RECORDS OF WATER RIGHTS TO A COUNTY CLERK AND RECORDER; REQUIRING THE VERIFICATION OF COMPLETIONS OF PERMITS AND CHANGE APPROVALS; AMENDING SECTIONS 85-2-102, 85-2-113, 85-2-236, 85-2-306, 85-2-308, 85-2-312, 85-2-315, 85-2-317, 85-2-402, 85-2-424, AND 85-2-501, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. *3139*

806 *(Senate Bill No. 326; Waterman)* AN ACT TO EXPAND MEMBERSHIP OF THE BOARDS OF REGIONAL MENTAL HEALTH CORPORATIONS TO INCLUDE CERTAIN CONSUMER MEMBERS; AMENDING SECTION 53-21-204, MCA; AND PROVIDING AN EFFECTIVE DATE. *3155*

807 *(Senate Bill No. 333; Gage)* AN ACT REQUIRING THAT A MONTANA SHAREHOLDER OF A CORPORATION THAT IS NOT INCORPORATED IN MONTANA AND HAS NOT ELECTED TO BE TAXED AS A MONTANA SMALL BUSINESS CORPORATION BE SUBJECT TO THE SAME INDIVIDUAL INCOME TAX TREATMENT AS A MONTANA SHAREHOLDER OF A CORPORATION THAT IS INCORPORATED IN MONTANA AND HAS NOT ELECTED TO BE TAXED AS A MONTANA SMALL BUSINESS CORPORATION; REQUIRING THAT A CORPORATION THAT ELECTS TO USE THE SUBCHAPTER S. CORPORATION FILING STATUS FOR FEDERAL PURPOSES USE THE MONTANA SMALL BUSINESS CORPORATION FILING STATUS FOR MONTANA PURPOSES; PROVIDING A LIMITED EXCEPTION ALLOWING CORPORATIONS THAT CURRENTLY USE SUBCHAPTER S. CORPORATION STATUS FOR FILING FEDERAL INCOME TAX AND REGULAR CORPORATION STATUS FOR FILING MONTANA INCOME TAX TO CONTINUE THAT METHOD OF FILING; AMENDING SECTIONS 15-30-111, 15-30-117, 15-30-126, 15-30-136, 15-30-161, 15-31-201, 15-31-202, 15-31-204, AND 90-8-202, MCA; REPEALING SECTION 15-31-208, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE. *3157*

808 *(Senate Bill No. 370; Waterman)* AN ACT TO ESTABLISH A MONTANA DRUG ABUSE RESISTANCE EDUCATION (D.A.R.E.) PROGRAM; TO ESTABLISH A MONTANA DRUG ABUSE RESISTANCE EDUCATION TRUST FUND ACCOUNT; TO PROVIDE THAT THE MONTANA BOARD OF CRIME CONTROL ADMINISTER THE FUND; TO PROVIDE FOR CERTAIN RESTRICTIONS ON THE USE OF THE FUND; TO PROVIDE FOR A VOLUNTARY INCOME TAX CHECKOFF TO FUND THE DRUG ABUSE RESISTANCE EDUCATION PROGRAM; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE. *3167*

809 *(Senate Bill No. 379; Van Valkenburg)* AN ACT REQUIRING THE BOARD OF CRIME CONTROL TO ESTABLISH MINIMUM STANDARDS OF TRAINING FOR PROBATION AND PAROLE OFFICERS AND REQUIRING THE OFFICERS TO RECEIVE THE TRAINING; AND AMENDING SECTIONS 44-4-301 AND 46-23-1003, MCA. *3173*

810 *(Senate Bill No. 441; Mazurek)* AN ACT REVISING THE LAW GOVERNING THE JUDICIAL NOMINATION COMMISSION; EXTENDING ALL TERMS OF MEMBERS TO 4 YEARS; LIMITING MEMBERS TO TWO TERMS; IMPLEMENTING STAGGERED TERMS FOR ALL MEMBERS; PROVIDING FOR PUBLIC NOTICE OF VACANCIES; PROVIDING FOR PUBLIC COMMENT ON APPLICATIONS; AMENDING SECTIONS 3-1-1001, 3-1-1002, 3-1-1007, AND 3-1-1010, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. *3174*

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811 *(Senate Bill No. 445; Doherty)* AN ACT PROVIDING MONTANA TAXPAYERS WITH A SIMPLE, INEXPENSIVE, AND EFFECTIVE TAX REVIEW PROCESS FOR TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE EXCEPT PROPERTY, INHERITANCE, AND ESTATE TAXES BUT INCLUDING REVISED ASSESSMENTS OF CENTRALLY ASSESSED PROPERTY TAXES; PROVIDING AUTHORITY TO ENTER INTO CLOSING AGREEMENTS; AMENDING SECTIONS 15-1-403, 15-1-406, 15-1-705, 15-8-601, 15-23-104, 15-25-114, 15-30-148, 15-30-149, 15-31-503, 15-31-532, 15-31-701, 15-35-112, 15-36-105, 15-36-113, 15-37-110, 15-37-114, 15-37-210, 15-38-110, 15-51-109, 15-53-105, 15-55-106, 15-58-110, 15-59-112, 15-59-212, 15-65-115, 69-1-225, AND 69-1-226, MCA; REPEALING SECTION 15-55-107, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE. *3177*

812 *(Senate Bill No. 472; Mazurek)* AN ACT TO RATIFY THE COMPACT ENTERED INTO BY THE STATE OF MONTANA AND THE NORTHERN CHEYENNE TRIBE OF THE NORTHERN CHEYENNE RESERVATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *3195*

813 *(Senate Bill No. 473; Svrcek)* AN ACT REVISING THE WORKERS' COMPENSATION ACT TO INCLUDE IN THE DEFINITION OF "EMPLOYER" AN ORGANIZATION PLACING A PERSON WHO PERFORMS COMMUNITY SERVICE AND TO INCLUDE IN THE DEFINITION OF "EMPLOYEE" A PERSON WHO PERFORMS COMMUNITY SERVICE; PROVIDING FOR WORKERS' COMPENSATION BENEFITS TO COMMUNITY SERVICE WORKERS; PROVIDING THE BASIS FOR PAYMENT OF PREMIUMS BY THE EMPLOYER; AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE. *3218*

814 *(House Bill No. 233; Bardanouve)* AN ACT PROVIDING A FIRST RIGHT OF PURCHASE OF OR THE RIGHT TO MATCH A COMPETING LEASE OFFER FOR LEASED LAND TO LEASEHOLDERS OF THE LAND WITHIN 300 FEET OF A RAILROAD RIGHT-OF-WAY; REQUIRING COMPENSATION TO THE LESSEE IF THE LEASE IS TERMINATED; AMENDING SECTION 69-14-553, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *3221*

815 *(House Bill No. 2; Bardanouve)* THE GENERAL APPROPRIATIONS ACT OF 1991 FOR THE APPROPRIATION OF MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1993. .... *3223*

816 *(House Bill No. 77; Quilici)* AN ACT INCREASING THE RETIREMENT BENEFITS PAYABLE IN THE HIGHWAY PATROL RETIREMENT SYSTEM; APPROPRIATING GENERAL FUND MONEY AND INCREASING THE ALLOCATION OF DEPARTMENT OF HIGHWAY FUNDS TO FUND THE BENEFIT INCREASE; INCREASING MEMBER CONTRIBUTIONS; PROVIDING CONTINGENT STATE RETIREMENT CONTRIBUTION CREDITS; AMENDING SECTIONS 19-6-401, 19-6-402, 19-6-404, AND 19-6-502, MCA; AND PROVIDING AN EFFECTIVE DATE. *3281*

817 *(House Bill No. 518; Messmore)* AN ACT GOVERNING THE BUDGET OF PROPERTY TAX REVENUES THAT EXCEED A LOCAL TAXING AUTHORITY'S PROPERTY TAX REVENUES OF THE PREVIOUS FISCAL YEAR; REQUIRING THE ADOPTION OF A RESOLUTION TO BUDGET THE ADDITIONAL REVENUE FOLLOWING AN ADVERTISED PUBLIC HEARING; AMENDING SECTION 15-10-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *3282*

818 *(House Bill No. 691; Toole)* AN ACT REMOVING GOVERNMENTAL ENTITY IMMUNITY FOR ACTIONS RESULTING IN SURFACE WATER OR GROUND WATER DAMAGE; AMENDING SECTION 2-9-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION. *3284*

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819 *(House Bill No. 963; Bardanouve)* AN ACT AUTHORIZING THE DEPARTMENT OF INSTITUTIONS TO ENTER INTO A LOAN AGREEMENT WITH THE MONTANA HEALTH FACILITY AUTHORITY FOR THE PURPOSE OF FINANCING THE COSTS OF ACQUIRING, CONSTRUCTING, AND EQUIPPING FACILITIES FOR THE DEVELOPMENTALLY DISABLED AT THE MONTANA DEVELOPMENTAL CENTER IN BOULDER, INCLUDING THE ESTABLISHMENT OF RESERVES AND THE PAYMENT COSTS OF THE FINANCING; AUTHORIZING THE CREATION OF A SPECIAL LIMITED OBLIGATION OF THE DEPARTMENT; APPROPRIATING THE LOAN PROCEEDS; PROVIDING A STATUTORY APPROPRIATION; AUTHORIZING THE PAYMENT OF THE SPECIAL LIMITED OBLIGATION FROM FACILITY REVENUES; AMENDING SECTIONS 17-7-502 AND 53-1-413, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *3285*

820 *(House Bill No. 990; S. Rice)* AN ACT APPROPRIATING $700,000 FROM THE GENERAL FUND TO THE DEPARTMENT OF COMMERCE, TO BE USED AS MATCHING FUNDS FOR THE DEVELOPMENT AND CONSTRUCTION OF A LEWIS AND CLARK NATIONAL HISTORIC TRAIL INTERPRETIVE CENTER; AND PROVIDING AN EFFECTIVE DATE. *3288*

821 *(Senate Bill No. 154; Nathe)* AN ACT CLARIFYING THAT STATUTORY LEGISLATIVE IMMUNITY EXTENDS ONLY TO LEGISLATIVE BODIES OF GOVERNMENTAL ENTITIES AND ONLY TO LEGISLATIVE ACTIONS TAKEN BY THOSE BODIES; CLARIFYING THAT GOVERNMENTAL ENTITIES ARE NOT IMMUNE UNDER THE LEGISLATIVE IMMUNITY STATUTE FOR NONLEGISLATIVE ACTIONS; CLARIFYING THAT THE ACQUISITION OF INSURANCE DOES NOT WAIVE IMMUNITY; AMENDING SECTION 2-9-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *3289*

822 *(Senate Bill No. 222; Van Valkenburg)* AN ACT CHANGING THE ELIGIBILITY REQUIREMENTS FOR RETIREMENT UNDER THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; PROVIDING THAT MEMBERS WHO TERMINATE COVERED EMPLOYMENT AFTER 10 YEARS AND WHO REMAIN MEMBERS MAY BECOME ELIGIBLE TO DRAW A RETIREMENT BENEFIT UPON REACHING THE AGE OF 50; AMENDING SECTIONS 19-9-104, 19-9-801, 19-9-802, 19-9-804, 19-9-902, 19-9-903, 19-9-911, AND 19-9-1011, MCA; AND PROVIDING AN EFFECTIVE DATE. *3290*

823 *(Senate Bill No. 226; Harp)* AN ACT TO RESTRUCTURE THE INCOME TAX ON PENSION BENEFITS BY EQUALIZING THE TAXATION OF ALL PENSION BENEFITS; TO PROVIDE AN EXEMPTION OF $3,600 FROM TAXATION OF BENEFITS FROM FEDERAL, STATE, AND PRIVATE RETIREMENT, ANNUITY, PENSION, AND ENDOWMENT PLANS OR SYSTEMS; TO PROVIDE THAT THE AMOUNT OF THE EXEMPTION BE REDUCED BY $2 FOR EVERY $1 OF FEDERAL ADJUSTED GROSS INCOME RECEIVED BY THE TAXPAYER IN EXCESS OF $30,000; TO PROVIDE FOR AN ADJUSTMENT PAYMENT TO RETIREES OF STATE, LOCAL, AND TEACHER RETIREMENT SYSTEMS WHO ARE MONTANA RESIDENTS; TO DIRECT A STUDY OF THE TAXATION OF RETIREMENT BENEFITS; TO PROVIDE A STATUTORY APPROPRIATION FOR ADJUSTMENT PAYMENTS; AMENDING SECTIONS 15-30-101, 15-30-111, 15-30-136, 17-7-502, 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1005, 19-10-504, 19-11-612, 19-12-407, 19-13-1003, AND 19-21-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *3296*

824 *(House Bill No. 982; O'Keefe)* AN ACT INCREASING THE SCHOOL MAXIMUM BUDGET SCHEDULES BY 2 PERCENT EACH FISCAL YEAR; APPROPRIATING FUNDING FOR THE SCHEDULE INCREASES; AMENDING SECTIONS 20-9-316, 20-9-317, 20-9-318, AND 20-9-319, MCA; AND PROVIDING AN EFFECTIVE DATE. *3310*

SENATE JOINT RESOLUTIONS

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1 (*Mazurek*) A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING THE 100TH ANNIVERSARY OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS. *3317*

2 (*Halligan*) A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE BOARD OF CRIME CONTROL TO ALLOCATE FORMULA GRANT FUNDS RECEIVED UNDER THE FEDERAL JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT FOR PROGRAMS TO ACHIEVE COMPLIANCE WITH SECTION 223(A)(14) OF THE ACT, WHICH PROHIBITS THE DETENTION OF JUVENILES IN ADULT JAILS. *3318*

4 (*Van Valkenburg*) A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT JOINT RULES TO GOVERN THEIR PROCEEDINGS. *3319*

5 (*B. Brown*) A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING MONTANA'S MEN AND WOMEN IN THE ARMED FORCES SERVING IN OPERATION DESERT SHIELD. *3336*

7 (*Harding*) A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS AND THE UNITED STATES DEPARTMENT OF AGRICULTURE, ANIMAL AND PLANT HEALTH INSPECTION SERVICE (USDA/APHIS), TO SUPPORT, THROUGH APPROPRIATE FUNDING, MONTANA'S AND OTHER WESTERN STATES' RESEARCH EFFORTS TO PROVIDE REQUIRED DATA TO THE ENVIRONMENTAL PROTECTION AGENCY (EPA) TO MAINTAIN CERTAIN RODENTICIDE REGISTRATIONS; URGING EPA SUPPORT FOR THE MONTANA DEPARTMENT OF AGRICULTURE MANAGEMENT PLAN FOR THE USE OF STRYCHNINE WITHIN ACCEPTABLE FEDERAL STANDARDS; AND URGING COOPERATION BETWEEN THE EPA, THE CHEMICAL PRODUCERS, AND THE STATES TO REGISTER RODENTICIDES. *3337*

8 (*B. Brown*) A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS OF THE UNITED STATES TO BROADEN THE BASE OF BANK DEPOSITS ASSESSED FOR FEDERAL DEPOSIT INSURANCE PREMIUMS. *3338*

9 (*Pinsoneault*) A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO ENACT LEGISLATION TO PROVIDE A NATIONAL HEALTH CARE PROGRAM FOR ALL CITIZENS OF THE UNITED STATES. *3339*

10 (*Mazurek*) A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO ADOPT LEGISLATION AUTHORIZING THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION TO ENTER INTO WATER AGREEMENTS FOR THE DELIVERY, USE, OR TRANSFER OF WATER WITHIN OR OUTSIDE THE RESERVATION. *3341*

12 (*Anderson*) A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE MONTANA DEPARTMENT OF AGRICULTURE TO STUDY AND DEVELOP A PLAN AND RECOMMENDATIONS ON A WEED SEED-FREE AGRONOMIC CROPS AND FARM PRODUCTS PROGRAM; AND REQUESTING A REPORT OF FINDINGS AND RECOMMENDATIONS OF THE STUDY TO THE 53RD LEGISLATURE. *3343*

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13 *(Jergeson)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO AMEND THE NEZ PERCE NATIONAL HISTORICAL PARKS LEGISLATION TO EXTEND DESIGNATION OF SITES TO INCLUDE THE BEAR PAW BATTLEFIELD, THE BIG HOLE BATTLEFIELD, FORT FIZZLE, AND CANYON CREEK SITES IN MONTANA. *3345*

14 *(Weeding)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE CONCENTRATION IN THE LIVESTOCK FEEDING AND PACKING INDUSTRIES; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 53RD LEGISLATURE. *3346*

15 *(Vaughn)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOMMENDING THAT SOCIAL SECURITY FUNDS BE USED ONLY FOR SOCIAL SECURITY BENEFITS. *3347*

16 *(Doherty)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE USE OF ALL AVAILABLE METHODS TO ENSURE THE MAINTENANCE OF ADEQUATE WATER LEVELS IN THE FORT PECK RESERVOIR. *3348*

17 *(Blaylock)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DESIGNATING THE SQUARE DANCE AS THE MONTANA FOLK DANCE. *3349*

18 *(Lynch)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO ESTABLISH THE NATIONAL MINE WASTE TESTING AND EVALUATION CENTER AS PART OF THE WATER, AIR, SOILS TESTING AND EVALUATION CENTER (WASTEC) AND TO AUTHORIZE ADEQUATE FUNDING TO OPERATE THE CENTER IN BUTTE. *3349*

19 *(Williams)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA PETITIONING THE UNITED STATES CONGRESS TO CONSIDER A CONSTITUTIONAL AMENDMENT, FOR RATIFICATION BY THE STATES, THAT WOULD PROHIBIT THE DESECRATION OF THE AMERICAN FLAG. *3351*

20 *(Yellowtail)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA CONGRESSIONAL DELEGATION TO SUPPORT LEGISLATION ESTABLISHING A MEMORIAL AT CUSTER BATTLEFIELD NATIONAL MONUMENT TO HONOR THE NATIVE AMERICAN PEOPLES WHO FOUGHT AT THE BATTLE OF THE LITTLE BIG HORN AND REDESIGNATING THE AREA AS THE LITTLE BIG HORN NATIONAL MONUMENT. ... *3352*

21 *(Thayer)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO FULLY FUND COMPLETION OF THE LEWIS AND CLARK NATIONAL TRAIL INTERPRETIVE CENTER AND URGING CONGRESS TO CONSIDER A HISTORICALLY APPROPRIATE PERMANENT NAME FOR THE NATIONAL HISTORIC TRAIL INTERPRETIVE CENTER. *3353*

23 *(Bruski)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA CONGRESSIONAL DELEGATION TO CALL ON THE U.S. CONGRESS TO RECONSIDER CERTAIN SECTIONS OF THE FEDERAL FOOD, AGRICULTURE, CONSERVATION AND TRADE ACT OF 1990 FOR PURPOSES OF IMPROVING NET FARM INCOME. *3354*

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24 *(Bengtson)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENDORSING THE STRATEGIES DETAILED IN THE MONTANA PICK-SLOAN INITIATIVE DEVELOPED BY THE MONTANA PICK-SLOAN ADVISORY COMMITTEE AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION. *3355*

25 *(Stimatz)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE WATER POLICY COMMITTEE TO CONDUCT AN INTERIM STUDY OF THE NEED FOR AND FEASIBILITY OF STATE REGULATION OF MONTANA'S GEOTHERMAL RESOURCES. *3356*

26 *(Jacobson)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN INTERIM COMMITTEE BE ESTABLISHED TO STUDY MANDATED HEALTH INSURANCE BENEFITS; AND REQUIRING A REPORT TO THE 53RD LEGISLATURE. *3357*

27 *(Gage)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF REMAINING SCHOOL FUNDING EQUITY ISSUES; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 53RD LEGISLATURE. *3359*

30 *(Harding)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE RECOGNITION OF FLAG DAY AND THE PAUSE FOR THE PLEDGE OF ALLEGIANCE. *3360*

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3 *(O'Keefe)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC) TO PROMOTE BREAST-FEEDING IN MONTANA. *3360*

4 *(O'Keefe)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE MEN AND WOMEN SERVING IN OPERATION DESERT SHIELD AND URGING A PEACEFUL RESOLUTION OF THE PERSIAN GULF CRISIS. *3361*

5 *(Menahan)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONCERNING THE CLASSIFICATION, PAY, AND OTHER CONDITIONS OF EMPLOYMENT OF LEGISLATIVE EMPLOYEES; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE; AND PROVIDING FOR RETROACTIVE APPLICABILITY. *3362*

7 *(Measure)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING LOCAL GOVERNMENTS AND SCHOOL DISTRICTS TO DEVELOP SOURCE REDUCTION AND RECYCLING PROGRAMS AND GUIDELINES FOR THE PROCUREMENT OF MATERIALS AND SUPPLIES MADE FROM RECYCLED MATERIAL. *3366*

8 *(Kadas)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE PACIFIC

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9	*(Russell)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO PASS LEGISLATION ASSURING THAT A TRIBAL GOVERNMENT WITHIN THE UNITED STATES HAS THE AUTHORITY TO MAINTAIN CRIMINAL JURISDICTION OVER NONMEMBER INDIANS WHO COMMIT CRIMINAL ACTS WITHIN THE BOUNDARIES OF THE RESPECTIVE TRIBE'S RESERVATION AND UPON THE TRIBAL GOVERNMENT'S LANDS.	3367
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14	*(Connelly)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE UNITED STATES CONGRESS CONDUCT HEARINGS IN MONTANA TO DETERMINE WHETHER STANDARD FOREST PRACTICES ARE AFFECTING OTHER MULTIPLE USES OF NATIONAL FOREST LANDS AND WHETHER NATIONAL FORESTS ARE BEING MANAGED ON A SUSTAINABLE BASIS.	3372
15	*(Wallin)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE GOVERNOR TO PROCLAIM THE SECOND WEEK OF OCTOBER IN EACH YEAR AS MONTANA'S OFFICIAL INVENTORS' AND INNOVATORS' WEEK; AND REQUESTING THE DEPARTMENT OF COMMERCE TO ARRANGE SUITABLE OBSERVANCES AND THE PUBLIC SCHOOLS TO TAKE APPROPRIATE NOTICE OF THE WEEK.	3373
16	*(Gervais)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING A CHANGE IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES' REGULATION RESTRICTING NATIVE AMERICAN VETERANS' USE OF CONTRACT HEALTH SERVICES.	3374
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18 (*Harrington*) A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE MACBRIDE PRINCIPLES OF FAIR EMPLOYMENT IN NORTHERN IRELAND AND URGING PRIVATE COMPANIES AND THE STATE TO CONSIDER ADHERENCE TO THE MACBRIDE PRINCIPLES BEFORE CONDUCTING BUSINESS WITH A COMPANY. *3376*

21 (*Whalen*) A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA FINDING THAT THE LONG-TERM MEDICAL CARE NEEDS OF ELDERLY OR DISABLED MONTANANS SHOULD BE MET IN THEIR HOMES AND COMMUNITIES WHENEVER APPROPRIATE; URGING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO MAKE LONG-TERM MEDICAL CARE AVAILABLE THROUGH MEDICAID HOME AND COMMUNITY SERVICES TO THE EXTENT POSSIBLE; AND ASKING THE UNITED STATES CONGRESS TO MAKE THE MEDICAID PROGRAM LESS RESTRICTIVE AND MORE COST-EFFECTIVE BY EXPANDING MEDICAID HOME AND COMMUNITY SERVICES AND BY APPLYING THE PRINCIPLES OF HOME AND COMMUNITY SERVICES AS A WHOLE. *3378*

22 (*D. Brown*) A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA STATE LIBRARY AND THE MONTANA LEGISLATIVE COUNCIL TO WORK TOGETHER TO PRODUCE GUIDELINES FOR THE USE OF ACID-FREE PAPER FOR PUBLICATION OF STATE DOCUMENTS. *3379*

23 (*Lee*) A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY BY THE LEGISLATIVE BRANCH COMPUTER SYSTEMS PLANNING COUNCIL TO PLAN FOR PRODUCTIVE USE OF COMPUTERS BY LEGISLATORS. *3380*

24 (*Ream*) A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S ANTICIPATED REVENUE FOR EACH YEAR OF THE 1992-93 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET AS MANDATED BY ARTICLE VII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING A JUNE 30, 1990, GENERAL FUND AND STATE EQUALIZATION ACCOUNT BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; REQUESTING THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING TO USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEARS 1991-92 AND 1992-93; AND ESTABLISHING AN ESTIMATE OF THE NONGENERAL FUND REVENUES FOR THE STATE EQUALIZATION ACCOUNT. *3382*

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CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE AND FOR EXPANDED CAPITOL POST-OFFICE SERVICE DURING THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** (1) The following amounts are appropriated from the general fund for fiscal years 1991, 1992, and 1993 for the operation of the 52nd legislature and costs of preparing for the 53rd legislature:

House of Representatives	$2,388,301
Senate	$1,467,689
Legislative Council	$ 641,207
Department of Administration	$ 2,300

(2) The appropriation to the department of administration is for additional personnel to provide capitol post-office service to the public during the regular session. The appropriation to the legislative council includes $3,500 to reimburse the department of administration for costs associated with making the state's financial adviser available for consultation with the legislature.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved January 17, 1991.

CHAPTER NO. 2

[SB 5]

AN ACT TO GENERALLY REVISE THE SECURITIES ACT OF MONTANA; REVISING EXEMPT TRANSACTIONS; CLARIFYING PHYSICAL DELIVERY OF COMMODITIES; EXPANDING THE DEFINITION OF SECURITY; MODIFYING THE REQUIREMENTS FOR FILING REGISTRATION STATEMENTS; AMENDING SECTIONS 30-10-103, 30-10-201, 30-10-206, 30-10-208, AND 30-10-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-103, MCA, is amended to read:

"**30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by ~~subsections~~ *subsection* (1), (2), (3), (8), (9), (10), or (11) of 30-10-104;

(b) effecting transactions exempted by 30-10-105 *except when registration as a salesman, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105*; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(4) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(5) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of such real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(6) "Commodity Exchange Act" means the federal statute of that name as amended on the effective date of this subsection.

(7) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(8) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. *The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.*

(9) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(11) (a) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through

publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents himself as providing the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(iv) a registered broker-dealer;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1); or

(vii) such other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) (a) "Investment adviser representative" means any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

(i) makes any recommendation or otherwise renders advice regarding securities to clients;

(ii) manages accounts or portfolios of clients;

(iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(iv) supervises employees who perform any of the foregoing.

(b) Investment adviser representative does not include an individual registered as a salesman pursuant to 30-10-201.

(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(16) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) such other items as the commissioner may by rule or order specify.

(17) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(18) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(19) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a security, *any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security,* or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

(20) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(21) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer"."

Section 2. Section 30-10-201, MCA, is amended to read:

"**30-10-201. Registration of broker-dealers, salesmen, investment advisers, and investment adviser representatives.** (1) It is unlawful for a person to transact business in this state as a broker-dealer or salesman, except as provided in 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter;

(c) his only clients in this state are:

(i) investment companies, as defined in the Investment Company Act of 1940, or insurance companies;

(ii) other investment advisers;

(iii) broker-dealers;

(iv) banks;

(v) trust companies;

(vi) savings and loan associations;

(vii) employee benefit plans with assets of not less than $1 million;

(viii) governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control; or

(ix) other institutional investors as are designated by rule or order of the commissioner; or

(d) he has no place of business in this state and during any 12 consecutive months does not direct business communications in this state in any manner to more than five present or prospective clients, other than those specified in subsection (3)(c), whether or not he or any of the persons to whom the communications are directed are then present in this state.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser representative may apply for registration by filing an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires. No registration application of a broker-dealer, salesman, investment adviser, or investment adviser representative may be withdrawn before the commissioner approves or denies such registration, without the express written consent of the commissioner.

(6) When the registration requirements are met, the commissioner shall make the registration effective. No effective registration of a broker-dealer, salesman, investment adviser, or investment adviser representative may be withdrawn or terminated without the express written consent of the commissioner.

(7) Except as provided in subsection (6), registration of a broker-dealer, salesman, investment adviser, or investment adviser representative:

(a) is effective until December 31 following such registration or such other time as the commissioner may by rule adopt; and

(b) may be renewed.

(8) The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(9) The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser registered under this act and specified in the application. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser shall promptly notify the commissioner.

(10) Registration of a broker-dealer, salesman, investment adviser, or investment adviser representative may be renewed by filing, prior to the expiration thereof, an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, investment adviser, or investment adviser representative filed by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer who is not a member of NASD, inc., by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(11) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(12) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, investment adviser, or investment adviser representative if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director, person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, investment adviser, or investment adviser representative;

(f) is the subject of an adjudication or determination, within the past 5 years, by a securities or commodities agency or administrator of another state or a court of competent jurisdiction, that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or commodities law of any other state;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected; or

(k) has failed to reasonably supervise his salesmen or employees~~, if he is a broker-dealer,~~ or his investment adviser representatives or employees~~, if he is an investment adviser,~~ to assure their compliance with this act.

(13) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within 30 days after the date on which the registration became effective.

(14) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(15) Upon the entry of the order under subsection (12) of this section, the commissioner shall promptly notify the applicant or registrant, as well

as the employer or prospective employer if the applicant or registrant is a salesman or investment adviser representative, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(16) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, salesman, investment adviser, or investment adviser representative or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(17) The commissioner may, after suspending or revoking registration of any broker-dealer, salesman, investment adviser, or investment adviser representative, impose a fine not to exceed $5,000 upon such broker-dealer, salesman, investment adviser, or investment adviser representative. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesman, investment adviser, or investment adviser representative fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of such broker-dealer, salesman, investment adviser, or investment adviser representative in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, salesman, investment adviser, or investment adviser representative to pay a fine also constitutes a forfeiture of his right to do business in this state under parts 1 through 3 of this chapter."

Section 3. Section 30-10-206, MCA, is amended to read:

"**30-10-206. General provisions regarding registration of securities.** (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. ~~Any document filed under parts 1 through 3 of this chapter or a predecessor law within 3 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.~~ The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that the following securities be deposited in escrow:

(A) any security issued within the past 3 years or to be issued to:

(I) a promoter for a consideration substantially different from the public offering price; or

(II) any person for a consideration other than cash; and

(B) any security issued or to be issued to a promoter while a corporation is still in a promotional or developmental stage; however, if shares were issued by a corporation while it was in a promotional or developmental stage and it no longer is in such stage, then this condition does not apply; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. Every registration shall remain effective for a period of 1 year unless it is revoked by the commissioner, terminated upon request of the registrant with the consent of the commissioner, or renewed under 30-10-209(1)(b); however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to said securities and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. *Subject to the provisions of 30-10-104 and 30-10-105, a salesman who offers or sells registered securities must be registered pursuant to 30-10-201.*

(4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:

(a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or

(b) are being offered and sold directly by or for the account of the issuer.

(5) No securities registration statement may be withdrawn, whether or not such statement has become effective, without the express written consent of the commissioner."

Section 4. Section 30-10-208, MCA, is amended to read:

"**30-10-208. Consent to service of process — manner of service.** (1) Every applicant for registration as a broker-dealer, ~~or~~ investment adviser, ~~or~~ salesman, *or investment adviser representative* under parts 1 through 3 of this chapter and every issuer which proposes to register and offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner, in such form as he prescribes, an irrevocable consent appointing the commissioner and his successors in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or its or his successor, executor, or administrator which arises under parts 1 through 3 of this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. ~~A person who has filed such a consent in connection with a previous registration need not file another.~~

(2) Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless:

(a) the plaintiff, who may be the commissioner, in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by certified or registered mail to the defendant or respondent at its or his last address on file with the commissioner; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows."

Section 5. Section 30-10-209, MCA, is amended to read:

"**30-10-209. Fees.** The following fees shall be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of $200 for the first $100,000 of initial issue or portion thereof in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum of $1,000.

(b) Each year thereafter, a registration of securities may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of an additional registration fee to be computed at 1/10 of 1% of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than $200 or more than $1,000. The registration statement for such securities may be amended to increase the amount of securities to be offered.

(c) If a registrant sells securities in excess of the aggregate amount registered for sale in this state, the registrant may file an amendment to the registration statement to include the excess sales. If the registrant fails to file an amendment before the expiration date of the registration order, he shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration of the excess securities is effective retroactively to the date of the existing registration.

(2) (a) For registration of a broker-dealer or investment adviser, the fee shall be $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesman or investment adviser representative, the fee shall be $50 for original registration with each employer, $50 for each annual renewal, and $50 for each transfer.

(3) For certified *or uncertified* copies of any documents filed with the commissioner, the fee shall be the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee shall be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee shall be $50.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 may be refunded.

(6) All fees, examination charges, miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted hereunder must be deposited in the general fund."

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved January 29, 1991.

CHAPTER NO. 3

[HB 15]

AN ACT REQUIRING EXECUTIVE BRANCH DEPARTMENT REVIEWERS OF ADMINISTRATIVE RULE PROPOSAL, ADOPTION, AND OTHER NOTICES TO SIGN EACH NOTICE; PROVIDING THAT SIGNING CONSTITUTES AN AFFIRMATION THAT THE REQUIRED REVIEW WAS PERFORMED TO THE BEST OF THE REVIEWER'S ABILITY; PROHIBITING THE SECRETARY OF STATE FROM ACCEPTING AN UNSIGNED NOTICE; REQUIRING EACH DEPARTMENT TO INFORM THE SECRETARY OF STATE AND

ADMINISTRATIVE CODE COMMITTEE OF THE NAME OF ITS REVIEWER; AND AMENDING SECTION 2-4-110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-110, MCA, is amended to read:

"**2-4-110. Departmental review of rule notices.** (1) The head of each department of the executive branch shall appoint an existing attorney, paralegal, or other qualified person from that department to review each departmental rule proposal notice, adoption notice, or other notice relating to administrative rulemaking. *Notice of the name of the person appointed under this subsection and of any successor must be given to the secretary of state and the administrative code committee within 10 days of the appointment.*

(2) The person appointed under subsection (1) shall review each notice by any division, bureau, or other unit of the department, including units attached to the department for administrative purposes only under 2-15-121, for compliance with this chapter before the notice is filed with the secretary of state. The reviewer shall pay particular attention to 2-4-302 and 2-4-305. The review must include but is not limited to consideration of:

(a) the adequacy of the rationale for the intended action and whether the intended action is reasonably necessary to effectuate the purpose of the code section or sections implemented;

(b) whether the proper statutory authority for the rule is cited;

(c) whether the citation of the code section or sections implemented is correct; and

(d) whether the intended action is contrary to the code section or sections implemented or to other law.

(3) The person appointed under subsection (1) shall sign each notice for which this section requires a review. The act of signing is an affirmation that the review required by this section has been performed to the best of the reviewer's ability. The secretary of state may not accept for filing a notice that does not have the signature required by this section."

Approved January 30, 1991.

CHAPTER NO. 4

[HB 19]

AN ACT TO EXCEPT FROM THE DEFINITION OF "RISK ASSETS" LOANS THAT ARE FULLY SECURED BY SHARES IN THE LENDING CREDIT UNION FOR PURPOSES OF CREDIT UNION RESERVES; AND AMENDING SECTION 32-3-704, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-3-704, MCA, is amended to read:

"**32-3-704. Risk assets defined.** For the purpose of establishing the reserves required, all assets except the following ~~shall be~~ *are* considered risk assets:

(1) cash on hand;

(2) deposits and shares in federal or state banks, savings and loan associations, and credit unions;

(3) assets ~~which~~ *that* are insured, fully guaranteed as to principal and interest, or due from the United States government, its agencies, the federal national mortgage association, or the government national mortgage association;

(4) loans to other credit unions;

(5) loans to students insured under the provision of Title IV, part B, of the Higher Education Act of 1965, or similar state insurance programs;

(6) loans insured under Title I of the National Housing Act by the federal housing administration;

(7) shares in central credit unions organized under this chapter or of any other state law or of the Federal Credit Union Act;

(8) common trust investments ~~which~~ *that* deal in investments authorized by this chapter;

(9) prepaid expenses;

(10) accrued interest on nonrisk investments;

(11) loans fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of the loan outstanding;

~~(11)~~*(12)* furniture and equipment; and

~~(12)~~*(13)* land and buildings."

Approved January 30, 1991.

CHAPTER NO. 5

[HB 78]

AN ACT CLARIFYING THAT AN EMERGENCY RULE MAY NOT BE ADOPTED WITH THE SAME OR SUBSTANTIALLY THE SAME WORDING AS AN EMERGENCY RULE THAT HAS JUST EXPIRED;

AMENDING SECTION 2-4-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-303, MCA, is amended to read:

"**2-4-303. Emergency or temporary rules.** (1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, *after which a new emergency rule with the same or substantially the same text may not be adopted,* but the adoption of an identical rule under 2-4-302 is not precluded. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to judicial review.

(2) A statute enacted or amended to be effective prior to October 1 of the year of enactment or amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year, upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the rule. The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule under 2-4-302 is not precluded during the period the temporary rule is effective."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved January 31, 1991.

CHAPTER NO. 6

[SB 9]

AN ACT TO LIMIT TO FIVE THE NUMBER OF BRANDS THAT MAY BE RECORDED OR RERECORDED BY ONE PERSON; TO REVISE THE DEFINITION OF LIVESTOCK; TO REQUIRE THE DEPARTMENT OF LIVESTOCK TO IMPLEMENT A SYSTEM FOR STAGGERED RECORDING AND RERECORDING OF MARKS AND BRANDS; AMENDING SECTIONS 81-3-102, 81-3-103, 81-3-104, 81-3-105, 81-3-106, 81-3-108, AND 81-3-201, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-3-201, MCA, is amended to read:

"81-3-201. **Definitions.** Unless the context requires otherwise, in this ~~part~~ *chapter*, the following definitions apply:

(1) "Deputy state stock inspector" means a person designated by the department as a deputy state stock inspector~~,~~ who does not receive a salary or compensation from the department.

(2) "Feedlot" means a confined livestock feeding operation where the owner or operator of the feedlot feeds livestock belonging to others for a fee.

(3) "Livestock" means any bovine animal, horse, mule, or ass, regardless of its age or sex, *and includes llama, bison, sheep, and elk.*

(4) "Person" means an individual, partnership, corporation, association, *firm,* or any entity not enumerated capable of owning or controlling livestock.

(5) "State stock inspector" means an employee of the department of livestock designated by the department as a state stock inspector."

Section 2. Section 81-3-102, MCA, is amended to read:

"81-3-102. **Recording of brands required —** ***limit.*** *(1)* It is unlawful for a person~~, firm, or corporation~~ to artificially brand, mark, or cause to be artificially branded or marked any domestic animal or livestock running at large on the public domain or open range or ~~which~~ *that* may run or stray at large or on the public domain or open range, unless the artificial brand or mark has been recorded or rerecorded with the department in the name of the person~~, firm, or corporation~~ within the period of 10 years immediately preceding the branding or marking.

(2) No more than five brands may be recorded or rerecorded by one person."

Section 3. Section 81-3-103, MCA, is amended to read:

"81-3-103. **Application for recording — record of brands.** (1) A person~~, firm, or corporation~~ desiring to have recorded an artificial mark or brand for use in distinguishing or identifying the ownership of any domestic animal or livestock shall make application for the mark or brand to the department. The application must be in writing and must contain the name, residence, and post-office address of the applicant and the species of the animals on which the mark or brand is to be used. An applicant may apply for a seasonal mark or brand that is designated for use only for a specific period of time and that is subject to renewal upon termination of that period.

(2) The department shall designate for the applicant's use some practical form of mark or brand distinguishable with reasonable certainty from all other marks and brands recorded or rerecorded, within the period of 10 years immediately preceding the time of filing the application, in the name of some person~~, firm, or corporation~~ other than the applicant. The department shall designate the position on the animals ~~on which~~ *where* the mark or brand ~~shall~~ *must* be placed and the species of animals on which the mark or brand may be used.

(3) The department shall keep a record in a book kept by it for that purpose of the particular mark or brand, the position on the ~~animal~~ *animals* where the mark or brand is to be used, the species of animals on which the mark or brand is to be used, and the date of recording. The record is a public record and is prima facie evidence of the facts recorded in it."

Section 4. Section 81-3-104, MCA, is amended to read:

"81-3-104. **Designation of years for rerecording brands.** ~~Each~~ *(1) Until a system is developed under subsection (2), each* 10th year after 1921 is the year for rerecording artificial marks and brands used to distinguish and identify the ownership of domestic animals and livestock. ~~The~~ *Subject to the provisions of 81-3-102(2), the* department shall, on the application of a person~~, firm, or corporation~~ or the transferee of the person~~, firm, or corporation~~ made in a year ~~which~~ *that* is a year for rerecording marks and brands, rerecord a mark or brand ~~which~~ *that* at the time of the application stands of record in the department in the name of the person~~, firm, or corporation~~. A mark or brand ~~which~~ *that* was not originally recorded or rerecorded in the name of the person~~, firm, or corporation~~ during the rerecording year last preceding the date when the application is filed or originally recorded in the name of the person~~, firm, or corporation~~ or his ~~or its~~ predecessor or predecessors in interest between the time of the application and the rerecording year last preceding the application is not of record in the department.

(2) The department shall develop a system for the staggered recording and rerecording of marks and brands."

Section 5. Section 81-3-105, MCA, is amended to read:

"81-3-105. **Right of owner of recorded brand.** A person~~, firm, or corporation~~ in whose name a mark or brand is recorded is entitled to the exclusive use of the mark or brand on the species of animal and in the position designated in the record. A copy of the record certified by the department is prima facie evidence of this right, and the certificate is also prima facie evidence that the person~~, firm, or corporation~~ entitled to use the mark or brand is the owner of all animals on which it appears in the position and on the species of animal stated in the certificate."

Section 6. Section 81-3-106, MCA, is amended to read:

"81-3-106. **Publication of notice of rerecording brands.** Between January 1 and June 30 in each rerecording year, the department shall publish, in at least one issue of at least one newspaper of general circulation in each county of this state~~,~~ in which a newspaper is published, a notice to the effect that the year is a year for rerecording marks and brands and that no mark or brand continues of record unless rerecorded. The department shall also mail to each person~~, firm, and corporation~~ in whose name a mark or brand stands of record~~,~~ a similar notice addressed to the person~~, firm, or corporation~~ at his ~~or its~~ post-office address as shown by the records in the department."

Section 7. Section 81-3-108, MCA, is amended to read:

"81-3-108. Penalty. ~~Any~~ *A* person~~, firm, or corporation~~ violating any provision of this part ~~shall be~~ ~~deemed~~ *is* guilty of a misdemeanor and shall be punished by a fine ~~of~~ not exceeding $1,000 or ~~imprisonment~~ *be imprisoned* in the county jail for *a term* not to exceed 1 year, or both ~~such fine and imprisonment~~."

Section 8. **Effective date.** [This act] is effective January 1, 1992.

Approved February 1, 1991.

CHAPTER NO. 7

[SB 35]

AN ACT TO PROVIDE THAT THE COUNTY ATTORNEY IS THE LEGAL ADVISER TO A HOSPITAL DISTRICT; AND AMENDING SECTIONS 7-4-2711 AND 7-34-2115, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2711, MCA, is amended to read:

"7-4-2711. County attorney to be legal adviser of county and other subdivisions. (1) The county attorney is the legal adviser of the board of county commissioners. He must attend their meetings when required and must attend and oppose all claims and accounts against the county which are unjust or illegal. He must defend all suits brought against his county.

(2) The county attorney must:

(a) give, when required and without fee, his opinion in writing to the county, district, and township officers on matters relating to the duties of their respective offices;

(b) act as counsel, without fee, for fire districts in unincorporated territories, towns, or villages within his county;

(c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee; ~~and~~

(d) when requested by a weed district pursuant to 7-22-2103, act as counsel, without fee; *and*

(e) when requested by a county hospital board pursuant to 7-34-2115, act as counsel, without fee, unless the legal action requested involves the county commissioners."

Section 2. Section 7-34-2115, MCA, is amended to read:

"7-34-2115. District to be governed by elected trustees — *legal assistance.* (1) ~~Said~~ *A* hospital district ~~shall~~ *must* be governed and managed by a board of three or five trustees, elected by the registered electors residing in the district. The number of trustees on the board and, if the number is set at five, the initial terms of two trustees ~~shall~~ *must* be fixed by the bylaws of the district.

(2) The trustees must be elected from among the registered electors qualified to vote at general elections within ~~said~~ *the* district.

(3) The trustees may call upon the county attorney for legal advice and services as they may require."

Approved February 1, 1991.

CHAPTER NO. 8

[HB 52]

AN ACT TO CLARIFY PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM RELATED TO ELECTION TO PURCHASE ADDITIONAL SERVICE, PAYMENT OF CLAIMS, AND ELIGIBILITY FOR DISABILITY ALLOWANCE; AMENDING SECTIONS 19-4-412, 19-4-501, AND 19-4-901, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-412, MCA, is amended to read:

"19-4-412. Election to purchase additional service. (1) *(a)* Except as provided in subsection (3), a member with 5 years or more of creditable service may make a written election with the retirement board to purchase, for the purpose of calculating his retirement allowance, 1 year of additional service for*:*

(i) each 5 years of ~~creditable~~ service~~, up to a~~ *on which contributions have been made as required under the provisions of 19-4-602; and*

(ii) each 5 years of membership service as defined in Title 19, chapter 3, for which contributions have been made as required under the provisions of 19-4-409.

(b) A maximum of 5 years of additional service *may be purchased under this section.* A part-time member may purchase additional service on a prorated basis.

(2) (a) To purchase additional service under this section, a member ~~must~~ *shall* contribute, in a lump-sum payment or in installments as agreed upon by the member and the retirement board, an amount equal to:

(i) the combined employer and employee rate on July 1, 1989, or the combined rate in effect at the time he is eligible to purchase the service, whichever date is later, multiplied by his earned compensation as provided in subsection (2)(b); and

(ii) interest at a rate of 8% compounded annually from July 1, 1989, or from the date at which he is eligible to purchase the service, whichever date is later.

(b) The earned compensation used in calculating the cost of purchasing additional service under this section is:

(i) for the first year of service purchased, the member's earned compensation for the 1988-89 school year or for his fifth year of service, whichever year is later;

(ii) for the second year of service purchased, the member's earned compensation for the 1988-89 school year or for his 10th year of service, whichever year is later;

(iii) for the third year of service purchased, the member's earned compensation for the 1988-89 school year or for his 15th year of service, whichever year is later;

(iv) for the fourth year of service purchased, the member's earned compensation for the 1988-89 school year or for his 20th year of service, whichever year is later; and

(v) for the fifth year of service purchased, the member's earned compensation for the 1988-89 school year or for his 25th year of service, whichever year is later.

(3) On or after July 1, 1989, a member eligible to purchase creditable service under *19-3-504, 19-3-510, 19-3-512, 19-3-513,* 19-4-402, 19-4-403, 19-4-408, 19-4-410, or 19-4-411 may not purchase additional service under this section unless he elects in writing to:

(a) waive his eligibility to purchase creditable service under ~~19-4-402, 19-4-403, 19-4-408, 19-4-410, or 19-4-411~~ *sections referred to in subsection (3)*; and

(b) apply the accumulated contributions made under ~~19-4-402, 19-4-403, 19-4-408, 19-4-410, or 19-4-411~~ *sections referred to in subsection (3)* to the cost of additional service purchased under this section.

(4) Additional service purchased under this section may not be used to qualify a member for service retirement."

Section 2. Section 19-4-501, MCA, is amended to read:

"**19-4-501. Financial administration of ~~moneys~~ *money*.** The members of the retirement board are the trustees of all ~~moneys~~ *money* collected for the retirement system, and as ~~such~~ trustees, they shall provide for the financial administration of the ~~moneys~~ *money* in the following manner:

(1) The ~~moneys shall~~ *money must* be invested and reinvested by the state board of investments.

(2) The retirement board annually shall establish the rate of regular interest.

(3) The retirement board annually shall divide among the several reserves of the retirement system an amount equal to the average balance of the reserves during the preceding fiscal year multiplied by the rate of regular interest. In accordance with the provisions of 19-4-605(5), the amount to be credited to each reserve ~~shall~~ *must* be allocated from the interest and other earnings on the ~~moneys~~ *money* of the retirement system actually realized during the preceding fiscal year, less the amount allocated to the expense ~~account~~ *fund* under the provisions of 19-4-606.

(4) The state treasurer is the custodian of the collected retirement system ~~moneys~~ *money* and of the securities in which the ~~moneys are~~ *money is* invested. ~~All expenditures from the moneys may be made only upon claims signed by two persons designated by the retirement board. A properly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of each person shall be filed with the department of administration as its authority for approving such claims.~~

(5) All the reserves established by part 6 of this chapter ~~shall~~ *must* be accounts in the pension trust fund type of the treasury fund structure of the state."

Section 3. Section 19-4-901, MCA, is amended to read:

"**19-4-901. Eligibility for disability retirement.** Upon the application of ~~an active~~ *a* member or of his employer for a disability retirement allowance, any ~~active~~ member who has 5 or more years of creditable service *and who has become disabled while being an active member* may be retired by the retirement board the month immediately following the month in which ~~his disability caused his retirement~~ *he terminates his employment.* In order for a member to be eligible for disability retirement, the retirement board must certify that he is mentally or physically incapacitated for the further performance of his duties, that ~~such~~ *his* incapacity is likely to be permanent, and that he should be retired."

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved February 1, 1991.

CHAPTER NO. 9

[HB 66]

AN ACT TO INCLUDE BEE PARASITES IN THE DEFINITION OF BEE DISEASES; TO REVISE THE PROCEDURES RELATED TO INSPECTION OF BEES; TO ALLOW THE DEPARTMENT OF AGRICULTURE TO ESTABLISH AN HOURLY RATE FOR INSPECTION FEES IN ADDITION TO PRESENT INSPECTION FEES, UNDER CERTAIN CIRCUMSTANCES; TO ALLOW AGREEMENTS BETWEEN THE DEPARTMENT OF AGRICULTURE AND OTHER STATES, AGENCIES, AND INDIVIDUALS TO CARRY OUT MONTANA BEE POLICY; AMENDING SECTIONS 80-6-101, 80-6-201, AND 80-6-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-6-101, MCA, is amended to read:

"**80-6-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Apiary" means a place where one or more colonies of bees are kept or one or more hives containing honeycombs or bee combs are kept.

(2) "Bee diseases" means American or European foulbrood, sacbrood, bee paralysis, *bee parasites,* or other disease or abnormal condition of egg, larval, pupal, or adult stages of bees.

(3) "Bees" means any stage of the bees in the genus Apis.

(4) "Colony" means the hive and all equipment used in connection with the hive.

(5) "Department" means the department of agriculture, provided for in 2-15-3001.

(6) "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives and includes containers of honey and wax ~~which may be~~ used in an apiary or in transporting bees and their products and apiary supplies.

(7) "Family unit" means two or more persons living together or residing in the same dwelling, house, or other place of residence.

(8) "General apiary" means ~~any~~ *an* apiary other than a pollination apiary, landowner apiary, or hobbyist apiary.

(9) "Hive" means a frame hive, box hive, box, barrel, log gum, skep, or other receptacle or container or a part of a container, natural or artificial, ~~which may be~~ used as a domicile for bees.

(10) "Hobbyist apiary" means an apiary owned by a hobbyist beekeeper.

(11) "Hobbyist beekeeper" means a person who owns a total of no more than five hives.

(12) "Landowner" means the person who has the ~~actual~~ use and exclusive possession of the land upon which a landowner apiary is to be registered. However, a person leasing or renting land for the primary purpose of locating or establishing an apiary ~~thereon~~ is not considered a landowner.

(13) "Landowner apiary" means an apiary owned by a landowner as defined in this section.

(14) "Persons" means individuals, associations, partnerships, or corporations.

(15) "Pest" means the African honeybee (Apis mellifera scutellata) and those honeybees Africanized by interbreeding with the African honeybee, as identified by rule of the department.

(16) "Pollination apiary" means an apiary operated for pollination of a commercial seed, fruit, or other commercial agricultural product as provided in 80-6-112.

(17) "Queen apiary" means an apiary or premises in which queen bees are reared or kept for sale or gift."

Section 2. Section 80-6-201, MCA, is amended to read:

"**80-6-201. Apiaries — powers and duties of the department.** (1) To prevent the spread of pests and contagious and infectious disease among bees and apiaries, the department may:

(a) order the transfer of colonies of bees from hives or containers ~~which~~ *that* cannot be properly examined for brood or other diseases to other hives or containers;

(b) order disinfection of any bee, beehive, brood comb, or any other equipment ~~which~~ *that* is infected or contaminated with disease or pests and burn any infected or contaminated bee, beehive, brood comb, or any other equipment if, in its judgment, disinfection will not remove the infection or contamination. Before burning any property, the department shall give the owner or person in charge a written notice at least 5 days before the date ~~on which~~ the property will be burned. The notice ~~shall~~ *must* be given by certified mail or personal service upon the owner or person in charge of the property.

(c) quarantine any apiary where pests, foulbrood, or any contagious or infectious diseases are present and, during the quarantine, prevent the removal from the apiary of any bees or equipment except under a special permit issued by the department permitting the removal under conditions prescribed by it. A person may not sell or offer for sale any apiary, bees, or equipment ~~which are~~ under quarantine unless a permit authorizing the sale or removal is issued by the department. Written notice of quarantine ~~shall~~

must be posted by the department, owner, or person in charge at the quarantined apiary at a conspicuous place, and a copy ~~shall~~ *must* be personally served or sent by certified mail to the owner of the apiary or person in charge. The quarantine continues in effect until it is ordered removed and a copy of the removal order served in the same manner.

(d) establish by rule interior and exterior quarantines to prevent the entry or spread of diseases or pests ~~which~~ *that* are not known to occur in Montana;

(e) inspect ~~any apiary~~ *apiaries,* hives, equipment, or premises for the presence of disease or pests;

(f) promulgate and enforce rules adopted pursuant to parts 1 through 3.

(2) ~~Any~~ *A* person failing to comply with a rule, order, or provision of a quarantine pursuant to this section is subject to penalties provided for in 80-6-303.

(3) The department may provide disease and pest inspection, sampling, and laboratory analysis services for a fee. The department shall adopt rules setting the fee commensurate with costs and establishing procedures for sampling and analysis.

(4) The department may enter into agreements with the United States department of agriculture, other federal agencies, other states, municipal authorities, and individual Montana beekeepers in carrying out the provisions of this part."

Section 3. Section 80-6-202, MCA, is amended to read:

"**80-6-202. Inspection of bees or used beekeeping equipment transported interstate.** (1) A person may not transport or bring into the state ~~any~~ *bees or* used beekeeping equipment or containers, including honey to be extracted, unless ~~it is~~ *under a compliance agreement or* certified and duly marked as being apparently pest- and disease-free by an official responsible for apiary regulations of the state from which ~~it is~~ *they are* being moved. The department ~~shall~~ *must* be advised in advance of the date of entry and the destination of the *bees or* material. Used equipment *or bees* transported into the state may be quarantined by the department, in accordance with 80-6-201(1)(c), from the time ~~it enters~~ *they enter* the state until ~~it has~~ *they have* been inspected and found to be apparently free of pests and diseases or until ~~it has~~ *they have* been in use while under quarantine for a minimum of 90 days and at least until the following July 1. The beekeeping materials are also subject to quarantine as provided in this section. The department may also inspect and certify as being apparently pest- and disease-free bees or beekeeping equipment ~~which is~~ to be transported from Montana to a state ~~which~~ *that* requires an inspection in the state of origin.

(2) *(a)* The costs of making the inspections provided for in subsection (1) ~~shall~~ *must* be paid in advance by the owner of the bees or equipment ~~and shall~~.

(b) Inspection fees for persons without a valid Montana compliance agreement must include*:*

(i) ~~a~~ per diem pursuant to Title 2, chapter 18, part 5~~,~~*;*

(ii) necessary traveling expenses~~,~~*;*

(iii) an hourly rate established by department rule; and

(iv) a fee of $50 for the issuance of a certificate of health.

(c) Persons transporting bees interstate with a valid Montana compliance agreement shall pay inspection fees that include:

(i) per diem pursuant to Title 2, chapter 18, part 5;

(ii) necessary traveling expenses; and

(iii) a fee of $50 for the issuance of a certificate of health.

(d) If inspection by an official of any other state is considered insufficient for the protection of the Montana bee industry by the department, the department shall so state by public statement. Importation of *bees or* beekeeping materials, including honey for extracting, from that other state ~~shall~~ *must* be denied unless the materials, *bees,* or honey ~~are~~ *is* first inspected by the department and there is obtained from it a certificate of inspection showing that the materials, *bees,* or honey ~~are~~ *is* apparently free from pests and contagious or infectious disease. The costs of making the inspection ~~shall~~ *must* be paid by the person requesting it, and inspection may be made at any point outside this state convenient to the person making the inspection. The department may require that the costs of making the inspection be paid in advance, and the costs ~~shall~~ *must* include*:*

(i) per diem pursuant to Title 2, chapter 18, part 5~~,~~*;*

(ii) necessary traveling expenses~~,~~*;*

(iii) an hourly rate established by department rule; and

(iv) a fee of $50 for the issuance of the certificate of inspection."

Section 4. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved February 1, 1991.

CHAPTER NO. 10

[HB 18]

AN ACT REVISING THE QUALIFICATIONS REQUIRED FOR A JOURNEYMAN PLUMBER'S LICENSE; AND AMENDING SECTION 37-69-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-69-304, MCA, is amended to read:

"**37-69-304. Qualifications of applicants for journeyman plumber's license — restriction on authority.** (1) The following requirements ~~shall~~ *must* be met by applicants for a journeyman plumber's license:

(a) a specific record of 4 *5* years' experience in the field of plumbing of a character satisfactory to the board. This experience requirement may be fulfilled by working 4 *5* years in a major phase of the plumbing business, *verified by time or pay records,* or by completing an apprenticeship program meeting the standards set by the department of labor and industry or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending an accredited trade or other school specializing in training of value in the field of plumbing and approved by the board.

(b) satisfactory completion of an examination conducted by the department, subject to 37-1-101(4), testing the applicant's knowledge of techniques and methods employed in the field of plumbing and establishing by practical demonstration his competence in the special skills required in the field of plumbing.

(2) A licensed journeyman plumber may perform work only in the employment of a licensed master plumber unless otherwise permitted by rule of the board."

Approved February 6, 1991.

CHAPTER NO. 11

[SB 45]

AN ACT ESTABLISHING RECIPROCITY FOR REAL ESTATE LICENSEES; AMENDING SECTION 37-51-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, it has been determined that it is in the best interest of Montana real estate licensees to be able to obtain licenses in other states and to allow the Board of Realty Regulation to enter into reciprocal licensing agreements with other states.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-306, MCA, is amended to read:

"**37-51-306. Transactions with nonresidents and with nonlicensed brokers or salesmen — reciprocity — consent to legal process.** (1) ~~It is unlawful for a~~ *A* licensed broker ~~to~~ *may not* employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker or licensed salesman. However, a licensed broker may pay a commission to a licensed broker of another state if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid. This subsection does not limit the next subsection.

(2) ~~A nonresident of this state actively engaged in the real estate business who maintains a place of business in another state and who has been licensed in the other state to conduct this business in that state may obtain a license as a broker in this~~ *A person who is licensed as a broker or a salesman in another state may obtain a license as a broker or as a salesman in this* state by complying with this chapter *and with the rules of the board.* However, this section applies only to ~~brokers~~ *licensees* of ~~those~~ other states ~~which~~ *that* offer the same privileges to the ~~licensed brokers~~ *licensees* of this state. ~~The~~ *A* nonresident licensee need not maintain a place of business in this state. The board may*:*

(a) authorize the department to license a nonresident ~~broker~~ without examination if he files with the department an authorized or certified copy of the license issued ~~to the nonresident for conducting this business~~ in another state and pays to the department the same license fee as is required for obtaining a ~~broker's~~ license in this state~~. The board may in its discretion~~*;*

(b) refuse to authorize the department to issue a ~~broker's~~ license to an applicant who is not a resident of this state*; and*

(c) enter into reciprocal agreements with other states.

(3) A nonresident ~~broker~~ *licensee* shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident ~~broker~~ *licensee* in a county of this state ~~which~~ *that* may be appropriate and designated by Title 25, chapter 2, part 1. The consent ~~shall~~ *must* provide that service of summons in this action may be served on the department for and on behalf of the nonresident ~~broker~~ *licensee,* and this service is sufficient to give the court jurisdiction over the ~~nonresident broker and his salesman or agent~~ *licensee* conducting a transaction in a county. The consent ~~shall~~ *must* be acknowledged and, if made by a corporation, ~~shall~~ *must* be authenticated by its seal."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 6, 1991.

CHAPTER NO. 12

[HB 11]

AN ACT REMOVING THE PROVISION THAT MADE THE ELIMINATION OF EMPLOYMENT PREFERENCE PROVIDED TO VETERANS AND THEIR ELIGIBLE SPOUSES UNDER THE MONTANA VETERANS' AND HANDICAPPED PERSONS' EMPLOYMENT PREFERENCE ACT TEMPORARY; REPEALING SECTION 19, CHAPTER 646, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 19, Chapter 646, Laws of 1989, is repealed.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 7, 1991.

CHAPTER NO. 13

[HB 80]

AN ACT TO ALLOW A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM TO PURCHASE CREDIT FOR EARNED COMPENSATION FOR FULL-TIME SERVICE DESPITE A LOSS IN COMPENSATION, PAY, OR SALARY DUE TO A TEMPORARY ABSENCE; AND AMENDING SECTION 19-4-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purchase of salary credit.** (1) A member may apply for credit for earned compensation that was not paid to the member and not reported to the system because of a temporary absence of the member.

(2) To qualify salary under this section, a contribution must be paid in an amount equal to 5.7% of the salary not reported to the system multiplied by the total years of creditable service.

Section 2. Section 19-4-101, MCA, is amended to read:

"**19-4-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest, on the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(3) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions.

(4) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(5) (a) "Average final compensation" means the average of the earned compensation of a member during the 3 consecutive years of full-time service which yield the highest average and on which contributions have been made as required by 19-4-602.

(b) In determining a member's retirement allowance under 19-4-802 or 19-4-804, the amount of each year's earned compensation that may be used in the calculation of average final compensation may not exceed the member's earned compensation from the preceding year by more than 10%, except as provided by rule by the retirement board.

(c) Earned compensation in excess of the amount specified in subsection (5)(b) is considered termination pay as provided in subsection (5)(d).

(d) If the earned compensation includes any termination pay, the member shall select one of the following options:

(i) use the total termination pay in the calculation of the average final compensation. The member and the employer shall pay contributions to the retirement system as are determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time the termination pay is received.

(ii) use a yearly amount of termination pay added to each of the 3 consecutive years' salary used in the calculation of the average final compensation, if the member has 4 or more years of service with the employer from which the termination pay was received. The amount of compensation used in the calculation of average final compensation must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer must pay contributions on the termination pay according to the rates provided for in 19-4-602(1) and 19-4-605(1).

(iii) exclude the termination pay from the average final compensation. No contribution is required of either the employer or member, and contributions made under 19-4-602 and 19-4-605 must be refunded.

(e) For purposes of this subsection, termination pay includes any form of termination pay or any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence.

(6) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other benefit provided by the retirement system.

(7) "Creditable service" is that service defined by 19-4-401.

(8) "Earned compensation" means the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including amounts paid under a salary reduction agreement, a cafeteria plan, a tax sheltered annuity, a deferred compensation program, and the value of any housing provided by the employer. The employer shall fix the value of any housing provided. The term does not include any other amounts paid in kind or fringe benefits not actually paid to a member. *The earned compensation is the full compensation, pay, or salary that would have been paid to a member for full-time service but was not paid to the member because of a reduction in compensation, pay, or salary due to a temporary absence provided that the retirement system receives the contribution required by [section 1].* The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding his retirement is the compensation, pay, or salary which he would have earned had his part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary which he would have received had he completed the full year, except that any termination pay, as defined in subsection (5)(e), received by the member is limited to the amount actually paid and is not the amount he would have earned had he completed the full year.

(9) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state which employs a person who is designated a member of the retirement system.

(10) "Full-time service" means service which is full-time and which extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, "full-time service" means service which is full-time and which totals at least 9 months in any one year.

(11) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-4-302. An inactive member is a person included under the provisions of 19-4-303.

(12) "Part-time service" means service which is less than full-time or which totals less than 9 months in any one year. Part-time service shall be credited in the proportion that the actual time worked bears to full-time service.

(13) "Pension" means the payments made to a beneficiary for life which are paid out of the pension accumulation fund.

(14) "Pension reserve" means the present value of all payments to be made on account of a pension computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(15) "Prior service" means employment of the same nature as service defined in subsection (20) of this section but rendered before September 1, 1937.

(16) "Regular interest" means interest at 4% per annum compounded annually or at such other rate as may be set by the retirement board in accordance with 19-4-501(2).

(17) "Retirement allowance" means the annuity plus the pension.

(18) "Retirement board" means the retirement system's governing board provided for in 2-15-1010.

(19) "Retirement system" means the teachers' retirement system of the state of Montana provided for in 19-4-102.

(20) "Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of 19-4-302."

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 4, part 4, and the provisions of Title 19, chapter 4, part 4, apply to [section 1].

Approved February 7, 1991.

CHAPTER NO. 14

[HB 85]

AN ACT ESTABLISHING A TIME PERIOD OF 180 DAYS IN WHICH AN EMPLOYEE OF THE DEPARTMENT OF HIGHWAYS MAY FILE A PERSONNEL GRIEVANCE WITH THE BOARD OF PERSONNEL APPEALS; BARRING GRIEVANCES FILED LATE; AND AMENDING SECTION 2-18-1001, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-1001, MCA, is amended to read:

"**2-18-1001. Highway department personnel grievances — hearing.** (1) An employee of the department of highways aggrieved by a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action and who has exhausted all other administrative remedies is entitled to a hearing before the board of personnel appeals, under the provisions of a grievance procedure to be prescribed by the board, for resolution of the grievance.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the department of highways against an aggrieved employee because the employee has filed or attempted to file a grievance with the board shall also be basis for a grievance and shall entitle the employee to a hearing before the board for resolution.

(3) A grievance under this part must be filed with the board of personnel appeals within 180 days after the alleged incident or action occurred. Failure to file the grievance within this period is a bar to proceeding with the grievance."

Approved February 7, 1991.

CHAPTER NO. 15

[SB 20]

AN ACT CLARIFYING PERMISSIBLE LOCATIONS OF BRANCH BANKS; AMENDING SECTION 32-1-372, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-372, MCA, is amended to read:

"**32-1-372. Branch bank — detached facilities.** (1) A bank may establish and maintain a branch bank only as provided in 32-1-371 and this section and, in the case of a bank organized under the laws of this state, with the prior approval of the state banking board, provided that nothing in this section prohibits ordinary clearinghouse transactions between banks.

(2) With the prior approval of the department, any bank or branch bank doing business in this state may establish and maintain not more than one detached drive-in and walk-up facility consisting of one or more teller windows. The detached facility must be in the city or within 3,000 feet of the city limits of the city in which the main banking house or branch bank is located. The facility may not be closer than 200 feet to a facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The distances ~~herein~~ specified *in this subsection* in relation to a facility operated by any other bank and in

relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of the facility ~~shall~~ *must* be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank or the branch bank, and ~~such~~ other transactions ~~as~~ *that* are normally and usually conducted or handled at teller windows in the main banking house or branch bank.

(3) Any bank authorized to do banking business in this state may utilize a satellite terminal as defined in the Montana Electronic Funds Transfer Act and at any location permitted by the Montana Electronic Funds Transfer Act. The use of satellite terminals hereby authorized ~~shall~~ *is* not ~~be~~ subject to the restrictions on location, transaction, or number applicable to detached drive-in, walk-up, or teller facilities.

(4) A bank, other than a bank owned by a holding company not located in Montana, may establish, maintain, and operate a branch bank~~:~~

~~(a) in the county or a county adjoining the county in which the main banking house of the branch bank is located; and~~

~~(b)~~ in a city in which no bank or branch bank is located at the time the branch bank is to be established *if that city is in the county or a county adjoining the county in which the main banking house of the branch bank is located.*

(5) Common ownership notwithstanding, a bank may acquire by consolidation or merger under 32-1-371 and may maintain and operate as a branch bank any bank in this state if, at the time of acquisition, a receiver has been appointed by an appropriate regulatory agency or other governmental authority. Nothing in this subsection allows a bank owned by a holding company not located in this state to acquire an interest in a bank in contravention of 12 U.S.C. 1842.

(6) A branch bank must have a community advisory board."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 7, 1991.

CHAPTER NO. 16

[SB 33]

AN ACT TO GENERALLY REVISE AND CLARIFY THE MONTANA CODE ANNOTATED; CONFORMING PROVISIONS OF THE MON-

TANA CODE ANNOTATED TO THE MONTANA JUSTICE AND CITY COURT RULES OF CIVIL PROCEDURE; DIRECTING THE CODE COMMISSIONER TO CLARIFY ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 52ND LEGISLATURE; AMENDING SECTIONS 1-11-204, 3-7-211, 3-10-702, 3-11-302, 3-15-107, 3-15-705, 7-2-2213, 7-2-2225, 7-6-4202, 7-7-2402, 15-24-1701, 15-31-702, 17-6-305, 17-7-401, 17-7-502, 19-3-513, 19-6-506, 20-7-401, 22-1-501, 22-3-522, 23-2-508, 23-2-611, 25-30-101, 25-31-402, 25-31-406, 25-31-407, 25-31-702, 25-32-101, 25-32-102, 25-32-103, 25-32-104, 27-1-221, 31-1-233, 31-3-141, 33-17-208, 33-21-207, 37-47-101, 39-71-401, 39-71-1019, 40-5-412, 44-12-203, 50-5-1104, 50-16-536, 53-3-321, 61-3-509, 61-8-207, 61-8-312, 61-10-107, 61-10-146, 75-2-503, 75-10-701, 75-10-704, 75-10-718, 76-14-112, 80-9-206, 82-4-222, 82-4-434, 85-7-102, 87-4-304, AND 87-5-121, MCA; AND REPEALING SECTIONS 2-4-321, 2-4-322, 2-4-323, 3-10-305, 3-10-306, 7-2-2214, 25-31-114, 25-31-116, 25-31-201, 25-31-202, 25-31-203, 25-31-204, 25-31-301, 25-31-302, 25-31-303, 25-31-304, 25-31-305, 25-31-306, 25-31-307, 25-31-308, 25-31-401, 25-31-403, 25-31-404, 25-31-408, 25-31-501, 25-31-502, 25-31-503, 25-31-504, 25-31-505, 25-31-506, 25-31-507, 25-31-511, 25-31-521, 25-31-522, 25-31-701, 25-31-804, 25-31-811, 25-31-812, 25-31-901, 25-31-902, 25-31-903, 25-31-904, 25-31-905, 25-31-911, 25-31-912, 25-31-913, 25-31-915, 25-31-1001, 25-31-1003, 25-31-1004, 25-31-1005, 25-31-1101, 25-31-1102, 25-31-1103, 25-31-1105, 25-32-101, 25-32-102, 25-32-103, 25-32-104, 53-8-101, 53-8-102, 53-8-103, AND 53-8-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-204, MCA, is amended to read:

"**1-11-204. Duties of code commissioner.** ~~(1) Prior to January 1, 1979, the code commissioner shall recodify all the laws of a general and permanent nature appearing in the codes and session laws and prepare them for publication.~~

~~(2) Prior to January 1, 1979, the commissioner shall prepare and submit to the legislature a report which is certified by the commissioner as the "Official Report of the Montana Code Commissioner", together with a bill enacting the Montana Code Annotated. A copy of the report and bill shall be deposited with the secretary of state. The report shall explain and indicate, in tabular or other form, all changes made during recodification, other than punctuation and capitalization, to clearly indicate the character of each change.~~

~~(3)~~*(1)* Prior to ~~the~~ November 1 immediately preceding each regular legislative session, the *code* commissioner shall prepare and submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation ~~which~~ *that* will:

(a) eliminate archaic or outdated laws;

(b) eliminate obsolete or redundant wording of laws;

(c) eliminate ~~any~~ duplications in law and any laws repealed directly or by implication;

(d) clarify existing laws;

(e) correct errors and inconsistencies within the laws.

~~(4)~~*(2)* The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:

(a) ~~Statutory~~ *the statutory* history of each code section;

(b) ~~Annotations~~ *annotations* of state and federal court decisions relating to the subject matter of the code;

(c) ~~Such~~ editorial notes, cross-references, and other matter ~~as~~ the commissioner considers desirable or advantageous;

(d) ~~The~~ *the* Declaration of Independence;

(e) ~~The~~ *the* Constitution of the United States of America and amendments ~~thereto~~ *to the constitution*;

(f) ~~Acts~~ *acts* of congress relating to the authentication of laws and records;

(g) ~~The~~ *the* Organic Act of the Territory of Montana;

(h) The Enabling Act;

(i) The 1972 Constitution of the State of Montana and any amendments ~~thereto~~ *to the constitution*;

(j) ~~The Ordinances~~ *ordinances* relating to federal relations and elections;

(k) ~~Rules~~ *rules* of civil, criminal, and appellate procedure and ~~such~~ other rules of procedure ~~as~~ the Montana supreme court may adopt; and

(l) ~~A~~ *a* complete subject index, a popular name index, and comparative disposition tables or cross-reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.

~~(5)~~*(3)* After publication of the Montana Code Annotated, the code commissioner shall:

(a) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section;

(b) continue to codify, index, arrange, rearrange, and generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;

(c) prepare and publish a report entitled "Official Report of the Montana Code Commissioner—(year)" ~~which~~ *that* indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation, spelling, and capitalization, to clearly indicate the character of each change made since the last ~~such~~ report.

~~(6)~~*(4)* From time to time, the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures."

Section 2. Section 3-7-211, MCA, is amended to read:

"**3-7-211. Appointment of water commissioners.** The district court having jurisdiction over the hydrologically interrelated portion of a water division, as described in 85-2-231~~(2)~~*(3)*, in which the controversy arises may appoint and supervise a water commissioner as provided for in Title 85, chapter 5."

Section 3. Section 3-10-702, MCA, is amended to read:

"**3-10-702. Governed by law prescribing sheriffs' duties.** (1) All the provisions of 3-5-407, 7-32-2101, 7-32-2102, 7-32-2121, except subsections (4), (5), and (6), 7-32-2122, 7-32-2124, 7-32-2127, 7-32-2129 through 7-32-2131, 7-32-2250, 25-3-101, 25-3-202, 25-3-204 through 25-3-206, 25-3-301, 25-3-302, 25-13-403, ~~25-31-408(3),~~ 27-18-305; and 27-18-1505 apply to constables and govern their powers, duties, and liabilities.

(2) The provisions of 7-32-2141(1) apply to constables. Fees collected by a constable for services, as provided in 7-32-2141(1), must be paid to the county treasurer, as provided in 7-4-2511(2), and credited to the budget of the justice's court."

Section 4. Section 3-11-302, MCA, is amended to read:

"**3-11-302. Who named as plaintiff.** (1) A criminal action brought for violation of a city or town ordinance must be brought in the name of the city or town as the plaintiff and against the accused as the defendant.

(2) A criminal action brought for violation of a state law within the city or town may be brought either in the name of the state of Montana as the plaintiff or in the name of the city or town as the plaintiff and must be brought against the accused as the defendant.

(3) A criminal action brought for violation of a state law within the county and within its concurrent jurisdiction with the justice's court must be brought in the name of the state of Montana as the plaintiff and against the accused as the defendant.

(4) A civil action brought in the city court must be prosecuted or defended in the same manner as a civil action in justices' courts under the Montana Justice ~~Courts~~ *and City Court* Rules of Civil Procedure (Title 25, chapter ~~22~~ *23*)."

Section 5. Section 3-15-107, MCA, is amended to read:

"3-15-107. **Number in justices' courts.** A jury in a justice's court, ~~both~~ in ~~civil cases and~~ misdemeanors, consists of six persons, but the parties may agree to a less number than six."

Section 6. Section 3-15-705, MCA, is amended to read:

"3-15-705. **Manner of impaneling.** The jury ~~shall~~ *must* be impaneled as provided in:

(1) Title 46, if the action is a criminal one;

(2) Title 25, chapter 7, part 2, and ~~M.R.Civ.P., Rule 47~~ *Rule 18B, Montana Justice and City Court Rules of Civil Procedure,* if the action is a civil one."

Section 7. Section 7-2-2213, MCA, is amended to read:

"7-2-2213. **Resolution of board of county commissioners.** The board of county commissioners, on the final hearing of ~~such~~ *the* petition or petitions, shall, by a resolution entered on its minutes, determine:

(1) the boundaries of the proposed new county, and the boundaries ~~so~~ determined by the board ~~shall~~ *must* be the boundaries of the proposed new county if it is created as ~~herein~~ provided *in this part*;

(2) whether the petition contains the genuine signatures of at least 50% of the registered electors of the proposed new county as ~~herein~~ required *in this part* or, in cases where separate petitions are presented from portions of two or more existing counties as ~~herein~~ required *in this part*, whether each petition is signed by at least 50% of the registered electors of that portion of each of the existing counties ~~which~~ *that* is proposed to be taken into the proposed new county;

(3) whether any line of the proposed new county passes within 15 miles of the courthouse situated at the county seat of any county proposed to be divided, except as otherwise provided;

(4) whether the proposed new county ~~will contain property, according to the last preceding assessment, which will equal in amount at least $4 million, inclusive of all assessed valuation~~ *and affected existing counties meet the limitations contained in 7-2-2202*;

(5) ~~whether the area of any existing county from which territory is taken to form the new county will be reduced to less than 1,200 square miles of surveyed land by taking the territory proposed to be taken therefrom to form the new county;~~

~~(6) whether the area of the proposed new county will contain at least 1,000 square miles of surveyed land to form the new county;~~

~~(7)~~ the class to which the proposed new county will belong after its creation and the name of the proposed new county as stated in the petition; *and*

~~(8)~~*(6)* whether the area embraced within the proposed new county will be reasonably compact."

Section 8. Section 7-2-2225, MCA, is amended to read:

"**7-2-2225. Officers of new county.** (1) Except as provided in subsections (2) through (4) ~~of this section~~, at the election provided for in 7-2-2215, there ~~shall~~ *must* be chosen a board of county commissioners and ~~such~~ other county~~, township,~~ and district officers as are provided by law for counties of the class to which the new county belongs.

(2) All elected, qualified, and acting officers of the county or counties who ~~may~~ reside within the proposed new county are considered to be officers of the new county if they file, within 5 days after the final hearing and determination of the petition for the proposed new county, with the board of county commissioners whose duty it ~~shall be~~ *is* to call the election. ~~their intention~~ *Filing with the board is the officers' declaration of intent* to become officers of the proposed new county.~~, and the~~ *The* board issuing the proclamation of the election shall omit providing for the election of any ~~such~~ officers ~~as~~ *who* have filed their declaration to continue in office.

(3) All elected, qualified, and acting justices of the peace residing within the proposed new county shall hold office as justices of the peace in the new county for the remainder of the term for which they were elected.

(4) All elected, qualified, and acting school trustees residing within the proposed new county at the time of the division of ~~such~~ *the* county into school districts, as provided in ~~7-2-2214~~ *Title 20, chapter 6,* shall hold office as school trustees in the new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside, as these districts are organized ~~as provided by this part~~.

(5) The officers elected or appointed under the provisions of this part shall ~~each~~ perform the duties and receive the compensation ~~now~~ provided by general law for the office to which they have been appointed or elected in the counties of the class to which the new county belongs."

Section 9. Section 7-6-4202, MCA, is amended to read:

"**7-6-4202. Definitions.** As used in this part, the following definitions apply:

(1) The term "clerk" ~~shall mean~~ *means* the clerk of the city.

(2) The term "council" ~~shall mean~~ *means the* city council or city commission.

(3) The ~~terms~~ *term* "municipal corporation" or "municipality" ~~shall mean~~ *means the* city.

(4) The ~~terms~~ *term* "treasurer" ~~or "city treasurer" shall mean~~ *means* the city treasurer ~~or the town clerk, whichever is appropriate~~."

Section 10. Section 7-7-2402, MCA, is amended to read:

"7-7-2402. **Election required to borrow money — exceptions.** (1) Except as provided in subsection (3), the board of county commissioners ~~must~~ *may* not borrow money for any of the purposes mentioned in this title or for any single purpose ~~to~~ *in* an amount exceeding ~~$10,000~~ *$500,000* without:

(a) first having submitted the question of a loan to a vote of the electors of the county; and

(b) the approval of a majority of the electors of the county.

(2) If a majority of the votes cast are in favor of the loan, then the board may make the loan, issuing bonds or otherwise as may seem best for the interests of the county.

(3) It ~~shall~~ *is* not ~~be~~ necessary to submit to the electors the question of borrowing money:

(a) to refund outstanding bonds; or

(b) for the purpose of enabling any county to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary lines."

Section 11. Section 15-24-1701, MCA, is amended to read:

"15-24-1701. *(Temporary)* **Suspension and cancellation of collection of certain property taxes on commercial property — local government discretion.** (1) The governing body of a county or consolidated local government unit may suspend collection of delinquent property taxes on commercial property to facilitate the purchase and continued operation of a business utilizing the commercial property if the property has not been used in a business for 6 months immediately preceding the date of suspension.

(2) The governing body may refuse to suspend delinquent taxes if it determines that the purchase of the commercial property is not an arm's length transaction or if the purchase otherwise appears to be a restructuring of ownership for the primary purpose of escaping payment of delinquent property taxes or if the governing body determines the ~~cancellation~~ *suspension* is not in the best interest of the county.

(3) If a purchaser of ~~such~~ *the* commercial property continuously utilizes the property in a profit-oriented, employment-stimulating business for 3 years from the date of purchase, the governing body may cancel the collection of the suspended delinquent property taxes. The governing body may not cancel the suspended delinquent property taxes if the purchaser is delinquent on taxes for any other property within the governing body's taxing jurisdiction. *(Terminates December 31, 1993—sec. 17, Ch. 631, L. 1989.)* "

Section 12. Section 15-31-702, MCA, is amended to read:

"**15-31-702. Distribution of corporation license taxes collected from banks or savings and loan associations.** (1) All corporation license taxes collected from banks and savings and loan associations ~~shall~~ *must* be distributed in the following manner:

(a) 20% must be remitted to the state treasurer to be allocated as provided in 15-1-501~~(2)~~*(3)*; and

(b) 80% is statutorily appropriated, as provided in 17-7-502, for allocation to the various taxing jurisdictions within the county in which the bank or savings and loan association is located.

(2) The corporation license taxes distributed under subsection (1)(b) ~~shall~~ *must* be allocated to each taxing jurisdiction in the proportion that its mill levy for that fiscal year bears to the total mill levy of the taxing authorities of the district in which the bank or savings and loan association is located.

(3) "Taxing jurisdictions" means, for the purposes of this section, all taxing authorities within a county permitted under state law to levy mills against the taxable value of property in the taxing district in which the bank or savings and loan association is located.

(4) If a return filed by a bank or savings and loan association involves branches or offices in more than one taxing jurisdiction, the department of revenue shall provide a method by rule for equitable distribution among those taxing jurisdictions."

Section 13. Section 15-35-108, MCA, is amended to read:

"**15-35-108.** *(Temporary)* **Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund ~~moneys shall~~ *money must* be deposited in the fund established under 17-6-203~~(5)~~*(6)* and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) 17.5% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund ~~shall~~ *must* be appropriated as follows:

(i) 1/3 for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) 2/3 for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102;

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 1/4% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. *(Terminates July 1, 1993—sec. 7, Ch. 541, L. 1983.)*

15-35-108. *(Effective July 1, 1993)* **Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund ~~moneys shall~~ *money must* be deposited in the fund established under 17-6-203~~(5)~~*(6)* and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17.5% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund ~~shall~~ *must* be appropriated as follows:

(i) 1/3 for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) 2/3 for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102;

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 1/4% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 14. Section 17-6-305, MCA, is amended to read:

"**17-6-305. Investment of twenty-five percent of the coal tax trust fund in the Montana economy.** (1) Twenty-five percent of all revenue deposited after June 30, 1983, into the permanent coal tax trust fund established in 17-6-203~~(5)~~*(6)* and 15% of the annual income and earnings on the Montana in-state investment fund appropriated to the coal severance tax permanent fund by 17-5-704(2) ~~shall~~ *must* be invested in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy ~~shall~~ *must* be considered.

(3) The legislature may provide additional procedures to implement this section."

Section 15. Section 17-7-401, MCA, is amended to read:

"**17-7-401. Definitions.** As used in this part, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government.

(3) "Approving authority" means the governor or his designated representative for executive branch agencies, the chief justice of the supreme court or his designated representative for judicial branch agencies, appropriate legislative committees or a designated representative for legislative branch agencies, or the board of regents or its designated representative for the university system.

(4) "Budget amendment" means a legislative appropriation to increase spending authority for the special revenue fund, proprietary funds, or unrestricted subfund contingent on total compliance with all budget amendment procedures.

(5) "Emergency" means any catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time an agency's appropriation was made, which was clearly not within the contemplation of the legislature and the governor, and which seriously affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(6) "Executive branch approving authority" means the governor or his designated representative.

(7) "Necessary" means essential to the public welfare and of a nature ~~which~~ *that* cannot wait until the next legislative session for legislative consideration.

(8) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(9) "University system unit" means the board of regents, office of the commissioner of higher education, university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon, the agricultural experiment station with central offices at Bozeman, the ~~forestry~~ *Montana forest* and conservation experiment station with central offices at Missoula, the cooperative extension service

with central offices at Bozeman, or the bureau of mines and geology with central offices at Butte."

Section 16. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; *and* 90-9-306~~; and section 13, House Bill No. 861, Laws of 1985~~.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for ~~such~~ *the* payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 17. Section 19-3-513, MCA, is amended to read:

"**19-3-513. Election to purchase additional service.** (1) At any time before retirement, a person who became a member of the retirement system before July 1, 1989, and who has 5 years or more of membership service may make a written election with the board to purchase additional service for the purpose of calculating his retirement allowance. Except as provided in subsection (3), the member may purchase 1 year of additional service for each 5 years of membership service that he has qualified under the retirement system, up to a maximum of 5 years of additional service.

(2) For each year of service purchased under this section, a member shall contribute to the retirement fund an amount equal to his normal compensation for the 12-month period immediately preceding the date he elects to purchase the service multiplied by the combined employee and employer contribution rates ~~on the date he elects to purchase the service~~ *contained in 19-3-701 and 19-3-801 in effect on and after July 1, 1993.* Contributions may be made in a lump-sum payment or in installments as agreed upon by the member and the board.

(3) (a) Except as provided in subsection (3)(b), after January 1, 1990, a member may elect to qualify a combined total of 5 years of service under 19-3-503, 19-3-512, or this section.

(b) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under this section shall receive credit for the full months of service purchased on or before January 1, 1990.

(4) Service purchased under this section may not be used to qualify a member for service retirement."

Section 18. Section 19-6-506, MCA, is amended to read:

"**19-6-506. Supplemental retirement allowance for certain retirees.** (1) Retired Montana highway patrol officers or their surviving spouses who are 65 years of age or older or disabled and who are not entitled through their own or their spouses' contributions to social security or medicare to prepaid medicare hospital insurance coverage are eligible for a supplemental retirement benefit.

(2) Subject to the restrictions in subsection (1) and beginning on the first day of the month after receipt of written application of an eligible retiree, the retirement system shall pay a supplemental benefit equal to the premium for coverage under medicare hospital insurance, excluding coverage for a spouse and dependents, from revenue deposited in the ~~state special revenue~~ *general* fund, as provided in 61-3-321(5). The written application must be accompanied by proof that the retiree is paying for medicare hospital insurance coverage.

(3) The supplemental benefit payment made under subsection (2) may not exceed the medicare hospital insurance premium in effect on July 1, 1989, for similar coverage."

Section 19. Section 20-7-401, MCA, is amended to read:

"**20-7-401. Definitions.** In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Appropriate public education" means the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped *persons* are met.

(2) "Deaf" means a hearing impairment ~~which~~ *that* is so severe that the child's hearing is nonfunctional for the purpose of educational performance.

(3) "Deaf/blind" means concomitant hearing and visual impairments, the combination of which causes such severe educational problems for the child so impaired that the child cannot be accommodated in a special education program designed solely for deaf or blind children.

(4) "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects educational performance: an inability to learn ~~which~~ *that* cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes a child who is schizophrenic. The term does not include a child who is socially maladjusted, unless it is determined that the child is emotionally disturbed.

(5) "Handicapped child" means a child evaluated as being mentally retarded, hard-of-hearing, deaf, ~~speech-impaired~~ *speech/language impaired,* visually handicapped, emotionally disturbed, deaf/blind, multihandicapped, orthopedically impaired, other health-impaired, or as having specific learning disabilities, who because of those impairments needs special education and related services. A child who is 5 years of age or younger may be identified as handicapped without the handicapping condition being specified.

(6) "Hard-of-hearing" means a hearing impairment, whether permanent or fluctuating, ~~which~~ *that* adversely affects a child's educational performance but ~~which~~ *that* is not included within the definition of deaf.

(7) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(8) "Multihandicapped" means concomitant impairments (e.g., mentally retarded/blind or mentally retarded/orthopedically impaired), the combination of which causes such severe educational problems for the child so impaired that the child cannot be accommodated in a special education program designed solely for one of the impairments. The term does not include deaf/blind children.

(9) "Orthopedically impaired" means a severe orthopedic impairment ~~which~~ *that* adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., fractures or burns ~~which~~ *that* cause contractures, amputation, cerebral palsy).

(10) "Other health-impaired" means:

(a) having an autistic condition that is manifested by severe communication and other developmental and educational problems; or

(b) having limited strength, vitality, or alertness due to chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes.

(11) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education and includes speech-language pathology, audiology, occupational therapy, and physical therapy.

(12) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a handicapped child, including but not limited to classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(13) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, ~~which~~ *that* may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems ~~which~~ *that* are primarily the result of visual, hearing, or motor handicaps; mental retardation; or environmental, cultural, or economic disadvantages.

(14) "Speech/language impaired" means a communication disorder, such as stuttering, impaired articulation, or a language or voice impairment, ~~which~~ *that* adversely affects a child's interpersonal relationships or educational performance.

(15) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.

(16) "Visually handicapped" means a visual impairment ~~which~~ *that,* after correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children."

Section 20. Section 22-1-501, MCA, is amended to read:

"**22-1-501. State law library created.** The library ~~heretofore~~ *formerly* known as a department of the state library of Montana and called "the law library" ~~shall become~~ *is* a separate and distinct library designated the "state law library of the state of Montana". The collections of laws, decisions of courts, law reports, textbooks, legal periodicals, and miscellaneous books and journals together with pamphlets, papers, maps, charts, and manuscripts ~~now~~ in the law library ~~in the capitol building~~ or belonging to ~~such~~ *the* law library or ~~hereafter~~ acquired by or donated to the law library ~~shall~~ constitute the *law* library ~~hereby established~~, and the title to all of the property constituting the ~~same now or hereafter shall~~ *law library must* be in the state of Montana, subject to the custody and control of the library board established ~~herein~~ *in 22-1-502.*"

Section 21. Section 22-3-522, MCA, is amended to read:

"**22-3-522. Uniform Unclaimed Property Act superseded.** The provisions of this part supersede the provisions of Title 70, chapter 9, parts 1 through 3, except that at its option, a museum may report property that has been on loan unclaimed by its owner for more than ~~7~~ *5* years to the department of revenue for disposition as provided in Title 70, chapter 9, part 3."

Section 22. Section 23-2-508, MCA, is amended to read:

"**23-2-508. Certificate of ownership — filing of security interests.** (1) Except as provided in subsection (9), a motorboat or sailboat 12 feet in length or longer may not be operated upon the waters of the state unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a motorboat or sailboat 12 feet in length or longer shall apply for a certificate of ownership and a certificate of number with the county treasurer of the county in which the owner resides, upon forms furnished by the department of justice. The forms must require the following information:

(a) name of the owner;

(b) residence of the owner, by town or county;

(c) business or home address of the owner;

(d) name and address of any lienholder;

(e) amount due under any contract or lien;

(f) name of the manufacturer;

(g) model number or name;

(h) identification number;

(i) name and address of the dealer or other person from whom acquired, if known; and

(j) ~~such~~ other information as the department of justice may require.

(3) The application is to be accompanied by documentation of ownership, such as an invoice, *a* bill of sale, *a* foreign title, *an* official certificate of boat number, *a* fee in lieu of tax receipt, or a certificate of ownership of a trailer purchased with the motorboat or sailboat. An applicant who fails to

provide ~~such~~ proof of ownership shall provide a certified statement describing how the motorboat or sailboat 12 feet in length or longer was acquired, from whom acquired, if known, and other information requested by the department of justice.

(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to motorboats or sailboats 12 feet in length or longer that are purchased as new and unused vessels or that were operated when the provisions of this part were not in force and effect.

(5) ~~Any~~ *A* motorboat or sailboat 12 feet in length or longer that does not have a manufacturer's or other identifying number ~~thereon~~ *on the motorboat or sailboat* must be assigned an identification number by the department of fish, wildlife, and parks. A fee of $1 must be paid to the department for an assignment of number.

(6) Upon completion of the application, the county treasurer shall issue to the applicant two copies of the certificate of number application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application for a certificate of ownership to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office~~,~~ and shall furnish the applicant a certificate of ownership containing that information in the application considered necessary by the department and a permanent boat number. The certificate of ownership need not be renewed annually and is valid as long as the person holding it owns the vessel.

(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(8) Upon application for a certificate of ownership, a fee of $5 must be paid to the county treasurer, $3.50 of which must be forwarded by the county treasurer to the department of justice and deposited in the general fund.

(9) A person who, on July 1, 1988, is the owner of a motorboat or sailboat 12 feet in length or longer with a valid certificate of number issued by the state is not required to file an application for a certificate of ownership for the motorboat or sailboat unless he transfers a part of his interest in the motorboat or sailboat or he renews the certificate of number for the motorboat or sailboat.

(10) A security interest in a boat is not valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been filed with the department of justice as provided in this section. The lien notice must be filed on a form approved by the department {of justice}. The department of justice may not file a security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the boat encumbered. If the lien notice is transmitted to the department of justice, the security

agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete boat description, the amount of the lien, and the signature of the debtor. The department of justice shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county ~~where~~ *in which* the boat is to be registered. The owner of a boat is the person entitled to operate and possess the boat.

(11) A security interest in a boat held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(12) Whenever a security interest or lien is filed against a boat that is subject to two security interests previously perfected by filing under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This boat is subject to additional security interest on file with the Department of Justice." No other information regarding the additional security interests need be endorsed on the certificate.

(13) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

(14) The filing of a security interest or other lien as ~~herein~~ provided *in this section* perfects a security interest that has attached at the time the certificate of ownership noting the interest is issued. Issuance of a certificate of ownership constitutes constructive notice to subsequent purchasers or encumbrancers, from the time of filing, of the existence of the security interest.

(15) Upon default under a chattel mortgage or conditional sales contract covering a boat, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a boat, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(16) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that he fails to file the satisfaction.

(17) Upon receipt of any liens, notice of liens dependent on possession, or attachments against the record of any boat registered in this state, the department of justice shall within 24 hours mail to the owner, conditional

sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(18) It is not necessary to refile with the department of justice any instruments on file in the office of ~~any~~ *the* county clerk and recorder on October 1, 1989.

(19) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a boat. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of any security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the general fund in accordance with 15-1-504."

Section 23. Section 23-2-611, MCA, is amended to read:

"**23-2-611. Certificate of ownership — filing of security interests.** (1) A snowmobile may not be operated upon any public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a snowmobile shall apply for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. The forms must require the following information:

(a) name of the owner;

(b) residence of the owner, by town and county;

(c) business or home mail address of the owner;

(d) name and address of any lienholder;

(e) amount due under any contract or lien;

(f) name of the manufacturer;

(g) model number or name;

(h) identification number; and

(i) name and address of the dealer or other person from whom acquired.

(3) The application must be signed by at least one owner or by a properly authorized officer or representative of the owner.

(4) If a certificate of ownership has previously been issued under the provisions of 23-2-601 through 23-2-644, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of 23-2-601 through 23-2-644 were not in force and effect.

(5) Upon completion of the application, on forms furnished by the department of justice, the county treasurer shall issue to the applicant two copies of the application, one of which ~~shall~~ *must* be marked "file copy". The treasurer shall forward one copy and the original application to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership, which ~~shall~~ *must* contain that information in the application considered necessary by the department of justice, and a permanent ownership number. The certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of $5 ~~shall~~ *must* be paid to the county treasurer, $3.50 of which ~~shall~~ *must* be forwarded by the county treasurer to the department of justice and deposited in the general fund.

(8) A security interest in a snowmobile is not valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been filed with the department of justice as provided in this section. The lien notice must be filed on a form approved by the department {of justice}. The department of justice may not file a security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the snowmobile encumbered. If the lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete snowmobile description, the amount of the lien, and the signature of the debtor. The department of justice shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the

county ~~where~~ *in which* the snowmobile is to be registered. The owner of a snowmobile is the person entitled to operate and possess the snowmobile.

(9) A security interest in a snowmobile held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(10) Whenever a security interest or lien is filed against a snowmobile that is subject to two security interests previously perfected by filing under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This snowmobile is subject to additional security interest on file with the Department of Justice"; No other information regarding the additional security interests need be endorsed on the certificate.

(11) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

(12) The filing of a security interest or other lien as ~~herein~~ provided *in this section* perfects a security interest that has attached at the time the certificate of ownership noting the interest is issued. Issuance of a certificate of ownership constitutes constructive notice to subsequent purchasers or encumbrancers, from the time of filing, of the existence of the security interest.

(13) Upon default under a chattel mortgage or conditional sales contract covering a snowmobile, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a snowmobile, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(14) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that he fails to file the satisfaction.

(15) Upon receipt of any liens, notice of liens dependent on possession, or attachments against the record of any snowmobile registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(16) It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.

(17) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a snowmobile. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the general fund in accordance with 15-1-504."

Section 24. Section 25-30-101, MCA, is amended to read:

"25-30-101. **Applicability of district court and justice's court rules.** (1) The provisions of 3-10-222, 3-10-231 through 3-10-234, ~~3-10-305, 3-10-306,~~ and 3-10-704 through 3-10-706; 25-31-102(2), ~~25-31-114 through 25-31-116, 25-31-304~~ *25-31-115*, 25-31-402~~(2)~~, 25-31-405, parts 7 through 11 of chapter 31 of this title (except ~~25-31-915,~~ 25-31-1002~~,~~ ~~25-31-1004, and 25-31-1005~~), and chapter 33 of this title; and chapter 9, part 10 of chapter 16, chapter 17, and part 15 of chapter 18 of Title 27 are applicable to municipal courts except when they are inconsistent with the provisions of this chapter and chapter 6 of Title 3, the words "municipal court" being substituted for justice's court and "judge" for justice of the peace.

(2) Except as otherwise provided by this chapter, chapter 6 of Title 3, and the supreme court's rules on disqualification of judges, the proceedings and practice in municipal court ~~shall~~ *must* be the same as in district court."

Section 25. Section 25-31-402, MCA, is amended to read:

"25-31-402. **~~Time for issuing summons — security~~ *Security* for costs.** ~~(1) The court must endorse on the complaint the date upon which it was filed, and at any time within 1 year thereafter the plaintiff may have summons issued.~~

~~(2) Justices~~ *A justice* may, in all cases, require a deposit of money or an undertaking as security for costs of court before issuing a summons."

Section 26. Section 25-31-406, MCA, is amended to read:

"25-31-406. **Time for answer or appearance.** The time specified in the summons for the appearance of the defendant must be as follows:

(1) if an order of arrest ~~be~~ *is* endorsed upon the summons, ~~forthwith~~ *immediately*;

(2) in all other cases, the summons ~~shall~~ *must* provide that the defendant shall answer ~~and, if such answer be~~ in writing, file the ~~same~~ *answer,* and serve a copy ~~thereof~~ upon the plaintiff or his attorney within ~~6~~ *20* days after service of ~~this~~ *the* summons, exclusive of the day of service, and in case

of his failure to appear or answer, judgment will be taken against him by default for the relief demanded in the complaint."

Section 27. Section 25-31-407, MCA, is amended to read:

"**25-31-407.** ~~**Where summons may be**~~ ***Requirements for summons*** **served** ***out of county.*** ~~(1) The summons cannot be served out of the county of the justice before whom the action is brought, except:~~

~~(a) when the action is brought upon a joint contract or obligation of two or more persons who reside in different counties and the summons has been served upon the defendant resident of the county, in which case the summons may be served upon the other defendant out of the county;~~

~~(b) when an action is brought against a party who has contracted to perform an obligation at a particular place and resides in a different county, in which case summons may be served in the county where he resides; and~~

~~(c) where an action is brought for an injury to person or property and the defendant resides in a different county, in which case summons may be served in the county where defendant resides.~~

~~(2)~~ When a summons issued by a justice of the peace is to be served out of the county in which it was issued, the summons ~~shall~~ *must* have attached to it a certificate, under seal by the county clerk of the county in which it was issued, to the effect that the person issuing the ~~same~~ *summons* was an acting justice of the peace at the date of the summons."

Section 28. Section 25-31-702, MCA, is amended to read:

"**25-31-702. Trial to be timely.** Unless postponed as provided in this part or transferred to another court, the trial of the action may commence at the time set by the court as specified in the notice mentioned in ~~25-31-701~~ *Rule 20, Montana Justice and City Court Rules of Civil Procedure,* and after the trial has commenced, there ~~must~~ *may* be no adjournment for more than 24 hours at any one time until all the issues ~~therein~~ are disposed of."

Section 29. Section 25-32-101, MCA, is amended to read:

"**25-32-101. Applicability of laws on procedure in justices' courts.** All proceedings in civil actions in city courts must, except as *otherwise provided* in this chapter ~~otherwise provided~~, be conducted in the same manner as civil actions in justices' courts and conform to the Montana Justice ~~Courts~~ *and City Court* Rules of Civil Procedure (Title 25, chapter ~~22~~ *23*)."

Section 30. Section 25-32-102, MCA, is amended to read:

"**25-32-102. Commencement of action — complaint.** (1) Civil actions in city courts are commenced by filing a complaint as provided under the Montana Justice ~~Courts~~ *and City Court* Rules of Civil Procedure (Title 25, chapter ~~22~~ *23*).

(2) The complaint must set forth a concise statement of the facts constituting the cause of action.

(3) A complaint under 3-11-103 must set forth the interest of the city in the action. An allegation that the cause of action arose from a violation of a city ordinance or failure to perform a duty required by city ordinance is a sufficient interest of the city.

(4) The ordinance may be referred to by its title, section, and number."

Section 31. Section 25-32-103, MCA, is amended to read:

"**25-32-103. Summons.** Immediately after filing the complaint, a summons must be issued, directed to the defendant and returnable as provided under the Montana Justice ~~Courts~~ *and City Court* Rules of Civil Procedure (Title 25, chapter ~~22~~ *23*)."

Section 32. Section 25-32-104, MCA, is amended to read:

"**25-32-104. Answer and immediate trial.** On the return of the summons, the defendant shall file a written answer to the complaint. The answer must conform to the Montana Justice ~~Courts~~ *and City Court* Rules of Civil Procedure (Title 25, chapter ~~22~~ *23*). Upon return of the answer, the case must be tried as in justice's court."

Section 33. Section 27-1-221, MCA, is amended to read:

"**27-1-221. Punitive damages — liability — proof — award.** (1) Subject to ~~subsection (2) and~~ the provisions of 27-1-220 *and this section*, reasonable punitive damages may be awarded ~~where~~ *when* the defendant has been *found* guilty of actual fraud or actual malice.

(2) A defendant is guilty of actual malice if he has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and:

(a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or

(b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

(3) A defendant is guilty of actual fraud if he:

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

(4) Actual fraud exists only ~~where~~ *when* the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of ~~such~~ *that* reliance. The contract definitions of fraud expressed in Title 28, chapter 2, do not apply to proof of actual fraud under this section.

(5) All elements of the claim for punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence~~,~~ but less than beyond a reasonable doubt.

(6) Liability for punitive damages must be determined by the trier of fact, whether judge or jury.

(7) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be determined by the jury in an immediate, separate proceeding and be submitted to the judge for review as provided in subsection (7)(c). In the separate proceeding to determine the amount of punitive damages to be awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

(b) When an award of punitive damages is made by the judge, he shall clearly state his reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

(i) the nature and reprehensibility of the defendant's wrongdoing;

(ii) the extent of the defendant's wrongdoing;

(iii) the intent of the defendant in committing the wrong;

(iv) the profitability of the defendant's wrongdoing, if applicable;

(v) the amount of actual damages awarded by the jury;

(vi) the defendant's net worth;

(vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;

(viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and

(ix) any other circumstances ~~which~~ *that* may operate to increase or reduce, without wholly defeating, punitive damages.

(c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (7)(b). If after review the judge determines that the jury award of punitive damages should be increased or decreased, he may do so. The judge shall clearly state his reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (7)(b).

(8) Nothing in this section is intended to alter the Montana Rules of Civil Procedure governing discovery of a defendant's financial affairs, financial condition, and net worth."

Section 34. Section 31-1-233, MCA, is amended to read:

"**31-1-233. Insurance.** (1) The amount, if any, included for insurance ~~which~~ *that* may be purchased by the holder of the contract ~~shall~~ *may* not exceed the applicable premiums chargeable in accordance with the rates filed with the insurance department of this state where ~~such~~ *the* rates are required by law to be approved by ~~said~~ *the insurance* department.

(2) All ~~such~~ insurance ~~shall~~ *purchased by the holder of the contract must* be written by an insurance company authorized to do business in this state and ~~shall~~ *must* be countersigned by a duly licensed resident ~~agent~~ *insurance producer* authorized to engage in the insurance business in this state.

(3) A buyer may be required to provide insurance on the goods at his own cost for the protection of the seller or holder as well as the buyer, but ~~such~~ *the* insurance ~~shall be~~ *is* limited to insurance against substantial risk of loss, damage, or destruction of the goods.

(4) Any other insurance may be included in a retail installment transaction at the buyer's expense only if contracted for voluntarily by the buyer.

(5) If ~~such~~ insurance for which ~~such~~ *an* identified charge is made insures the life, safety, or health of the buyer or his interest in the goods and is purchased by the holder, the holder shall within 30 days after the execution of the retail installment contract send or cause to be sent to the buyer a policy or policies or certificate or certificates of insurance, written by an insurance company authorized to do business in this state, clearly setting forth:

(a) the amount of the premium;

(b) the kind or kinds of insurance;

(c) the coverages; and

(d) if a policy, all the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of insurance or, if a certificate, a summary ~~thereof~~ *of the terms, exceptions, limitations, restrictions, and conditions*.

(6) The seller ~~shall~~ *may* not decline existing insurance written by an insurance company authorized to do business in this state, and the buyer ~~shall have~~ *has* the privilege of purchasing insurance from an ~~agent~~ *insurance producer* or broker of his own selection and of selecting his insurance company, provided that:

(a) the insurance company ~~shall be~~ *is* acceptable to the holder, which acceptance ~~shall~~ *may* not be unreasonably or arbitrarily withheld; and

(b) the inclusion of the cost of the insurance premium in the retail installment contract when the buyer selects his ~~agent~~ *insurance producer,* broker, or company ~~shall be~~ *is* optional with the seller.

(7) If any insurance is canceled or the premium adjusted, any refund of the insurance premium received by the holder ~~shall~~ *must* be credited to the final maturing installment of the contract except to the extent applied toward payment for a similar insurance protecting the interests of the buyer and the holder or either of them."

Section 35. Section 31-3-141, MCA, is amended to read:

"**31-3-141. Actions available to consumer.** (1) A consumer may bring action in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any person who fails to comply with this part.

(2) A person who fails to delete information or incorporate into a report a consumer's statement of dispute because he judges the dispute to be frivolous or irrelevant is liable to suit.

(3) A person, other than the department of ~~revenue~~ *social and rehabilitation services* under 40-5-261, who furnishes information to a consumer reporting agency ~~which~~ *that* is false or ~~any~~ *a* person who furnishes the information with malice or willful intent to injure the concerned consumer is liable to suit.

(4) A consumer who disputes the result of a reinvestigation conducted under 31-3-124 of the accuracy of information provided by the department of ~~revenue~~ *social and rehabilitation services* may petition for an administrative hearing pursuant to 40-5-261."

Section 36. Section 33-17-208, MCA, is amended to read:

"**33-17-208. Prelicensing education — basic requirement.** (1) (a) A person applying for a license to act as an insurance producer for property, casualty, and surety insurance shall complete 40 hours of approved prelicensing education courses in those areas of insurance within 12 months prior to the examination, unless he is exempted from the requirement under subsection (3).

(b) A person applying for a license to act as an insurance producer for life and disability insurance or as an ~~enrollment representative~~ *insurance producer* for a health service corporation shall complete 40 hours of approved prelicensing education courses in those areas of insurance within 12 months prior to the examination, unless he is exempted from the requirement under subsection (3).

(2) A person applying for licenses to act as an insurance producer for both the property, casualty, and surety areas and the life and disability areas ~~must~~ *shall* meet the education requirements in all the areas of insurance.

(3) The minimum prelicensing education requirement does not apply to a person who:

(a) has been licensed within the 12 preceding months as an insurance producer in another state that requires prelicensing education and has completed the education in the other state;

(b) seeks a nonresident license, having been licensed as an insurance provider in his state of residence for at least 1 year;

(c) seeks a nonresident license and is from a state having a prelicensing education requirement;

(d) seeks to reinstate a license lapsed for less than 2 years;

(e) seeks a temporary license under 33-17-216; or

(f) is exempt from examination requirements under 33-17-212(5)."

Section 37. Section 33-21-207, MCA, is amended to read:

"**33-21-207. Issuance of policies.** Each policy, certificate of insurance, or notice of proposed insurance of credit life insurance and credit disability insurance must be delivered or issued for delivery in Montana only by an insurer authorized to transact insurance in Montana and must, except as provided in 33-17-103, be issued only through a licensed insurance ~~agent~~ *producer*."

Section 38. Section 37-47-101, MCA, is amended to read:

"**37-47-101.** *(Temporary)* **Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of outfitters provided for in 2-15-1883.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "License year" means that period commencing January 1 and ending December 31 of the same year.

(4) "Nonresident" means a person other than a resident.

(5) "Outfitter" means any person, except a person providing services on real property that he owns for the primary pursuit of bona fide agricultural interests, who:

(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;

(b) for consideration provides any saddle or pack animal or personal service for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game and accompanies such a party or person on an expedition for any of these purposes;

(c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or

(d) for consideration aids or assists any person in locating or pursuing any game animal.

(6) "Professional guide" and "guide" mean a person:

(a) who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment; or

(b) who has contracted independently with an outfitter and who furnishes personal guiding services and facilities, transportation, or equipment that he owns in assisting a person to hunt or take game birds or fish. A guide who provides independent contractor services to an outfitter may not provide facilities, equipment, or services for overnight use.

(7) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.

(8) "Participant" means a person using the services offered by a licensed outfitter or professional guide.

37-47-101. *(Effective July 1, 1991)* **Definitions.** As used in this ~~part~~ *chapter*, unless the context requires otherwise, the following definitions apply:

(1) "License year" means that period commencing January 1 and ending December 31 of the same year.

(2) "Nonresident" means a person other than a resident.

(3) "Outfitter" means ~~any~~ *a* person, except a person providing services on real property that he owns for the primary pursuit of bona fide agricultural interests, who:

(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;

(b) for consideration provides ~~any~~ *a* saddle or pack animal or personal service for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats, for ~~any~~ *a* person to hunt, trap, capture, take, or kill ~~any~~ game and accompanies such a party or person on an expedition for any of these purposes;

(c) for consideration furnishes a boat or other floating craft and accompanies ~~any~~ *a* person for the purpose of catching fish; or

(d) for consideration aids or assists ~~any~~ *a* person in locating or pursuing any game animal.

(4) "Outfitters' council" means the Montana outfitters' council provided for in 2-15-1883.

(5) "Professional guide" ~~and~~ *or* "guide" ~~mean~~ *means* a person:

(a) who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment; or

(b) who has contracted independently with an outfitter and who furnishes personal guiding services and facilities, transportation, or equipment in assisting a person to hunt or take game animals or fish.

(6) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.

(7) "Participant" means a person using the services offered by a license outfitter or professional guide."

Section 39. Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2) ~~of this section~~, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. ~~Every~~ *Each* employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows ~~such~~ an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to his main duties, carries or delivers papers.

(3) (a) A sole proprietor or a working member of a partnership who holds himself out or considers himself an independent contractor {and who is not contracting} for cosmetologist's services or barber's services, as defined in 39-51-204(1)(l) ~~must~~, *shall* elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the department for an exemption from the Workers' Compensation Act for himself.

(b) The application must be made in accordance with the rules adopted by the department. The department may deny the application only if it determines that the applicant is not an independent contractor.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains his status as an independent contractor until he notifies the department of any change in his status and provides a description of his present work status.

(e) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A private corporation shall provide coverage for its officers and other employees under the provisions of compensation plan No. 1, 2, or 3. However, pursuant to ~~such~~ rules ~~as~~ the department promulgates and

subject in all cases to approval by the department, an officer of a private corporation may elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by the department, served in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and *to* the department; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the employer, *to* the department, and *to* the insurer.

(b) If the employer changes plans or insurers, the officer's previous election is not effective and the officer shall again serve notice as provided if he elects not to be bound.

(c) The appointment or election of an employee as an officer of a corporation for the purpose of excluding the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer ~~must~~ *shall* sign the notice required by subsection (4)(a) under oath or affirmation, and he is subject to the penalties for false swearing under 45-7-202 if he falsifies the notice.

(5) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over ~~such~~ *the* place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign ~~will~~ *must* be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 40. Section 39-71-1019, MCA, is amended to read:

"**39-71-1019. Referral to department of social and rehabilitation services for retraining — benefits — appeals.** (1) If in its final order of determination the department considers a worker able to return to work in the worker's job pool, the insurer is not liable for rehabilitation benefits, even though the worker independently may pursue a training program of the worker's own choice or seek vocational rehabilitation services from the department of social and rehabilitation services.

(2) If in its final order of determination the department finds the worker needs retraining, the department shall determine the maximum duration for which funds under 39-71-1003 may be used for rehabilitation services under 39-71-1012(2)(d) through (2)(f) and shall refer the worker to

the department of social and rehabilitation services for a determination of vocational handicap.

(3) If the department of social and rehabilitation services determines that a disabled worker has a vocational handicap, the worker is eligible for funds under 39-71-1003 up to the maximum duration established in the department's final order of determination.

(4) If a disabled worker seeks vocational rehabilitation services from the department of social and rehabilitation services without giving the insurer the opportunity to designate a rehabilitation provider or, subsequently, without giving the department the opportunity to designate a rehabilitation panel to provide a report, the insurer is not liable for rehabilitation benefits. The insurer may terminate rehabilitation and other benefits, if any, being received by the worker by following the procedure set forth in 39-71-1032.

(5) The department of social and rehabilitation services, in providing rehabilitation services to a worker referred to it by the department, shall consider but is not bound by the rehabilitation panel report.

(6) If the department of social and rehabilitation services has determined that all appropriate rehabilitation services have been provided to a disabled worker, the department {of social and rehabilitation services} shall document that determination to the department.

(7) The appeal process before the board of social and rehabilitation appeals provided for in 53-7-106 is the exclusive remedy for a person aggrieved in the receipt of services provided by the department of social and rehabilitation services."

Section 41. Section 40-5-412, MCA, is amended to read:

"40-5-412. **Initiation of income withholding procedures.** (1) In a case concerning a support obligation referred to in 40-5-411, the department shall immediately issue an order under 40-5-415 for the payment of current support.

(2) In any other case, the department shall monitor and track all support payments required by the support order. If at any time these records indicate that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support, the department shall commence proceedings to initiate withholding of the obligor's income as provided in this part.

(3) To accomplish the purpose of subsection (2), the department by written notice to the obligor may direct an obligor who does not owe unpaid child support equal to or in excess of 1 month's support payment to pay all support through the department, notwithstanding ~~any~~ *a* court order directing payments to be made to the obligee or clerk of court.

(4) Whenever an obligation for support is paid through ~~the support enforcement and collections unit of~~ the department, the department ~~must~~

shall forward payment to the obligee within 10 days of the department's receipt of payment from the obligor."

Section 42. Section 44-12-203, MCA, is amended to read:

"44-12-203. **Presumption — procedure following answer or expiration of time for answering.** (1) There is a rebuttable presumption of forfeiture as to all property listed in 44-12-102, except property listed in 44-12-102(1)(i).

(2) If a verified answer to the petition is not filed within 20 days after the service of the petition and summons, the court upon motion ~~must~~ *shall* order the property forfeited to the state.

(3) If a verified answer is filed within 20 days, the forfeiture proceedings ~~shall~~ *must* be set for hearing without a jury ~~not less than~~ *no sooner than* 60 days after the answer is filed. Notice of the hearing ~~shall~~ *must* be given in the manner provided for service of the petition and summons."

Section 43. Section 50-5-1104, MCA, is amended to read:

"50-5-1104. **Rights of long-term care facility residents.** (1) The state adopts by reference for all long-term care facilities the rights for long-term care facility residents applied by the federal government to facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or medicare program (42 U.S.C. 1395x(j) and 1396d(c), as implemented by regulation).

(2) In addition to the rights adopted under subsection (1), the state adopts for all residents of long-term care facilities the following rights:

(a) A resident or his authorized representative must be informed by the facility at least 30 days in advance of any changes in the cost or availability of services, unless to do so is beyond the facility's control.

(b) Regardless of the source of payment, each resident or his authorized representative is entitled, upon request, to receive and examine an explanation of his monthly bill.

(c) Residents have the right to organize, maintain, and participate in resident advisory councils. The facility shall afford reasonable privacy and facility space for the meetings of ~~such~~ *the* councils.

(d) A resident has the right to present a grievance on his own behalf or that of others to the facility or the resident advisory council. The facility shall establish written procedures for receiving, handling, and informing residents or the resident advisory council of the outcome of any grievance presented.

(e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving grievances, free from restraint, interference, or reprisal.

(f) During his stay in a long-term care facility, a resident retains the prerogative to exercise decisionmaking rights in all aspects of his health care, including placement and treatment issues such as medication, special diets, or other medical regimens.

(g) The resident's authorized representative must be notified in a prompt manner of any significant accident, unexplained absence, or significant change in the resident's health status.

(h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected incidents of abuse under the Montana Elder *and Developmentally Disabled* Abuse Prevention Act, Title 53, chapter 5, part 5.

(i) Each resident has the right to privacy in his room or portion of the room. If a resident is seeking privacy in his room, staff members should make reasonable efforts to make their presence known when entering the room.

(j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance notice to ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days' written notification of any interfacility transfer or discharge except in cases of emergency or for medical reasons documented in the resident's medical record by the attending physician.

(k) If clothing is provided to the resident by the facility, it must be of reasonable fit.

(l) A resident has the right to reasonable safeguards for his personal possessions brought to the facility. The facility shall provide a means for safeguarding the resident's small items of value in his room or in another part of the facility where he must have reasonable access to the items.

(m) The resident has the right to have all losses or thefts of personal possessions promptly investigated by the facility. The results of the investigation must be reported to the affected resident.

(3) The administrator of the facility shall adopt whatever additional measures are necessary to implement the residents' rights listed in subsections (1) and (2) and meet any other requirements relating to residents' health and safety that are conditions of participation in a state or federal program of medical assistance."

Section 44. Section 50-16-536, MCA, is amended to read:

"50-16-536. **Method of compulsory process.** (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535 (1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535 (1)(i), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or his authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535 (1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535 (1)(i), that the requirements of subsection (1) for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, where authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) Where access to health care *information* is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the health care provider's actual cost for providing the information, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure."

Section 45. Section 53-3-321, MCA, is amended to read:

"**53-3-321. Services for recipients in need of special assistance.** (1) Unless otherwise exempted, in a county with state-assumed welfare services, a person who has a serious barrier to employment or who suffers from drug or alcohol dependency shall report to a job search, training, and ~~work~~ *workfare* program for the purpose of receiving an assessment to determine whether the person is likely to benefit from counseling, therapy, or rehabilitation. The agency shall require that the person be enrolled in either:

(a) a job search, training, and ~~work~~ *workfare* program established under 53-3-304, except that he need not participate in the job search program under 53-3-304(3)(e) until the agency determines that he is ready to participate in the work force; or

(b) a program designed specifically to help that person overcome problems that impair the potential for employment.

(2) Subject to available funding, a program provided for in subsection (1)(b) may include the following elements:

(a) assessment and testing;

(b) an employability plan;

(c) remedial education or job skills training, if required by the employability plan; and

(d) services, including counseling, therapy, and rehabilitation, to address serious barriers to employment and drug or alcohol dependency.

(3) In order to encourage rehabilitation, the department may restrict services to persons suffering from drug or alcohol dependency to one intervention through the provision of services described in subsections (2)(a) through (2)(d). The department may continue to provide up to 3 months of additional benefits for those persons participating in a drug or alcohol rehabilitation program. This 3-month extension extends those limitations in 53-3-215."

Section 46. Section 61-3-509, MCA, is amended to read:

"**61-3-509. Disposition of taxes.** (1) Except as provided in subsection (2), the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles and fees in lieu of tax on motor homes, travel trailers, and campers collected under 61-3-504, 61-3-521, and 61-3-537 to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days thereafter, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(2) The county treasurer shall deduct as a district court fee 7% of the amount of the 2% tax collected on an automobile or truck having a rated capacity of ~~three-quarters of a~~ *1* ton or less. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time the county treasurer distributes the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the general fund to be used for purposes of state funding of the district court expenses as provided in 3-5-901. Any amount forwarded to the state treasurer under

this subsection that is not used for district court expenses must be refunded to the counties in the proportion that the amount collected from each county bears to the total amount collected."

Section 47. Section 61-8-207, MCA, is amended to read:

"61-8-207. **Traffic-control signal legend.** Whenever traffic is controlled by traffic-control signals exhibiting the words "Go", "Caution", or "Stop" or exhibiting different colored lights successively one at a time or with arrows, the following colors only ~~shall~~ *must* be used and ~~said~~ *the* terms and lights ~~shall~~ *must* indicate and apply to drivers of vehicles and pedestrians as follows:

(1) ~~Green~~ *green* alone or "Go":

(a) Vehicular traffic facing the signal may proceed straight through or turn left or right unless a sign at ~~such~~ *the* place prohibits either ~~such~~ turn. But vehicular traffic, including vehicles turning right or left, ~~shall~~ *must* yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection ~~of~~ *or* an adjacent crosswalk at the time ~~such~~ *the* signal is exhibited.

(b) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(2) ~~Yellow~~ *yellow* alone or "Caution" when shown following the green or "Go" signal:

(a) Vehicular traffic facing the signal is ~~thereby~~ warned that the red or "Stop" signal will be exhibited immediately thereafter and ~~such~~ vehicular traffic ~~shall~~ *may* not enter or be crossing the intersection when the red or "Stop" signal is exhibited.

(b) Pedestrians facing ~~such~~ *the* signals are ~~thereby~~ advised that there is insufficient time to cross the roadway, and ~~any~~ *a* pedestrian then starting to cross shall yield the right-of-way to all vehicles.

(3) ~~Red~~ *red* alone or "Stop":

(a) Vehicular traffic facing the signal ~~shall~~ *must* stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and ~~shall~~ *must* remain standing until green or "Go" is shown alone, until a right turn can safely be made, or until a left turn can safely be made from the far left lane if the turn is made from a one-way street onto another one-way street going left. In making ~~such~~ *the* turn, vehicular traffic must yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection. If a traffic sign legend indicating that no right turn on red or no left turn on red may be made after a stop is posted at ~~said~~ *the* intersection, ~~such~~ *the* movement cannot be made until green or "Go" is shown alone.

(b) ~~No~~ *A* pedestrian facing ~~such~~ *a* signal ~~shall~~ *may not* enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(4) ~~Red~~ *red* with *a* green arrow:

(a) Vehicular traffic facing ~~such~~ *a* signal may cautiously enter the intersection only to make the movement indicated by ~~such~~ *the* arrow but ~~shall~~ *must* yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

(b) ~~No~~ *A* pedestrian facing ~~such~~ *a* signal ~~shall~~ *may not* enter the roadway unless he can do so safely and without interfering with ~~any~~ vehicular traffic.

(5) ~~Traffic-control~~ *traffic-control* signal at *a* place other than *an* intersection:

(a) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section ~~shall be~~ *are* applicable except as to those provisions ~~which~~ *that* by their very nature can have no application.

(b) Any stop required ~~shall~~ *must* be made at a sign or marking on the pavement indicating where the stop ~~shall~~ *must* be made, but in the absence of any ~~such~~ sign or marking, the stop ~~shall~~ *must* be made at the signal."

Section 48. Section 61-8-312, MCA, is amended to read:

"**61-8-312. Special speed limitations on trucks, truck tractors, motor-driven cycles, and vehicles towing housetrailers.** (1) ~~No~~ *A* person ~~shall~~ *may not* operate ~~any~~ *a* truck or truck tractor, the gross weight of which exceeds 8,000 pounds, at a speed greater than 65 miles per hour on those completed sections of interstate and four-lane divided highways and 60 miles per hour on those completed sections of primary and secondary highways. However, the truck nighttime speed limit ~~shall~~ *may* not exceed that of automobiles, as stated in 61-8-303.

(2) ~~No~~ *A* person ~~shall~~ *may not* operate a vehicle subject to a term permit under 61-10-124(3)(d) or a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles subject to special permits under 61-10-124~~(4)~~*(6)* at a speed greater than 55 miles per hour.

(3) ~~No~~ *A* person ~~shall~~ *may not* operate ~~any~~ *a* motor-driven cycle at any time mentioned in 61-9-201 at a speed greater than 35 miles per hour unless ~~such~~ *the* motor-driven cycle is equipped with a headlamp or lamps ~~which~~ *that* are adequate to reveal a person or vehicle at a distance of 300 feet ahead.

(4) ~~No~~ *A* person ~~shall~~ *may not* operate a vehicle ~~which~~ *that* is towing a housetrailer at a speed greater than a maximum of 50 miles per hour."

Section 49. Section 61-10-107, MCA, is amended to read:

"**61-10-107. Maximum gross weight — when permit required.** (1) An axle may not carry a load in excess of 20,000 pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. For purposes of this section, axles

40 inches or less apart are considered as a single axle. A vehicle or combination may not have more than nine axles. The maximum gross weight allowed on a vehicle, group of axles, or combination of vehicles ~~shall~~ *must* be determined by the formula:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

in which W equals gross weight, L equals wheel base in feet, and N equals number of axles, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axles of ~~such~~ *the* consecutive sets of tandem axles is 36 feet or more.

(2) Notwithstanding a vehicle's conformance with the requirements of subsection (1), its maximum load per inch of tire width, excluding the steering axle, may not exceed 600 pounds, based on the table in 61-10-105(3).

(3) If the gross weight of a vehicle or combination exceeds 80,000 pounds, the vehicle or combination must have a special permit, which may be issued in the discretion of the department of highways based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation. The fee ~~shall be~~ *is* $20 per trip permit or $100 per term permit. A term permit may not be issued for a period of time greater than the period for which the GVW license is valid. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. Permits may specify and permits issued under 61-10-124~~(4)~~*(6)* must specify highway routing.

(4) A special permit issued under subsection (3) for the transportation of agricultural products by farm vehicles from a harvesting combine or other harvesting machinery to the point of first unloading ~~shall be~~ *is* for the full term of the harvest season of the agricultural product transported.

(5) This section does not apply to highways ~~which~~ *that* are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes."

Section 50. Section 61-10-146, MCA, is amended to read:

"**61-10-146. Special permits — misrepresentations and violations as misdemeanor.** (1) A person who knowingly and willfully misrepresents the size or weight of a vehicle, combination of vehicles, load, object, or other thing in obtaining a special permit or who does not follow the requirements and conditions of the special permit or who operates a vehicle, combination of vehicles, load, object, or other thing the size or weight of which requires a special permit without first obtaining a special permit is guilty of a misdemeanor.

(2) A person, firm, or corporation convicted of violating any provision of 61-10-124~~(4)~~*(6)* or any restriction on the special permits issued by the department under 61-10-124~~(4)~~*(6)* shall be punished by a fine of not less than $500 or more than $1,000 and all special permits issued for the

operation of the combination in violation shall be confiscated. The combination must be separated into combinations of legal length before the units may proceed."

Section 51. Section 75-2-503, MCA, is amended to read:

"75-2-503. **Rulemaking authority** — ***issuance of permits.*** *(1)* The department shall adopt rules establishing standards and procedures for accreditation of asbestos-related occupations and control of the work performed by persons in asbestos-related occupations. The rules must be consistent with federal law and include but are not limited to:

~~(1)~~*(a)* standards for training course review and approval;

~~(2)~~*(b)* standards for accreditation of applicants for asbestos-related occupations;

~~(3)~~*(c)* examination requirements for accreditation of applicants for asbestos-related occupations;

~~(4)~~*(d)* requirements for renewal of accreditation, including periodic refresher courses;

~~(5)~~*(e)* revocation of accreditation;

~~(6)~~*(f)* inspection requirements for asbestos projects and asbestos-related occupations credentials;

~~(7)~~*(g)* criteria to determine whether and what type of control measures are necessary for an asbestos project and whether a project is completed in a manner sufficient to protect public health, including criteria setting allowable limits on indoor airborne asbestos. A determination of whether asbestos abatement of a structure is necessary may not be based solely upon the results of airborne asbestos testing.

~~(8)~~*(h)* requirements for issuance of asbestos project permits and conditions that permitholders ~~must~~ *shall* meet;

~~(9)~~*(i)* standards for seeking injunctions, criminal and civil penalties, or emergency actions;

~~(10)~~*(j)* advance notification procedures and issuance of permits for asbestos projects; and

~~(11) (a)~~*(k)* fees, *which must be commensurate with costs,* for:

(i) review and approval of training courses;

(ii) application for and renewal of accreditation by a person seeking to pursue an asbestos-related occupation;

(iii) issuance of asbestos project permits; and

(iv) requested inspections of asbestos projects~~;~~.

~~(b) fees must be commensurate with costs;~~

~~(c) for~~ *(2) For* asbestos projects having a cost of $3,000 or less, the department shall issue asbestos project permits within 7 calendar days following the receipt of a properly completed permit application and the appropriate fee."

Section 52. Section 75-10-701, MCA, is amended to read:

"**75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Director" means the director of the department of health and environmental sciences.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(4) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

(5) "Fund" means the environmental quality protection fund established in 75-10-704.

(6) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

(7) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other such resources within the state of Montana owned, managed, held in trust or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

(8) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by ~~such~~ *the* dam, unless ~~such~~ *the* owner or operator is a person who would otherwise be liable for ~~such~~ *a* release or threatened release under 75-10-715(1).

(9) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(10) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(11) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance ~~either~~ directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers as defined in 80-10-101(2) when applied as part of accepted agricultural practice.

(12) "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasi-

bility studies, and other actions necessary or appropriate to respond to a release or threatened release.

(13) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially ~~responsible party~~ *liable person* acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

(14) "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(b) any person who is retained or hired by a person described in subsection (14)(a) to provide services relating to a remedial action.

(15) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies."

Section 53. Section 75-10-704, MCA, is amended to read:

"**75-10-704. Environmental quality protection fund.** (1) There is created in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) establish and implement a system for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify ~~responsible parties~~ *liable persons*, to obtain the participation and financial contribution of ~~responsible parties~~ *liable persons* for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature; and

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) The department shall submit to the legislature at the beginning of each regular session a complete financial report on the fund, including a description of all expenditures made since the preceding report."

Section 54. Section 75-10-718, MCA, is amended to read:

"**75-10-718. Liability of remedial action contractor.** (1) A person who is a remedial action contractor with respect to a release or threatened release of a hazardous or deleterious substance is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss or damage to property, or economic loss.

(2) Immunity from liability, pursuant to subsection (1), does not apply in the case of a release that is caused by conduct of the remedial action contractor that is negligent or grossly negligent or that constitutes intentional misconduct.

(3) This section does not affect the liability of a person under a warranty under federal, state, or common law or the liability to an employee of an employer who is a remedial action contractor under any provision of law, including any provision of a law relating to workers' compensation.

(4) A state agency, state employee, or an employee of a political subdivision who provides services relating to remedial action while acting within the scope of its or his authority as a governmental agency or employee has the same exemption from liability as is provided to the remedial action contractor under this section.

(5) The defense provided by 75-10-715(5)(c) is not available to a person liable under 75-10-715(1) with respect to remedial action costs or damages caused by an act or omission of a remedial action contractor.

(6) Except as provided in subsections (4) and (5), this section does not affect the liability under this part of a person other than a remedial action contractor.

(7) This section does not affect the plaintiff's burden of establishing liability under this part.

(8) This section does not minimize the liability, lessen the standard of liability, or otherwise shield from liability a potentially ~~responsible party~~ *liable person* under 75-10-715 or section 107 of CERCLA for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance."

Section 55. Section 76-14-112, MCA, is amended to read:

"76-14-112. **Rangeland improvement loan special revenue account.** (1) There is created a rangeland improvement loan special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be allocated to the rangeland improvement loan earmarked account ~~$185,000 for the biennium ending June 30, 1989, from the renewable resource development account created in 90-2-125,~~ any principal and accrued interest received in repayment of a loan made under the rangeland improvement loan program~~,~~ and any fees or charges collected by the department pursuant to 76-14-116 for the servicing of loans, including arrangements for obtaining security interests."

Section 56. Section 80-9-206, MCA, is amended to read:

"80-9-206. **Inspection fees — filing of annual statement.** (1) An inspection fee ~~shall~~ *must* be paid on all commercial feeds, including custom-mix feeds, except pet foods and specialty pet foods, distributed in this state as follows:

(a) The inspection fee ~~shall~~ *must* be set by rule on a cents-per-ton basis, except that the first 10 tons are exempt. The department may adjust the fee by rule to adequately fund the administration of this chapter. Adjustments ~~shall~~ *may* be made only after holding a public hearing on the proposed changes as required in 80-9-103 and ~~shall~~ *must* remain within the limits of 5 cents to 25 cents per ton. The effective date of any rule adjusting fees ~~will be~~ *is* January 1 of the calendar year following the issuance of ~~such~~ *the* rule. All permit holders are to be notified immediately of any change in fees.

(b) The feed manufacturer has primary responsibility for paying inspection fees. However, the distributor is responsible for inspection fees if the manufacturer has not paid them.

(c) Inspection fees ~~shall~~ *must* be paid on each commercial feed, including custom-mix feeds and feed ingredients that are defined as commercial feeds even though they are used in the manufacture of other commercial feeds. However, premixes prepared and used within a feed plant are exempt but not premixes or ingredients transferred from one plant to another even within the same organization.

(d) A person producing a commercial feed with a feed mixing plant at a feed lot~~,~~ *or a* poultry, swine, or dairy operation may not be required to pay inspection fees on the commercial feeds produced and used in his feeding operation at the site, but he ~~will be~~ *is* responsible for any unpaid inspection fees on commercial feed purchased by him and on any commercial feed he produces and distributes other than in his feeding operations at the site.

(2) Each person who holds a permit as required in 80-9-201(1) shall:

(a) file, not later than January 31 of each year, an annual statement setting forth the number of tons of commercial feeds distributed in this state during the preceding calendar year (January 1 through December 31) and upon filing ~~such a~~ *the* statement shall pay the inspection fee at the rate stated in subsection (1) ~~of this section~~. Inspection fees ~~which~~ *that* have not been remitted to the department *on or* before January 31 ~~shall~~ have a penalty fee of 10% with a minimum of $10 added to the amount due. The assessment of this penalty fee does not prevent the department from taking other action as provided in this chapter.

(b) keep those records ~~which~~ *that* are necessary or are required by the department to indicate accurately the tonnage of commercial feed distributed in this state. The department may examine the records to verify statements of tonnage.

(c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department to cancel or refuse to reissue a permit."

Section 57. Section 82-4-222, MCA, is amended to read:

"82-4-222. **Permit application.** (1) An operator desiring a permit shall file an application ~~which shall~~ *that must* contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. ~~Such~~ *The* plan ~~shall~~ *must* reflect thorough advance investigation and study by the operator, ~~and shall~~ include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of ~~such~~ use, and ~~shall~~ state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the area of land to be affected by the permit and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record and any purchasers under contracts for deed of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) *(i)* whether the applicant is in compliance with 82-4-251 and, if known, whether ~~every~~ *each* officer, partner, director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant, is subject to any of the provisions of 82-4-251. ~~and he~~ *If so, the applicant* shall ~~so~~ certify *the fact.* ~~and~~

(ii) whether any of the ~~foregoing~~ parties or persons *specified in subsection (1)(g)(i)* have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond ~~and, if~~. *If* so, a detailed explanation of the facts involved in each case must be attached~~;~~.

(h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory authority;

(i) the names and addresses of any persons who are engaged in strip-*mining* or underground-mining activities on behalf of the applicant;

(j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(k) the results of any test borings or core samplings ~~which~~ *that* the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of ~~such~~ *the* minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of ~~such~~ *the* seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application ~~shall~~ *must* contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set ~~shall~~ *must* depict subsurface conditions at ~~such~~ intervals ~~as~~ the department requires across the surface and ~~shall~~ *must* run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section ~~shall~~ *must* depict the thickness and geologic character of all known strata, beginning with the topsoil. In addition, each application for an underground-mining permit ~~shall~~ *must* be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections ~~shall~~ *must* also include all existing shafts, entries, and haulageways.

(l) the name and date of a daily newspaper of general circulation within the county in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of his application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected ~~should~~ *if* a permit ~~be~~ *is* granted;

(m) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface *water* and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until ~~such time as~~ hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until ~~such~~ *the* information is available and is incorporated into the application.

(n) a coal conservation plan; and

(o) ~~such~~ other or further information as the department may require.

(2) The application for a permit ~~shall~~ *must* be accompanied by two copies of all maps meeting the requirements of ~~the~~ subsections ~~below~~ *(2)(a) through (2)(n)*. The maps ~~shall~~ *must*:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining, ~~and~~ the boundaries of surface properties, and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of ~~such~~ *the* area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan ~~shall~~ *must* indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections ~~which~~ *that* have been submitted;

(l) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification ~~shall~~ *must* be signed and notarized. The department may reject a map as incomplete if its accuracy is not ~~so~~ attested.

(n) contain ~~such~~ other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip-*mining* or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings ~~shall~~ *must*, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required ~~above~~ *by this section*, each application for a permit ~~shall~~ *must* be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, *and* revegetating, and a reclamation plan for the area affected by the operation, which proposals ~~shall~~ *must* meet the requirements of this part and rules adopted under this part. The reclamation plan ~~shall~~ *must* address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state, certifying that the applicant has in force for the strip-*mining* or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy, or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy ~~shall~~ *must* provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip-*mining* or underground-coal-mining and reclamation oper-

ations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee ~~must~~ *shall* maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of his application for public inspection with the clerk and recorder at the courthouse of the county ~~where~~ *in which* the major portion of mining is proposed to occur."

Section 58. Section 82-4-434, MCA, is amended to read:

"**82-4-434. Reclamation plan part of contract — requirements.** The contract ~~shall~~ *must* meet the following requirements:

(1) The operator shall submit a reclamation plan to the board before commencing any opencut mining and may not commence mining before the plan receives approval from the board. The operator may request and receive a meeting with the board prior to submission of the plan. If the board does not notify the operator that it has approved or disapproved a plan within 30 days after the board has received the plan, the board is considered to have approved the plan. The board, however, for sufficient cause, may extend its period of consideration for an additional 30 days if it notifies the operator prior to the end of the original 30-day period. The board shall submit each reclamation plan or amendments to the reclamation plan to the landowner for his recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or amendments. The board may seek technical help from any state or federal agency. The board shall submit the plan immediately to the director of the university of Montana statewide archaeological survey for evaluation of possible archaeological or historical values in the area to be mined. The board may approve a reclamation plan only if the board has found that the plan provides for the best possible reclamation procedures available under the circumstances at the time, so that after mining operations are completed, the affected land will be reclaimed to a productive use. Once the reclamation plan is accepted in writing by the board, it ~~shall~~ *must* become a part of the contract but is subject to annual review and modification by the board.

(2) The board may not approve any reclamation plan unless the plan provides:

(a) that the land will be reclaimed for one or more specified uses, including but not limited to forest, pasture, orchard, cropland, residence, recreation, industry, *and* habitat for wildlife, including food, cover, or water, or other uses;

(b) that to the extent reasonable and practicable, the operator will establish vegetative cover commensurate with the proposed land use;

(c) whenever operations result in a need to prevent acid drainage or sedimentation on or in adjoining lands or streams, for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of ~~such~~ *the* impoundments or devices will not interfere with other landowners' rights or contribute to water pollution;

(d) that to accomplish practical utilization of soil materials, ~~such~~ *the* material will be utilized for placement on affected areas, if required by the reclamation plan after completion or termination of that particular phase of the mining operations, at a depth sufficient for plant growth on slopes of 3:1 or less;

(e) that grading will be commensurate with the topography sought and land use designated;

(f) that metal and other waste will be removed or buried;

(g) that all access, haul, and other support roads will be located, constructed, and maintained in such a manner as to control and minimize channeling and other erosion;

(h) that the operator will submit a progress report annually to the board;

(i) that all operations will be conducted ~~so as~~ to avoid range and forest fires and spontaneous combustion and that open burning of carbonaceous materials will be in accordance with suitable practices for fire prevention and control;

(j) that archaeological and historical values in areas to be mined will be given appropriate protection;

(k) that except for rock faces, bench faces, and excavations used for water impoundments, each surface area of the mined premises ~~which~~ *that* will be disturbed will be revegetated when its use for extractive purposes is no longer required;

(l) that seeding and planting will be done in a manner to achieve a permanent suitable vegetative cover for wildlife, livestock, and retardation of erosion and that all seed will be drilled unless otherwise provided in the plan;

(m) that reclamation will be as concurrent with mining operations as feasible and will be completed within a specified length of time; and

(n) that surface *water* and ground water will be given appropriate protection, consistent with state law, from deterioration of water quality and quantity that may arise as a result of the operation.

(3) If reclamation according to the plan has not been completed in the time specified, the board after 30 days' written notice shall order the operator to cease mining and, if the operator does not cease, shall institute an action to enjoin further operation and may sue for damages for breach of contract, for payment of the performance bond, or for both.

(4) (a) At any time during the period of reclamation, the operator may for good reason submit to the board a new reclamation plan or ~~amendment~~ *amendments* to the existing plan, including extensions of time.

(b) The board may approve the proposed new reclamation plan or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan and the proposed new plan or amendments to the existing plan will result in reclamation as or more desirable than the reclamation proposed under the existing plan; or

(ii) it is highly improbable reclamation will be successful unless the existing plan is replaced or amended.

(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan become a part of the contract.

(5) The operator shall provide a performance bond or an alternative acceptable to the board in an amount commensurate with the estimated cost of reclamation, but in no case may the bond be less than $200 per acre. The estimated cost of reclamation ~~shall~~ *must* be set forth in the reclamation plan.

(6) The contract, reclamation plan, and amendments accepted by the board ~~shall be~~ *are* a public record and *are* open to inspection.

(7) The contract ~~shall become~~ *is* effective when signed by the board and the operator and ~~shall remain~~ *remains* in force until terminated by mutual consent or by the board upon 6 months' notice."

Section 59. Section 85-7-102, MCA, is amended to read:

"85-7-102. **Evidence of title.** (1) The following documents ~~shall be~~ *are* sufficient evidence of title for the purpose of this chapter:

(a) the certificate of the county clerk and recorder;

(b) the certificate of the department of state lands; *or*

(c) records of ownership prepared by licensed title insurance ~~agents~~ *producers.*

(2) ~~Where~~ *When* lands have been purchased from the state and part or all of the purchase money has been paid but the patents or deeds from the state to ~~such~~ *the* lands have not been issued, the receipt or receipts held by the purchasers or the certificate of the department of state lands showing the payments on account of purchase ~~shall be~~ *is* evidence of title to ~~such~~ *the* lands under this chapter."

Section 60. Section 87-4-304, MCA, is amended to read:

"87-4-304. **License classification and fees.** (1) The following classes of licenses ~~shall~~ *may* be issued and the following fees charged ~~therefor~~ *for the licenses*:

(a) resident fur dealer's license, $10;

(b) nonresident fur dealer's license:

(i) ~~the fee must be~~ the same as the fee charged in the nonresident's state of residence for a Montana fur dealer seeking licensure in that state; *or*

(ii) if the nonresident's state does not issue a nonresident fur dealer's license, ~~the fee is~~ $50;

(c) fur dealer's agent's license, $10.

(2) ~~Any~~ *A* person who is employed by a resident or nonresident fur dealer as a traveling fur buyer ~~shall be deemed~~ *is considered* a fur dealer's agent. A fur dealer's agent's license may be issued to any person who is employed as a fur buyer by a licensed resident or licensed nonresident fur dealer, providing that it ~~shall be~~ *is* the responsibility of each ~~and every~~ fur dealer and fur dealer's agent to have the proper license before buying or dealing in furs as defined ~~by~~ *in* 87-4-301."

Section 61. Section 87-5-121, MCA, is amended to read:

"**87-5-121. Nongame wildlife account.** (1) There is a nongame wildlife account in the state special revenue fund provided for in 17-2-102.

(2) All money collected under 15-30-150 and all interest earned by the fund before being expended under this section must be deposited in the account~~, except as provided in subsection (5)~~.

(3) Money in the account must be used by the department, upon the approval of the commission as determined under 87-5-122, to provide adequate funding for:

(a) research and education programs on nongame wildlife in Montana, as provided for in 87-5-104; and

(b) any management programs for nongame wildlife approved by the legislature under 87-5-105 as species or subspecies in need of management.

(4) The money is available to the department in the same manner as provided in 87-1-601, except that ~~no~~ money collected under 15-30-150 may *not* be used:

(a) for the purchase of any real property; or

(b) in such a way as to interfere with the production on or management of private property.

~~(5) The department of revenue may deduct from collections an amount not to exceed $1 for each tax checkoff contribution for administering the voluntary checkoff program.~~ *(Subsection (5) is not effective since contingency in sec. 5, Ch. 589, L. 1987, did not occur.)*"

Section 62. **Code commissioner instruction.** The code commissioner is instructed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 52nd legislature.

Section 63. **Repealer.** Sections 2-4-321, 2-4-322, 2-4-323, 3-10-305, 3-10-306, 7-2-2214, 25-31-114, 25-31-116, 25-31-201, 25-31-202, 25-31-203, 25-31-204, 25-31-301, 25-31-302, 25-31-303, 25-31-304, 25-31-305, 25-31-306, 25-31-307, 25-31-308, 25-31-401, 25-31-403, 25-31-404, 25-31-408, 25-31-501, 25-31-502, 25-31-503, 25-31-504, 25-31-505, 25-31-506, 25-31-507, 25-31-511, 25-31-521, 25-31-522, 25-31-701, 25-31-804, 25-31-811, 25-31-812, 25-31-901, 25-31-902, 25-31-903, 25-31-904, 25-31-905, 25-31-911, 25-31-912, 25-31-913, 25-31-915, 25-31-1001, 25-31-1003, 25-31-1004, 25-31-1005, 25-31-1101, 25-31-1102, 25-31-1103, 25-31-1105, 25-32-101, 25-32-102, 25-32-103, 25-32-104, 53-8-101, 53-8-102, 53-8-103, and 53-8-104, MCA, are repealed.

Approved February 7, 1991.

CHAPTER NO. 17

[SB 78]

AN ACT ESTABLISHING THE THIRD MONDAY IN JANUARY AS A STATE HOLIDAY IN HONOR OF MARTIN LUTHER KING JR.; ELIMINATING HERITAGE DAY AS A STATE HOLIDAY; AMENDING SECTION 1-1-216, MCA; AND REPEALING SECTION 1-1-214, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-1-216, MCA, is amended to read:

"**1-1-216. Legal holidays and business days.** (1) The following are legal holidays in the state of Montana:

(a) Each Sunday;

(b) New Year's Day, January 1;

(c) Martin Luther King Jr. Day, the third Monday in January;

~~(c)~~*(d)* Lincoln's and Washington's Birthdays, the third Monday in February;

~~(d)~~*(e)* Memorial Day, the last Monday in May;

~~(e)~~*(f)* Independence Day, July 4;

~~(f)~~*(g)* Labor Day, the first Monday in September;

~~(g)~~*(h)* Columbus Day, the second Monday in October;

~~(h)~~*(i)* Veterans' Day, November 11;

~~(i)~~*(j)* Thanksgiving Day, the fourth Thursday in November;

~~(j)~~*(k)* Christmas Day, December 25;

~~(k)~~*(l)* State general election day~~;~~

~~(l) Heritage Day, to be observed annually on a date determined by the governing body of each political subdivision for the purposes of that political subdivision and by the governor for the executive, legislative, and judicial branches of state government, including the Montana university system~~.

(2) If any of the above-enumerated holidays (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days are business days."

Section 2. **Repealer.** Section 1-1-214, MCA, is repealed.

Approved February 8, 1991.

CHAPTER NO. 18

[HB 43]

AN ACT TO CLARIFY THE EXTENT OF A GRANDPARENT'S RIGHT TO VISIT GRANDCHILDREN; TO PROVIDE FOR NOTICE, IN CERTAIN CASES, TO THE DEPARTMENT OF FAMILY SERVICES IN A PROCEEDING TO ESTABLISH VISITATION RIGHTS; AND AMENDING SECTION 40-9-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-9-102, MCA, is amended to read:

"**40-9-102. Grandparent visitation rights.** (1) Except as provided in subsection (5), the district court may grant to a grandparent of a child reasonable visitation rights, *including but not limited to visitation rights regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title. The department of family services must be given notice of a petition for grandparent visitation regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.*

(2) Visitation rights granted under this section may be granted only upon a finding by the court, after a hearing, that the visitation would be in the best interest of the child.

(3) No person may petition the court under this section more often than once every 2 years unless there has been a significant change in the

circumstances of the child; the child's parent, guardian, or custodian; or the child's grandparent.

(4) The court may appoint an attorney to represent the interests of a child with respect to visitation when such interests are not adequately represented by the parties to the proceeding.

(5) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the adoption of the child by a person other than a stepparent or a grandparent."

Approved February 11, 1991.

CHAPTER NO. 19

[SB 2]

AN ACT REPEALING THE PROVISION MAKING THE REGIONAL RATEMAKING LAW FOR CERTAIN TYPES OF INSURANCE TEMPORARY; REPEALING SECTION 13, CHAPTER 400, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 13, Chapter 400, Laws of 1989, is repealed.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 11, 1991.

CHAPTER NO. 20

[SB 61]

AN ACT CLARIFYING THAT THE CALCULATION OF THE MONTANA DEDUCTION ALLOWED FOR A NET OPERATING LOSS DEDUCTION FROM A TRADE OR BUSINESS IS LIMITED TO ITEMS RELATED TO MONTANA INCOME; AMENDING SECTION 15-30-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-117, MCA, is amended to read:

"**15-30-117. Net operating loss — computation.** (1) A *Montana* net operating loss must be determined in accordance with section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in accordance with the following:

(a) ~~Additions to loss include~~ *The net operating loss deduction for Montana purposes is increased by the following*:

(i) that portion of the federal income tax and motor vehicle tax allowed as a deduction under 15-30-121 or 15-30-131 which is attributable to income from a *Montana* trade or business; and

(ii) *Montana* wages and salaries allowed as a business deduction under 15-30-111(5).

(b) ~~Reductions in the loss include~~ *The net operating loss deduction for Montana purposes is decreased by the following*:

(i) interest received on obligations of another state or territory or of a county, municipality, district, or political subdivision thereof allowed as nonbusiness income under 15-30-111(1)(a);

(ii) federal income tax refunds required to be reported under 15-30-111 and 15-30-131 as *Montana* business income;

(iii) state income tax; and

(iv) any other nonbusiness deductions allowed under 15-30-121 in excess of nonbusiness income.

(2) Notwithstanding the provisions of section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, a net operating loss does not include:

(a) income defined as exempt from state taxation under 15-30-111(2); or

(b) a zero bracket deduction provided for under section 63 of the Internal Revenue Code of 1954 or as that section may be labeled or amended."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Retroactive applicability.** [Section 1] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved February 11, 1991.

CHAPTER NO. 21

[SB 36]

AN ACT REVISING LICENSING PROCEDURES REGARDING VETERINARIANS; CLARIFYING THE EXEMPTION OF PERSONS PERFORMING EMBRYO TRANSFER TECHNOLOGY FROM VETERINARY PRACTICE LAW; REMOVING THE REQUIREMENT THAT THE BOARD OF VETERINARY MEDICINE SET LICENSING AND EXAMINATION FEES EACH YEAR; REMOVING THE REQUIREMENT THAT APPLICANTS FOR LICENSURE AS VETERINARIANS OBTAIN A GRADE OF 70 PERCENT IN ALL SUBJECTS EXAMINED; AMENDING SECTIONS 37-18-104, 37-18-302, AND 37-18-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-18-104, MCA, is amended to read:

"**37-18-104. Exemptions — rules.** (1) This chapter does not apply to:

(a) veterinarians in the performance of their official duties, either civil or military, in the service of the United States unless they engage in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university, or the United States;

(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation;

(d) a veterinarian residing on a border of a neighboring state and authorized under the laws thereof to practice veterinary medicine therein, who is actually called to attend cases in this state but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state;

(e) the employment as assistants to veterinarians licensed and registered under this chapter of veterinary medical students who have successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association and authorized by law to confer degrees; or

(f) a person advising with respect to or performing acts that the board defines by rule as accepted livestock management practices.

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(3) (a) ~~Embryo~~ *Nonsurgical embryo* transfers *in bovines* may be performed, under the supervision of a ~~licensed~~ veterinarian *licensed and residing in Montana*, by individuals who attest to the board that they possess a combination of 3 years' education, experience, and training in that procedure.

(b) Exemption under subsection (3)(a) remains in effect until testing and certification procedures, as determined by board rule, are implemented on or before July 1, 1991. At a minimum, board rules must address:

(i) minimum education requirements;

(ii) minimum requirements of practical experience;

(iii) continuing education requirements;

(iv) limitations on practices and procedures that may be performed by certified individuals;

(v) the use of specific drugs necessary for safe and proper practice of certified procedures;

(vi) content and administration of the certification test, including written and practical testing;

(vii) application and reexamination procedures;

(viii) conduct of certified individuals, including rules for suspension, revocation, and denial of certification; and

(ix) establishment of an advisory committee. The committee:

(A) must consist of:

(I) one member of the board who is a veterinarian;

(II) one member of the Montana state university reproductive physiology department;

(III) one member representing the Montana stockgrowers association animal health committee;

(IV) one member representing the Montana woolgrowers association;

(V) one reproductive specialist with practical experience in embryo transfers; and

(VI) a veterinarian who is a member of the American college of theriogenologists;

(B) shall make recommendations regarding the testing and certification procedures. The committee may not adopt rules.

(C) in cooperation with the board, shall conduct a study of the practice of bovine pregnancy testing and ovine pregnancy testing with the use of ultrasound equipment. The study must include but is not limited to:

(I) federal laws governing the practice of pregnancy testing;

(II) education and experience requirements for the practice of pregnancy testing; and

(III) pregnancy testing by nonveterinarians;

(D) terminates July 1, 1991.

(4) This chapter does not prohibit a person from caring for and treating his own farm animals or being assisted in this treatment by his full-time employees, as defined in 2-18-601, employed in the conduct of his business or by other persons whose services are rendered gratuitously in case of emergency.

(5) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at his regular place of business."

Section 2. Section 37-18-302, MCA, is amended to read:

"**37-18-302. Application — qualification — fee.** A person desiring to begin the practice of veterinary medicine or veterinary surgery in this state or who desires to hold himself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in 37-18-104, shall make application to the department for a license to do so. The application shall be on a form furnished by the department and shall be accompanied by satisfactory evidence of the good moral character of the applicant and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of the applicant shall be submitted to the department for inspection and verification. The photostatic copy remains the property of the department. A person applying for a license to practice shall pay to the department a nonrefundable fee commensurate with the costs of the examinations and set ~~annually~~ by the board."

Section 3. Section 37-18-303, MCA, is amended to read:

"**37-18-303. Examination — temporary permit pending examination.** (1) Subject to 37-1-101, the board shall by means of examination, either oral, written, or practical or a combination of oral, written, or practical as the board determines, ascertain the professional qualifications for license of applicants under this part. An investigation under reciprocity arrangements may replace examination for licensees from other states under 37-18-304. The department shall issue a license to all who are found to be, in the judgment of the board, competent to practice. A license may not be issued to a person who is not found by the examination or investigation to be competent.

(2) The examination shall be held when determined necessary by the board, but not less frequently than once each year at a time and place specified by the board. The examination shall cover theory and practice, pharmacology and therapeutics, animal sanitation, surgery, communicable diseases, and other subjects chosen by the board which are ordinarily included in the curriculum of a school of veterinary medicine recognized and approved by the American veterinary medical association.

(3) The department shall consecutively number applications received, note on each the disposition made of it, and preserve them for reference and shall number consecutively licenses issued.

(4) Applicants must achieve a grade of 70% ~~in all subjects~~ in order to obtain a license. An applicant who has failed an examination may apply to be reexamined at a subsequent examination and shall pay another application fee commensurate with the costs of the examinations and set ~~annually~~ by the board and shall take another complete examination in all subjects.

(5) An applicant for examination may, in the discretion of the board, be given a temporary permit to practice veterinary medicine prior to taking the examination if the applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this part. The temporary permit is valid only until the date of the next examination. Under no circumstances may a second temporary permit be issued to the same person. A temporary permit may not be issued to a person who has failed an examination given under this section."

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved February 12, 1991.

CHAPTER NO. 22

[HB 17]

AN ACT ALLOWING THE FISH AND GAME COMMISSION TO ADOPT RULES REGARDING THE USE AND TYPE OF ARCHERY EQUIPMENT THAT MAY BE EMPLOYED FOR HUNTING AND FISHING PURPOSES; RESTRICTING THE USE OF PROHIBITED ARCHERY EQUIPMENT; AND AMENDING SECTION 87-1-301, MCA.

A statement of intent is required for this bill because 87-1-301(2) grants to the fish and game commission the authority to adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes. It is intended that this authority be permissive rather than mandatory in order to allow but not require the commission to address any need for restrictions or limitations on archery equipment, with adequate opportunity for public hearing and comment. The legislature is aware that this rulemaking power is expressed in broad and general language; however, this is necessary because bow hunting technology is an emerging field for which detailed and precise standards have not yet been fully developed. The legislature recognizes that the commission has the power to determine the extent and nature of hunting and fishing privileges and that the commission's expertise makes it the proper forum for addressing the need for archery equipment regulation.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-301, MCA, is amended to read:

"**87-1-301. Powers of ~~the~~ commission.** *(1)* The commission shall:

~~(1)~~*(a)* set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

~~(2)~~*(b)* establish the hunting, fishing, and trapping rules of the department;

~~(3)~~*(c)* establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

~~(4)~~*(d)* have the power within the department to establish wildlife refuges and bird and game preserves;

~~(5)~~*(e)* approve all acquisitions or transfers by the department of interests in land or water;

~~(6)~~*(f)* review and approve the budget of the department prior to its transmittal to the budget office; and

~~(7)~~*(g)* review and approve construction projects whose estimated cost is more than $1,000 but less than $5,000.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change."

Section 2. **Restrictions on use of archery equipment.** A person may not, while hunting or fishing, use archery equipment that has been prohibited by rule of the commission.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 87, chapter 3, part 1, and the provisions of Title 87, chapter 3, part 1, apply to [section 2].

Approved February 14, 1991.

CHAPTER NO. 23

[HB 79]

AN ACT REVISING ELECTION MATERIALS DISCLOSURE REQUIREMENTS TO DELETE THE NAME AND ADDRESS OF THE COMMERCIAL PRINTER FROM THE ELECTION MATERIALS IT PRINTS; AMENDING SECTION 13-35-225, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-35-225, MCA, is amended to read:

"**13-35-225. Election materials not to be anonymous.** (1) Whenever any person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, such communication shall clearly and conspicuously state ~~the name and address of the printer, if printed commercially, and~~ the name and address of the person who made or financed the expenditure for the communication; including, in the case of a political committee, the name and address of the treasurer.

(2) If any document or other article of advertising is too small for the requirements of subsection (1) to be conveniently included, the person financing the communication shall file a copy of the article with the commissioner, together with the required information, prior to its public distribution.

(3) If information required in subsection (1) is inadvertently omitted or not printed, upon discovering the omission, the person financing the communication shall file notification of the omission with the commissioner within 5 days and make every reasonable effort to bring the material into compliance with subsection (1)."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 14, 1991.

CHAPTER NO. 24

[HB 84]

AN ACT TO AUTHORIZE THE DEPARTMENT OF HIGHWAYS TO ENTER INTO AGREEMENTS WITH OTHER STATES FOR THE ISSUANCE OF OVERWEIGHT AND OVERSIZE PERMITS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Issuance of permits for overweight and oversize loads — interstate agreements.** The department of highways may enter into agreements with other states to provide for the issuance of permits for overweight and oversize loads, as authorized by the laws and rules of each state.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 10, and the provisions of Title 61, chapter 10, apply to [section 1].

Approved February 14, 1991.

CHAPTER NO. 25

[HB 243]

AN ACT ABOLISHING THE STATE EMPLOYEE SICK LEAVE ADVISORY COUNCIL AND TRANSFERRING ITS FUNCTION TO THE STATE EMPLOYEE GROUP BENEFITS ADVISORY COUNCIL; AMENDING SECTION 2-18-618, MCA; AND REPEALING SECTION 2-15-216, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-618, MCA, is amended to read:

"**2-18-618. Sick leave.** (1) Each permanent full-time employee shall earn sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) shall equal 1 year. Sick leave credits shall be credited at the end of each pay period. Sick leave credits shall be earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) An employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave shall be computed on the basis of the employee's salary or wage at the time he terminates his employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment therefor shall be the responsibility of the agency wherein the sick leave accrues. However, no employee forfeits any sick leave rights or benefits he had accrued prior to July 1, 1971. However, where an employee transfers between agencies within the same jurisdiction, he is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(6) An employee who receives a lump-sum payment pursuant to this section and who is again employed by any agency may not be credited with any sick leave for which the employee has previously been compensated.

(7) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(8) An employee may contribute any portion of his accumulated sick leave to a nonrefundable sick leave fund for state employees and thereby become eligible to draw upon the fund if an extensive illness or accident exhausts his accumulated sick leave. The department of administration shall, in consultation with the ~~sick leave advisory council provided for in 2-15-216~~ *state employee group benefits advisory council, provided for in 2-15-1016,* administer the sick leave fund and adopt rules to implement this subsection.

(9) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave."

Section 2. **Repealer.** Section 2-15-216, MCA, is repealed.

Approved February 15, 1991.

CHAPTER NO. 26

[SB 6]

AN ACT TO REVISE THE UNIFORM STATUTORY RULE AGAINST PERPETUITIES BY PROVIDING A UNIFORM METHOD FOR MEASURING A PERIOD OF TIME CONTAINED IN INSTRUMENTS GOVERNING PROPERTY ARRANGEMENTS; AND AMENDING SECTION 70-1-802, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-1-802, MCA, is amended to read:

"**70-1-802. Statutory rule against perpetuities.** (1) A nonvested property interest is invalid unless:

(a) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(b) the interest either vests or terminates within 90 years after its creation.

(2) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(a) when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

(b) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(3) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(a) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(b) the power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(4) In determining whether a nonvested property interest or a power of appointment is valid under subsection (1)(a), (2)(a), or (3)(a), the possibility that a child will be born to an individual after the individual's death is disregarded.

(5) If, in measuring a period from the creation of a trust or other property arrangement, a clause in a governing instrument purports to postpone the vesting or termination of any interest or trust until, purports to disallow the vesting or termination of any interest or trust beyond, purports to require all interests or trusts to vest or terminate no later than, or operates in any similar fashion upon the later of:

(a) the expiration of a period of time that exceeds 21 years or that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement; or

(b) the death of, or the expiration of a period not exceeding 21 years after the death of, the survivor of specified lives in being at the creation of the trust or other property arrangement, then the portion of the clause pertaining to the period of time that exceeds 21 years or that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the

trust or other property arrangement must be disregarded, and the clause operates upon the death of, or upon the expiration of the period not exceeding 21 years after the death of, the survivor of the specified lives in being at the creation of the trust or other property arrangement."

Approved February 15, 1991.

CHAPTER NO. 27

[HB 48]

AN ACT PROVIDING SPECIFICATIONS FOR COMMERCIAL TOW TRUCK WARNING SIGNS AND FIRE EXTINGUISHERS; AMENDING SECTION 61-9-416, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-416, MCA, is amended to read:

"**61-9-416. Commercial tow ~~car~~ *truck* requirements.** (1) ~~Every~~ *A* commercial tow ~~car~~ *truck* used to tow a vehicle by means of a crane, hoist, towbar, towline, or dolly ~~shall~~ *must* be:

(a) equipped with and carry not less than two red flares, ~~or~~ two red lanterns, or two warning lights or reflectors~~, which~~. *The* reflectors ~~shall~~ *must* be of a type approved by the department~~;~~.

(b) equipped with at least two highway warning signs of a uniform type, *with dimensions of 3 x 3 feet, lettering 5 inches high, and reflectorized orange background and black border, as* prescribed by the department. ~~and shall~~ *The signs must* be ~~so~~ designed ~~as~~ to be visible both day and night. *The warning signs must bear the words "wreck ahead", "tow truck ahead", or "wrecker ahead", as prescribed by the department.* ~~The operator of a commercial tow car used for the purpose of rendering assistance to other vehicles shall, when the rendering of assistance necessitates the obstruction of any portion of the roadway outside a business or residence district, place a highway warning sign 200 feet in advance of and 200 feet to the rear of the disabled vehicle, except as otherwise provided in this section.~~ When a motor vehicle is disabled on the highway, ~~such~~ *the* tow ~~car~~ *truck* operator called to render assistance during the hours of darkness shall immediately upon arrival place warning signs upon the highway as prescribed in this section and ~~in addition thereto~~ shall *also* place not less than one red flare, red lantern, or warning light or reflector in close proximity to each warning sign.

(c) equipped with and carry a *dry chemical* fire extinguisher of at least ~~2-quart~~ *5 pound* capacity ~~of a type capable of extinguishing a fire~~ *or an equivalent alternative type of fire extinguisher, approved by the department*;

(d) equipped with a lamp emitting a flashing or steady red light mounted on top of the cab of the tow ~~car~~ *truck* or on the top of the crane or hoist if ~~such~~ *the* light can be seen from the front of the tow ~~car~~ *truck*. The light from ~~such~~ *the* lamp must be visible for a distance of 1,000 feet under normal atmospheric conditions~~,~~ and ~~shall~~ *must* be mounted in such a manner that it can be securely fastened with the lens of the lamp facing the rear of the tow ~~car~~ *truck* upon which it is mounted. When standing at the location from which the disabled vehicle is to be towed, the operator of the tow ~~car~~ *truck* may unfasten the red light and place it in any position ~~deemed~~ *considered* advisable to warn approaching drivers. When the disabled vehicle is ready for towing, the red light must be turned to *the* rear of the tow ~~car~~ *truck* upon which it is mounted and securely locked in this position. Additional red lights of an approved type may be displayed at either *side* or both sides of the tow ~~car~~ *truck* as the case may warrant during the period of preparation at the location from which the disabled vehicle is to be towed.

(e) equipped with one or more brooms, and the operator of the tow ~~car~~ *truck* engaged to remove a disabled vehicle from the scene of an accident shall remove all glass and debris deposited upon the roadway by the disabled vehicle ~~which~~ *that* is to be towed;

(f) equipped with and carry a shovel, and whenever practical the tow ~~car~~ *truck* operator engaged to remove any disabled vehicle shall spread dirt upon that portion of the roadway where oil or grease has been deposited by ~~such~~ *the* disabled vehicle;

(g) equipped with and carry a portable electrical extension cord for use in displaying a light on the rear of the disabled vehicle. The length of ~~such~~ *the* extension cord ~~shall~~ *may* not be less than the length of the combined vehicles, and whenever a disabled vehicle is towed during the hours of darkness and the rear lamp or lamps on the disabled vehicle cannot be lighted, the tow ~~car~~ *truck* operator shall provide for ~~such~~ *the* rear light by means of the extension cord ~~herein~~ referred to *in this subsection.*

(2) The operator of a commercial tow truck used for the purpose of rendering assistance to other vehicles shall, when the rendering of assistance necessitates the obstruction of any portion of the roadway outside a business or residence district, place a highway warning sign as required in subsection (1)(b):

(a) in an area in which the posted speed limit is 45 miles an hour or less, not less than 450 feet in advance of the disabled vehicle and an equal distance to the rear of the disabled vehicle; and

(b) in an area in which the posted speed limit is more than 45 miles an hour, 600 feet in advance of the disabled vehicle, except on a divided highway where the disabled vehicle does not cause disruption of traffic traveling on the opposite side of the divided highway, and an equal distance to the rear of the disabled vehicle.

~~(2)~~*(3)* The owner or operator of a commercial tow ~~car~~ *truck* who complies with the requirements of this section may stop or park ~~such~~ *the* tow

~~car~~ *truck* upon a highway for the purpose of rendering assistance to a disabled vehicle, notwithstanding other provisions of this code."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 15, 1991.

CHAPTER NO. 28

[HB 89]

AN ACT TO CHANGE THE NAME OF THE FISH AND GAME COMMISSION TO THE FISH, WILDLIFE, AND PARKS COMMISSION; AND AMENDING SECTION 2-15-3402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3402, MCA, is amended to read:

"2-15-3402. Fish ~~and game~~, *wildlife, and parks* commission — composition — qualifications — quasi-judicial. (1) There is a fish ~~and game~~, *wildlife, and parks* commission.

(2) The commission consists of five members. At least one member ~~shall~~ *must* be experienced in the breeding and management of domestic livestock. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments ~~shall~~ *must* be made without regard to political affiliation and ~~shall~~ *must* be made solely for the wise management of the fish, wildlife, and state parks~~,~~ and other outdoor recreational resources of this state. A person may not be appointed to the commission unless he is informed or interested and experienced in the subject of wildlife, fish, *parks,*

and outdoor recreation and the requirements for the conservation and protection of *wildlife,* fish, ~~game, game birds, animals~~ *parks,* and outdoor recreational resources.

(4) A vacancy occurring on the commission ~~shall~~ *must* be filled by the governor in the same manner and from the district in which the vacancy occurs.

(5) The fish ~~and game,~~ *wildlife, and parks* commission is designated as a quasi-judicial board for purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the commission."

Section 2. **Name change — directions to code commissioner.** Wherever the name "fish and game commission", meaning the commission established in 2-15-3402, appears in the Montana Code Annotated or in legislation enacted by the 1991 legislature, the code commissioner is directed to change the name to "fish, wildlife, and parks commission".

Approved February 15, 1991.

CHAPTER NO. 29

[HB 126]

AN ACT TO REPEAL SECTION 21, CHAPTER 473, LAWS OF 1979, WHICH PROVIDES THE PERIOD OF EFFECTIVENESS FOR THE ENERGY SUPPLY EMERGENCY POWERS OF THE GOVERNOR; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 21, Chapter 473, Laws of 1979, is repealed.

Section 2. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to occurrences after June 30, 1985.

Approved February 15, 1991.

CHAPTER NO. 30

[HB 181]

AN ACT TO REQUIRE THE SELLER OF A DWELLING TO GIVE THE BUYER WRITTEN NOTIFICATION OF WHETHER OR NOT THE DWELLING IS EQUIPPED WITH SMOKE DETECTION DEVICES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions — notice of presence of smoke detectors upon sale of dwelling.** (1) In this section, the following definitions apply:

(a) "Dwelling" means a building or portion of a building, including a mobile home or housetrailer, that contains not more than two dwelling units.

(b) "Dwelling unit" means a building or portion of a building that contains living facilities with provision for sleeping, eating, cooking, and sanitation for not more than one family.

(c) "Smoke detector" means a device that detects visible or invisible particles or combustion.

(2) Upon the sale or transfer of ownership of a dwelling not otherwise required to have a smoke detector, the seller shall provide a written notice to the buyer in a buy-sell agreement or at the time of the sale to the buyer that the dwelling is equipped or is not equipped with smoke detectors or other fire detection devices.

(3) Neither the seller nor his agent is liable in a civil action for failure to comply with, or negligence in complying with, the requirements of this section. Evidence of failure to comply with, or negligence in complying with, this section is not admissible in a civil action.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 30, chapter 11, part 2, and the provisions of Title 30, chapter 11, part 2, apply to [section 1].

Approved February 15, 1991.

CHAPTER NO. 31

[HB 98]

AN ACT AUTHORIZING SPECIAL LICENSE PLATES FOR SURVIVORS OF THE PEARL HARBOR ATTACK; PROVIDING FOR RETENTION OF SPECIAL LICENSE PLATES; AND AMENDING SECTION 61-3-446, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Special license plates — Pearl Harbor attack survivors.** (1) A motor vehicle owner who is a resident of this state and who is a veteran of the armed services of the United States is entitled to special license plates, in lieu of the regular license plates prescribed by law, if he:

(a) was a member of the United States armed forces on December 7, 1941;

(b) was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles; and

(c) received an honorable discharge from the United States armed forces.

(2) Upon payment of all taxes and fees required by parts 3 and 5 of this chapter and furnishing proof satisfactory to the department that the applicant fulfills the requirements of subsection (1), the department shall issue special license plates designed to indicate that the applicant is a survivor of the Pearl Harbor attack.

(3) A qualified applicant is entitled to special license plates under this section for only one motor vehicle.

(4) If the license plates issued under this section are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

Section 2. Section 61-3-446, MCA, is amended to read:

"**61-3-446. Retention of special license plates.** If during a registration year the holder of special license plates issued under 61-3-444, 61-3-445, 61-3-447, ~~or~~ 61-3-451, *or [section 1]* disposes of the vehicle to which the plates are affixed, he shall retain the plates and may affix them to another vehicle."

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [section 1].

Approved February 19, 1991.

CHAPTER NO. 32

[SB 11]

AN ACT PROVIDING FOR RECIPROCAL BID PREFERENCE ON PUBLIC CONTRACTS FOR CONSTRUCTION, REPAIR, OR PUBLIC WORKS; AMENDING SECTION 18-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-1-102, MCA, is amended to read:

"**18-1-102. State contracts to lowest ~~resident~~ bidder.** (1) (a) In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall award:

(i) a public contract for construction, repair, or public works to the lowest responsible ~~resident~~ bidder ~~whose bid does not exceed the applicable percentage when compared to the lowest responsible nonresident bidder. The applicable percentage is the greater of:~~

~~(A) 3%; or~~

~~(B) the percentage that applies to a resident bidder in the award of a public contract for construction, repair, or public works in the nonresident bidder's state of residence.~~ *without regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of any nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or country.*

(ii) a public contract for the purchase of goods, if the goods are comparable in quality and performance, to the lowest responsible resident bidder whose:

(A) bid is not more than 3% higher than that of the lowest responsible nonresident bidder;

(B) offered goods are Montana-made and whose bid is not more than 5% higher than that of the lowest responsible nonresident bidder; or

(C) offered goods are Montana-made and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered goods are not Montana-made.

(b) (i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose offered goods are Montana-made if the bid is:

(A) not more than 3% higher than that of a resident bidder whose offered goods are not Montana-made; and

(B) not more than 5% higher than that of the nonresident bidder.

(ii) However, no combination of preferences under this subsection may exceed 5%.

(2) The preferences in this section apply:

(a) whether the law requires advertisement for bids or does not require advertisement for bids; and

(b) to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 19, 1991.

CHAPTER NO. 33

[SB 70]

AN ACT CLARIFYING THAT THE OFFICER OR EMPLOYEE OF A CORPORATION RESPONSIBLE FOR COLLECTING, TRUTHFULLY ACCOUNTING FOR, AND PAYING WITHHOLDING TAX WHO FAILS TO COLLECT, TRUTHFULLY ACCOUNT FOR, AND PAY THE TAX IS LIABLE TO THE STATE FOR THE TAX, INCLUDING PENALTY AND INTEREST; AMENDING SECTION 15-30-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-203, MCA, is amended to read:

"**15-30-203. Employer liable for withholding.** (1) ~~Every~~ *Each* employer ~~shall be~~ *is* liable for the amounts ~~hereinbefore~~ required to be deducted and withheld *under this part*, and ~~such~~ *the* amounts plus interest due ~~thereon shall be considered as~~ *on the amounts are* a tax~~, and with~~. *With* respect ~~thereto~~ *to the tax*, the employer ~~shall be~~ *is* ~~considered a~~ *the* taxpayer.

(2) The officer or employee of a corporation whose duty it is to collect, truthfully account for, and pay ~~over~~ to the state *the* amounts withheld from the corporation's employees and who ~~willfully~~ fails to pay ~~over~~ the withholdings is liable to the state for *the* amounts ~~so~~ withheld and the ~~amount of~~ penalty and interest due ~~thereon~~ *on the amounts.*

(3) If the employer fails to deduct and withhold the amounts specified in 15-30-202 and thereafter the tax against which ~~such~~ *the* deducted and withheld amounts would have been credited is paid, the amounts ~~so~~ required to be deducted and withheld ~~shall~~ *may* not be collected from the employer."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Retroactive applicability.** [Section 1] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved February 19, 1991.

CHAPTER NO. 34

[SB 41]

AN ACT TRANSFERRING THE COLLECTION OF THE ASSESSMENT ON PASSENGER TRAMWAYS FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF COMMERCE; AMENDING SECTION 23-2-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-715, MCA, is amended to read:

"**23-2-715. Assessment on passenger tramway receipts.** (1) The board is hereby authorized to impose an assessment of up to 1/4 of 1% on the gross receipts of all passenger tramways operated in the state of Montana. A minimum of $100 shall be collected annually from the owner of a passenger tramway facility. The assessment shall be calculated upon gross receipts received during the period July 1 of any year ~~to July 1~~ *through June 30* of the following year. The assessments shall be collected by the department of ~~revenue~~ *commerce* and remitted to the state special revenue fund by December 31 of each year.

(2) All proceeds of the gross receipts assessment and the fees collected under 23-2-714 shall be used only to support the duties of the board set forth in this part."

Section 2. **Applicability.** [This act] applies to taxable years beginning July 1, 1991.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved February 19, 1991.

CHAPTER NO. 35

[SB 54]

AN ACT TO PERMIT A LICENSED OCCUPATIONAL THERAPIST TO PROVIDE TREATMENT THAT INCLUDES THE USE OF SUPERFICIAL HEAT AND COLD AND OTHER LIMITED TREATMENT USED IN PREPARATION FOR OR IN CONJUNCTION WITH PURPOSEFUL ACTIVITY; AMENDING SECTION 37-24-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-24-103, MCA, is amended to read:

"**37-24-103. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of occupational therapy practice established by 2-15-1859.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.

(4) "Occupational therapy" means the use of purposeful activity with an individual who is limited by physical injury or illness, psychosocial dysfunction, developmental or learning disability, or the aging process in order to maximize independence, prevent disability, and maintain health. The practice encompasses evaluation, treatment, and consultation. *Treatment includes the use of superficial heat and cold, including hot packs, cold packs, ice, paraffin, and water, applied to the elbow, forearm, and hand; vibration and brushing; treatment of oral motor conditions; and the use of therapeutic devices limited to the elbow, forearm, and hand that the board approves consistent with the basic education requirements for professional licensure under this chapter. Treatment is limited to procedures in preparation for or in conjunction with purposeful activity.* Occupational therapy services may be provided individually, in groups, or through social systems. Specific occupational therapy services include but are not limited to:

(a) teaching daily living skills;

(b) developing perceptual-motor skills and sensory integrative functioning;

(c) developing play skills and prevocational and leisure capacities;

(d) designing, fabricating, or applying splints or selective adaptive equipment and training in the use of upper extremity prosthetics or upper extremity orthotic devices;

(e) using specifically designed crafts and exercises to enhance functional performance;

(f) administering and interpreting tests such as manual muscle and range of motion; and

(g) adapting environments for the handicapped.

(5) "Occupational therapy aide" means a person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

(6) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association, as it read on October 1, 1985."

Section 2. **Construction of law.** Nothing in [this act] may be construed to prohibit the use of therapeutic devices or equipment authorized as a specific occupational therapy service under 37-24-103(4)(d).

Section 3. **Effective date — termination.** [This act] is effective on passage and approval and terminates July 1, 1993.

Approved February 19, 1991.

CHAPTER NO. 36

[SB 68]

AN ACT UPDATING THE DANGEROUS DRUG SCHEDULES TO CONFORM TO THE CONTROLLED SUBSTANCES CONTAINED IN FEDERAL REGULATIONS; AND AMENDING SECTIONS 50-32-222, 50-32-224, 50-32-226, 50-32-229, AND 50-32-232, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-32-222, MCA, is amended to read:

"**50-32-222. Specific dangerous drugs included in Schedule I.** Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Opiates. Unless specifically excepted or listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) acetyl-alpha-methylfentanyl;

(b) acetylmethadol;

~~(b)~~*(c)* allylprodine;

~~(c)~~*(d)* alphacetylmethadol;

~~(d)~~*(e)* alphameprodine;

~~(e)~~*(f)* alphamethadol;

~~(f)~~*(g)* alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

~~(g)~~*(h)* benzethidine;

~~(h)~~*(i)* betacetylmethadol;

(j) beta-hydroxyfentanyl;

(k) beta-hydroxy-3-methylfentanyl;

~~(i)~~*(l)* betameprodine;

~~(j)~~*(m)* betamethadol;

~~(k)~~*(n)* betaprodine;

~~(l)~~*(o)* clonitazene;

~~(m)~~*(p)* dextromoramide;

~~(n)~~*(q)* diampromide;

~~(o)~~*(r)* diethylthiambutene;

~~(p)~~*(s)* difenoxin;

~~(q)~~*(t)* dimenoxadol;

~~(r)~~*(u)* dimepheptanol;

~~(s)~~*(v)* dimethylthiambutene;

~~(t)~~*(w)* dioxaphetyl butyrate;

~~(u)~~*(x)* dipipanone;

~~(v)~~*(y)* ethylmethylthiambutene;

~~(w)~~*(z)* etonitazene;

~~(x)~~*(aa)* etoxeridine;

~~(y)~~*(bb)* furethidine;

~~(z)~~*(cc)* hydroxypethidine;

~~(aa)~~*(dd)* ketobemidone;

~~(bb)~~*(ee)* levomoramide;

~~(cc)~~*(ff)* levophenacylmorphan;

(gg) 3-methylfentanyl;

(hh) 3-methylthiofentanyl;

~~(dd)~~*(ii)* morpheridine;

(jj) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

~~(ee)~~*(kk)* noracymethadol;

~~(ff)~~*(ll)* norlevorphanol;

~~(gg)~~*(mm)* normethadone;

~~(hh)~~*(nn)* norpipanone;

(oo) para-fluorofentanyl;

(pp) PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);

~~(ii)~~*(qq)* phenadoxone;

~~(jj)~~*(rr)* phenampromide;

~~(kk)~~*(ss)* phenomorphan;

~~(ll)~~*(tt)* phenoperidine;

~~(mm)~~*(uu)* piritramide;

~~(nn)~~*(vv)* proheptazine;

~~(oo)~~*(ww)* properidine;

~~(pp)~~*(xx)* propiram;

~~(qq)~~*(yy)* racemoramide;

~~(rr) sufentanil;~~

(zz) thiofentanyl;

~~(ss)~~*(aaa)* tilidine; and

~~(tt)~~*(bbb)* trimeperidine.

(2) Opium derivatives. Unless specifically excepted or listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) acetorphine;

(b) acetyldihydrocodeine;

(c) benzylmorphine;

(d) codeine methylbromide;

(e) codeine-n-oxide;

(f) cyprenorphine;

(g) desomorphine;

(h) dihydromorphine;

(i) drotebanol;

(j) etorphine;

(k) heroin;

(l) hydromorphinol;

(m) methyldesorphine;

(n) methyldihydromorphine;

(o) morphine methylbromide;

(p) morphine methylsulfonate;

(q) morphine-n-oxide;

(r) myrophine;

(s) nicocodeine;

(t) nicomorphine;

(u) normorphine;

(v) pholcodine; and

(w) thebacon.

(3) Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) 3,4-methylenedioxy amphetamine;

(b) 3,4-methylenedioxymethamphetamine (MDMA);

~~(b)~~*(c)* 5-methoxy-3,4-methylenedioxy amphetamine;

~~(c)~~*(d)* 3,4,5-trimethoxy amphetamine;

~~(d)~~*(e)* bufotenine;

(f) doet (2,5-dimethoxy-4-ethalamphetamine);

~~(e)~~*(g)* diethyltryptamine;

~~(f)~~*(h)* dimethyltryptamine;

~~(g)~~*(i)* 4-methyl-2,5-dimethoxy-amphetamine;

~~(h)~~*(j)* ibogaine;

~~(i)~~*(k)* lysergic acid diethylamide;

~~(j)~~*(l)* marijuana;

~~(k)~~*(m)* mescaline;

(n) parahexyl;

~~(l)~~*(o)* peyote;

(p) PCE (N-ethyl-1-phenylcyclohexylamine);

(q) PHP 1-(1-phenylcyclohexyl)pyrrolidine (pcp analog);

~~(m)~~*(r)* n-ethyl-3-piperidyl benzilate;

~~(n)~~*(s)* n-methyl-3-piperidyl benzilate;

~~(o)~~*(t)* psilocybin;

~~(p)~~*(u)* psilocyn;

~~(q)~~*(v)* tetrahydrocannabinols;

~~(r)~~*(w)* 2,5-dimethoxyamphetamine;

~~(s)~~*(x)* 4-bromo-2,5-dimethoxy-amphetamine;

~~(t)~~*(y)* 4-methoxyamphetamine;

~~(u)~~*(z)* ethylamine analog of phencyclidine;

~~(v)~~*(aa)* pyrrolidine analog of phencyclidine; and

~~(w)~~*(bb)* thiophene analog of phencyclidine.

(4) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) mecloqualone*; and*

(b) methaqualone.

(5) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) fenethylline; and

(b) n-ethylamphetamine.

(6) For purposes of subsection (3) only, the term "isomer" includes the optical, position, and geometric isomers.

(7) If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols listed in subsection (3) shall automatically be rescheduled from Schedule I to Schedule II."

Section 2. Section 50-32-224, MCA, is amended to read:

"50-32-224. **Specific dangerous drugs included in Schedule II.** Schedule II consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, and naltrexone and their respective salts, but including the following:

(i) raw opium;

(ii) opium extracts;

(iii) opium fluid extracts;

(iv) powdered opium;

(v) granulated opium;

(vi) tincture of opium;

(vii) codeine;

(viii) ethylmorphine;

(ix) etorphine hydrochloride;

(x) hydrocodone;

(xi) hydromorphone;

(xii) metopon;

(xiii) morphine;

(xiv) oxycodone;

(xv) oxymorphone; and

(xvi) thebaine;

(b) any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of the substances referred to in subsection (1)(a) of this section, except that these substances do not include the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of these substances, except that these substances do not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; and

(e) concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

(2) Opiates. Unless specifically excepted or listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(a) *alfentanil;*

(b) alphaprodine;

~~(b)~~*(c)* anileridine;

~~(c)~~*(d)* bezitramide;

~~(d)~~*(e)* dihydrocodeine;

~~(e)~~*(f)* diphenoxylate;

~~(f)~~*(g)* fentanyl;

~~(g)~~*(h)* isomethadone;

~~(h)~~*(i)* levomethorphan;

~~(i)~~*(j)* levorphanol;

~~(j)~~*(k)* metazocine;

~~(k)~~*(l)* methadone;

~~(l)~~*(m)* methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

~~(m)~~*(n)* moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;

~~(n)~~*(o)* pethidine (meperidine);

~~(o)~~*(p)* pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

~~(p)~~*(q)* pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

~~(q)~~*(r)* pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

~~(r)~~*(s)* phenazocine;

~~(s)~~*(t)* piminodine;

~~(t)~~*(u)* racemethorphan;

~~(u)~~*(v)* racemorphan; ~~and~~

(w) sufentanil; and

~~(v)~~*(x)* bulk dextropropoxyphene (nondosage forms).

(3) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system:

(a) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(b) phenmetrazine and its salts;

(c) methamphetamine, its salts, isomers, and salts of its isomers; and

(d) methylphenidate.

(4) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) amobarbital;

(b) ~~methaqualone;~~

~~(c)~~ pentobarbital;

~~(d)~~*(c)* phencyclidine; and

~~(e)~~*(d)* secobarbital.

(5) Immediate precursors. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances:

(a) immediate precursor to amphetamine and methamphetamine:

(i) phenylacetone;

(b) immediate precursors to phencyclidine (PCP):

(i) 1-phenylcyclohexylamine; and

(ii) 1-piperidinocyclohexanecarbonitrile (PCC).

(6) Hallucinogenic substances:

(a) dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a federal food and drug administration-approved drug product; and

(b) nabilone."

Section 3. Section 50-32-226, MCA, is amended to read:

"**50-32-226. Specific dangerous drugs included in Schedule III.** Schedule III consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) benzphetamine;

(b) chlorphentermine;

(c) clortermine; and

(d) phendimetrazine.

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system:

(a) any substance that contains any quantity of a derivative of barbituric acid or any salt thereof;

(b) chlorhexadol;

(c) glutethimide;

(d) lysergic acid;

(e) lysergic acid amide;

(f) methyprylon;

(g) sulfondiethylmethane;

(h) sulfonethylmethane;

(i) sulfonmethane;

(j) *tiletamine and zolazepam or any of their salts;*

(k) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule; and

~~(k)~~*(l)* any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the federal food and drug administration for marketing only as a suppository.

(3) Nalorphine.

(4) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(g) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(h) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts."

Section 4. Section 50-32-229, MCA, is amended to read:

"**50-32-229. Specific dangerous drugs included in Schedule IV.** Schedule IV consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(b) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alprazolam;

(b) barbital;

(c) bromazepam;

(d) camazepam;

~~(c)~~*(e)* chloral betaine;

~~(d)~~*(f)* chloral hydrate;

~~(e)~~*(g)* chlordiazepoxide;

(h) clobazam;

~~(f)~~*(i)* clonazepam;

~~(g)~~*(j)* clorazepate;

(k) clotiazepam;

(l) cloxazolam;

(m) delorazepam;

~~(h)~~*(n)* diazepam;

(o) estazolam;

~~(i)~~*(p)* ethchlorvynol;

~~(j)~~*(q)* ethinamate;

(r) ethyl loflazepate;

(s) fludiazepam;

(t) flunitrazepam;

~~(k)~~*(u)* flurazepam;

~~(l)~~*(v)* halazepam;

(w) haloxazolam;

(x) ketazolam;

(y) loprazolam;

~~(m)~~*(z)* lorazepam;

(aa) lormetazepam;

~~(n)~~*(bb)* mebutamate;

(cc) medazepam;

(dd) meprobamate;

~~(o)~~*(ee)* methohexital;

~~(p) meprobamate;~~

~~(q)~~*(ff)* methylphenobarbital (mephobarbital);

(gg) midazolam;

(hh) nimetazepam;

(ii) nitrazepam;

(jj) nordiazepam;

~~(r)~~*(kk)* oxazepam;

(ll) oxazolam;

~~(s)~~*(mm)* paraldehyde;

~~(t)~~*(nn)* petrichloral;

~~(u)~~*(oo)* phenobarbital;

(pp) pinazepam;

~~(v)~~*(qq)* prazepam; ~~and~~

(rr) quazepam;

~~(w)~~*(ss)* temazepam;

(tt) tetrazepam; and

(uu) triazolam.

(3) Fenfluramine. Any material, compound, mixture, or preparation that contains any quantity of the following substance, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible:

(a) fenfluramine.

(4) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) *cathine;*

(b) diethylpropion;

(c) fencamfamin;

(d) fenproporex;

~~(b)~~*(e)* mazindol;

(f) mefenorex;

~~(c)~~*(g)* pemoline, including organometallic complexes and chelates thereof;

~~(d)~~*(h)* phentermine;

~~(e)~~*(i)* pipradrol; and

~~(f)~~*(j)* SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(5) Other substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including its salts:

(a) pentazocine."

Section 5. Section 50-32-232, MCA, is amended to read:

"**50-32-232. Specific dangerous drugs included in Schedule V.** Schedule V consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs or its salts calculated as the free anhydrous base or alkaloid in limited quantities as set forth in subsections (1)(a) through (1)(f),

which include one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(b) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(c) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(d) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(f) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) ~~Loperamide~~ *Buprenorphine.*

(3) Propylhexedrine.

(4) Pyrovalerone."

Approved February 19, 1991.

CHAPTER NO. 37

[SB 81]

AN ACT CLARIFYING THE DEPARTMENT OF REVENUE'S AUTHORITY TO ISSUE REVISED ASSESSMENTS FOR CENTRALLY ASSESSED PROPERTY TO THE PERSON OR ENTITY THAT OWNED THE PROPERTY AT THE TIME IT ESCAPED ASSESSMENT, WAS ERRONEOUSLY ASSESSED, OR WAS OMITTED FROM TAXATION; AMENDING SECTION 15-8-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-8-601, MCA, is amended to read:

"**15-8-601. Assessment revision — conference for review.** (1) *(a)* ~~Whenever~~ *Except as provided in subsection (1)(b), whenever* the department of revenue discovers that any taxable property of any person has in any year escaped assessment, been erroneously assessed, or been omitted from taxation, the department may assess the same provided the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All such revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

(b) Within the time limits set by 15-23-116, whenever the department discovers property subject to assessment under Title 15, chapter 23, that has escaped assessment, been erroneously assessed, or been omitted from taxation, the department may issue a revised assessment to the person, firm, or corporation who owned the property at the time it escaped assessment, was erroneously assessed, or was omitted from taxation, regardless of the ownership of the property at the time of the department's revised assessment.

(2) Whenever the department or its agent proposes to increase the valuation of locally assessed property above the value reported by the taxpayer under 15-8-301, the action of the department is subject to the notice and conference provisions of this section.

(3) (a) Notice of revised assessment pursuant to this section shall be made by the department or its agent by postpaid letter addressed to the person interested within 10 days after the revised assessment has been made. The notice shall include opportunity for a conference on the matter, at the request of the person interested, not less than 15 or more than 30 days after notice is given.

(b) An assessment revision review conference is not a contested case as defined in the Montana Administrative Procedure Act. The department shall keep minutes in writing of each assessment review conference, which are public records.

(c) Following an assessment review conference or expiration of opportunity therefor, the department shall order such assessment as it considers proper. Any party to the conference aggrieved by the action of the department may appeal directly to the state tax appeal board within 30 days or, if the property is locally assessed, may appeal to the county tax appeal board at its next meeting.

(4) The department must record in a book to be kept for that purpose all changes, corrections, and orders made by it and must direct its agent to enter upon the assessment book all changes and corrections made by it.

(5) Immediately upon receipt of a revised assessment, the county official possessing the assessment roll book shall enter the revised assessment. If the revised assessment corrects an original assessment, the previous entry shall be canceled upon order of the department."

Section 2. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved February 19, 1991.

CHAPTER NO. 38

[SB 150]

AN ACT TO ELIMINATE THE CARRYING CAPACITY ADJUSTMENT TO THE MINIMUM RENTAL RATE FOR STATE GRAZING LEASES; AND AMENDING SECTION 77-6-507, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-6-507, MCA, is amended to read:

"**77-6-507. Formula for fixing annual rental.** (1) In this section:

(a) "animal unit" means one cow, one horse, five sheep, or five goats;

(b) "animal-unit-month carrying capacity" means that amount of natural feed necessary for the complete subsistence of one animal unit for 1 month.

(2) The board shall establish the *minimum* per annum rental rate per section of all grazing lands ~~which~~ *that* are the property of the state ~~upon the animal-unit-month basis as provided in this section.~~

~~(3) In fixing the minimum annual rental per section, the following formula shall be used:~~

~~(a) The base rental shall be computed~~ by multiplying six times the average price per pound of beef cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.

~~(b) The minimum annual rental for grazing lands with an annual carrying capacity of more than 14 and less than 20 animal units per section is the base rental.~~

~~(c) The minimum annual rental for grazing lands with an annual carrying capacity of more than 19 animal units per section is 10 cents more than the base rental.~~

~~(d) The minimum annual rental for grazing lands with an annual carrying capacity of less than 15 animal units per section is 10 cents less than the base rental.~~

~~(4)~~*(3)* The carrying capacity of the land to be used in the above formula ~~shall~~ *must* be in accordance with the determinations of the department made under 77-6-201.

~~(5)~~*(4)* The average price per pound of beef cattle on the farm in Montana ~~shall~~ *must* be taken from statistics published by the United States department of agriculture current at the time of computation of the rental or from other reliable sources current at ~~such~~ *that* time."

Approved February 19, 1991.

CHAPTER NO. 39

[SB 155]

AN ACT REPEALING THE ANNUAL AUDIT REQUIREMENT FOR THE AGRICULTURAL LOAN AUTHORITY; AND REPEALING SECTION 80-12-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 80-12-401, MCA, is repealed.

Approved February 19, 1991.

CHAPTER NO. 40

[SB 39]

AN ACT REMOVING IMPRISONMENT AS A PENALTY FOR MINOR TRAFFIC OFFENSES; AND AMENDING SECTIONS 61-8-104, 61-9-104, 61-9-511, 61-9-515, 61-9-518, AND 61-9-519, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-104, MCA, is amended to read:

"**61-8-104. Required obedience to traffic laws.** It is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor *punishable as provided in 61-8-711* for any person to do any act forbidden or fail to perform any act required in this chapter."

Section 2. Section 61-9-104, MCA, is amended to read:

"**61-9-104. Required obedience to traffic laws.** It is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor *punishable as provided in 61-9-511* for any person to do any act forbidden or fail to perform any act required in this chapter."

Section 3. Section 61-9-511, MCA, is amended to read:

"**61-9-511. Violation of chapter — penalty.** (1) It is a misdemeanor for any person to violate any of the provisions of this chapter unless ~~such~~ *the* violation is ~~by this chapter or other law of this state~~ declared to be a felony.

(2) ~~Every~~ *A* person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall for a first conviction ~~thereof~~ be punished by a fine of not less than $10 or more than $100 ~~or by imprisonment for not more than 10 days~~. For a second conviction within 1 year, ~~thereafter such~~ *the* person shall be punished by a fine of not less than $25 or more than $200 ~~or by imprisonment for not more than 20 days or by both such fine and imprisonment~~. Upon a third or subsequent conviction within 1 year after the first conviction, ~~such~~ *the* person shall be punished by a fine of not less than $50 or more than $500 ~~or by imprisonment for not more than 6 months or by both fine and imprisonment~~.

(3) On failure of payment of fines, the offender in cases of misdemeanor shall be imprisoned in the county jail in the county in which the offense has been committed~~, and said~~. *The* imprisonment shall be computed upon the basis of ~~$2~~ *$25* of ~~said~~ *the* fine for each day's incarceration.

(4) Upon conviction, the court costs~~,~~ or any part ~~thereof,~~ *of the court costs* may ~~also~~ be assessed against the defendant in the discretion of the court."

Section 4. Section 61-9-515, MCA, is amended to read:

"**61-9-515. Violations of provisions relating to fenders, splash aprons, or flaps — penalty.** Any person violating any of the provisions of 61-9-407 ~~shall be deemed~~ *is* guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished by a fine of not less than $10 or more than $25 ~~or by imprisonment in the county jail for a period of not more than 30 days or by both such fine and imprisonment~~."

Section 5. Section 61-9-518, MCA, is amended to read:

"**61-9-518. Violation of motorcycle or quadricycle requirements — penalty.** (1) A person convicted of the violation of 61-9-417 shall be fined $5.

(2) A person convicted of the violation of 61-9-418 shall be punished by a fine of not less than $10 or more than $100 ~~or by imprisonment for not more than 10 days or by both such fine and imprisonment~~ for the first ~~such~~ conviction. For a second conviction within 1 year ~~thereafter, such~~ *the* person shall be punished by a fine of not less than $25 or more than $200 ~~or by imprisonment for not more than 20 days or by both such fine and imprisonment~~. Upon a third or subsequent conviction within 1 year after the first

conviction, ~~such~~ *the* person shall be punished by a fine of not less than $50 or more than $500 ~~or by imprisonment for not more than 6 months or by both such fine and imprisonment~~."

Section 6. Section 61-9-519, MCA, is amended to read:

"**61-9-519. Violation of tire restrictions — penalty.** A person violating 61-9-406 is guilty of a misdemeanor *and is subject to penalty as provided in 61-9-511.*"

Approved February 22, 1991.

CHAPTER NO. 41

[SB 83]

AN ACT TO DIRECT THAT ALL INTEREST EARNED ON LICENSE MONEY RECEIVED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE DEPARTMENT; AMENDING SECTION 87-1-601, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, the federal government has imposed a requirement on the Department of Fish, Wildlife, and Parks that all interest received from cash balances resulting from license sales must be used for department programs; and

WHEREAS, under present law interest earnings from money received are not credited to department programs; and

WHEREAS, unless present law is amended to conform to federal requirements, the department is in danger of losing over $7 million in federal funds; and

WHEREAS, the Legislature finds that it is in the best interests of the state to designate that interest earned on money received by the Department from license sales be credited to the Department's special revenue account so that the interest is available for expenditure by the Department.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-601, MCA, is amended to read:

"**87-1-601. Use of fish and game money.** (1) *(a)* All money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source ~~shall~~ *must* be turned over to the state treasurer and placed by him in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources ~~shall~~ *must* be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-412, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) That money ~~shall~~ *must* be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. That money ~~shall~~ *must* be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) All money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, relating to violations of state fish and game laws under Title 87 ~~shall~~ *must* be deposited by the state treasurer and credited to the department of fish, wildlife, and parks in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution ~~shall~~ *must* be paid to the county where the trial was held in any case ~~where~~ *in which* the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition ~~shall~~ *must* be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived ~~therefrom~~ *from the fund*, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department, and only upon appropriation by the legislature. If the use of money as set forth ~~herein~~ *in this section* would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in ~~such~~ *a* violation."

Section 2. **Effective date.** [This act] is effective January 1, 1992.

Approved February 22, 1991.

CHAPTER NO. 42

[SB 140]

AN ACT TO INCLUDE ANABOLIC STEROIDS AS A SCHEDULE III DRUG; PROVIDING A MISDEMEANOR PENALTY FOR FIRST OFFENSE POSSESSION OF ANABOLIC STEROIDS; AND AMENDING SECTIONS 45-9-102, 46-18-201, 46-18-231, AND 50-32-226, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-9-102, MCA, is amended to read:

"**45-9-102. Criminal possession of dangerous drugs.** (1) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in 50-32-101.

(2) ~~Any~~ *A* person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not more than 6 months, or both.

~~(3)~~*(4)* A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than $50,000, except as provided in 46-18-222.

~~(4)~~*(5)* A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2), ~~or~~ (3), *or (4)* shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $50,000, or both.

~~(5)~~*(6)* A person of the age of 21 years or under convicted of a first violation under this section ~~shall be~~ *is* presumed to be entitled to a deferred imposition of sentence of imprisonment.

~~(6)~~*(7)* Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 2. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of ~~court-appointed~~ *court-appointed* counsel as provided in 46-8-113;

(ix) community service;

(x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution, with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If any financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail time already served.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102~~(3)~~*(4)*, and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-502(3), 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of such imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program."

Section 3. Section 46-18-231, MCA, is amended to read:

"**46-18-231. Fines in felony and misdemeanor cases.** (1) Whenever, upon a verdict or a plea of guilty, a person has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103, 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102~~(3)~~*(4)*, and 45-9-103(2), a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict or plea of guilty, a person has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not to exceed $50,000."

Section 4. Section 50-32-226, MCA, is amended to read:

"**50-32-226. Specific dangerous drugs included in Schedule III.** Schedule III consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) benzphetamine;

(b) chlorphentermine;

(c) clortermine; and

(d) phendimetrazine.

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system:

(a) any substance that contains any quantity of a derivative of barbituric acid or any salt thereof;

(b) chlorhexadol;

(c) glutethimide;

(d) lysergic acid;

(e) lysergic acid amide;

(f) methyprylon;

(g) sulfondiethylmethane;

(h) sulfonethylmethane;

(i) sulfonmethane;

(j) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule; and

(k) any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the federal food and drug administration for marketing only as a suppository.

(3) Nalorphine.

(4) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(g) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(h) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Anabolic steroids. Any material, compound, mixture, or preparation containing an anabolic steroid, including but not limited to the following:

(a) androisoxazole;

(b) androstendiol;

(c) bolandiol;

(d) bolasterone;

(e) boldenone;

(f) chlormethandienone;

(g) clostebol;

(h) dihydromesterone;

(i) ethylestrenol;

(j) fluoxymesterone;

(k) formyldienolone;

(l) 4-hydroxy-19-nortestosterone;

(m) mesterolone;

(n) methandriol;

(o) methandrostenolone;

(p) methenolone;

(q) 17-methyltestosterone;

(r) methyltrienolone;

(s) nandrolone;

(t) norbolethone;

(u) norethandrolone;

(v) normethandrolone;

(w) oxandrolone;

(x) oxymestrone;

(y) oxymetholone;

(z) quinbolone;

(aa) stanolone;

(bb) stanozolol;

(cc) stenbolone;

(dd) testosterone; or

(ee) trenbolone."

Approved February 22, 1991.

CHAPTER NO. 43

[HB 207]

AN ACT TO ELIMINATE THE DEPOSIT REQUIREMENT FOR THE LESSEE OF A STATE AGRICULTURAL GRAZING LEASE WHO EXERCISES HIS PREFERENCE RIGHT TO MEET A HIGH BID AND REQUESTS A HEARING TO HAVE THE BID RATE LOWERED; AND AMENDING SECTION 77-6-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-6-205, MCA, is amended to read:

"**77-6-205. Renewal leases.** (1) A lessee of state land classed as agricultural, grazing, town lot, city lot, or land valuable for commercial development who has paid all rentals due from him to the state or who has voluntarily terminated a lease under 77-6-116 is entitled to have his lease renewed for a period not to exceed the maximum lease period provided in 77-6-109 at any time within 30 days prior to its expiration or within 30 days following voluntary termination if no other applications for lease of the land have been received 30 days prior to the expiration of his lease or within 30 days following voluntary termination. The renewal ~~shall~~ *must* be at the rental rate provided by law for the renewal period and subject to any other conditions at the time of the renewal imposed by law as terms of the lease. Except as provided in 77-6-212, if other applications have been received, the holder of the lease has the preference right to lease the land covered by his former lease by meeting the highest bid made by any other applicant. Applications for lease of lands in this section ~~shall~~ *must* be given preference in the order of their receipt at the office of the department.

(2) The board shall accept the highest bid. If the lessee exercises the preference right and believes the bid to be excessive, he may request an administrative hearing. The request must contain a statement of reasons why the lessee believes the bid not to be in the state's best interest ~~and must be accompanied by a deposit equal to 20% of the competitive bid in the case of grazing lands and $1 per acre in the case of agricultural lands~~. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the bid may not be in the state's best interests. The board may, after the hearing, reduce the rental from the amount bid if the lessee shows that the bid is not in the best interest of the state because it is above community standards for a lease of ~~such~~ *the* land, would cause damage to the tract, or *would* impair its long-term productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and ~~so~~ inform the lessee and competitive bidder *of the reduction*. It is the duty of the board to secure the best lessees possible, so that the state may receive the maximum return possible with the least injury occurring to the land.

(3) A renewal lease may be canceled pursuant to 77-6-113, 77-6-208, 77-6-209, or 77-6-210 for a violation by the lessee that occurred during the

previous lease term but no more than 3 years prior to the date on which the notice of cancellation required by 77-6-211 is issued. Cancellation procedures instituted but not completed before renewal are applicable to the renewal lease.

(4) A renewal lease may be voluntarily terminated pursuant to 77-6-116."

Approved February 22, 1991.

CHAPTER NO. 44

[HB 372]

AN ACT REQUIRING A CITY JOINING THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM TO PAY EXCESS UNFUNDED LIABILITIES; REMOVING THE REQUIREMENT FOR A SEPARATE VALUATION OF UNFUNDED LIABILITIES OF ALL PRIOR PLANS AS OF JULY 1, 1986; AMENDING SECTION 19-13-503, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-13-503, MCA, is amended to read:

"**19-13-503. Unfunded liabilities.** (1) The legislature finds and declares that many cities operating under prior plans have excess and unfunded liabilities, and the liabilities cannot be amortized by the percentage contributions set forth in this chapter.

(2) The administrator shall, ~~on or before October 1, 1986~~ *within 6 months after a city is granted membership in the plan,* determine the excess and unfunded liability of ~~each city participating in the plan created by this chapter~~ *the city's previous plan.* ~~For each city determined by~~ *If* the administrator *determines that the city* ~~to have~~ *has* an excess and unfunded liability under a ~~prior~~ *previous* plan that~~, as of July 1, 1986,~~ is not funded by sums on deposit or funds available for deposit with the administrator, the ~~state auditor~~ *city* shall pay an additional sum over a period of time ~~from the premium taxes on insurance risks enumerated in 19-11-512~~ to amortize ~~each~~ *the* city's excess liability.

~~(3) If the administrator determines that the state auditor is paying an amount in excess of the amount necessary to amortize each city's liabilities under the prior plan and under this chapter, the administrator shall credit the accounts of the administrator for the excess payments.~~

~~(4)~~*(3)* For each city with an unfunded liability, any portion of the member, the employer, and state contributions that exceeds the amount necessary to maintain the current level of unfunded liability must be applied to the reduction of the unfunded liability."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved February 22, 1991.

CHAPTER NO. 45

[HB 427]

AN ACT TO DESIGNATE THE MONTANA LAW ENFORCEMENT OFFICERS' MEMORIAL IN THE OLD MONTANA STATE PRISON IN DEER LODGE, MONTANA, AS THE STATE'S OFFICIAL LAW ENFORCEMENT OFFICERS' MEMORIAL.

WHEREAS, the law enforcement officers of Montana are our guardians of life, property, and well-being; defenders of the individual right to be free men and women; and soldiers in the war against crime and are dedicated to the preservation of life, liberty, peace, and the pursuit of happiness; and

WHEREAS, the State of Montana desires to honor and remember the valor, service, and dedication of its seldom recognized peace officers, former and present; and

WHEREAS, it is known that over 90 local, county, state, and federal officers have died in the line of duty in Montana since 1863.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Creation of law enforcement officers' memorial.** The memorial in the Montana law enforcement museum, located in the old Montana state prison, Deer Lodge, Montana, which is dedicated to the men and women who have served their communities and the state of Montana as law enforcement officers and have been killed or died in the line of duty, is designated as this state's official law enforcement officers' memorial.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 22, and the provisions of Title 22 apply to [section 1].

Approved February 22, 1991.

CHAPTER NO. 46

[HB 14]

AN ACT REVISING THE SECURITIES REGULATION LAWS TO REQUIRE THAT QUANTITIES OF PRECIOUS METALS PURCHASED AND DELIVERED TO A DEPOSITORY INSTITUTION BE PHYSI-

CALLY LOCATED WITHIN THE STATE AT ALL TIMES AFTER DELIVERY; AND AMENDING SECTION 30-10-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-105, MCA, is amended to read:

"**30-10-105. Exempt transactions.** Except as ~~in this section~~ expressly provided *in this section,* 30-10-201 through 30-10-207 ~~shall~~ *do* not apply to any of the following transactions:

(1) ~~any~~ *a* nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) ~~any~~ *a* nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to ~~such~~ *the* securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years~~,~~ or ~~during the existence of~~ *if* the issuer and any predecessors ~~if~~ *have been in existence for* less than 3 years~~,~~ *and there has been no default* in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and ~~of~~ *give* the reasons therefor and *shall notify them* that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order ~~will remain~~ *remains* in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. ~~No~~ *An* order under this subsection may *not* operate retroactively. ~~No~~ *A* person may *not* be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

(3) ~~any~~ *a* nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) ~~any~~ *a* transaction between the issuer or other person on whose behalf the offering is made and an underwriter or ~~among~~ *between* underwriters;

(5) ~~any~~ *a* transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties ~~as such~~;

(6) ~~any~~ *a* transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) ~~any~~ *an* offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer~~,~~ or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(8) (a) ~~any~~ *a* transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) no commission or other remuneration is paid or given directly or indirectly for soliciting ~~any~~ *a* prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) For the purpose of the exemption provided for in subsection (8)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(9) ~~any~~ *an* offer or sale of a preorganization certificate or subscription if:

(a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

(b) the number of subscribers does not exceed 10; and

(c) no payment is made by any subscriber;

(10) ~~any~~ *a* transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either *subsection (10)*(a) or ~~(b) of this subsection~~ *the notice specifying the terms of the offer;*

(11) ~~any~~ *an* offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop, refusal, denial, suspension, or revocation order is in effect and no public proceeding or examination looking toward such an order is pending under either law;

(12) ~~any~~ *an* offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of ~~such~~ *the* filing;

(13) the issuance of ~~any~~ *a* stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(14) ~~any~~ *a* transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) ~~any~~ *a* transaction in compliance with ~~such~~ rules ~~as~~ *that* the commissioner in his discretion may adopt to serve the purposes of 30-10-102. The commissioner may in his discretion require that 30-10-201 through 30-10-207 apply to any or all transactional exemptions adopted by rule.

(16) ~~any~~ *a* transaction by a certified Montana capital company as defined in 90-8-104, provided that ~~such~~ *the* company first files all disclosure documents, along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing.

(17) the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;

(18) *a* transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

(19) a transaction that:

(a) involves the purchase of one or more precious metals; ~~and~~

(b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by such payment is delivered into the possession of a depository (other than the seller) that:

(i) (A) is a financial institution (meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state);

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser~~.~~*; and*

(c) requires the quantity of precious metals purchased and delivered into the possession of a depository, as provided in subsection (19)(b), to be physically located within Montana at all times after the 7-day delivery period provided in subsection (19)(b), and the precious metals are in fact physically located within Montana at all times after that delivery period.

(20) a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any byproduct of the commodity; *or*

(21) ~~any~~ *an* offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code ~~of 1986~~."

Approved February 24, 1991.

CHAPTER NO. 47

[HB 22]

AN ACT REVISING THE EXEMPTION STATUTE RELATING TO LICENSURE OF PRIVATE INVESTIGATORS AND PATROL OFFICERS TO CLARIFY THAT PARALEGALS EMPLOYED BY ONE OR MORE LAWYERS, LAW OFFICES, AGENCIES, OR ENTITIES ARE EXEMPT FROM LICENSURE; AMENDING SECTIONS 37-60-101 AND 37-60-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, section 2, Chapter 332, Laws of 1989, exempted "a legal intern, paralegal, or legal assistant employed by a licensed attorney" from licensure as a private investigator; and

WHEREAS, the Board of Private Security Patrol Officers and Investigators, in Rule 8.50.423, Administrative Rules of Montana, interpreted the license exemption for paralegals to apply to "a paralegal employed by only one law firm" and required that paralegals "employed by more than one firm at the same time" be licensed as private investigators; and

WHEREAS, the Legislature intended the 1989 law, by use of the singular phrase "employed by a licensed attorney", to include the plural, in conformity with the basic rule of statutory construction set out in section 1-2-105, MCA, and now finds it necessary to clarify the licensing exemption with regard to paralegals.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-60-101, MCA, is amended to read:

"**37-60-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means any individual employed by a contract security company or a proprietary security organization to respond to security alarm system signals.

(2) "Armed carrier service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(3) "Armed private investigator" means a private investigator who at any time wears, carries, possesses, or has access to a firearm in the performance of his duties.

(4) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, carrier service guard, or alarm response runner and who at any time wears or carries a firearm in the performance of his duties.

(5) "Armored car service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(6) "Board" means the board of private security patrol officers and investigators provided for in 2-15-1891.

(7) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(8) "Contract security company" means any person who installs or maintains a security alarm system, undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(9) "Department" means the department of commerce provided for in 2-15-1801.

(10) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration whatsoever conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes or wrongs committed or threatened against the United States or any state or territory thereof.

(11) "Licensee" means a person licensed under this chapter.

(12) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by ~~a lawyer, law office~~ *one or more lawyers, law offices,* governmental ~~agency~~ *agencies,* or other ~~entity~~ *entities* or who may be authorized by administrative, statutory, or court authority to perform this work.

(13) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

(14) "Private investigator" means a person other than an insurance adjuster who for any consideration whatsoever makes or agrees to make any investigation with reference to:

(a) crimes or wrongs done or threatened against the United States or any state or territory thereof;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) securing evidence to be used before any court, board, officer, or investigating committee.

(15) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property, or the direction of the movements of the public in public areas.

(16) "Proprietary security organization" means any person who employs a private security guard, an alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

(17) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.

(18) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(19) "Security alarm system" means an assembly of equipment and devices or a single device such as a solid state unit which plugs directly into a 110-volt AC line, designed to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a protected premises, to which signals police, private security guards, or alarm response runners are expected to respond. Fire alarm systems and alarm systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a premises are not included within the meaning of this definition.

(20) "Street patrol service" means any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares.

(21) "Unarmed private investigator" means a private investigator who does not wear, carry, possess, or have access to a firearm in the performance of his duties.

(22) "Unarmed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a private security guard,

armored car service guard, or alarm response runner, who does not wear or carry a firearm in the performance of those duties."

Section 2. Section 37-60-105, MCA, is amended to read:

"**37-60-105. Exemptions.** This chapter does not apply to:

(1) (a) any one person employed singly and exclusively by any one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure which at the time is not open to the public;

(b) a person:

(i) employed singly and exclusively by a retail merchant;

(ii) performing at least some of his work for the retail merchant as a private security guard; and

(iii) who has received training as a private security guard from the employer or at the employer's direction;

(2) an officer or employee of the United States of America or of this state or a political subdivision thereof while such officer or employee is engaged in the performance of his official duties;

(3) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

(4) (a) an attorney at law in performing his duties as an attorney at law;

(b) a legal intern, paralegal, or legal assistant employed by ~~a~~ *one or more* ~~licensed attorney~~ *lawyers, law offices, governmental agencies, or other entities*; or

(c) a law student who is serving a legal internship;

(5) a collection agency or finance company licensed to do business under the laws of this state, or an employee thereof while acting within the scope of his employment, while making an investigation incidental to the business of the agency or company, including an investigation of the location of a debtor or his property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof;

(6) special agents employed by railroad companies, provided the railroad company notifies the board that such agents are operating in the state;

(7) insurers and insurance producers and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them;

(8) an insurance adjuster, as defined by 37-60-101(10); or

(9) an internal investigator or auditor, while making an investigation incidental to the business of the agency or company by which he is singularly and regularly employed."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved February 24, 1991.

CHAPTER NO. 48

[HB 318]

AN ACT PROVIDING THAT THE TERM OF APPOINTMENT FOR THE LEGISLATIVE AUDITOR COMMENCES IN EVEN-NUMBERED YEARS; PROVIDING FOR A TRANSITION TERM; AND AMENDING SECTION 5-13-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-13-303, MCA, is amended to read:

"**5-13-303. Term and removal.** The legislative auditor is responsible solely to the legislature. He shall hold office for a term of 2 years beginning with July 1 of each ~~odd-numbered~~ *even-numbered* year. The committee may remove him for misfeasance, malfeasance, or nonfeasance in office at any time after notice and hearing."

Section 2. **Transition.** The legislative auditor appointed in 1991 must be appointed to a 1-year term.

Approved February 24, 1991.

CHAPTER NO. 49

[HB 323]

AN ACT CHANGING THE ELIGIBILITY AND BENEFIT PROVISIONS FOR DISABILITY RETIREMENT FOR NEW MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; PROVIDING A ONE-TIME ELECTION FOR ALL CURRENT MEMBERS TO PARTICIPATE IN THE NEW PROVISIONS, AS REQUIRED BY FEDERAL AMENDMENTS TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967; AMENDING SECTIONS 19-3-1002 AND 19-3-1008, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-1002, MCA, is amended to read:

"**19-3-1002. Eligibility for disability retirement.** (1) Except as provided in ~~subsection~~ *subsections* (2) *and (3)* and 19-3-1004, a member who is not eligible for service or early retirement but has completed 5 years of creditable service and has become disabled while in active service, as defined in 19-3-1001, is eligible for disability retirement*, as provided in 19-3-1008(1)*.

(2) A member age 60 or older who has completed 5 years of creditable service and has had a duty-related accident forcing him to terminate his employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive his eligibility for a service retirement to be eligible for disability retirement. The waiver is effective only upon approval by the board of his application for disability retirement. The board shall determine whether a member has become disabled under the provisions of 19-3-1003. The board may request any information on file with the state compensation mutual insurance fund concerning ~~the~~ *any* duty-related accident. If no information is available, the board may request and the state fund shall provide an investigative report on the disabling accident.

(3) (a) A member employed on [the effective date of this act] has a one-time election to be covered for disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2) commences on the date the completed election form is received by the board or its designated representative. To be eligible for disability benefits under the provisions of this part, a member must have completed 5 years of creditable service and must have become disabled while in active service, as defined in 19-3-1001.

(b) An individual becoming a member after [the effective date of this act] who has completed 5 years of creditable service and has become disabled while in active service, as defined in 19-3-1001, is covered for disability purposes under the provisions of 19-3-1008(2)."

Section 2. Section 19-3-1008, MCA, is amended to read:

"**19-3-1008. Allowance for ~~nonduty-related~~ disability.** (1) The annual amount of retirement allowance payable to a member eligible for disability retirement ~~for other than duty-related reasons~~ *under the provisions of 19-3-1002(1)* is the sum of *(1)*(a), *(1)*(b), and *(1)*(c) *of this section* as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(b) an annuity which is the actuarial equivalent of his accumulated normal contributions with normal interest to the day his retirement allowance commences;

(c) if, in the opinion of the board, the disability is not due to intemperance, willful misconduct, or violation of law on the part of the member, a pension which is the greater of *(1)(c)*(i) or *(1)(c)*(ii) as follows:

(i) a pension which, together with the annuity provided under subsection *(1)*(b), shall make the retirement allowance equal to 90% of one fifty-sixth of his final compensation multiplied by his years of creditable service and additional service purchased under 19-3-513;

(ii) a retirement allowance equal to 25% of his final compensation.

(2) The annual amount of retirement allowance payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) is a retirement allowance equal to one fifty-sixth of his final compensation multiplied by his years of creditable service and additional service purchased under 19-3-513.

~~(2)~~*(3)* Except as provided in 19-3-1201, if a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1101, his beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member.

(4) Subject to the provisions of part 11 of this chapter, a retired member receiving a retirement allowance on [the effective date of this act] who has previously been granted a disability retirement allowance under the provisions of this section will continue to receive the monthly disability retirement allowance as calculated prior to [the effective date of this act], subject to any postretirement or cost-of-living increases granted by the legislature."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved February 24, 1991.

CHAPTER NO. 50

[HB 373]

AN ACT PROVIDING REFUNDS OF CONTRIBUTIONS AND INTEREST TO MEMBERS WHO ELECT TO TERMINATE THEIR MEMBERSHIP IN THE JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS', AND MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEMS; AMENDING SECTIONS 19-5-403, 19-6-403, 19-7-304, 19-7-705, 19-8-503, AND 19-9-304, MCA; REPEALING SECTION 19-7-305, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-5-403, MCA, is amended to read:

"**19-5-403. Refunds in case of resignation or discharge.** ~~Where~~ *When* a contributor *willingly* resigns ~~of his own volition~~ or is discharged for cause before becoming entitled to a retirement allowance, ~~then~~ the *accumulated* deductions standing to his credit ~~shall~~ *must* be paid to him *upon the board's receipt of his written application for a refund.*"

Section 2. Section 19-6-403, MCA, is amended to read:

"**19-6-403. Refund of member's contribution.** ~~(1)~~ If a member *willingly resigns or* is discharged for cause before becoming entitled to a retirement allowance, the *accumulated* deductions standing to his credit ~~shall~~ *must* be paid to him *upon his written application to the board.*

~~(2) If a member resigns of his own volition before becoming entitled to a retirement allowance, his accumulated deductions shall be paid to him.~~"

Section 3. Section 19-7-304, MCA, is amended to read:

"**19-7-304. Discharge or ~~voluntary~~ resignation prior to eligibility for retirement.** When, before becoming entitled to the retirement allowance, a member *willingly* resigns ~~of his own volition~~ or is discharged for cause ~~other than incompetence, malfeasance in office, or unlawful conduct~~, he ~~must:~~

~~(1) notify the board of his termination of eligibility and~~ *may apply in writing to the board to* withdraw *the* accumulated contributions standing to his credit at the time of his termination ~~of eligibility; or~~

~~(2) notify the board of his termination of current eligibility but request that accumulated contributions standing to his credit be retained by the board for a period of time not to exceed 1 year pending reestablishment of eligibility.~~"

Section 4. Section 19-7-705, MCA, is amended to read:

"**19-7-705. Exemption from taxes and legal process.** Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these is:

(1) exempt from any state, county, or municipal tax except for a refund paid under 19-7-304~~(1)~~ of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-7-403;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

(3) unassignable except as specifically provided in 19-7-706."

Section 5. Section 19-8-503, MCA, is amended to read:

"19-8-503. **Refund of member's contribution.** ~~Upon termination of~~ *(1) When* the employment of an active member *is terminated* prior to his ~~retirement date~~ *becoming entitled to retirement benefits*, he shall *apply in writing to the board to* withdraw the amount of his member contributions, *including the accumulated interest on his account.*

(2) A member entitled to retirement benefits may apply in writing to the board to withdraw his accumulated contributions and interest in lieu of all other benefits under the plan. ~~If he has 10 years or more of service, the amount paid shall include regular interest, at a rate to be determined by the board, on such amounts. If he has less than 10 years of service, he shall receive only the amount paid through salary deductions, without interest.~~"

Section 6. Section 19-9-304, MCA, is amended to read:

"19-9-304. **Termination of employment prior to retirement.** ~~Upon termination of~~ *(1) When* the employment of an active member *is terminated* prior to his *minimum* retirement date, he shall withdraw the amount of his member contributions, *including the accumulated interest on his account,* in lieu of all other benefits under the plan. ~~If he has 10 years or more of service, the amount paid shall include regular interest, at a rate to be determined by the board, on such amounts. If he has less than 10 years of service, he shall receive only the amount paid through salary deductions, without interest.~~

(2) If an active member's employment terminates by reason of his death, his beneficiaries are entitled to the benefits prescribed in 19-9-911."

Section 7. **Repealer.** Section 19-7-305, MCA, is repealed.

Section 8. **Effective date.** [This act] is effective July 1, 1991.

Approved February 24, 1991.

CHAPTER NO. 51

[SB 161]

AN ACT AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO ESTABLISH A VOLUNTARY WASTE PESTICIDE REPORTING SYSTEM; DIRECTING THE DEPARTMENT TO DEVELOP A PROPOSED WASTE PESTICIDE DISPOSAL PROGRAM; AMENDING SECTION 80-8-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Montana agricultural producers, government agencies, and citizens possess a substantial volume of waste pesticides that they cannot use in compliance with current regulatory requirements or are unable to beneficially use for a variety of other reasons; and

WHEREAS, all Montanans have an interest in providing for the proper disposal of waste pesticides for purposes of protecting public health and safety, ground water quality, and other resources.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-8-102, MCA, is amended to read:

"**80-8-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Active ingredient" means:

(a) in the case of a pesticide, other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(b) in the case of a plant regulator, an ingredient which acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or their produce;

(c) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(d) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(2) "Adulterated" applies to a pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold or if any substance has been substituted wholly or in part for the pesticide or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

(4) "Applicator" means a person who applies pesticides by any method.

(5) "Beneficial insects" means those insects which, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(6) "Commercial applicator" means a person who by contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

(7) "Commercial operator" means a person who applies pesticides under the supervision of a commercial applicator.

(8) "Crop" means a food intended for human or animal consumption or a fiber product.

(9) "Dealer" means a person who sells, wholesales, offers or exposes for sale, exchanges, barters, or gives away within this state any pesticide except those pesticides which are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes, and lawn.

(10) "Defoliant" means a substance or mixture of substances for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(11) "Desiccant" means a substance or mixture of substances for artificially accelerating the drying of plant tissue.

(12) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests but not equipment used for the application of pesticides.

(13) "Environment" means the soil, air, water, plants, and animals.

(14) "Equipment" means equipment used in the actual application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(15) "Farm applicator" means a person applying pesticides to his own crops or land.

(16) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living man or other animals.

(17) "Fungicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any fungus.

(18) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

(19) "Inert ingredient" means an ingredient which is not an active ingredient.

(20) "Ingredient statement" means either:

(a) a statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) a statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide. However, subsection (20)(a) of this section applies if the preparation is highly toxic to man, determined as provided in 80-8-105; and if the pesticide contains arsenic in any form, the ingredient statement shall also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(21) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most

part belonging to the class insecta, comprising six-legged, winged and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(22) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

(23) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or to its immediate container and any outside container or wrapper of any retail package of the pesticide or device.

(24) "Labeling" means all labels and other written, printed, or graphic matter:

(a) upon the pesticide or device or any of its containers or wrappers;

(b) accompanying the pesticide or device at any time;

(c) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States environmental protection agency; departments of agriculture, interior, or health, education, and welfare; state experiment stations; state agricultural colleges; or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(25) "Misbranded" applies:

(a) to a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients which is false or misleading;

(b) to a pesticide if:

(i) it is an imitation of or is offered for sale under the name of another pesticide;

(ii) its labeling bears any reference to registration under this chapter;

(iii) the labeling accompanying it does not contain instructions for use necessary and, if complied with, adequate for the protection of the public;

(iv) the label does not contain a warning or caution statement necessary and, if complied with, adequate to prevent injury to living man or undue hazard to the environment;

(v) the label of the retail package which is presented or displayed under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

(vi) any word, statement, or other information required to appear on the labeling is not prominently placed on the labeling with a conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms rendering it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living men or other vertebrate animals or vegetation, except weeds, to which it is applied or to the person applying the pesticide;

(viii) in the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to man or other vertebrate animals or vegetation to which it is applied or to the person applying the pesticide. Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(26) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(27) "Nematodes", "nemas", or "eelworms" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle and inhabiting soil, water, animals, plants, or plant parts.

(28) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(29) "Pest" includes any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered a pest or which the department declares a pest.

(30) "Pesticide" means any:

(a) substance or mixture of substances, including any living organism or any product derived from a living organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department declares a pest;

(b) substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(c) other substances intended for that use named by the department by a rule adopted by it.

(31) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(32) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(33) "Registrant" means the person registering any pesticide or device under the provisions of this chapter.

(34) "Restricted-use pesticide" means any pesticide, including highly toxic pesticides, which the department has found and determined, subsequent to a hearing, to be injurious when used in accordance with registration, label, directions, and cautions to persons, beneficial insects, animals, crops, or the environment other than the pests it is intended to prevent, destroy, control, or mitigate.

(35) "Retailer" means any person who sells, offers or exposes for sale, exchanges, barters, or gives away within this state any pesticide for home, yard, lawn, and garden use, in quantities or concentrations as determined by the department of agriculture.

(36) "Waste pesticide" means a pesticide:

(a) that may not be used legally because the environmental protection agency or the department has canceled or suspended the pesticide's registration or has taken other administrative action to prohibit use of the pesticide;

(b) that will not be used for reasons including but not limited to product damage, toxicity, or obsolescence; or

(c) that cannot be disposed of in a legal or economically feasible manner.

~~(36)~~*(37)* "Weed" means any plant or part of the plant which grows where not wanted."

Section 2. **Voluntary waste pesticide reporting system — proposed program — pesticide information.** (1) The department shall establish a voluntary reporting system to encourage pesticide applicators and other persons to report:

(a) the types and volume of waste pesticides in their possession; and

(b) the county where the waste pesticides are stored.

(2) The department shall inventory the waste pesticide information reported under subsection (1) and develop a proposed waste pesticide disposal program for consideration by the legislature in 1993.

(3) All waste pesticide information reported to the department under subsection (1) is confidential. The department may summarize the information for purposes of preparing a waste pesticide inventory report that is

public information. If a waste pesticide disposal program is not approved by the legislature in 1993, the department shall destroy the waste pesticide information received under subsection (1).

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 80, chapter 8, part 1, and the provisions of Title 80, chapter 8, part 1, apply to [section 2].

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved February 26, 1991.

CHAPTER NO. 52

[HB 280]

AN ACT TO DENY TEMPORARY TOTAL DISABILITY BENEFITS TO A WORKER WHO IS RELEASED BY A TREATING PHYSICIAN TO RETURN TO THE SAME, A MODIFIED, OR AN ALTERNATIVE POSITION WITH THE SAME EMPLOYER AT AN EQUIVALENT OR HIGHER WAGE EVEN IF THE WORKER HAS NOT REACHED MAXIMUM HEALING; TO PROVIDE FOR REQUALIFICATION FOR BENEFITS; AMENDING SECTION 39-71-701, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-701, MCA, is amended to read:

"**39-71-701. Compensation for temporary total disability —** ***exception.*** (1) Subject to the limitation in 39-71-736 *and subsection (4) of this section*, a worker is eligible for temporary total disability benefits when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing.

(2) The determination of temporary total disability must be supported by a preponderance of medical evidence.

(3) Weekly compensation benefits for injury producing temporary total disability shall be 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

(4) If the treating physician releases a worker to return to the same, a modified, or an alternative position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage than he received at the time of injury, the worker is no longer eligible for temporary

total disability benefits even though he has not reached maximum healing. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available for any reason to the worker and the worker continues to be temporarily totally disabled, as defined in 39-71-116.

~~(4)~~*(5)* In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

~~(5)~~*(6)* Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, weekly compensation benefits for temporary total disability may not exceed the state's average weekly wage of $299 established July 1, 1986."

Section 2. **Applicability.** [This act] applies to claims for injuries that occur after [the effective date of this act].

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved February 26, 1991.

CHAPTER NO. 53

[HB 16]

AN ACT REQUIRING THAT ALL PRINTING, BINDING, AND STATIONERY WORK FOR THE STATE MUST BE PRINTED IN THE STATE OF MONTANA BY THE LOWEST RESPONSIBLE BIDDER; PROVIDING THAT IF THERE IS NO RESPONSIBLE IN-STATE BIDDER, THE WORK MAY BE PERFORMED BY THE LOWEST RESPONSIBLE BIDDER OUTSIDE THE STATE; AND AMENDING SECTION 18-7-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-7-107, MCA, is amended to read:

"**18-7-107. State printing, binding, and stationery work** ~~— resident preference~~. All printing, binding, and stationery work for the state of Montana must be printed in the state of Montana by ~~a~~ *the lowest* responsible bidder *if the bid, including the cost of delivery, does not exceed the lowest bid by a nonresident printer by more than 8%* ~~if his bid does not exceed the lowest bid by a nonresident printer by more than the percentage in 18-1-102~~. *If there is no responsible in-state bidder, the work may be* *performed by the lowest responsible bidder outside the state. Federal exemptions as specified in 18-1-102(2)(b) apply."*

Approved February 26, 1991.

CHAPTER NO. 54

[HB 119]

AN ACT ALLOWING THE CREATION OF A SPECIAL IMPROVEMENT DISTRICT TO ACQUIRE PARK LAND; AND AMENDING SECTION 7-12-4102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-4102, MCA, is amended to read:

"7-12-4102. Authorization for creation of special improvement districts. (1) The city or town council has power to create special improvement districts, designating them by number; to extend the time for payment of assessments levied upon the districts for district improvements for a period not exceeding 20 years or, if refunding bonds are issued pursuant to 7-12-4194, for a period not exceeding 30 years; to make the assessments payable in installments; and to pay all expenses of whatever character incurred in making the improvements with special improvement warrants or bonds.

(2) Whenever the public interest or convenience requires, the city council may:

(a) create special improvement districts for acquiring by purchase, building, constructing, or maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for acquiring by purchase or building and constructing municipal swimming pools and other recreation facilities;

(c) create special improvement districts and order the whole or any portion or portions, either in length or width, of any one or more of the streets, avenues, alleys, or places or public ways of the city:

(i) graded or regraded to the official grade;

(ii) planked or replanked;

(iii) paved or repaved;

(iv) macadamized or remacadamized;

(v) graveled or regraveled;

(vi) piled or repiled;

(vii) capped or recapped;

(viii) surfaced or resurfaced;

(ix) oiled or reoiled;

(d) create special improvement districts and order the acquisition, construction, or reconstruction within the districts of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, hose connections for irrigating purposes;

(v) appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect the same from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees on the streets, avenues, and alleys;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by the city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes, hose connections for irrigating; hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in the city from overflow by water;

(f) create special improvement districts to make monetary advances or contributions to aid in the construction of additional natural gas and electric distribution lines and telecommunications facilities in order to extend those public utility services;

(g) create special improvement districts and order any work to be done that is considered necessary to improve the whole or any portion of the streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of the city;

(h) create special improvement districts to acquire and improve by purchase, gift, bequest, lease, or other means land to be designated as public park or open-space land; and

~~(h)~~*(i)* maintain, preserve, and care for any and all of the improvements authorized in this section.

(3) The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city where the special improvement district abuts and benefits that property. Property owners within the proposed district boundaries outside the city may not be included in the special improvement district if 40% of those property owners protest the creation of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the special improvement district prior to passing the resolution of intention or the resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions."

Approved February 26, 1991.

CHAPTER NO. 55

[HB 27]

AN ACT TO EXEMPT, IN CERTAIN CIRCUMSTANCES, A SCHOOL DISTRICT FROM THE NEPOTISM LAW IN THE EMPLOYMENT OF A SUBSTITUTE TEACHER; AND AMENDING SECTION 2-2-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-302, MCA, is amended to read:

"**2-2-302. Appointment of relative to office of trust or emolument unlawful.** (1) It ~~shall be~~ *is* unlawful for ~~any~~ *a* person or ~~any~~ member of any board, bureau, or commission or employee at the head of any department of this state or any political subdivision ~~thereof~~ *of this state* to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of this section and 2-2-303 do not apply to:

(a) ~~sheriffs~~ *a sheriff* in the appointment of ~~persons~~ *a person* as ~~cooks~~ *a cook* and/or ~~attendants~~ *an attendant;* ~~and~~

(b) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom he is related assumed the duties of the office~~.~~*; or*

(c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days."

Approved February 27, 1991.

CHAPTER NO. 56

[HB 53]

AN ACT INCREASING THE LICENSE FEES FOR PETROLEUM AND LIQUEFIED PETROLEUM DEALERS; CLARIFYING THE STATUS OF LICENSES UPON CHANGE OF OWNERSHIP OF MEASURING DEVICES; AMENDING SECTION 82-15-105, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-15-105, MCA, is amended to read:

"**82-15-105. Licenses and fees** — ***status of license on transfer of ownership.*** (1) A petroleum dealer or liquefied petroleum dealer may not do business in this state until a license has been issued to him by the department. The license ~~shall~~ *must* be obtained by the dealer by making application to the department upon blank forms provided by the department. A dealer who has not been issued a license and who is found selling, offering for sale, delivering, or distributing petroleum products shall upon conviction be punished as provided by this part.

(2) The fee for this license ~~shall be~~ *is* determined as follows and depends upon the number of devices utilized by the dealer:

(a) each gasoline pump, diesel pump, or fuel oil pump measuring device—~~$5~~ *$7;*

(b) each petroleum vehicle tank meter or bulk petroleum meter of 2 inches (5.08 centimeters) and under—~~$15~~ *$20;*

(c) each bulk petroleum meter over 2 inches (5.08 centimeters)—~~$20~~ *$25;*

(d) each liquefied petroleum liquid meter—~~$25~~ *$30;*

(e) each vapor meter~~—$3~~ *$4*;

(f) each petroleum and liquefied petroleum vehicle tank up to and including 2,000 gallons (7,570 liters)~~—$20~~ *$25*;

(g) each petroleum and liquefied petroleum vehicle tank over 2,000 gallons (7,570 liters)~~—$20~~ *$25* plus ~~$4~~ *$5* for each additional 1,000 gallons (3,785 liters).

(3) All licenses are annual ~~and nontransferable as to person or location~~ and expire on December 31 of each year. There is an additional charge of 50% on all license fees that are not paid before March 1 of each year in which the vehicle tank, meter, or measuring device is in use. If the fee is not paid, the equipment ~~shall~~ *must* be sealed and removed from service by the department. It is unlawful for anyone to use a device so removed from service or to break the seal until all fees have been paid.

(4) If ownership of a measuring device changes and the device:

(a) remains at the same location, the license transfers to the new owner and remains in effect until December 31 of that year;

(b) is moved to a new location, the license is void, and the new owner shall:

(i) apply for a new license that will expire on December 31 of that year; and

(ii) pay the applicable fees prescribed in subsection (2)."

Section 2. **Effective date — applicability.** [This act] is effective January 1, 1992, and applies to licenses and fees for years beginning after December 31, 1991.

Approved February 27, 1991.

CHAPTER NO. 57

[HB 91]

AN ACT PROHIBITING A PERSON WHO RECEIVES A MOOSE, MOUNTAIN GOAT, OR LIMITED MOUNTAIN SHEEP SPECIAL LICENSE FROM RECEIVING ANOTHER SPECIAL LICENSE FOR THAT SPECIES FOR 7 YEARS; AMENDING SECTION 87-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-702, MCA, is amended to read:

"87-2-702. **Restrictions on special licenses.** (1) A person who has killed or taken any game animal, except a deer or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

(2) The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.

(3) After March 27, 1987, a person may, during his lifetime, lawfully take only one grizzly bear in Montana with a license authorized by 87-2-701.

(4) A person who receives a moose, mountain goat, or limited mountain sheep license with the exception of an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next succeeding 7 years."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 27, 1991.

CHAPTER NO. 58

[HB 138]

AN ACT TO ESTABLISH QUALIFICATIONS FOR PUBLIC SAFETY COMMUNICATIONS OFFICERS; TO ALLOW FOR CERTIFICATION OF PUBLIC SAFETY COMMUNICATIONS OFFICERS; AMENDING SECTIONS 44-4-301 AND 44-4-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants authority to the board of crime control to adopt rules establishing minimum qualifications and minimum certification standards for public safety communications officers. These rules should address the following:

(1) standards of physical, educational, mental, and moral fitness governing the recruitment, selection, appointment, and certification of public safety communications officers;

(2) types of programs acceptable for meeting certification standards;

(3) standards for determining programs to be approved for fulfillment of the certification requirements, such as adequacy of facilities and qualifications of instructors;

(4) number of hours of instruction, if any, required;

(5) contents of examination, if any, required; and

(6) attendance requirements, if any.

It is not the intent of this legislation that the board of crime control be required to establish state-operated training schools for public safety communications officers, although the board may establish courses of study for public safety communications officers at training schools already administered by the state.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 3], the following definitions apply:

(1) "Board" means the Montana board of crime control provided for in 2-15-2006.

(2) "Public safety communications officer" means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under [section 3].

Section 2. **Qualifications for public safety communications officers.** To be appointed a public safety communications officer, a person:

(1) must be a citizen of the United States;

(2) must be at least 18 years of age;

(3) must be fingerprinted and a search must be made of local, state, and national fingerprint files to disclose any criminal record;

(4) may not have been convicted of a crime for which he could have been imprisoned in a federal or state penitentiary;

(5) must be of good moral character, as determined by a thorough background investigation;

(6) must be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government; and

(7) shall meet any additional qualifications established by the board.

Section 3. **Certification of public safety communications officers — notification requirements.** (1) A local government may require that a person appointed to receive requests for emergency services, as defined in 10-4-101, and dispatch the appropriate emergency service units to be certified by the board as a public safety communications officer.

(2) The board shall determine the certification standards for public safety communications officers as provided in [section 2].

(3) A public safety communications officer who has successfully met the certification standards set by the board and the qualification requirements in [section 2] and who has completed a 6-month probationary term of employment must, upon application to the board, be issued a basic public safety communications officer certificate.

(4) Within 10 days of the appointment, termination, resignation, or death of any public safety communications officer, written notice must be given to the board by the employing authority.

Section 4. Section 44-4-301, MCA, is amended to read:

"44-4-301. **Functions.** (1) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature.

(2) The board shall have the authority to establish minimum qualifying standards for employment of peace officers, as defined in 7-32-303, detention officers, ~~and~~ detention center administrators, *and public safety communications officers.*

(3) The board shall have the authority to require basic training for officers, establish minimum standards for equipment and procedures and for advanced in-service training for officers, *establish minimum standards for the certification of public safety communications officers,* and establish minimum standards for law enforcement and detention officer training schools administered by the state or any of its political subdivisions or agencies, to insure the public health, welfare, and safety.

(4) The board may waive the minimum qualification standard for good cause shown."

Section 5. Section 44-4-302, MCA, is amended to read:

"44-4-302. **Definitions.** As used in 44-4-301 and this section, the following definitions apply:

(1) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to a detention center.

(2) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center or temporary detention center.

(3) "Detention officer" means a person or a peace officer who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a detention center or temporary detention center.

(4) "Public safety communications officer" means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under [section 3].

~~(4)~~*(5)* "Temporary detention center" means a facility for the temporary detention of an arrested person for up to 72 hours, excluding holidays, Saturdays, and Sundays. The period of time a person is held in temporary detention may not exceed 96 hours."

Section 6. **Effective date.** [This act] is effective July 1, 1991.

Approved February 27, 1991.

CHAPTER NO. 59

[HB 140]

AN ACT REQUIRING A STATE OFFICER OR STATE EMPLOYEE SOLICITING OR ACCEPTING EMPLOYMENT, OR ENGAGING IN NEGOTIATIONS OR MEETINGS TO CONSIDER EMPLOYMENT, WITH A PERSON WHOM HE REGULATES TO FIRST NOTIFY HIS SUPERVISOR AND DEPARTMENT DIRECTOR IN WRITING; AND AMENDING SECTION 2-2-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-121, MCA, is amended to read:

"**2-2-121. Rules of conduct for state officers and state employees.** (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) A state officer or a state employee may not:

(a) use state time, facilities, or equipment for his private business purposes;

(b) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from his agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any state agency; ~~or~~

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; *or* *(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom he regulates in the course of his official duties without first giving written notification to his supervisor and department director.*

(3) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding subsection (2)(e) if his participation is necessary to the administration of a statute and if he complies with the voluntary disclosure procedures under 2-2-131.

(4) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless he is also a full-time state employee."

Approved February 27, 1991.

CHAPTER NO. 60

[HB 163]

AN ACT EXPANDING THE USE OF STATE LAW ENFORCEMENT PAYMENTS TO MUNICIPAL POLICE DEPARTMENTS; AND AMENDING SECTION 7-32-4120, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-4120, MCA, is amended to read:

"**7-32-4120. Expenditure of state payments by municipality not having police retirement system — annual report.** *(1) As used in this section, "employee" means a person employed by a municipal police department, including police officers.*

~~(1)~~*(2)* ~~Any~~ *A* city or town not governed by the provisions of chapter 9 or 10 of Title 19 shall only expend the payment received pursuant to 19-10-305 for police *department employee* training, *for equipment and personnel relating to substance abuse enforcement,* or to purchase pensions for ~~members~~ *employees* of its police department.

~~(2)~~*(3)* The city treasurer or town clerk of ~~such~~ *the* cities or towns shall, on or before April 1 of each year, report to the state auditor as to the expenditures of all funds received pursuant to 19-10-305."

Approved February 27, 1991.

CHAPTER NO. 61

[HB 171]

AN ACT REPEALING STATUTES THAT PROVIDE FOR THE ABANDONMENT OF THE DALY DITCH WATER PROJECT; REPEALING SECTIONS 85-1-401, 85-1-402, 85-1-403, 85-1-404, 85-1-405, 85-1-406, 85-1-407, 85-1-408, AND 85-1-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 85-1-401, 85-1-402, 85-1-403, 85-1-404, 85-1-405, 85-1-406, 85-1-407, 85-1-408, and 85-1-409, MCA, are repealed.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 27, 1991.

CHAPTER NO. 62

[HB 178]

AN ACT ADOPTING THE UNIFORM INTERNATIONAL WILL ACT; PROVIDING FOR THE VALIDITY OF INTERNATIONAL WILLS; PROVIDING FOR CERTIFICATION OF INTERNATIONAL WILLS; AND PROVIDING FOR A REGISTRY FOR INTERNATIONAL WILLS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** In [sections 1 through 10], the following definitions apply:

(1) "International will" means a will executed in conformity with [sections 2 through 5].

(2) "Authorized person" and "person authorized to act in connection with international wills" means a person who by [section 9] or by the laws of the United States, including members of the diplomatic and consular service of the United States designated by the foreign service regulations, is empowered to supervise the execution of international wills.

Section 2. **International will — validity.** (1) The form of a will is valid, regardless of the place where it is made, of the location of the assets, and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of [sections 1 through 10].

(2) The invalidity of the will as an international will does not affect its formal validity as a will of another kind.

(3) [Sections 1 through 10] do not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Section 3. **International will — requirements.** (1) An international will must be made in writing. It need not be written by the testator himself. It may be written in any language, by hand, or by any other means.

(2) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents of the will. The testator need not inform the witnesses or the authorized person of the contents of the will.

(3) In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

(4) If the testator is unable to sign, the absence of his signature does not affect the validity of the international will if the testator indicates the reason for his inability to sign and the authorized person makes note of the inability on the will. In that case, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for him if the authorized person makes note of this on the will, but it is not required that any person sign the testator's name for him.

(5) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Section 4. **International wills — other points of form.** (1) The signatures must be placed at the end of the will. If the will consists of several sheets, each sheet must be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet must be numbered.

(2) The date of the will must be the date of its signature by the authorized person.

(3) The authorized person shall ask the testator whether he wished to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator, the place where he intends to have his will kept must be mentioned in the certificate provided for in [section 5].

(4) A will executed in compliance with [section 3] is not invalid merely because it does not comply with this section.

Section 5. **International will — certificate.** The authorized person shall attach to the will a certificate to be signed by him establishing that the requirements of [sections 1 through 10] for valid execution of an international will have been fulfilled. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate must be substantially in the following form:

CERTIFICATE
(Convention of October 26, 1973)

I, ______________ (name, address, and capacity), a person authorized to act in connection with international wills, certify that on _________ (date) at ___________ (place) (testator) ________________ (name, address, date, and place of birth) in my presence and that of the witnesses

(a) ______________ (name, address, date, and place of birth)

(b) ______________ (name, address, date, and place of birth) has declared that the attached document is his will and that he knows the contents thereof.

I furthermore certify that:

(a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed;

(2) following a declaration of the testator stating that he was unable to sign his will for the following reason ________________, I have mentioned this declaration on the will, and the signature has been affixed by _______________ (name and address);

(b) the witnesses and I have signed the will;

*(c) each page of the will has been signed by ____________ and numbered;

(d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

(e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

*(f) the testator has requested me to include the following statement concerning the safekeeping of his will:

PLACE OF EXECUTION

DATE

SIGNATURE and, if necessary, SEAL

* to be completed if appropriate

Section 6. **International will — effect of certificate.** In the absence of evidence to the contrary, the certificate of the authorized person is conclusive of the formal validity of the instrument as a will under [sections

1 through 10]. The absence or irregularity of a certificate does not affect the formal validity of a will under [sections 1 through 10].

Section 7. **International will — revocation.** An international will is subject to the ordinary rules of revocation of wills.

Section 8. **Source and construction.** [Sections 1 through 7] derive from the Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying [sections 1 through 10], regard must be given to its international origin and to the need for uniformity in its interpretation.

Section 9. **Persons authorized to act in relation to international will — eligibility — recognition by authorizing agency.** Individuals who have been admitted to practice law before the courts of this state and are currently licensed are authorized persons in relation to international wills.

Section 10. **International will information registration.** The secretary of state shall establish a registry system by which authorized persons may register in a central information center information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or individual-identifying number established by law, address, and date and place of birth of the testator and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The secretary of state, at the request of the authorized person, may cause the information he receives about the execution of any international will to be transmitted to the registry system of another jurisdiction as identified by the testator if that other registry system adheres to rules protecting the confidentiality of the information similar to those established in this state.

Section 11. **Codification instruction.** [Sections 1 through 10] are intended to be codified as an integral part of Title 72, chapter 2, and the provisions of Title 72, chapter 2, apply to [sections 1 through 10].

Approved February 27, 1991.

CHAPTER NO. 63

[HB 194]

AN ACT ENSURING DUE PROCESS TO INDIGENTS BY PROVIDING THAT THE DISTRICT COURT SHALL WAIVE THE UNDERTAKING FOR AN APPEAL TO DISTRICT COURT WHEN THE APPEALING

PARTY IS INDIGENT; IMPLEMENTING THE MONTANA SUPREME COURT'S DECISION IN MERCHANTS ASSOCIATION V. CONGER, 185 MONT. 552, 606 P.2D 125 (1979); AND AMENDING SECTIONS 25-33-104 AND 25-33-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-33-104, MCA, is amended to read:

"**25-33-104. Papers to be transmitted.** Upon the filing of the notice of appeal and the undertaking ~~as~~ *when* required ~~in~~ *by* 25-33-201, 25-33-203, and 25-33-205, the justice or judge must, within 10 days, upon the payment of the fees therefor, transmit to the clerk of the district court a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal, and the undertaking; and the justice or judge may be compelled by the district court, by an order entered upon motion, to transmit such papers and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice or judge by the party or his attorney."

Section 2. Section 25-33-201, MCA, is amended to read:

"**25-33-201. Undertaking on appeal.** (1) ~~An~~ *Except as provided in subsection (4), an* appeal from a justice's or city court is not effectual for any purpose unless an undertaking be filed, with two or more sureties, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money. The undertaking must be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs if the appeal be withdrawn or dismissed or the amount of any judgment and all costs that may be recovered against him in the action in the district court.

(2) ~~An~~ *Except as provided in subsection (4), an* appeal from a justice's or city court is not effectual for any purpose unless an undertaking be filed, with two or more sureties, in a sum equal to twice the value of the property, including costs, when the judgment is for the recovery of specific personal property. When the action is for the recovery of specific personal property, the undertaking must be conditioned that the appellant will pay the judgment and costs appealed from and obey the order of the court made therein if the appeal be withdrawn or dismissed or pay any judgment and costs that may be recovered against him in said action in the district court and obey any order made by the court therein.

(3) ~~When~~ *Except as provided in subsection (4), when* the judgment appealed from directs the delivery of possession of real property, the execution of the same cannot be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that:

(a) during the possession of such property by the appellant, he will not commit or suffer to be committed any waste thereon; and

(b) if the appeal be dismissed or withdrawn or the judgment affirmed or judgment be recovered against him in the action in the district court, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof or he will pay any judgment and costs that may be recovered against him in said action in the district court, not exceeding a sum to be fixed by the justice or judge of the court from which the appeal is to be taken, which sum must be specified in the undertaking.

(4) When the appealing party is determined by the court to be indigent, the district court shall waive the undertaking requirements of this section."

Approved February 27, 1991.

CHAPTER NO. 64

[HB 205]

AN ACT TO CHANGE THE CALCULATION OF CONTRIBUTIONS DUE FOR SERVICE CREDITS TRANSFERRED BETWEEN THE PUBLIC EMPLOYEES' AND TEACHERS' RETIREMENT SYSTEMS; AMENDING SECTIONS 19-3-511 AND 19-4-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-511, MCA, is amended to read:

"**19-3-511. Transfer of service credits from teachers' retirement system.** (1) A member may at any time before his retirement make a written election with the board to qualify in the public employees' retirement system all of his creditable service in the teachers' retirement system. The amount that must be paid to the retirement system to qualify this service under this section is the sum of subsections (2) and (3).

(2) The teachers' retirement system shall transfer to the public employees' retirement system an amount equal to ~~5% of the average final compensation, as defined in 19-4-101, earned by the member multiplied by the total years of creditable service being transferred plus accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the teachers' retirement system. If the member had less than 3 full years of membership service, the average final compensation must be based on the compensation reported to the teachers' retirement board by the employer~~ *72% of the amount determined in accordance with subsection (3).*

(3) ~~(a)~~ The employee shall pay an amount equal to his accumulated contributions at the time he terminated active membership, as defined in 19-4-302, plus accrued interest from the date of termination until payment

is received by the retirement system, based on the interest tables in use by the teachers' retirement system.

~~(b) If the sum of the rates provided in 19-3-701 and 19-3-801 exceeded the sum of the rates provided in 19-4-602 and 19-4-605 at the time the employee terminated active membership, as defined in 19-4-302, the employee shall pay an amount in addition to that required in subsection (3)(a) to receive full credit for the service transferred. This additional amount is equal to:~~

~~(i) the final compensation as determined in subsection (2) multiplied by the total years of creditable service being transferred multiplied by the difference between the sum of the rates provided for in 19-3-701 and 19-3-801 and the sum of the rates provided in 19-4-602 and 19-4-605; plus~~

~~(ii) accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the retirement system.~~

~~(c) If the member chooses not to make the contribution provided for in this section, he shall receive credit for the service transferred based on the ratio between the retirement systems' employee and employer contribution rates provided for in 19-3-701, 19-3-801, 19-4-602, and 19-4-605.~~

(4) The amount of creditable service granted in subsection (1) must be on a month-by-month basis. Military service credit transferred from the teachers' retirement system must be included in the 5-year maximum military service credit provided for in 19-3-503.

(5) Subject to the provisions of 19-3-304, the board is the sole authority in determining the amount of creditable service qualified under this section and the amount paid to the retirement system under subsections(2) and (3).

(6) If a member who has creditable service in the teachers' retirement system dies before he qualifies this service in the public employees' retirement system and if the service credits from both systems, when combined, entitle his beneficiary to a death benefit, the payment of the death benefit is the liability of the public employees' retirement system. Before payment of the death benefit, the teachers' retirement board must transfer to the public employees' retirement system the contributions necessary to qualify this service in the public employees' retirement system as provided in subsections (2) and (3)."

Section 2. Section 19-4-409, MCA, is amended to read:

"**19-4-409. Transfer of service credits from public employees' retirement system.** (1) A member may at any time before his retirement make a written election with the retirement board to qualify in the teachers' retirement system all of his creditable service in the public employees' retirement system. The amount that must be paid to the retirement system to qualify this service under this section is the sum of subsections (2) and (3).

(2) The public employees' retirement system shall transfer to the teachers' retirement system an amount equal to ~~5% of the final compensation, as defined in 19-3-104, earned by the member multiplied by the total years of creditable service being transferred plus accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the public employees' retirement system. If the member had less than 3 full years of membership service, the final compensation must be based on the compensation reported to the public employees' retirement board by the employer~~ *72% of the amount determined in accordance with subsection (3).*

(3) ~~(a)~~ The employee shall pay an amount equal to his accumulated contributions at the time he terminated active membership under 19-3-406 plus accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the public employees' retirement system.

~~(b) If the sum of the rates provided in 19-4-602 and 19-4-605 exceeded the sum of the rates provided in 19-3-701 and 19-3-801 at the time the employee terminated active membership under 19-3-406, the employee shall pay an amount in addition to that required in subsection (3)(a) to receive full credit for the service transferred. This additional amount is equal to:~~

~~(i) the final compensation as determined in subsection (2) multiplied by the total years of creditable service being transferred multiplied by the difference between the sum of the rates provided in 19-4-602 and 19-4-605 and the sum of the rates provided in 19-3-701 and 19-3-801; plus~~

~~(ii) accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the retirement system.~~

~~(c) If the member chooses not to make the contribution as provided in this section, he shall receive credit for the service transferred, based on the ratio between the retirement systems' employee and employer contribution rates provided for under 19-3-701, 19-3-801, 19-4-602, and 19-4-605.~~

(4) A member who qualifies service from the public employees' retirement system in the teachers' retirement system must complete 5 years of membership service in the teachers' retirement system to qualify or purchase military service, out-of-state teaching service, employment while on leave, and private school employment.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If a member who has creditable service in the public employees' retirement system dies before he qualifies this service in the teachers' retirement system and if his service credits from both systems, when combined, entitle his beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must

transfer to the teachers' retirement system the contributions necessary to qualify this service in the teachers' retirement system as provided in subsections(2) and (3).

(7) If the retirement board determines that an individual's membership was erroneously classified, the member's accumulated contributions and service must be transferred to the teachers' retirement system and any employee and employer contributions due as calculated in 19-4-602 and 19-4-605 are the liability of the employee and the employing entity where the error occurred, respectively."

Section 3. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to service credits transferred between the public employees' retirement system and the teachers' retirement system on and after October 1, 1989.

Section 4. **Effective date.** [This act] is effective upon passage and approval.

Approved February 27, 1991.

CHAPTER NO. 65

[HB 242]

AN ACT TO ALLOW STATE EMPLOYEES INVOLUNTARILY TERMINATED FROM EMPLOYMENT TO ENTER INTO CONTRACTS WITH THE STATE IMMEDIATELY FOLLOWING THEIR TERMINATION; AMENDING SECTION 2-2-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-201, MCA, is amended to read:

"**2-2-201. Public officers, employees, and former employees not to have interest in contracts.** Members of the legislature, state, county, city, town, or township officers or any deputy or employee thereof must not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within 6 months following the termination of his employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which he was directly involved during his employment. In this section the term:

(1) "be interested in" does not include holding a minority interest in a corporation;

(2) "contract" does not include:

(a) contracts awarded to the lowest responsible bidder *or proposer* based on competitive bidding procedures;

(b) merchandise sold to the highest bidder at public auctions;

(c) investments or deposits in financial institutions which are in the business of loaning or receiving money;

(d) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It shall be presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(3) "former employee" does not include a person whose employment with the state was involuntarily terminated due to a reduction in force or other involuntary termination not involving violation of the provisions of this chapter."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 27, 1991.

CHAPTER NO. 66

[SB 90]

AN ACT RECOGNIZING DENTAL AND DENTAL HYGIENE SCHOOLS; CHANGING THE LICENSURE REQUIREMENTS FOR OUT-OF-STATE DENTAL HYGIENISTS AND ALLOWING DENTAL HYGIENISTS TO PERFORM MORE TASKS UNDER THE GENERAL AS OPPOSED TO THE DIRECT SUPERVISION OF A DENTIST; RECOGNIZING ACCREDITED DENTAL HYGIENE SCHOOLS; AMENDING SECTIONS 37-4-302, 37-4-401, 37-4-404, 37-4-405, AND 37-4-408, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

The intent of the amendments to 37-4-404(2) is to permit the board of dentistry to establish, within the parameters set by statute, the number of practice hours required for licensure of dental hygienists by credentials.

The intent of the amendments to 37-4-405(1) is to ensure that, except for the administration of local anesthesia, it is up to the discretion of the supervising dentist and not the board to determine if a dental hygienist is to perform the duties referred to in Title 37, chapter 4, under general or direct supervision.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-4-302, MCA, is amended to read:

"**37-4-302. Recognition of dental schools *and dental hygiene schools.*** In determining what ~~shall constitute~~ *constitutes* a recognized dental college ~~or school and/or a recognized school of dental hygiene~~, the board shall be guided by the standards, canons, and practices required for ~~such~~ recognition by the ~~council on dental education of the American dental association~~ *commission on dental accreditation. In determining what constitutes a recognized dental hygiene school, the board shall recognize only those dental hygiene schools accredited by the commission on dental accreditation or its successor as designated by the United States department of education or the council on post-secondary accreditation, or both.*"

Section 2. Section 37-4-401, MCA, is amended to read:

"**37-4-401. Practice of dental hygiene.** The practice of dental hygiene is services, performed by a licensed preventive oral health practitioner known as a dental hygienist, that are educational, therapeutic, prophylactic, or preventive procedures in nature, as the board in writing defines and authorizes~~. These services include~~, *and that may be performed under general supervision of a licensed dentist. The practice of dental hygiene also includes* and the board shall authorize the administration of local anesthetic agents by a licensed dental hygienist certified by the board to administer the agents *only* under the direct supervision and authorization of a licensed dentist. However, this section does not allow the board or a licensed dentist to delegate any of the following duties:

(1) diagnosis, treatment planning, and prescription;

(2) surgical procedures on hard and soft tissues other than root planing and subgingival curettage;

(3) restorative, prosthetic, orthodontic, and other procedures which require the knowledge and skill of a dentist;

(4) prescription for drugs or medications or work authorizations."

Section 3. Section 37-4-404, MCA, is amended to read:

"**37-4-404. Admission of dental hygienists from other states — ~~reciprocity~~.** ~~(1)~~ On the payment of a fee prescribed by the board ~~and after satisfactory practical examination demonstrating his proficiency~~, a dental hygienist may be granted a license to practice dental hygiene in this state ~~without being required to take an examination in theory~~ if he:

~~(a)~~*(1)* has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state;

~~(b)~~*(2)* has been lawfully and continuously engaged in the practice of dental hygiene for a period of ~~1 year or more~~ *at least 500 hours during the 1-year period* immediately before filing his application to practice in this state; ~~and~~

~~(c)~~*(3)* deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments~~.~~*; and*

(4) deposits in person with the department evidence of graduation from a school of dental hygiene accredited by the commission on dental accreditation or its successor as recognized by the United States department of education and the council on post-secondary accreditation.

~~(2) No license may be issued to the applicant without an examination in theory unless the state or territory from which the certificate has been granted extends a like privilege to engage in the practice of dental hygiene to dental hygienists licensed by this state who have moved to the other state.~~

~~(3) The board may enter into reciprocity agreements with other states or territories, the standards of which as to the practice of dental hygiene are, in the opinion of the board, equal to those of this state.~~"

Section 4. Section 37-4-405, MCA, is amended to read:

"**37-4-405. Dental hygienist to practice under supervision of licensed dentist.** (1) A licensed dental hygienist, *with the permission of the supervising dentist,* may practice in the office of a licensed and actively practicing dentist, in a public or private institution, under a board of health, or in a public clinic authorized by the board, ~~but may not practice except~~ under the ~~direct personal~~ *general* supervision of a licensed dentist; however, the dental hygienist may give instruction in oral hygiene without the supervision of a licensed dentist in a public or private institution or hospital or extended care facility or under a board of health or in a public clinic ~~authorized by the board~~.

(2) ~~The board may, in lieu of the direct supervision requirement set forth in subsection (1), permit a licensed dental hygienist to provide clinical dental hygiene services to a public or private institution, a hospital or extended care facility, or a school or public health program after a review of a request for such service and a description of the type of supervision necessary is made by the board.~~ For the purposes of this section, "supervision" is defined as follows:

(a) "direct supervision" means ~~the supervision of those tasks and procedures that do not require the dentist in the room where performed but require his presence on the premises and availability for prompt consultation and treatment; and~~ *treatment by a dental auxiliary or licensed dental hygienist provided with the intent and knowledge of the dentist. The treatment must be performed while the dentist is on the premises.*

(b) "general supervision" means ~~those tasks and procedures that do not require the presence of a dentist on the premises but shall remain under the dentist's directive order, control, responsibility, and evaluation~~ *treatment, except the administration of local anesthesia, by a licensed dental hygienist provided with the intent and knowledge of the dentist licensed and residing in the state of Montana. The supervising dentist need not be on the premises.*

~~(3) Notwithstanding any other provisions of this section, a dental hygienist may continue performing tasks and procedures requiring direct supervision if:~~

~~(a) the supervising dentist required to be on the premises has been called out of the office briefly for an emergency; and~~

~~(b) both the hygienist and the patient consent.~~"

Section 5. Section 37-4-408, MCA, is amended to read:

"**37-4-408. Auxiliary personnel — employment, duties, and limitations.** *A dental auxiliary is a person other than a licensed dental hygienist employed by a licensed dentist.* The board may, within the limitations of this chapter, adopt rules ~~which~~ *that* define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by ~~any~~ *a* licensed dentist in his office, except that nothing ~~herein shall~~ *in this section may* be construed to allow the board by rule to provide for delegation by a licensed dentist to any such auxiliary personnel any of the duties prohibited to dental hygienists under 37-4-401 or a prophylaxis. The performance of intraoral tasks by all dental auxiliaries, as permitted by board rules, ~~shall~~ *must* be under the direct supervision of the licensed dentist employing ~~such~~ *the* personnel."

Section 6. **Effective date.** [This act] is effective July 1, 1991.

Approved March 13, 1991.

CHAPTER NO. 67

[HB 23]

AN ACT REQUIRING THE DEPARTMENT OF REVENUE TO ACCEPT A SIGNED STATEMENT FROM THE VENDOR AS EVIDENCE OF KEYLOCK OR CARDTROL PURCHASES OF GASOLINE FOR WHICH AN AGRICULTURAL-USE REFUND IS REQUESTED; AMENDING SECTION 15-70-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-223, MCA, is amended to read:

"15-70-223. Estimate allowed for agricultural use — ***seller's signed statement acceptable on keylock or cardtrol purchases.*** (1) An applicant whose use qualifies as agricultural use may apply for a refund of 60% of the applicable tax on the gallons of gasoline as indicated by bulk delivery invoices or by evidence of keylock or cardtrol purchases as an estimate of off-roadway use.

(2) For purposes of application for a refund under subsection (1), the department shall accept, as evidence of keylock or cardtrol purchases, a statement of the sale of gasoline with applicable tax that identifies the purchaser and that is signed by a licensed distributor or a person licensed under 15-70-203 from whom the gasoline was purchased.

~~(2)~~*(3)* If any invoice or evidence is either lost or destroyed, the purchaser may support his claim for refund by submitting an affidavit relating the circumstances of such loss or destruction and by producing such other evidence as may be required by the department of revenue.

~~(3)~~*(4)* An applicant whose use does not qualify as agricultural use may not estimate and must maintain records as required by 15-70-222."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 13, 1991.

CHAPTER NO. 68

[HB 115]

AN ACT REVISING THE PADDLEFISH ROE DONATION PROGRAM; DEFINING THE INTAKE FISHING ACCESS SITE FOR PURPOSES OF DONATION OF ROE TO THE PROGRAM; AMENDING SECTION 87-4-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-601, MCA, is amended to read:

"87-4-601. *(Temporary)* **Sale of fish or spawn unlawful — exceptions.** (1) Except as provided in subsections (2) and (3), a person may not, for speculative purposes, for market, or for sale, in any way, catch any of the fish which in this title are classified as game fish or remove or cause to be removed the eggs or spawn of any such fish. No person may sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn from any game fish.

(2) The restrictions of subsection (1) do not apply to:

(a) the catching of fish in private ponds by the owners of private ponds;

(b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for propagation purposes;

(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules and regulations of the department;

(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under rules and regulations as the fish and game commission may prescribe; or

(e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.

(3) (a) A person issued a paddlefish tag under 87-2-306 who legally takes a paddlefish at the Intake fishing access site north of Glendive during an authorized paddlefish season may donate the paddlefish roe, or eggs, to a Montana nonprofit corporation as specified in subsection (3)(b) for processing and marketing as caviar. *For purposes of this subsection, the Intake fishing access site means the area from the face of Intake dam downstream to the confluence of Cottonwood Creek and the Yellowstone River. A paddlefish brought into the Intake fishing access site for cleaning or donation to the paddlefish roe donation program must be a properly tagged, whole paddlefish. Roe separated from the paddlefish is not acceptable for donation to the program. A paddlefish intentionally cut in any manner to identify its sex is also unacceptable for donation to the program.*

(b) The department shall develop rules for selecting one Montana nonprofit organization to accept paddlefish egg donations and process and market the eggs as caviar. The department shall also develop rules for the marketing and sale of caviar under this section.

(c) The department may enter into an agreement with the organization selected pursuant to the rules provided for in subsection (3)(b) specifying times, sites, and other conditions under which paddlefish eggs may be collected. The agreement must require the organization to maintain records of revenue collected and related expenses incurred and to make the records available to the department and the legislative auditor upon request.

(d) (i) One-half of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, marketing, and administration must be deposited in a state special revenue fund established for the department. The fund and any interest earned on the fund must be used to benefit the paddlefish fishery, including fishing access, improvements, habitat, and fisheries management, or to provide information to the public regarding fishing in eastern Montana, which could include the design and construction of interpretive displays.

(ii) The other half of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, marketing, and administration must be paid to the nonprofit organization that processes and markets the caviar. An advisory committee must be appointed by the commission and consist of one member from the organization selected pursuant to the rules provided for in subsection (3)(b), two area local government representatives, and two representatives of area sportsmen. The advisory committee shall solicit and review historical, cultural, recreational, and fish and wildlife proposals and fund projects. The committee shall notify the commission of its actions. Proceeds may be used as seed money for grants. *(Terminates June 30, 1993—sec. 5, Ch. 409, L. 1989.)*

87-4-601. *(Effective July 1, 1993)* **Sale of fish or spawn unlawful — exceptions.** (1) Except as provided in subsection (2), no person may, for speculative purposes, for market, or for sale, in any way, catch any of the fish which in this title are classified as game fish or remove or cause to be removed the eggs or spawn of any such fish. No person may sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn therefrom.

(2) The restrictions of subsection (1) do not apply to:

(a) the catching of fish in private ponds by the owners thereof;

(b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for such purposes;

(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules and regulations of the department;

(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under such rules and regulations as the fish and game commission may prescribe; or

(e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 13, 1991.

CHAPTER NO. 69

[HB 154]

AN ACT TO ALLOW A BUS DEPRECIATION RESERVE FUND TO BE USED TO CONVERT, REMODEL, REBUILD, OR REPLACE A BUS OR RADIO; AND AMENDING SECTION 20-10-147, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-10-147, MCA, is amended to read:

"**20-10-147. Bus depreciation reserve.** (1) The trustees of any district owning a bus or a two-way radio used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for *the conversion, remodeling, or rebuilding of a bus or for* the replacement of ~~such~~ *a* bus or radio.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio for such purposes. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, shall be reported by the county superintendent to the county commissioners on the second Monday of August as the bus depreciation reserve fund levy requirement for that district and a levy shall be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund moneys shall be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only ~~for the purchase of buses or radios~~ *to convert, remodel, or rebuild buses or* to replace the buses or radios for which the bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve cash balance to any other fund maintained by the district, it shall submit such proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 20-20-301, and the election shall be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer."

Approved March 13, 1991.

CHAPTER NO. 70

[HB 326]

AN ACT REVISING AND CLARIFYING THE DUTIES OF THE VETERANS' BURIAL SUPERVISOR; AND AMENDING SECTIONS 10-2-101, 10-2-501, 10-2-503, AND 10-2-504, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-101, MCA, is amended to read:

"**10-2-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "board" means the board of veterans' affairs provided for in 2-15-1205; and

(2) "veteran" means an honorably discharged individual who served on active duty, other than for training, with the United States armed forces, *including an individual who served with the United States coast guard.* The term includes individuals who served with the first special service force and the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945."

Section 2. Section 10-2-501, MCA, is amended to read:

"**10-2-501. Burial allowance for military.** (1) The board of commissioners of each county in this state shall designate a person in the county, preferably a veteran, as veterans' burial supervisor.

(2) The veterans' burial supervisor shall cause to be decently interred the body of any veteran who ~~is~~ *was* a resident of the state of Montana *at the time of death. In performing this duty, the veterans' burial supervisor shall ensure that the desires of the veteran's personal representative or heirs are not violated.*

(3) The burial may not be made in any burial grounds or cemetery or in any portion of any burial grounds or cemetery used exclusively for the burial of pauper dead.

(4) A sum not to exceed $250 to defer burial expenses must be paid by the county commissioners of the county in which the veteran was a bona fide resident at the time of death.

(5) The burial benefits are not available in the case of any veteran whose ~~executor, administrator,~~ *personal representative* or heirs waive the benefits.

(6) Whenever burial is of a resident of the Montana veterans' home, a sum not to exceed $250 to defer burial expenses must be paid by the county commissioners of the county in which the veteran resided prior to admittance to the Montana veterans' home.

(7) If a veteran dies while temporarily absent from the state or county of residence, the provisions of this section apply and the burial expenses not exceeding the amount specified in this section must be paid in the same manner as provided in this section.

(8) Whenever a veteran dies at any public institution of the state of Montana, other than the Montana veterans' home, and burial for any cause is not made in the county of the former residence of the veteran, the officers

of the state institution shall provide the proper burial prescribed in this section. The reimbursement for the expense of each burial may not exceed $250. The expense must be paid by the county in which the veteran resided at the time of entry into the institution.

(9) A burial may not be covered by any special or standing contract whereby the cost of burial is reduced below the maximum amount fixed in this section, to the disparagement of proper interment.

(10) The veterans' burial supervisor shall, upon request of the deceased veteran's next of kin or guardian, assist in applying to the proper authority for a suitable headstone, as provided by act of congress, and in placing the headstone on the veteran's grave. A sum not exceeding $30 for the shipping and raising of the headstone must be paid by the county commissioners of the county in which the veteran was a resident at the time of death. The expense must be audited and paid as provided in this section for burial expenses."

Section 3. Section 10-2-503, MCA, is amended to read:

"**10-2-503. Report of *actions and* expenses by burial supervisor.** It ~~shall be~~ *is* the duty of the person appointed as provided in 10-2-501 to cause the veteran to be buried as provided in this part, and he shall immediately report his action to the clerk of the board of county commissioners, setting forth all the facts, together with the veteran's name~~,~~ *and* rank, *the last* command to which the veteran belonged, so far as is known, the date of death, *the exact* place of burial, ~~occupation while living,~~ and an itemized statement of the expenses incurred by reason of ~~such~~ *the* burial. *The board of county commissioners may direct that additional information be kept in the book required to be kept by the clerk of the board of county commissioners by 10-2-504."*

Section 4. Section 10-2-504, MCA, is amended to read:

"**10-2-504. Duty of clerk.** It ~~shall be~~ *is* the duty of the clerk of the board of county commissioners, upon receiving the report and statement of expenses, to transcribe in a book to be kept for that purpose all the facts contained in ~~such~~ *the* report concerning the veteran. ~~It shall also be the duty of the clerk, upon receiving the report of the burial of the veteran, to make application to the proper authorities under the government of the United States for a suitable headstone as provided by act of congress and to cause the same to be placed at the head of the grave of the veteran, the expense of which shall not exceed the sum of $30 for cartage of and properly setting up each stone. The expense thus incurred shall be audited and paid as provided in 10-2-502 for the burial expenses.~~"

Approved March 13, 1991.

CHAPTER NO. 71

[HB 39]

AN ACT TO EXCLUDE FROM TAXATION MOTOR VEHICLES OWNED BY CERTAIN ENTITIES THAT PROVIDE POTABLE WATER; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"**15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts, except, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) *motor vehicles,* land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section

501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) provided the tools are owned by the taxpayer, the first $15,000 or less of market value of tools that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment; and

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105.

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 2. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990.

Approved March 15, 1991.

CHAPTER NO. 72

[HB 434]

AN ACT TO ALLOW THE STATE TREASURER TO ASSESS COUNTIES AN INTEREST CHARGE FOR THE LATE REMITTANCE OF MONEY COLLECTED BY COUNTY TREASURERS FOR THE STATE, RATHER THAN TO REQUIRE THE ASSESSMENT; AMENDING SECTION 15-1-504, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-504, MCA, is amended to read:

"**15-1-504. Settlement of county treasurer with state treasurer.** The county treasurer, between the 1st and 20th days of each month, ~~must~~ *shall* remit to the state treasurer all ~~moneys~~ *money* belonging to the state ~~which were~~ *that was* collected by ~~such~~ *the county* treasurer during the preceding month. ~~Such~~ *The* remittance ~~shall~~ *must* be accompanied by a detailed report upon ~~such~~ *a* form ~~as~~ *that* the state treasurer ~~may prescribe, and for all such moneys by him collected and not remitted by him to the state treasurer within 5 days from the time herein required, he shall pay interest at the rate of 10% per annum~~ *prescribes. The state treasurer may assess counties an interest charge of 10% a year on all money not remitted within 5 days from the time required by this section.*"

Section 2. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved March 15, 1991.

CHAPTER NO. 73

[HB 439]

AN ACT REQUIRING A COURT TO INFORM A DEFENDANT WHO IS BEING ARRAIGNED THAT IF HE IS NOT A CITIZEN OF THE UNITED STATES, A GUILTY PLEA MIGHT RESULT IN DEPORTATION FROM OR EXCLUSION FROM ADMISSION TO THE UNITED STATES OR DENIAL OF NATURALIZATION UNDER FEDERAL LAW; AND AMENDING SECTIONS 46-12-202 AND 46-12-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-12-202, MCA, is amended to read:

"**46-12-202. Court to advise defendant of his rights and the charges.** (1) The defendant shall be advised by the court as follows:

(a) of the nature of the crime charged against him;

(b) of the punishment as set forth by statute for the crime charged;

(c) if the defendant intends to enter into a plea bargain agreement:

(i) that under 46-12-204, the court is not bound by such agreements;

(ii) that under 46-12-204, if the court does not impose the sentence recommended by the prosecution pursuant to a plea agreement, the court is not required to allow the defendant to withdraw a plea of guilty;

(iii) that criminal sentencing is governed by Title 46, chapter 18; and

(iv) that the defendant and his counsel should carefully review Title 46, chapter 18, and consider the most severe sentence that can be imposed for a particular crime;

(d) if the defendant appears for arraignment without counsel, of his right to counsel and of his right to assigned counsel if he is unable to employ counsel. If counsel is or has been waived by the defendant, the court shall ascertain if the waiver is or was voluntary before proceeding.

(e) of the time prescribed by statute to enter a plea;

(f) of his right to secure bail to release him from custody; *and*

(g) that if the defendant is not a United States citizen, a guilty plea might result in deportation from or exclusion from admission to the United States or denial of naturalization under federal law.

(2) The court, or the clerk or county attorney under its direction, must:

(a) deliver to the defendant a true copy of the indictment, information, or complaint, including the endorsements thereon and the list of witnesses when required;

(b) read the indictment, information, or complaint to the defendant unless the defendant or his counsel waives such reading; and

(c) ask him whether he pleads guilty or not guilty to the indictment, information, or complaint."

Section 2. Section 46-12-204, MCA, is amended to read:

"**46-12-204. The plea — plea bargains.** (1) The defendant shall enter a plea of guilty or not guilty to the indictment, information, or complaint. If the defendant refuses to plead to the indictment, information, or complaint, a plea of not guilty must be entered.

(2) The court may refuse to accept a plea of guilty and shall not accept the plea of guilty without first determining that the plea is voluntary with an understanding of the charge.

(3) (a) A plea bargain agreement is an agreement between a defendant and a prosecutor that in exchange for a particular plea the prosecutor will recommend to the court a particular sentence. A judge may not participate in the making of, and is not bound by, a plea bargain agreement. If a judge does not impose a sentence recommended by a prosecutor pursuant to a plea bargain agreement, the judge is not required to allow the defendant to withdraw a plea of guilty.

(b) Before a judge accepts a plea of guilty, he must advise the defendant:

(i) of all the provisions of subsection (3)(a);

(ii) of the punishment as set forth by statute for the crime charged;

(iii) that prior to entering a plea of guilty, the defendant and his counsel should have carefully reviewed Title 46, chapter 18, and considered the most severe sentence that can be imposed for a particular crime; ~~and~~

(iv) that the judge may impose any sentence allowed by law*; and*

(v) that if the defendant is not a United States citizen, a guilty plea might result in deportation from or exclusion from admission to the United States or denial of naturalization under federal law."

Section 3. **Coordination instruction.** If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-12-204, then [section 2 of this act], amending 46-12-204, is void.

Approved March 15, 1991.

CHAPTER NO. 74

[HB 453]

AN ACT REQUIRING A PUBLIC EMPLOYER TO PICK UP A MEMBER'S CONTRIBUTION UNDER THE MONTANA JUDGES' RETIREMENT SYSTEM; REQUIRING THE EMPLOYER TO DEDUCT FROM THE MEMBER'S COMPENSATION AN AMOUNT EQUAL TO THE AMOUNT OF THE MEMBER'S CONTRIBUTION PICKED UP BY THE EMPLOYER; REQUIRING A MEMBER TO PAY STATE AND LOCAL TAXES ON A REFUND OF CERTAIN CONTRIBUTIONS; AMENDING SECTIONS 19-5-402 AND 19-5-704, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-5-402, MCA, is amended to read:

"**19-5-402. Member's contribution ~~deducted from salary~~.** *(1)* Every member shall be required to contribute into the fund a sum equal to 6% of his monthly salary, except that a member elected or appointed to office after July 1, 1983, shall be required to contribute into the fund a sum equal to 7% of his monthly salary beginning on the first day of his term. This sum shall be deducted from his salary and credited to his account in the fund.

(2) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code, as amended and applicable on July 1, 1991, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1991.

(3) The member's contribution picked up by the employer is the member's contribution for all purposes of the retirement system, except for the determination of a tax upon a distribution from the retirement system. The contributions must become part of the member's accumulated contributions but must be accounted for separately from the previously accumulated contributions.

(4) The member's contributions picked up by the employer are payable from the same source used to pay compensation to the member and must be included in the member's monthly compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 2. Section 19-5-704, MCA, is amended to read:

"**19-5-704. Exemption from taxes and legal process —** ***exception.*** Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these *except refunds paid under 19-5-403 of the member's contributions picked up by an employer after June 30, 1991, as provided in 19-5-402,* shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable except as specifically provided in 19-5-705."

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved March 15, 1991.

CHAPTER NO. 75

[HB 456]

AN ACT INCREASING THE NUMBER OF REPORTING TIMES FOR STATEWIDE BALLOT ISSUE COMMITTEES TO FILE REPORTS; REVISING CAMPAIGN REPORTING REQUIREMENTS CONCERNING IDENTIFICATION OF PERSONS MAKING CERTAIN CONTRIBUTIONS; REVISING CERTAIN LIMITS ON CONTRIBUTIONS SUBJECT TO REPORTING; REQUIRING THAT EMPLOYERS OF CONTRIBUTORS BE IDENTIFIED; AND AMENDING SECTIONS 13-37-226, 13-37-228, AND 13-37-229, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-226, MCA, is amended to read:

"**13-37-226. Time for filing reports.** (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees ~~which~~ *that* are ~~specifically~~ organized to support or oppose a particular statewide candidate ~~or issue~~ shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that~~:~~

~~(i)~~ the candidate expects to be on the ballot; ~~or~~

~~(ii) an issue subject to a referendum submitted by the legislature or the people is or is expected to be on the ballot;~~

(b) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days next preceding the date on which an election is held and within 24 hours after receiving a contribution of $500 or more if received between the 10th day before and the day of the election;

(c) not more than 20 days after the date of the election; and

(d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that an issue subject to a referendum is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

~~(2)~~*(3)* Candidates for a state district office, including but not limited to candidates for the legislature, public service commission, or district court judge, and political committees which are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 10th day next preceding the date on which an election is held and within 24 hours after receiving a contribution of $100 or more if received between the 15th day before and the day of the election;

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files his or its closing report as specified in 13-37-228(3).

~~(3)~~*(4)* Candidates for any other public office and political committees which are specifically organized to support or oppose a particular local issue shall be required to file the reports specified in subsection ~~(2)~~ *(3)* only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

~~(4)~~*(5)* For the purposes of this subsection, a committee which is not specifically organized to support or oppose a particular candidate or ballot issue and which receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file reports:

(a) on the 10th day next preceding the date of an election in which it participates by making an expenditure;

(b) not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) a closing report at the close of each calendar year, on a date to be prescribed by the commissioner.

~~(5)~~*(6)* The commissioner may promulgate rules regarding the extent to which organizations that are not primary political committees but are incidental political committees shall report their politically related activities in accordance with this chapter.

~~(6)~~*(7)* All reports required by this section shall be complete as of the fifth day before the date of filing as specified in 13-37-225(2) and subsections (1) through ~~(5)~~ *(6)* of this section."

Section 2. Section 13-37-228, MCA, is amended to read:

"**13-37-228. Time periods covered by reports.** Reports filed under 13-37-225 and 13-37-226 shall be filed to cover the following time periods even though no contributions or expenditures may have been received or made during the period:

(1) The initial report shall cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate or a political committee as defined in 13-1-101 until the fifth day before the date of filing of the appropriate initial report pursuant to subsections (1) through ~~(4)~~ *(5)* of 13-37-226.

(2) Subsequent periodic reports shall cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to 13-37-226(1) through ~~(4)~~ *(5)*.

(3) Closing reports shall cover the period of time from the last periodic report to the final closing of the books of the candidate or political commit-

tee. A candidate or political committee shall file a closing report following an election in which he or it participates whenever all debts and obligations are extinguished and no further contributions or expenditures will be received or made which relate to the campaign, unless the election is a primary election and the candidate or political committee will participate in the general election."

Section 3. Section 13-37-229, MCA, is amended to read:

"**13-37-229. Disclosure of contributions received.** Each report required by this chapter shall disclose the following information:

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name, ~~and~~ mailing address, (occupation, and ~~the principal place of business~~ *employer*, if any), of each person who has made aggregate contributions, *other than loans, of $35 or more to a candidate or political committee* (including the purchase of tickets and other items for events, such as dinners, luncheons, rallies, and similar fundraising events)~~, other than loans, to the candidate or political committee, of:~~

~~(a) $75 or more if the candidate has filed for a state office to be filled by a statewide vote of all the electors of Montana or if the political committee was specifically organized to support or oppose a particular statewide candidate or issue; or~~

~~(b) $35 or more for any other candidate or political committee~~;

(3) for each person identified under subsection (2), the aggregate amount of contributions made by that person within the reporting period and the total amount of contributions made by that person *for all reporting periods*;

(4) the total sum of individual contributions made to or for ~~the~~ *a* political committee or candidate and not reported under subsections (2) and (3) of this section;

(5) the name and address of each political committee or candidate from which the reporting committee or candidate received any transfer of funds, together with the amount and dates of all transfers;

(6) each loan from any person during the reporting period, together with the full names, ~~and~~ mailing addresses, (~~occupation~~ *occupations*, and ~~principal place of business~~ *employers*, if any), of the lender and endorsers, if any, and the date and amount of each loan;

(7) the amount and nature of debts and obligations owed to a political committee or ~~candidates~~ *candidate*, in the form prescribed by the commissioner;

(8) an itemized account of proceeds ~~which~~ *that* total less than ~~$75 under subsection (2)(a) or~~ $35 ~~under subsection (2)(b)~~ from a person from mass collections made at fundraising events;

(9) each contribution, rebate, refund, or other receipt not otherwise listed under subsections (2) through (8) of this section during the reporting period;

(10) the total sum of all receipts received by or for the committee or candidate during the reporting period; and

(11) other information that may be required by the commissioner to fully disclose the sources of funds used to support or oppose candidates or issues."

Approved March 15, 1991.

CHAPTER NO. 76

[HB 54]

AN ACT TO ALLOW A COUNTY THAT CONSOLIDATES THE OFFICE OF COUNTY SUPERINTENDENT OF SCHOOLS WITH ANOTHER OFFICE TO CONTRACT WITH A PERSON WHO MEETS STATUTORY QUALIFICATIONS; AMENDING SECTION 20-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-201, MCA, is amended to read:

"**20-3-201. Election and qualifications.** (1) A county superintendent ~~shall~~ *must* be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent ~~shall~~ *must* be elected at the general election preceding the expiration of the term of office of the incumbent.

(2) ~~Any~~ *A* person ~~shall be~~ *is* qualified to assume the office of county superintendent who:

(a) is a qualified elector;

(b) holds a valid teacher certificate issued by the superintendent of public instruction; and

(c) has ~~not less than~~ *at least* 3 years of successful teaching experience.

(3) *(a)* When the office of county superintendent of schools is consolidated with another county office within the county, the officeholder ~~shall~~ *must* have the qualifications ~~of~~ *listed in* subsection (2) or ~~he~~ shall, with the approval of the governing body, contract for ~~the services of another county superintendent, with approval of the governing body of that county, to perform~~ the *full performance of the* duties required of a county superintendent in 20-3-207 and 20-3-210~~. The officeholder may contract for the services of~~ *with:*

(i) another county superintendent, *with the approval of the governing body of that county;*

(ii) a former county superintendent; or

(iii) a person who:

(A) is a qualified elector;

(B) holds a valid administrative certificate as provided in 20-4-106(1)(c);

(C) takes the oath of office in 20-1-202;

(D) is bonded in the manner provided for county officers in Title 2, chapter 9, part 7; and

(E) attends instructional training in the duties of a county superintendent as offered by the superintendent of public instruction ~~to perform other duties required by law of a county superintendent~~.

(b) Whenever a governing body contracts with a person for performance of the duties required of a county superintendent under the provisions of subsection (3)(a)(iii), the contract must be for at least the duration of 1 school fiscal year.

(c) The superintendent of public instruction shall prescribe a contract form to be used."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved March 18, 1991.

CHAPTER NO. 77

[HB 58]

AN ACT AMENDING THE LAWS RELATING TO THE SUSPENSION AND CANCELLATION OF THE COLLECTION OF CERTAIN PROPERTY TAXES ON COMMERCIAL PROPERTY; PROVIDING THAT THE GOVERNING BODY MAY SUBORDINATE A COUNTY'S TAX LIEN TO A PURCHASER'S FINANCING; REMOVING THE TERMINATION OF THE PROGRAM BY REPEALING SECTION 17, CHAPTER 631, LAWS OF 1989; AND AMENDING SECTION 15-24-1701, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-1701, MCA, is amended to read:

"**15-24-1701.** ~~(Temporary)~~ **Suspension and cancellation of collection of certain property taxes on commercial property — *subordination of county tax lien* — local government discretion.** (1) The governing body of a county or consolidated local government unit may suspend collection of delinquent property taxes on commercial property to facilitate the purchase and continued operation of a business utilizing the commercial property if the property has not been used in a business for 6 months immediately preceding the date of suspension.

(2) The governing body may refuse to suspend delinquent taxes if it determines that the purchase of the commercial property is not an arm's length transaction or if the purchase otherwise appears to be a restructuring of ownership for the primary purpose of escaping payment of delinquent property taxes or if the governing body determines the cancellation is not in the best interest of the county.

(3) If the purchaser is obtaining financing as a part of a purchase agreement, the purchaser may request and the governing body may grant a subordination of the suspended tax lien to the financing. The request must include an operational plan, levels of employment, and other factors the governing body may consider important in determining if subordination of the county's tax lien position is in the best interest of the people of the county. Subordination does not diminish any other claims of tax lien as established by this section.

~~(3)~~*(4)* If a purchaser of such commercial property continuously utilizes the property in a profit-oriented, employment-stimulating business for 3 years from the date of purchase, the governing body may cancel the collection of the suspended delinquent property taxes. The governing body may not cancel the suspended delinquent property taxes if the purchaser is delinquent on taxes for any other property within the governing body's taxing jurisdiction. ~~*(Terminates December 31, 1993--sec. 17, Ch. 631, L. 1989.)*~~"

Section 2. **Repealer.** Section 17, Chapter 631, Laws of 1989, is repealed.

Approved March 18, 1991.

CHAPTER NO. 78

[HB 288]

AN ACT INCREASING THE SERVICE RETIREMENT ALLOWANCE FOR MEMBERS OF THE SHERIFFS' RETIREMENT SYSTEM WITH 24 YEARS OR LESS OF CREDITABLE SERVICE WHO RETIRE ON OR AFTER JULY 1, 1991; AMENDING SECTION 19-7-503, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-7-503, MCA, is amended to read:

"19-7-503. **Service retirement allowance.** (1) The amount of any service retirement allowance granted to a member with ~~25~~ *24* years or less of creditable service shall be ~~2%~~ *2.0834%* of his final salary for each year of creditable service, up to a maximum of 50% of final salary.

(2) The member's retirement allowance shall be increased for any member who contributes after ~~25~~ *24* years of service by 1.35% of his final salary for each year of creditable service in excess of ~~25~~ *24* years of service, up to a maximum of 60% of his final salary.

(3) If a member dies after retirement and had not elected an optional retirement allowance provided for in 19-7-701, his beneficiary must be paid the excess, if any, of the member's accumulated contributions at the time of retirement less payments made to the retired member."

Section 2. **Applicability.** [This act] applies to members of the sheriffs' retirement system, as established in 19-7-102, retiring on or after July 1, 1991.

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved March 18, 1991.

CHAPTER NO. 79

[HB 367]

AN ACT PROVIDING FOR THE EXPANSION OF BUSINESS IMPROVEMENT DISTRICTS; PROVIDING FOR ASSESSING LAND IN THE EXPANDED AREA OF A DISTRICT; AND AMENDING SECTIONS 7-12-1111, 7-12-1112, 7-12-1114, 7-12-1115, AND 7-12-1133, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-1111, MCA, is amended to read:

"7-12-1111. **Establishment *or expansion* of a district.** (1) Upon receipt of a petition signed by the owners of more than 60% of the area of the property proposed in the petition to be included in a district *or in the expansion of a district,* a governing body shall establish a district *or expand a district* as provided in this part.

(2) The boundaries of a district must comply with applicable zoning regulations, and the district may not include areas that are zoned primarily as residential areas."

Section 2. Section 7-12-1112, MCA, is amended to read:

"7-12-1112. **Resolution of intention to create *or expand* district — notice.** (1) Before creating *or expanding* a district, the governing body shall pass a resolution of intention to do so, designating the boundaries thereof.

(2) Notice of passage of the resolution must be published for 5 days in a daily newspaper or in one issue of a weekly paper published in the municipality or county or, in case no newspaper is published in the municipality or county, then by posting for 5 days in three public places in the municipality or county. A copy of the notice shall be mailed to every owner of real property within the proposed district *or within the proposed area of expansion* listed on the last completed assessment roll for state, county, and school district taxes, at the owner's last-known address, on the same day the notice is first published or posted.

(3) The notice must describe the general purpose of the district *or the general reason for the expansion* and designate the time when and the place where the governing body will hear and pass upon all protests that may be made against the creation of ~~such~~ *the* district *or the expansion of the existing district.* The notice shall refer to the resolution on file with the governing body or clerk, if any, for the description of the boundaries.

(4) The resolution to expand a district deals only with the question of the expanded area, and the existing district does not have to be reestablished."

Section 3. Section 7-12-1114, MCA, is amended to read:

"**7-12-1114. Hearing on protest — sufficient protest to bar proceedings.** (1) At a regular meeting of the governing body after the expiration of the time within which protest may be made, the governing body shall proceed to hear and pass upon all protests. Its decision shall be final and conclusive.

(2) The governing body may adjourn the hearing from time to time. A protestant shall have the right to withdraw a protest at any time before final action thereon by the council or commission.

(3) No further action shall be taken upon the proposed district *or proposed expansion of an existing district* for 1 year if a written protest against passage of the proposed ordinance is filed by:

(a) owners of property within the proposed district *or area of a proposed expansion* having a taxable valuation, when aggregated, representing not less than 50% of the total taxable valuation of property within the district *or within the area of a proposed expansion*;

(b) not less than 50% of the owners of property within the district *or area of a proposed expansion*; or

(c) owners of property within the proposed district *or area of a proposed expansion* having projected assessments, when aggregated, representing not less than 50% of the total projected assessments for property within the district *or within the area of a proposed expansion.*"

Section 4. Section 7-12-1115, MCA, is amended to read:

"**7-12-1115. Resolution creating *or expanding* district.** When no protests have been delivered to the governing body within 15 days after the date of the first publication of the notice of the passing of the resolution of intention, when a protest shall have been found by the governing body to be insufficient or has been overruled, or when a protest against the extent of the proposed district *or proposed expansion of a district* has been heard and denied, the governing body has jurisdiction to order the creation *or expansion* of the district and shall pass a resolution creating *or expanding* the district in accordance with the resolution of intention."

Section 5. Section 7-12-1133, MCA, is amended to read:

"**7-12-1133. Assessment of costs — area, lot, taxable valuation, and square footage options.** (1) At the same time the board submits the annual budget and work plan to the governing body as provided in 7-12-1132, the board shall also recommend to the governing body a method of levying an assessment on the property within the district which will best ensure that the assessment on each lot or parcel is equitable in proportion to the benefits to be received.

(2) The governing body shall annually assess the entire cost of the district against the entire district using a method which best ensures that the assessment on each lot or parcel is equitable in proportion to the benefits to be received. In determining the method of assessment to be used, the governing body shall consider the recommendations of the board. The governing board shall levy the assessment using one of the following methods:

(a) each lot or parcel of land within such district may be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places;

(b) if the governing body determines that the benefits derived by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the area of the lot or parcel;

(c) each lot or parcel of land, including the improvements thereon, may be assessed for that part of the whole cost of the district which its taxable valuation bears to the total taxable valuation of the property of the district;

(d) each building may be assessed for that part of the whole cost of the district that the occupied or income-producing area of the building above the first floor bears to the area of the entire district; or

(e) by using any combination of the assessment options provided in subsections (2)(a) through (2)(d).

(3) If a district is expanded, the land within the expanded area must be assessed as provided for in subsection (2) for the duration of the district."

Approved March 18, 1991.

CHAPTER NO. 80

[HB 480]

AN ACT TO INCLUDE TOWN EMPLOYEES AMONG THOSE PUBLIC EMPLOYEES ENTITLED TO MILITARY LEAVE; AND AMENDING SECTION 10-1-604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-604, MCA, is amended to read:

"**10-1-604. Leave of absence of public employees attending training camp or similar training program.** A state, city, *town,* or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of 6 months shall be given leave of absence with pay for a period of time not to exceed 15 working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time."

Approved March 18, 1991.

CHAPTER NO. 81

[HB 599]

AN ACT REVISING THE CALCULATION OF PENSION BENEFITS PAID UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; AMENDING SECTION 19-12-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Report to the legislature.** By January 10, 1993, the board shall provide to the 53rd legislature a report on the funding available in the volunteer firefighters' fund for benefits provided under the Volunteer Firefighters' Compensation Act. The legislature shall review the sufficiency of the fund to provide the current level of benefits and may eliminate, modify, or continue the benefit levels provided in 19-12-404.

Section 2. Section 19-12-404, MCA, is amended to read:

"**19-12-404. Pension benefits.** (1) Each person who meets the requirements set forth in 19-12-401 or, in the case of a beneficiary, 19-12-405(1) and who has completed and filed a claim as provided in

19-12-403 is entitled to participate in the volunteer firefighters' pension plan and to receive payments as provided in this section.

(2) The payments shall be computed each year in the following manner:

(a) *For fiscal years 1992 and 1993, the base benefit level is established at $120 per month for each retiree qualifying for full participation under the provisions of 19-12-401(1)(a). Partial participation is calculated under the provisions of 19-12-401(1)(b).*

(b) Whenever at the close of business on the last day of a fiscal year there is a balance in the volunteer firefighters' fund in excess of ~~$1~~ *$6* million, the board shall set aside ~~the smaller of the amount in excess of $1 million and an amount equal to 95% of the increase of the balance over the balance at the end of the preceding fiscal year for the payment by the board of pensions to qualified claimants during the immediately succeeding fiscal year. The~~ *the* amount to be paid to each qualifying claimant ~~shall be determined by dividing the amount set aside by the number of claimants qualifying to participate in the pension plan at the beginning of such succeeding fiscal year~~.

~~(b)~~*(c)* The total pension payable to a qualified claimant under this section may not exceed $200 per month, and the amount to be set aside from the volunteer firefighters' fund may not exceed the amount necessary to pay the maximum of $200 per month to each claimant qualified as of the beginning of the fiscal year during which the payments are to be made.

~~(c)~~*(d)* For the purpose of computation and payment of benefits under this section, if children of a volunteer firefighter become eligible for benefits, all the children of the volunteer firefighter shall be treated collectively as one claimant.

(3) If the amount ~~set aside is sufficient to pay each~~ *of the benefit for a* qualified claimant *is* at least $20 per month throughout the succeeding fiscal year, the pension shall be paid monthly on or before the last day of each month. If the amount ~~set aside is not sufficient to pay each~~ *of the benefit for a* qualified claimant ~~at least~~ *is less than* $20 per month, ~~each~~ *the* qualified claimant's full pension for that year shall be paid to him in one lump payment on or before December 15 of that year."

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 12, part 2, and the provisions of Title 19, chapter 12, part 2, apply to [section 1].

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved March 18, 1991.

CHAPTER NO. 82

[SB 92]

AN ACT DELETING REQUIREMENTS FOR LOCAL GOVERNMENTS TO REPORT THE USE OF MOTOR FUEL TAX FUNDS AND OF THE DEPARTMENT OF HIGHWAYS TO REPORT MONTHLY CONSTRUCTION PLANS AND PROJECTS; AMENDING SECTIONS 15-70-101 AND 60-2-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-101, MCA, is amended to read:

"**15-70-101. Disposition of funds.** All taxes, interest, and penalties collected under this chapter, except those collected by a justice's court, ~~shall~~ *must* be turned over promptly to the state treasurer, who shall place the ~~same~~ *money* in the state special revenue fund to the credit of the department of highways. Those funds ~~hereinbelow~~ allocated to cities, towns, and counties ~~shall~~ *in this section must* be paid by the department of highways from the state special revenue fund to ~~such~~ *the* cities, towns, and counties.

(1) $14,000,000 of the funds collected under this chapter, except those collected by a justice's court, is statutorily appropriated, as provided in 17-7-502, to the department of highways and ~~shall~~ *must* be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (1)(a) through (1)(c):

(a) $54,000 ~~shall~~ *must* be designated for the purposes and functions of the Montana rural technical assistance transportation program in Bozeman;

(b) $6,323,000 ~~shall~~ *must* be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;

(c) $7,623,000 ~~shall~~ *must* be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds ~~hereby~~ allocated *by this section* to counties, cities, and towns ~~shall~~ *must* be used for the construction, reconstruction, maintenance, and repair of rural roads~~,~~ *or* city or town streets and alleys or for the share ~~which such~~ *that the* city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets ~~which~~ *that* are part of the federal-aid primary or secondary highway system or urban extensions ~~thereto~~ *to those systems*, except that the governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

~~(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities, and towns shall inform the department of highways of the purposes for which the funds will be expended so that the county commissioners, the governing body, and the department of highways may coordinate the expenditure of public funds for road improvements.~~

~~(4)~~*(3)* All funds ~~hereby~~ allocated *by this section* to counties, cities, and towns ~~shall~~ *must* be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases ~~where~~ *in which* the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

~~(5)~~*(4)* For the purposes of this section ~~where~~ *in which* distribution of funds is made on a basis related to population, the population ~~shall~~ *must* be determined by the last preceding official federal census.

~~(6)~~*(5)* For the purposes of this section ~~where~~ *in which* determination of mileage is necessary for distribution of funds, it ~~shall be~~ *is* the responsibility of the cities, towns, and counties to furnish to the department of highways a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted ~~shall be~~ *is* subject to review and approval by the department of highways.

~~(7)~~*(6)* Except by a town or third-class city as provided in subsection (2), ~~none of~~ the funds authorized by this section ~~shall~~ *may not* be used for the purchase of capital equipment.

~~(8)~~*(7)* Funds authorized by this section ~~shall~~ *must* be used for construction and maintenance programs only."

Section 2. Section 60-2-202, MCA, is amended to read:

"60-2-202. **Duties of department.** The department shall:

(1) maintain and preserve the records of the commission in its office at Helena; *and*

(2) file and preserve copies of all plans, specifications, contracts, estimates, and official acts taken by it or by the commission~~;~~

~~(3) prepare and submit to the governor on or before the 15th day of each month a report of work constructed, under construction, and proposed for construction; the progress made during the preceding month; and recommendations for improvements and their estimated costs~~."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1991.

CHAPTER NO. 83

[SB 100]

AN ACT TO DELETE THE REQUIREMENT THAT INTERLOCAL AGREEMENTS BE APPROVED BY THE ATTORNEY GENERAL; AMENDING SECTION 7-11-107, MCA; AND REPEALING SECTION 7-11-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-11-107, MCA, is amended to read:

"7-11-107. **Filing of interlocal agreement.** ~~Within 10 days after the approval by the attorney general and prior to commencement of its performance, said~~ *The* interlocal contract made pursuant to this part ~~shall~~ *must* be filed with:

(1) the county clerk and recorder of the county or counties where ~~said~~ *the* political agencies are situated; and

(2) the secretary of state."

Section 2. **Repealer.** Section 7-11-106, MCA, is repealed.

Approved March 18, 1991.

CHAPTER NO. 84

[SB 110]

AN ACT TO AUTHORIZE THE DEPARTMENT OF REVENUE TO WRITE OFF THE COLLECTION OF A TAX, PENALTY, OR INTEREST DUE TO THE STATE WHEN THE DEPARTMENT DETERMINES THAT IT IS NOT COST-EFFECTIVE TO ATTEMPT TO COLLECT THE TAX, PENALTY, OR INTEREST.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 1] grants the department of revenue authority to adopt rules for establishing procedures to determine whether it is cost-effective to collect any tax, penalty, or interest from a delinquent taxpayer. The legislature intends that the rules adopted by the department address the circumstances under which it is no longer cost-effective to pursue the collection of a tax. These circumstances include but are not limited to the difficulty of finding the delinquent taxpayer, the difficulty of locating the assets of the taxpayer, or the financial condition of the taxpayer. In addition, the rules adopted by the department may include procedures to remove, for accounting purposes, a delinquency from the department's accounts receivable.

The legislature also intends that rules provide that if a tax delinquency is written off, it is not forgiven, but the department will incur no further expense in collecting the tax.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Writeoff of collection of tax, penalty, or interest — rules.** (1) The department of revenue may write off the collection of any tax, penalty, or interest due to the state under this title when the department determines that it is not cost-effective for the department to attempt to collect the tax, penalty, or interest. The department shall establish procedures to determine the cost-effectiveness of collecting the tax, penalty, or interest. If the department writes off the collection of any tax, penalty, or interest, the department shall place in the taxpayer's file a written justification for the writeoff that includes a determination that attempted collection is not cost-effective.

(2) The department shall prescribe rules to establish the procedures to carry out the purposes of this section.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 1, part 2, and the provisions of Title 15, chapter 1, part 2, apply to [section 1].

Approved March 18, 1991.

CHAPTER NO. 85

[SB 144]

AN ACT AMENDING THE UNIT OWNERSHIP ACT TO REQUIRE THE FILING OF A DECLARATION OF UNIT OWNERSHIP WITH A CITY OR TOWN CLERK IF CONDOMINIUM PROPERTY IS LOCATED WITHIN A CITY OR TOWN; AND AMENDING SECTION 70-23-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-23-305, MCA, is amended to read:

"**70-23-305. Recording of declaration.** (1) When a declaration is made and approved as required, it ~~shall~~ *must*, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date ~~thereof shall~~ *of recording must* be entered ~~thereon~~ *on the declaration.*

(2) At the time of recording a declaration, the person offering it for record shall also file ~~an exact~~ *a* copy, certified by the recording officer to be a true copy ~~thereof~~, with the department of revenue or its agent in the county in which the property is located.

(3) If the property is located in a city or town, a copy of the declaration only must also be filed with the city or town clerk at the time of recording."

Approved March 18, 1991.

CHAPTER NO. 86

[SB 147]

AN ACT PROVIDING A PROCEDURE FOR THE FILING OF A SHORT-PERIOD MONTANA CORPORATION LICENSE TAX RETURN BY CORPORATIONS PERMITTED TO FILE A MONTANA CONSOLIDATED CORPORATION LICENSE TAX RETURN; AMENDING SECTION 15-31-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-141, MCA, is amended to read:

"**15-31-141. Consolidated returns — computation and procedure — prohibition on financial institutions.** (1) Corporations which are affiliated may not file a consolidated return unless at least 80% of all classes of stock of each corporation involved is owned directly or indirectly by one or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and, except for a unitary business operation described in subsection (2)(b), permission to file a consolidated return is given by the department of revenue. For purposes of this section, a "unitary business operation" means one in which:

(a) the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations; or

(b) all of the corporations in the affiliated group are incorporated and operate exclusively in Montana, are not multistate corporations, and have filed a consolidated federal return for the tax year.

(3) The election to file a consolidated return is binding as long as the affiliated group continues to file a federal consolidated return.

(4) If the conditions of subsections (1) and (2) of this section are met, the department may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(5) Any corporation liable to report under this chapter and owning or controlling, either directly or indirectly, at least 80% of all classes of stock of each corporation involved may be required to make a consolidated report showing the combined net income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the department may require, but excluding intercorporate stockholdings and intercorporate accounts. Any corporation liable to report under this chapter and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the department may require, but excluding intercorporate stockholdings and intercorporate accounts. In case it shall appear to the department that any arrangement exists in such a manner as to improperly reflect the business done, the segregable assets, or the entire net income earned from business done in this state, the department is authorized and empowered to equitably adjust the tax in such manner as it may determine.

(6) (a) A majority of the corporation license tax collected from financial institutions is paid to local government areas in which each financial institution is located. However, consolidated returns for financial institutions do not reflect the true tax attributable to each local government. In addition, consolidated returns would permit financial institutions to offset income against losses of nonfinancial institutions, thereby distorting the true income of each financial organization.

(b) In accordance with subsection (6)(a), financial institutions are prohibited from filing consolidated returns under this section.

(7) (a) When an affiliated group elects to file a consolidated return under the provisions of this section, a corporation of the affiliated group shall

file a separate return for any portion of its taxable year in which its income is not included in the consolidated return of the group. The separate return must be filed no later than the 15th day of the 5th month following the close of the taxable year for which a consolidated return of the affiliated group is filed.

(b) A 1-month to 6-month extension of time is automatically allowed for filing a return, provided that on or before the due date of the return, an application for an extension is made by the corporation. The application must be made on forms prescribed by the department."

Section 2. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1991.

CHAPTER NO. 87

[SB 166]

AN ACT ALLOWING A LOCAL GOVERNMENT TO ESTABLISH AN EMPLOYEE INCENTIVE AWARD PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Agency" means any office, board, bureau, commission, or department operated by a local government.

(2) "Governing body" means the legislative authority of a local government.

(3) "Local government" means any city, town, county, consolidated city-county, or school district.

Section 2. **Establishment of program.** A governing body may develop and administer an employee incentive award program to appropriately recognize and monetarily reward local government employees in a timely manner for suggestions or inventions that contribute to the efficiency, economy, or other improvement of local government by reducing costs of governmental operations.

Section 3. **Powers and duties of a governing body.** A governing body shall:

(1) adopt regulations to equitably administer the employee incentive award program;

(2) provide an opportunity for all employees to participate in the program;

(3) assist agencies in making incentive awards under the program;

(4) grant or deny incentive awards in consultation with the incentive awards advisory council if there is such a council;

(5) determine the amount of each incentive award;

(6) designate the source of funding for the awards; and

(7) hear appeals from employees on the operation of the program.

Section 4. **Appointment and functions of advisory council — governing body as advisory council.** (1) The governing body may appoint an incentive awards advisory council. Members of the advisory council must be selected from a diverse group to adequately represent employees.

(2) The advisory council shall meet regularly and consult with the governing body to review all proposed incentive awards and to recommend granting or rejecting proposed awards.

(3) The governing body may serve as the incentive awards advisory council in lieu of appointing a separate council.

Section 5. **Eligibility for award.** (1) Except as provided in subsection (2), an employee may be eligible for an incentive award if his suggestion or invention results in:

(a) eliminating or reducing an agency's expenditures; or

(b) improving services to the public by permitting more work to be accomplished without increasing the cost of governmental operations.

(2) (a) An employee may not be eligible for an incentive award if his suggestion or invention directly relates to his assigned duties and responsibilities unless the proposal is so superior or meritorious as to warrant special recognition as determined by the governing body.

(b) Suggestions or inventions relating to the following matters may not be considered for awards:

(i) personnel grievances;

(ii) classification and pay of positions;

(iii) matters recommended for study or review; and

(iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research.

Section 6. **Agency head to grant award.** After an agency implements an employee's suggestion or invention and the amount of monetary savings to the local government is estimated, an agency head, upon written application to and approval from the governing body and the incentive awards advisory council, if there is such a council, may grant an incentive award to an employee whose proposal meets the requirements of [section 5].

Section 7. **Effective date.** [This act] is effective July 1, 1991.

Approved March 19, 1991.

CHAPTER NO. 88

[SB 201]

AN ACT PROVIDING THAT THE COUNTY ATTORNEY IS THE LEGAL ADVISER TO FIRE SERVICE AREAS; AND AMENDING SECTION 7-4-2711, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2711, MCA, is amended to read:

"**7-4-2711. County attorney to be legal adviser of county and other subdivisions.** (1) The county attorney is the legal adviser of the board of county commissioners. He must attend their meetings when required and must attend and oppose all claims and accounts against the county which are unjust or illegal. He must defend all suits brought against his county.

(2) The county attorney must:

(a) give, when required and without fee, his opinion in writing to the county, district, and township officers on matters relating to the duties of their respective offices;

(b) act as counsel, without fee, for fire districts *and fire service areas* in unincorporated territories, towns, or villages within his county;

(c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee; and

(d) when requested by a weed district pursuant to 7-22-2103, act as counsel, without fee."

Approved March 19, 1991.

CHAPTER NO. 89

[SB 202]

AN ACT REQUIRING INFORMATION AGENTS TO REPORT SEPARATELY TO THE DEPARTMENT OF REVENUE FOR MONTANA INCOME TAX PURPOSES INTEREST INCOME FROM OBLIGATIONS OF ANOTHER STATE AND POLITICAL SUBDIVISIONS OF THAT STATE; AMENDING SECTION 15-30-301; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-301, MCA, is amended to read:

"**15-30-301. Information agents' duties.** (1) Every information agent shall make *a* return to the department of complete information concerning the following distributions made for any individual during the taxable year upon which no withholding tax has been deducted:

(a) sums in excess of $10 distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code of 1965 or as that section may be amended, royalties, and payments made under a retirement plan covering an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code of 1965 or as that section may be amended;

(b) all interest income in excess of $10 from obligations of another state and a county, municipality, district, or other political subdivision of that state;

~~(b)~~*(c)* interest, other than that specified in ~~subsection~~ *subsections* (1)(a) *and (1)(b)* ~~of this section~~, rents, salaries, wages, prizes, awards, annuities, pensions, and other fixed or determinable gains, profits, and income in excess of $600, except interest coupons payable to the bearer.

(2) The return should be made under the regulations and in the form and manner prescribed by the department; provided, however, that for ease of reporting, the form shall be as nearly identical to the comparable federal form as possible."

Section 2. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 19, 1991.

CHAPTER NO. 90

[SB 244]

AN ACT REQUIRING PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS TO CONSULT WITH THE DEPARTMENT OF COMMERCE PRIOR TO INITIATING PROGRAM EXPANSION; AND AMENDING SECTION 37-1-131, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-1-131, MCA, is amended to read:

"**37-1-131. Duties of boards.** Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by legal counsel when required under 37-1-121(1).

(3) pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6)~~.~~;

(4) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available."

Approved March 19, 1991.

CHAPTER NO. 91

[HB 450]

AN ACT PROVIDING FOR THE DISAPPROVAL OF AN APPLICATION TO LOBBY IF REPORTS HAVE NOT BEEN FILED OR ARE INACCURATE; CLARIFYING THE CONTENTS OF THE LOBBYING DOCKET; PROVIDING FOR THE ISSUANCE OF ORDERS OF NONCOMPLIANCE; PROVIDING FOR ENFORCEMENT; REDUCING THE PERIOD OF TIME LOBBYING RECORDS MUST BE KEPT; REDUCING THE TIME PERIOD FOR BRINGING AN ACTION FOR A VIOLATION OF

THE LOBBYING LAWS; AND AMENDING SECTIONS 5-7-103, 5-7-201, 5-7-208, 5-7-212, AND 5-7-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-7-103, MCA, is amended to read:

"**5-7-103. Licenses — fees — eligibility.** (1) Any adult of good moral character who is a citizen of the United States and who is otherwise qualified under this chapter may be licensed as a lobbyist. The commissioner shall provide a license application form. The application form may be obtained in the office of the commissioner and filed therein. Upon approval of the application and receipt of the license fee of $10 by the commissioner, a license shall be issued which entitles the licensee to practice lobbying on behalf of one or more enumerated principals. Each license shall expire on December 31 of each even-numbered year or may be terminated at the request of the lobbyist.

(2) *(a)* ~~No~~ *Except as provided in subsection (2)(b), an* application may *not* be disapproved without affording the applicant a hearing. The hearing ~~shall~~ *must* be held and the decision entered within 10 days of the date of the filing of the application.

(b) An application may not be approved if a principal has failed to file reports required under 5-7-208.

(3) The fines and license fees collected under this chapter shall be deposited in the state treasury."

Section 2. Section 5-7-201, MCA, is amended to read:

"**5-7-201. Docket — contents.** The commissioner shall make available to the public the information required by this chapter, including but not limited to the name and business address of each lobbyist, the name and business address of his principal, and the subject or subjects to which the employment relates or a statement that the employment relates to all matters in which the principal has an interest. The docket entry for each principal ~~shall~~ *must* also indicate the *date of receipt of the* principal's ~~required~~ *lobbying* reports ~~of payments to influence official action by a public official~~ *as required by 5-7-208.*"

Section 3. **Inspection of applications and reports — issuance of orders of noncompliance.** (1) Each application and report filed with the commissioner must be inspected within 10 days after it is filed. If a person has not satisfied the provisions of this chapter, the commissioner shall immediately notify the person of the noncompliance. An order of noncompliance may be issued when:

(a) it is determined that an application or report filed with the commissioner does not conform to the requirements of this chapter; or

(b) a person has failed to file an application or report required by law.

(2) The person shall submit the necessary information within 5 days after receiving the notice of noncompliance. Upon failure to submit the required information within 5 days, the commissioner may initiate a civil or criminal action pursuant to the procedures contained in 5-7-305.

Section 4. Section 5-7-208, MCA, is amended to read:

"**5-7-208. Principals to file ~~accountings~~ *report*.** (1) A principal subject to this chapter shall file with the commissioner ~~an accounting~~ *a report* of payments made for the purpose of lobbying.

(2) If such payments are made solely to influence legislative action, ~~such accounting~~ *a report* shall be made:

(a) before February 16th of any year the legislature is in session and shall include all payments made in that calendar year prior to February 1;

(b) before the 16th day of the calendar month following any calendar month in which the principal spent $5,000 or more and shall include all payments made during the prior calendar month; and

(c) within 60 days following adjournment of such session and shall include all payments made during such session, except as has previously been reported.

(3) If such payments are made to influence any other official action by a public official or made to influence such other action and legislative action, ~~such accounting~~ *a report* shall be made:

(a) before February 16th of the calendar year following such payments and shall include all payments made during the prior calendar year; and

(b) before the 16th day of the calendar month following any calendar month in which the principal spent $5,000 or more and shall include all payments made during the prior calendar month.

(4) If no such payments are made during the reporting periods provided in subsections (2)(a), (2)(c), and (3)(a) above, the principal shall file a report stating such.

(5) Each ~~accounting~~ *report* filed under this section shall:

(a) list all payments for lobbying in each of the following categories:

(i) printing;

(ii) advertising, including production costs;

(iii) postage;

(iv) travel expenses;

(v) salaries and fees, including allowances, rewards, and contingency fees;

(vi) entertainment, including all foods and refreshments;

(vii) telephone and telegraph; and

(viii) other office expenses;

(b) itemize, identifying the payee and the beneficiary:

(i) each separate payment conferring $25 or more benefit to any public official when the payment was made for the purpose of lobbying; and

(ii) each separate payment conferring $100 or more benefit to more than one public official, regardless of individual benefit when the payment was made for the purpose of lobbying, except that in regard to a dinner or other function to which all senators or all representatives have been invited, the beneficiary may be listed as all members of that group without listing separately each person who attended;

(c) list each contribution and membership fee which amounts to $250 or more when aggregated over the period of 1 calendar year paid to the principal for the purpose of lobbying, with the full address of each payer and the issue area, if any, for which such payment was earmarked;

(d) list each official action which the principal or his agents exerted a major effort to support, oppose, or modify, together with a statement of the principal's position for or against such action; and

(e) be kept by the commissioner for a period of 10 years."

Section 5. Section 5-7-212, MCA, is amended to read:

"**5-7-212. Audit of ~~final accounting statements~~ *lobbying reports*.** (1) The commissioner ~~shall examine and~~ may audit the ~~accountings~~ *reports* filed under 5-7-208 and shall investigate any irregularities and report any apparent violations of this chapter to the attorneys having authority to prosecute. The lobbyist is required to provide and the principal is required to obtain and keep for a period of ~~7~~ *3* years from the date of filing all records supporting the ~~accountings~~ *reports* filed under 5-7-208.

(2) All such records shall be open to inspection on request of the commissioner or an attorney having authority to prosecute violations of this chapter. The commissioner and such attorneys are given the power to:

(a) subpoena and compel attendance;

(b) issue enforceable civil investigative demands;

(c) take evidence; and

(d) require the production of any books, correspondence, memoranda, bank account statements, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of this chapter."

Section 6. Section 5-7-305, MCA, is amended to read:

"**5-7-305. Penalties and enforcement.** (1) Any person violating the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail not more than 6 months or by a fine not exceeding $200, or both.

(2) Any person who violates any of the provisions of this chapter shall be subject to civil penalties of not less than $250 and not more than $7,500 according to the discretion of the district court, as court of original jurisdiction. A lobbyist who violates any of the provisions of this chapter shall have his license suspended or revoked according to the discretion of the court. Any public official holding elective office adjudged in violation of the provisions of this act is additionally subject to recall under Montana Recall Act, 2-16-601, et seq., and such violation shall constitute an additional basis for recall to those mentioned in 2-16-603(3).

(3) The attorney general, commissioner, or the county attorney of the county in which the violation takes place may bring criminal or civil actions in the name of the state for any appropriate criminal or civil remedy.

(4) If a prosecution is undertaken by the commissioner or any county attorney, all costs associated with the prosecution shall be paid by the state of Montana.

(5) (a) Any individual who has notified the commissioner, the attorney general, and the appropriate county attorney in writing that there is reason to believe that some portion of this chapter is being violated may himself bring in the name of the state an action (hereinafter referred to as a citizen's action) authorized under this chapter if:

(i) the attorney general and the appropriate county attorney have failed to commence an action hereunder within 40 days after such notice; and

(ii) said attorneys then fail to commence an action within 10 days after a written notice delivered to them advising them that a citizen's action will be brought if they do not bring an action.

(b) Each notification shall toll the statute of limitations applicable until the expiration of the waiting period.

(c) If the individual who brings the citizen's action prevails, he shall be entitled to be reimbursed by the state of Montana for costs and attorney's fees incurred; provided that in the case of a citizen's action which is dismissed and which the court also finds was brought without reasonable cause, the court may order the individual commencing the action to pay all costs of trial and reasonable attorney's fees incurred by the defendant.

(6) No civil action may be brought under this section more than ~~7~~ *3* years after the occurrence of the facts which give rise to the action.

(7) All civil penalties imposed pursuant to this section shall be deposited in the state general fund.

(8) A hearing under this chapter shall be held by the court unless the defendant-licensee demands a jury trial. The trial shall be held as soon as possible but at least 20 days after the filing of the charges and shall take precedence over all other matters pending before the court.

(9) If the court finds for the plaintiff, judgment shall be rendered revoking or suspending the license and the clerk of court shall file a certified copy of the judgment with the commissioner."

Section 7. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 5, chapter 7, and the provisions of Title 5, chapter 7, apply to [section 3].

Approved March 20, 1991.

CHAPTER NO. 92

[SB 15]

AN ACT EXEMPTING FROM THE RESOURCE INDEMNITY TRUST TAX OIL AND GAS ROYALTIES RECEIVED BY THE UNITED STATES AS TRUSTEE FOR INDIVIDUAL INDIANS AND BY THE UNITED STATES, THE STATE OF MONTANA, OR A COUNTY OR MUNICIPAL GOVERNMENT; AMENDING SECTION 15-38-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-38-121, MCA, is amended to read:

"**15-38-121.** ~~**Tribal**~~ ***Certain*** **royalties exempt.** ~~Royalties~~ *Exempt from taxation are royalties* received by*:*

(1) an Indian tribe with respect to on-reservation oil and gas production pursuant to a lease entered into under the Indian Mineral Leasing Act of 1938 (25 U.S.C. 396a-396g (1983)) ~~are exempt from taxation.~~*;*

(2) the United States as trustee for individual Indians; and

(3) the United States, the state of Montana, or a county or municipal government."

Section 2. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved March 20, 1991.

CHAPTER NO. 93

[SB 25]

AN ACT ALLOWING A COUNTY TREASURER TO DEPOSIT NONTAX REVENUE OF $25 OR LESS IN THE GENERAL FUND.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Deposit of nontax revenue.** Except for nontax revenue earmarked for a specific fund, the county treasurer may deposit in the general fund any nontax revenue of $25 or less received by the county.

Approved March 20, 1991.

CHAPTER NO. 94

[SB 119]

AN ACT REQUIRING DEALERS TO RECORD AND REPORT DELIVERIES OF LIQUEFIED PETROLEUM GAS USED TO POWER MOTOR VEHICLES; AND AMENDING SECTION 15-71-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-71-101, MCA, is amended to read:

"**15-71-101. Tax to be collected on motor vehicles self-propelled by a liquefied petroleum gas — *recording and reporting of liquefied petroleum gas deliveries.*** (1) The department of highways shall, under the rules issued by the department of revenue, collect or cause to be collected from owners or operators of motor vehicles powered by ~~any~~ *a* liquefied petroleum gas an annual license tax fee on each ~~such~~ vehicle~~, which~~. *The* license tax fee is prorated on a quarterly basis and may be paid quarterly, semiannually, or annually according to the following schedule:

(a) passenger cars and pickups whose licensed gross vehicle weight is 10,000 pounds or less, $108;

(b) motor trucks and truck tractors whose licensed gross vehicle weight is over 10,000 pounds and less than 18,000 pounds, $144;

(c) motor trucks and truck tractors whose licensed gross vehicle weight is 18,000 pounds or more and less than 48,000 pounds, $361;

(d) motor trucks and truck tractors whose licensed gross vehicle weight is 48,000 pounds or more, $1,806;

(e) school buses used to provide transportation services on contract with school districts in this state, $144.

(2) Upon payment of the tax required by this section, the department of highways shall provide, ~~a certificate~~ to be carried in each vehicle, *a certificate* ~~which~~ *that* is valid for a period *of* no less than a calendar quarter or for ~~such~~ *a* further calendar period for which the tax is paid.

(3) When a dealer delivers liquefied petroleum gas for use to power a motor vehicle, the dealer shall record the identifying number of the certificate issued and required to be carried in the motor vehicle as provided in subsection (2). On or before the last day of January, April, July, and October, the dealer shall report to the department of highways each delivery during the preceding calendar quarter of liquefied petroleum gas required to be recorded under this subsection."

Approved March 20, 1991.

CHAPTER NO. 95

[SB 168]

AN ACT DIRECTING AMENDMENT OF RULES 11.14.502 AND 16.24.410, ADMINISTRATIVE RULES OF MONTANA, TO ELIMINATE CURRENT RESTRICTIONS ON THE USE OF NONDISPOSABLE DIAPERS IN DAY-CARE FACILITIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Rule 16.24.410, Administrative Rules of Montana, requires day-care centers to use only disposable diapers for children unless the parents present medical documentation that nondisposable diapers should be used; and

WHEREAS, Rule 11.14.502, Administrative Rules of Montana, permits the use of nondisposable diapers but requires a child's parent to document the need for nondisposable diapers; and

WHEREAS, the disposal of solid waste is a major problem as landfills reach capacity while the volume of solid waste continues to grow in our present "throw-away" society; and

WHEREAS, 18 billion disposable diapers are thrown away each year in America, accounting by weight for approximately 2% of all municipal solid waste and between 3.5% and 4.5% of all household solid waste; and

WHEREAS, disposable diapers are the third, single-largest manufactured product to be found in landfills and other solid waste disposal sites; and

WHEREAS, disposable diapers in landfills present a threat to the public health and environment because of untreated urine and fecal matter released into the soil and ground water; and

WHEREAS, nondisposable diapers, such as cloth diapers, can be reused many times and their use would reduce the threat to the public health and environment posed by single-use disposable diapers; and

WHEREAS, the use of nondisposable diapers would help alleviate current solid waste problems by reducing the amount of disposable diapers thrown away each year; and

WHEREAS, there is no medical evidence that nondisposable diapers are less sanitary or present a greater threat to the spread of germs than disposable diapers.

THEREFORE, the Legislature finds it appropriate to amend Rules 11.14.502 and 16.24.410, Administrative Rules of Montana, to eliminate current restrictions on the use of nondisposable diapers in day-care facilities in order to allow their use as an alternative to disposable diapers.

Be it enacted by the Legislature of the State of Montana:

Section 1. The Department of Family Services shall amend Rule 11.14.502, Administrative Rules of Montana, to read:

"11.14.502 DAY CARE FACILITIES CARING FOR INFANTS, DIAPERING AND TOILET TRAINING (1) A sufficient supply of clean, dry diapers shall be available and diapers shall be changed as frequently as needed. Disposable diapers, a commercial diaper service, or reusable diapers supplied by the infant's family may be used ~~although disposable diapers are recommended~~. If ~~the parent documents that~~ non-disposable diapers ~~should be~~ *are* used, the facility may launder the diapers using a germicidal process approved ~~and available from~~ *by* the state or local health department.

(2) Soiled reusable diapers shall be placed into separate cleanable covered containers provided with waterproof liners prior to transport to laundry, parent, or acceptable disposal. These containers shall be emptied, cleaned and disinfected daily. Soiled disposable diapers shall be disposed of immediately into an outside trash disposal or put in a securely tied plastic bag and discarded indoors until outside disposal is possible. Reusable diapers shall be removed from the facility daily.

(3) Diaper-changing surfaces shall be cleaned after each use by washing or by changing a pad or disposable sheeting and sanitized or covered for reuse.

(4) Soft, absorbent, disposable towels or clean reusable towels which have been laundered between each use shall be used for cleaning the infant.

(5) Safety pins shall be kept out of reach of infants and toddlers. Infants shall not be left unattended on a surface from which they might fall.

(6) All toilet articles shall be identified and separated as to each infant and kept in a sanitary condition.

(7) Diapering and toileting areas shall contain a wash basin that is separate from that used for food preparation.

(8) Toilet training shall be initiated when readiness is indicated for the child and in consultation with the child's parent(s) or placement agency. There shall be no routine attempt to toilet train infants under the age of 18 months."

Section 2. The Department of Health and Environmental Sciences shall amend Rule 16.24.410, Administrative Rules of Montana, to read:

"16.24.410 SPECIAL REQUIREMENTS WHEN CARING FOR CHILD UNDER TWO If a day care center cares for children under two years of age, it must:

(1) ensure that cribs, playpens, and toys are made of washable, non-toxic materials and are kept clean.

(2) either provide separate cribs for each such child, or launder bedding in accordance with ARM 16.24.408(4) above.

(3) handle diapers in the following manner:

(a) provide an adequate and cleanable area for diaper changing separate from food preparation and play areas.

(b) store soiled diapers in easily cleanable or lined receptacles with tight-fitting lids, and empty and clean them at least daily.

(4) request parents to provide a supply of clean clothes adequate to allow at least one change per day and adequate diapers for a day's use.

(5) ~~use only disposable diapers unless parents present medical documentation that~~ *allow the use of* non-disposable diapers. ~~should be used, in which case~~ *If non-disposable diapers are used,* they must be subjected, after each use, to a germicidal process approved by the department or local health authority, or returned to the parent for laundering at the end of each day.

(6) have facilities to bathe such children when necessary."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1991.

CHAPTER NO. 96

[HB 3]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1991; AMENDING NAR-

RATIVE PROVISIONS IN HOUSE BILL NO. 100, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Time limits.** The appropriations contained in [this act] are intended to provide only necessary and ordinary expenditures for the years for which the appropriations are made. The unspent balance of any appropriation must revert to the fund from which it was appropriated unless the appropriation is continued by [this act].

Section 2. **Governor's power to reduce appropriations.** In the event of a shortfall in revenue, the governor may reduce any appropriation in [this act] by not more than 15%.

Section 3. **Totals not appropriations.** The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 4. **Appropriations.** The following money is appropriated subject to the terms and conditions of [this act]:

Agency and Program	FY	Amount	Fund
MONTANA SUPREME COURT			
Boards and Commissions	1991	$ 23,500	General Fund
Judicial Standards Commission	1991	3,500	General Fund
Water Court	1991	22,000	State Special
STATE AUDITOR			
State Payroll	1991	51,054	General Fund
Fiscal Control	1991	165,490	General Fund
Management	1991	118,117	Proprietary
DEPARTMENT OF JUSTICE			
Legal Services	1991	196,000	General Fund
Motor Vehicle — Decals & Gas	1991	63,700	General Fund
Highway Patrol — Prisoners	1991	280,000	State Special
Highway Patrol — Gasoline	1991	127,282	State Special
Law Enforcement — Gasoline	1991	9,500	General Fund
Fire Marshal Computer	1991	9,500	General Fund
County Attorney Payroll	1991	77,000	General Fund
Transportation of Prisoners	1991	100,000	General Fund

CRIME CONTROL DIVISION			
Crime Victims Compensation	1991	80,000	State Special
GOVERNOR'S OFFICE			
Citizens' Advocate	1991	12,000	General Fund
DEPARTMENT OF HIGHWAYS			
Construction	1991	1,275,482	State Special
		4,115,132	Federal Special
Maintenance Program	1991	234,716	State Special
Preconstruction	1991	49,995	State Special
	1991	100,005	Federal Special
Equipment Program	1991	519,411	Proprietary
Stores Inventory	1991	1,057,820	State Special
Interfund Transfers	1991	23,133,652	State Special
DEPARTMENT OF REVENUE			
Property Assessment — CAMAS	1991	270,320	General Fund
DEPARTMENT OF ADMINISTRATION			
Teachers' Retirement System	1991	26,866	Trust Account
Public Employees' Retirement Division	1991	73,818	Trust Account
DEPARTMENT OF MILITARY AFFAIRS			
Firefighters' Lawsuit	1991	30,000	General Fund
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES			
Natural Resource Damage Litigation	1991	270,000	State Special
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES			
Family Assistance — AFDC	1991	1,339,886	General Fund
		135,825	State Special
		4,030,629	Federal Special
Family Assistance — Day Care	1991	209,870	General Fund
		433,610	Federal Special

Family Assistance — JOBS	1991	450,000	General Fund
Medicaid — Primary Care	1991	7,502,699	General Fund
		26,045,092	Federal Special
State Medical	1991	1,558,034	General Fund
TEAMS Carryover	1991	461,964	General Fund
		2,977,827	Federal Special
Developmental Disabilities	1991	728,115	General Fund
		701,091	Federal Special
DEPARTMENT OF FAMILY SERVICES			
Community Services — Foster Care	1991	744,604	General Fund
		224,169	Federal Special
Mountain View — Medical Costs	1991	32,251	General Fund
Pine Hills — Medical Costs	1991	48,583	General Fund
Pine Hills — Decrease in School Trust Interest & Income	1991	23,600	General Fund
DEPARTMENT OF STATE LANDS			
Forestry — Firefighting	1991	2,999,161	General Fund
		600,000	Federal Special
Weights and Measures	1991	13,527	General Fund
DEPARTMENT OF INSTITUTIONS			
Montana State Prison	1991	719,417	General Fund
Swan River Forest Camp	1991	48,775	General Fund
Corrections Program	1991	25,742	General Fund
Women's Corrections	1991	78,040	General Fund
Corrections — Medical Costs	1991	565,357	General Fund
Board of Pardons	1991	38,000	General Fund
Montana State Hospital	1991	96,000	General Fund
OFFICE OF PUBLIC INSTRUCTION			
Transportation Aid to School			

Districts	1991	605,589	General Fund
SCHOOL FOR THE DEAF AND BLIND			
ATF Local 4027 Payout	1991	161,285	General Fund
Employee Settlement Costs	1991	21,829	General Fund
Upgrades	1991	13,400	General Fund
Large Print & Braille Texts	1991	10,000	General Fund
BOARD OF PUBLIC EDUCATION			
Severance Pay	1991	6,000	General Fund
MONTANA UNIVERSITY SYSTEM			
U of M — Liability Insurance	1991	93,843	General Fund
Eastern — Liability Insurance	1991	106,011	General Fund
Northern — Liability Insurance	1991	133,237	General Fund

STATEWIDE TOTAL

Fund	FY	Amount
General Fund	1991	$20,446,383
State Special Revenue	1991	26,666,772
Federal Special Revenue	1991	38,627,555
Proprietary and Other	1991	738,212
Total	1991	$86,478,922

Section 5. Section 16, House Bill No. 100, Laws of 1989, the narrative to appropriations to the department of social and rehabilitation services, on page 2060, Laws of Montana, 1989, is amended to read:

(1) in paragraph 1: "~~No funds may be transferred from these items to any other portion of the SRS budget.~~"

(2) in paragraph 2: "~~No funds may be transferred out of item 1bii to any other portion of the SRS budget.~~"

(3) in paragraph 3: "~~No funds may be transferred from these items to any other portion of the SRS budget.~~"

Section 6. Section 16, House Bill No. 100, Laws of 1989, the narrative to appropriations to the department of institutions, on page 2070, Laws of Montana, 1989, is amended to read:

"Within item 5, transfers may be made between line items in excess of 5% of the total appropriation authority, *including personal services spending authority*, in each line item upon approval of the governor or his designated representative."

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1991.

CHAPTER NO. 97

[HB 38]

AN ACT REVISING THE STATUTES RELATING TO ASSISTANCE BY THE STATE AUDITOR IN THE COLLECTION OF DELINQUENT ACCOUNTS OWED TO STATE AGENCIES; AMENDING SECTIONS 17-4-103 AND 17-4-106, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-4-103, MCA, is amended to read:

"**17-4-103. Collection of claims by state auditor.** (1) In his discretion, it is the duty of the state auditor to examine the collection of ~~moneys~~ *money* due the state and institute suits in its name for official delinquencies in relation to the assessment, collection, and payment of the revenue and against persons who ~~by any means have become possessed of~~ *possess* public money or property and ~~failed~~ *fails* to pay over or deliver the ~~same~~ *money or property* and against debtors of the state.~~, of which suits the~~ *The* courts of the county ~~in which~~ *where* the seat of government may be located have jurisdiction, without regard to the residence of the defendants, *over the collection suits authorized by this section.*

(2) Whenever ~~any~~ *a* person has ~~received moneys or has~~ money or other personal property ~~which~~ *that* belongs to the state by escheat or otherwise or has been entrusted with the collection, management, or disbursement of ~~any moneys~~ *money*, bonds, or interest accruing ~~therefrom~~ *from the money or bonds*, belonging to or held in trust by the state, and fails to render an account ~~thereof~~ *of the money or personal property* to and make settlement with the state auditor within the time prescribed by law or, when no particular time is specified, fails to render ~~such~~ *an* account and make settlement or who fails to pay into the state treasury ~~any~~ *the* ~~moneys~~ *money* belonging to the state, upon being required *to do* so ~~to do~~ by the state auditor, within 20 days after ~~such~~ *the* requisition, the state auditor ~~must~~ *shall* state an account with ~~such~~ *that* person, charging 25% damages and interest at the rate of 10% ~~per annum~~ *a year* from the time of the failure~~;~~. ~~a~~ *A* copy of ~~which~~ *the* account in ~~any~~ *a* suit ~~therein~~ is prima facie evidence

of the things ~~therein~~ stated *in the account,*~~;~~ but ~~in case~~ *when* the state auditor cannot for want of information state an account, he may in ~~any~~ *an* action brought by him aver that fact and allege generally the amount of money or other property ~~which is~~ due ~~to~~ or ~~which belongs~~ *belonging* to the state.

(3) The state auditor may assist in the collection of ~~any~~ *a* delinquent account owing to any state agency *and may separately charge the state agency that transferred the debt for the cost of assistance. The state auditor may designate the percentage of collected proceeds to be retained for the cost of assistance.*

(4) The state auditor ~~is hereby authorized to~~ *may* provide a collection service for the general purpose of centralizing the collection of all debts owing to the state."

Section 2. Section 17-4-106, MCA, is amended to read:

"**17-4-106. Agency owed debt to receive all ~~moneys~~ *money* collected — *exception.*** *(1)* All ~~moneys~~ *money* collected by the state auditor on debts transferred to ~~it~~ *him* by the various state agencies, *except funds collected under 17-4-103(3),* ~~shall~~ *must* be deposited to the account or fund of the agency to which the debt was originally owing.

(2) Funds collected under 17-4-103(3) must be deposited in an account in the internal service fund for the cost of assistance of debt collection by the state auditor. Funds deposited in excess of the amount appropriated for operation of the debt collection program must be carried forward into the next fiscal year for operation of the debt collection program. Any excess carried forward into the next fiscal year will be used to reduce the designated percentage of the collected proceeds charged to the various state agencies. At the end of each biennium, any fund balance in excess of $10,000 must be transferred back to the general fund."

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved March 20, 1991.

CHAPTER NO. 98

[HB 55]

AN ACT TO GENERALLY REVISE COUNTY BIDDING LAWS; INCREASING THE DOLLAR AMOUNTS ABOVE WHICH COMPETITIVE BIDDING IS REQUIRED; REDEFINING THE CRITERIA FOR BID SOLICITATION; AND AMENDING SECTIONS 7-5-2301, 7-5-2302, AND 7-5-2303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2301, MCA, is amended to read:

"**7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts.** (1) Except as provided in 7-5-2304, ~~no~~ *a* contract for the purchase of any vehicle, road machinery~~,~~ or other machinery, apparatus, appliances, ~~or~~ equipment, or ~~for any~~ materials or supplies ~~of any kind for which must be paid a sum~~ in excess of ~~$10,000~~ *$20,000* or for the construction of any building, road, or bridge ~~for which must be paid a sum~~ in excess of ~~$10,000~~ *$25,000* or for the repair or maintenance of any building, road, or bridge ~~for which must be paid a sum~~ in excess of ~~$25,000~~ *$45,000* ~~shall~~ *may not* be entered into by a county governing body without first publishing a notice calling for bids ~~for furnishing the same~~.

(2) The notice must be published as provided in 7-1-2121.

(3) Every ~~such~~ contract ~~shall~~ *subject to bidding must* be let to the lowest and best responsible bidder."

Section 2. Section 7-5-2302, MCA, is amended to read:

"**7-5-2302. Use of competitive, nonadvertised bidding for certain purchases.** (1) Except as provided in 7-5-2303, ~~on any purchase contract entered into by~~ a county governing body *may enter a contract* for the purchase of any vehicle, *road machinery or other* machinery, ~~appliances,~~ apparatus, *appliances, equipment* ~~building~~, or materials ~~and~~ *or* supplies ~~for which must be paid a sum~~ in excess of ~~$10,000~~ *$20,000* but less than ~~$25,000~~ *$50,000*~~,~~ *if* bids ~~shall be~~ *are* solicited without advertising from persons, firms, or corporations who have ~~caused to be~~ filed with the governing body of the county a request in writing that its name be listed with the governing body for solicitations on the particular items set forth in the request. The governing body shall solicit bids ~~of~~ *from listed* prospective suppliers. ~~whose names are listed as provided herein, which~~ *The* solicitation ~~shall~~ *must* contain the same information ~~as is~~ required to be set forth in advertisements. If a person, firm, or corporation whose name is listed fails for a period of 1 year to respond to any solicitation for bids, ~~such~~ *the* listing may be canceled.

(2) The governing body of the county shall let ~~such~~ *a* contract to the lowest and best responsible bidder.

(3) Compliance with the provisions of this section ~~shall be~~ *is* considered as meeting the requirements of 7-5-2301."

Section 3. Section 7-5-2303, MCA, is amended to read:

"**7-5-2303. Use of public auction to make purchase.** (1) In lieu of soliciting bids, the governing body may purchase at public auction any vehicle, *road machinery or other* machinery, ~~appliances,~~ apparatus, *appliances, equipment* ~~building~~, or materials ~~and~~ *or* supplies for ~~which must be paid a sum~~ *an amount* less than ~~$25,000~~ *$60,000.*

(2) Compliance with the provisions of this section ~~shall be~~ *is* considered as meeting the requirements of 7-5-2301."

Approved March 20, 1991.

CHAPTER NO. 99

[HB 69]

AN ACT REVISING PROVISIONS REGARDING THE ESTABLISHMENT, NUMBER, SALARY, AND ELECTION OF MUNICIPAL COURT JUDGES AND THE ADMINISTRATION OF AND APPEAL FROM MUNICIPAL COURTS; AMENDING SECTIONS 3-6-101, 3-6-102, 3-6-201, 3-6-203, AND 3-6-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-6-101, MCA, is amended to read:

"**3-6-101. Establishment of ~~the~~ court.** (1) ~~All cities in the state of Montana with a population of 10,000~~ *A city with a population of 4,000* or more, according to the last federal census, may have a court, known as the municipal court of the city of (designating the name of the city) of the state of Montana. The court ~~shall~~ *must* be a court of record. *The municipal court shall assume continuing jurisdiction over all pending city court cases in the city in which the municipal court is established.*

(2) ~~The provisions of this chapter apply only after~~ *A city may have a municipal court only if* the governing body of the city ~~has elected~~ *elects* by a two-thirds majority vote to adopt ~~them~~ *the provisions of this chapter* by ordinance and, in the ordinance, ~~has provided~~ *provides* the manner in which and time when the municipal court is to be established and *is to* assume continuing jurisdiction over all pending city court cases. *If a city judge is not an attorney and his office is abolished because a municipal court is established, the ordinance must provide that the time when the establishment of the municipal court takes effect is the date on which the municipal court judge elected at the next election held under 3-6-201 begins his term of office.* The ordinance must be consistent with the provisions of this chapter."

Section 2. Section 3-6-102, MCA, is amended to read:

"**3-6-102. Abolition of city court.** *(1)* In cities in which a municipal court is established, the office of city judge is ~~hereby~~ abolished.

(2) Except as provided in 3-6-101(2), a city judge whose office is abolished shall serve as a municipal court judge in the same city in which he served as city judge for the remainder of his term and until the office of municipal court judge is filled by election, as provided under 3-6-201 and 3-6-202."

Section 3. Section 3-6-201, MCA, is amended to read:

"**3-6-201. ~~Election~~ *Number of judges — election —* term of office.** *(1) The governing body of a city shall determine by ordinance the number of judges required to operate the municipal court.*

~~(1)~~*(2)* ~~One judge of each~~ *A* municipal court *judge must* ~~shall~~ be elected at the general ~~city~~ election, *as provided in 13-1-104(2).* The judge's term ~~shall commence~~ *commences* on the first Monday in January following the election. The judge shall hold office for the term of 4 years and until his successor is elected and qualified.

~~(2)~~*(3)* ~~All~~ *Except as provided in subsection (2), all* elections of municipal *court* judges are governed by the laws applicable to the election of ~~nonpartisan city officials~~ *district court judges.*"

Section 4. Section 3-6-203, MCA, is amended to read:

"**3-6-203. Salary.** The salary of the municipal court judge ~~shall~~ *must* be set by ~~city~~ ordinance *or resolution* and ~~shall be~~ *is* payable monthly by the city treasurer. Actual and necessary expenses for the municipal court judge ~~shall be the travel~~ *are* expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties."

Section 5. Section 3-6-301, MCA, is amended to read:

"**3-6-301. Clerk of the court — *administrative expenses.*** *The position of* ~~city~~ *municipal court* clerk of the ~~city in which said court is located shall be ex officio clerk of such~~ court *must be established by ordinance. The governing body of the city shall set the salary of the clerk and provide for other necessary expenses that may be incurred in operating the court.*"

Section 6. **Appeal to district court — record on appeal.** (1) A party may appeal to district court from a municipal court judgment or order. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

Section 7. **Codification instruction.** [Section 6] is intended to be codified as an integral part of Title 3, chapter 6, and the provisions of Title 3, chapter 6, apply to [section 6].

Section 8. **Effective date.** [This act] is effective July 1, 1991.

Approved March 20, 1991.

CHAPTER NO. 100

[HB 82]

AN ACT ALLOWING DEPARTMENT OF HIGHWAYS EMPLOYEES TO MAKE ARRESTS FOR VIOLATIONS OF THE STATUTES GOVERNING LICENSING OF VEHICLES PROPELLED BY LIQUEFIED PETROLEUM GAS; AND AMENDING SECTION 61-12-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-12-206, MCA, is amended to read:

"**61-12-206. Offenses for which arrest authorized.** (1) Employees appointed under 61-12-201 may make arrests for violations of the following statutory provisions only:

(a) part 1, chapter 10, of this title;

(b) part 3, chapter 4, of this title;

(c) sections 15-24-201 through 15-24-205;

(d) sections 15-70-302 through 15-70-307;

(e) sections 15-70-311 through 15-70-314;

(f) sections 15-71-101 through 15-71-105;

~~(f)~~*(g)* section 61-3-502(1);

~~(g)~~*(h)* sections 61-10-201 through 61-10-215;

~~(h)~~*(i)* sections 61-10-222 through 61-10-224;

~~(i)~~*(j)* sections 61-10-231 through 61-10-233.

(2) These employees may not arrest for violations other than specified in this section."

Approved March 20, 1991.

CHAPTER NO. 101

[HB 101]

AN ACT TO ALLOW SENTENCES OF IMPRISONMENT FOR DUI OFFENSES TO BE SERVED IN FACILITIES OTHER THAN COUNTY JAILS; AND AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-714, MCA, is amended to read:

"**61-8-714. Penalty for driving under the influence of alcohol or drugs.** (1) ~~A~~ *Except as provided in subsection (7), a* person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The ~~jail~~ sentence may not be suspended unless the judge finds that the imposition of the ~~jail~~ sentence will pose a risk to the defendant's physical or mental well-being.

(2) ~~On~~ *Except as provided in subsection (7), on* a second conviction, he shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. ~~Three~~ *Except as provided in subsection (7), 3* days of the ~~jail~~ sentence may not be suspended unless the judge finds that the imposition of the ~~jail~~ sentence will pose a risk to the defendant's physical or mental well-being.

(3) ~~On~~ *Except as provided in subsection (7), on* the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year~~,~~ and by a fine of not less than $500 or more than $1,000. ~~Notwithstanding~~ *Except as provided in subsection (7), notwithstanding* any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the ~~jail~~ sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which must include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend

the course or the treatment program, the counselor shall notify the court of the failure. As long as the alcohol information course and treatment program are approved as provided in this subsection, the defendant may attend the information course and treatment program of his choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to his alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction ~~hereunder~~ *under this section*, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court."

Section 2. Section 61-8-722, MCA, is amended to read:

"61-8-722. **Penalty for driving with excessive blood alcohol concentration.** (1) ~~A~~ *Except as provided in subsection (7), a* person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) ~~On~~ *Except as provided in subsection (7), on* a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) ~~On~~ *Except as provided in subsection (7), on* a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, ~~shall~~ apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing ~~such~~ education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction ~~hereunder~~ *under this section*, then ~~such~~ *the* prior offense shall be expunged from the defendant's record.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court."

Approved March 20, 1991.

CHAPTER NO. 102

[HB 102]

AN ACT ELIMINATING THE REQUIREMENT THAT MANDATORY TREATMENT FOR DUI OFFENSES BE PROVIDED ONLY THROUGH APPROVED TREATMENT PROGRAMS; ALLOWING MANDATORY TREATMENT FOR DUI OFFENSES TO BE OBTAINED FROM ANY CERTIFIED CHEMICAL DEPENDENCY COUNSELOR; AND AMENDING SECTION 61-8-714, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-714, MCA, is amended to read:

"**61-8-714. Penalty for driving under the influence of alcohol or drugs.** (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(2) On a second conviction, he shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year, and by a fine of not less than $500 or more than $1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which must include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure. As long as the alcohol information course ~~and treatment program are~~ *is* approved as provided in this subsection~~,~~ *and the treatment is provided by a certified chemical dependency counselor,* the defendant may attend the information course and treatment program of his choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to his alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction ~~hereunder~~ *under this section*, then all records and data relating to the prior conviction are confidential criminal justice information as defined in 44-5-103 and public access to the information may only be obtained by district court order upon good cause shown.

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401."

Approved March 20, 1991.

CHAPTER NO. 103

[HB 114]

AN ACT REQUIRING AN INSTITUTION FROM WHICH A PERSON ESCAPES OR IS RELEASED FROM CONFINEMENT AFTER BEING ACCUSED OR CONVICTED OF A CRIME TO NOTIFY, IN CERTAIN INSTANCES, CERTAIN LAW ENFORCEMENT OFFICIALS THAT THE PERSON HAS LEFT CONFINEMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Notification of escape or release from confinement.** (1) The notice required by subsection (2) must be given if any of the following persons escapes or is released from confinement:

(a) a person committed to a hospital or mental health facility under Title 46, chapter 14; or

(b) a person confined in a jail or other institution pending or during trial for a criminal offense involving the use or threat of physical force or violence or confined in a jail, prison, or other institution after conviction of a criminal offense involving the use or threat of physical force or violence or after being designated as a dangerous offender under 46-18-404.

(2) If a person referred to in subsection (1) escapes or is released from confinement, the institution in which he was confined shall notify:

(a) the sheriff or other law enforcement officials in the county in which the offense occurred;

(b) the sheriff or other law enforcement officials in the county or counties, if known, in which a victim or the victims of the offense reside at the time of the escape or release;

(c) the sheriff or other law enforcement officials in the county, if known, in which the person intends to reside upon leaving confinement;

(d) the sheriff or other law enforcement officials in the county in which the jail, prison, hospital, mental health facility, or other institution from which the person escaped or was released is located; and

(e) a court that has requested that it be notified in the event of a release or escape of the person.

Approved March 20, 1991.

CHAPTER NO. 104

[HB 135]

AN ACT AFFORDING INDIGENT PROPERTY OWNERS DUE PROCESS IN TAX DEED PROCEEDINGS BY REMOVING THE DEPOSIT REQUIREMENTS IF INDIGENCY IS FOUND AND BY PROVIDING THAT DEFENSES ARE NOT WAIVED IF THE INDIGENCY RESULTS IN AN INABILITY TO PAY THE DEPOSIT; IMPLEMENTING THE DECISION OF THE MONTANA SUPREME COURT IN BALL V. GEE, 795 P.2D 82, 47 ST. REP. 1196 (1990); AND AMENDING SECTIONS 15-18-411 AND 15-18-412, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-18-411, MCA, is amended to read:

"**15-18-411. Action to quiet title to tax deed — notice.** (1) (a) In an action brought to set aside or annul any tax deed or to determine the rights of a purchaser to real property claimed to have been acquired through tax proceedings or a tax sale, the purchaser, upon filing an affidavit, may obtain from the court an order directed to the person claiming to:

(i) own the property;

(ii) have any interest in or lien upon the property;

(iii) have a right to redeem the property; or

(iv) have rights hostile to the tax title.

(b) The person described in subsections (1)(a)(i) through (1)(a)(iv) is ~~hereafter~~ referred to as the true owner.

(c) ~~The~~ *Except as provided in subsection (1)(d), the* order described in subsection (1)(a) may command the true owner to:

(i) deposit with the court for the use of the purchaser:

(A) the amount of all taxes, interest, penalties, and costs that would have accrued if the property had been regularly and legally assessed and taxed as the property of the true owner and was about to be redeemed by the true owner; and

(B) the amount of all sums reasonably paid by the purchaser following the order and after 3 years from the date of the tax sale to preserve the property or to make improvements thereon while in the purchaser's possession, as the total amount of the taxes, interest, penalties, costs, and improvements is alleged by the plaintiff and as must appear in the order; or

(ii) show cause on a date to be fixed in the order, not exceeding 30 days from the date of the order, why such payment should not be made.

(d) The deposit provided for in subsection (1)(c) may not be required of a person found by the court to be indigent following an examination into the matter by the court upon the request of a true owner claiming to be indigent.

(2) The affidavit must list the name and address of the true owner and whether he is in the state of Montana, if known to the plaintiff, or state that the address of the true owner is not known to the plaintiff.

(3) (a) The order must be filed with the county clerk and a copy served personally upon each person shown in the affidavit claiming to be a true owner and who is, at that time, known to be in the state of Montana.

(b) Jurisdiction is acquired over all other persons by:

(i) publishing the order once in the official newspaper of the county;

(ii) posting the order in three public places in the county at least 10 days prior to the hearing; and

(iii) giving a copy to the county treasurer."

Section 2. Section 15-18-412, MCA, is amended to read:

"**15-18-412. Procedure in tax deed quiet title action.** (1) Upon the hearing of the order to show cause, the court has jurisdiction to determine the amount to be deposited and to make an order that the same be paid to the court within a period not exceeding 30 days after the order is made.

(2) (a) Except as provided in ~~subsection~~ *subsections* (2)(b) *and (2)(c)*, if the amount is not paid within the time fixed by the court, the true owner is considered to have waived any defects in the tax proceedings and any right of redemption. In the event of waiver, the true owner has no claim of any

kind against the state or purchaser and a decree must be entered in the action quieting the title of the purchaser as against the true owner.

(b) The proceedings are void if the taxes were not delinquent or have been paid.

(c) A deposit is not required if the true owner is found by the court to be indigent following an examination into the matter by the court upon the request of a true owner claiming to be indigent.

(3) If payment is made to the court and the true owner is successful in the action and the tax proceedings are declared void, the amount deposited with the court must be paid to the purchaser.

(4) If the purported true owner is not successful in the action and the title of the purchaser is sustained, the money must be returned to the purported true owner.

(5) In any action brought by a purchaser to quiet title, several tracts of land, whether contiguous or noncontiguous or owned by different defendants, may be set forth in one complaint. All persons claiming any title to, interest in, or lien upon any of the premises or any part thereof may be joined as defendants, even though their claims are independent, are not in common, and do not cover the same tracts. The procedure in such an action must follow, as nearly as practicable, the procedure specified in 70-28-101 through 70-28-109.

(6) In the final judgment, the court shall also determine the rights resulting from any additional taxes on the property accruing or being paid by either party during the pendency of the suit.

(7) In the quiet title action, the court has complete jurisdiction to fix the amount of taxes that should have been paid, including penalties, interest, and costs, and to determine all questions necessary in granting full relief, including the power to order any assessor or other tax officer to make and certify to the court a corrected or new assessment or to do any other act necessary to enable the court to do complete justice. Errors may be reviewed on appeal from the final judgment."

Approved March 20, 1991.

CHAPTER NO. 105

[HB 148]

AN ACT ALLOWING HOME ARREST IN LIEU OF IMPRISONMENT FOR CERTAIN CRIMINAL OFFENSES; ALLOWING HOME ARREST FOR BOTH ADULT AND JUVENILE OFFENDERS; PROHIBITING HOME ARREST FOR CERTAIN FELONY OFFENSES; AMENDING

SECTIONS 41-5-306, 41-5-403, 41-5-523, 46-18-201, 61-8-714, AND 61-8-722, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Monitoring device" means an electronic device or apparatus that is limited in capability to recording or transmitting information concerning the offender's presence in or absence from the home. The device must be minimally intrusive.

(2) (a) "Home" means the temporary or permanent residence of an offender consisting of the actual living area approved by the supervising authority.

(b) When more than one residence or family are located on a single piece of property, the term does not include the residence of any other person who is not part of the social unit formed by the offender's immediate family.

(3) "Home arrest" means the use of a person's home for purposes of confinement.

(4) "Supervising authority" means, in the case of an adult felon, the corrections division of the department of institutions; in the case of an adult misdemeanant, a court-approved entity other than the corrections division of the department of institutions; or, in the case of a juvenile, the juvenile probation division of the youth court or any other person or entity appointed by the court.

(5) "Violent felony offense" means deliberate homicide, mitigated deliberate homicide, negligent homicide, aggravated assault, negligent vehicular assault, kidnapping, aggravated kidnapping, robbery, sexual intercourse without consent, sexual abuse of children, arson, aggravated burglary, escape, any criminal attempt to commit an enumerated offense, or conviction as a persistent felony offender when the offender has a felony conviction for any of the listed offenses within the 5-year period preceding the date of the present conviction.

Section 2. **Home arrest — petition — agreement.** (1) An offender may petition a sentencing court for an order directing that all or a portion of a sentence of imprisonment in the county jail or state prison be served under conditions of home arrest. Petitions may be considered and ruled upon by the sentencing court prior to and throughout the term of the offender's sentence.

(2) The sentencing judge shall study the records of all persons petitioning for home arrest and, in his discretion, may:

(a) refer the case to the appropriate supervising authority for approval and acceptance into the home arrest program. The supervising authority may accept or reject any referral.

(b) conduct hearings on the desirability of granting home arrest;

(c) order a term of home arrest in lieu of a sentence of imprisonment in the county jail or state prison. The time actually spent in home arrest pursuant to this section may not exceed 6 months or the maximum term of imprisonment imposed, whichever is shorter.

(d) issue a warrant for a person when there is reason to believe the person has violated the conditions of home arrest, conduct hearings on the matter, and order imprisonment in the county jail or state prison upon proof of violation; and

(e) grant final discharge from arrest.

(3) A home arrestee shall execute a written agreement with the court setting forth all the conditions of home arrest. The order of home arrest must incorporate that agreement and must order compliance with its terms. The order and agreement must be transmitted to the supervising authority and to the appropriate jail or prison official.

(4) Time spent in home arrest must be credited against the maximum term of imprisonment imposed for the offender pursuant to law.

(5) Home arrest must be under the supervision of the supervising authority. A home arrestee is subject to the decisions of the supervising authority during the period of supervision. Fees for supervision or equipment usage must be paid directly to the clerk of the sentencing court and must be distributed by the clerk to the supervising authority.

Section 3. **Home arrest — conditions — fees — consent of cohabitants.** (1) A home arrestee must be confined to his home under conditions imposed by the sentencing court, which may include but are not limited to the following:

(a) The home arrestee must be confined to his home at all times except when:

(i) working at approved employment or traveling directly to and from employment;

(ii) seeking employment;

(iii) undergoing medical, psychiatric, or mental health treatment or participating in an approved counseling or aftercare program;

(iv) attending an approved educational institution or program;

(v) attending a regularly scheduled religious service at a place of worship;

(vi) participating in an approved community service program; or

(vii) conforming to a schedule prepared by the supervising authority, specifically setting forth the times when he may be absent from the home and the locations where he may be during those times.

(b) The home arrestee may not commit another offense during the period of home arrest.

(c) The home arrestee may not change the place of home arrest or the schedule without prior approval of the supervising authority.

(d) The home arrestee shall maintain a telephone or other approved monitoring device in the home or on the arrestee's person at all times.

(e) Conditions set by the court or the supervising authority may include:

(i) restitution;

(ii) supervision fees under 7-32-2245, 46-18-702, or 46-18-703;

(iii) any of the conditions imposed on persons on probation or conditional discharge under 46-23-1011 or 46-23-1021.

(2) A written and notarized consent agreement must be filed with the court by every adult who will share the offender's home during the term of home arrest.

(3) Violation of the provisions of any condition of home arrest may subject the home arrestee to prosecution under 45-7-306.

Section 4. **Home arrest — ineligibility.** A person being held under a detainer, warrant, or process issued by some other jurisdiction is not eligible for home arrest. A person convicted of a violent felony offense is not eligible for home arrest. However, this section does not prevent the use of a monitoring device as a part of an intensive supervision program or other program of the department of institutions.

Section 5. **Home arrest — responsibility for own living expenses — government benefits.** A person serving a sentence under conditions of home arrest is responsible for food, housing, clothing, and medical care expenses and is eligible for government benefits to the same extent as a person on probation, parole, or conditional discharge.

Section 6. **Home arrest — list of offenders.** At least once every 30 days, the supervising authority shall provide all local and county law enforcement agencies with a list of the offenders under home arrest in their jurisdictions. This list must include the following information:

(1) the offender's place of home arrest;

(2) the offense for which the offender was charged, convicted, or otherwise placed under home arrest;

(3) the date that the sentence of home arrest will be completed; and

(4) the name, address, and phone number of the officer of the supervising authority for the offender.

Section 7. Section 41-5-306, MCA, is amended to read:

"**41-5-306.** *(Temporary)* **Place of shelter care or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only ~~in~~:

(a) *in* a licensed youth foster home as defined in 41-3-1102;

(b) *in* a facility operated by a licensed child welfare agency; ~~or~~

(c) *in* a licensed youth group home as defined in 41-3-1102*; or*

(d) under home arrest, either in his own home or in one of the facilities described in subsections (1)(a) through (1)(c), as provided in [sections 1 through 6].

(2) A youth alleged to be in need of care ~~shall~~ *may* be placed only in the facilities ~~stated~~ *listed* in subsection (1) ~~of this section~~ and ~~shall~~ *may* not be placed in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in the facilities described in subsection (1), *under home arrest as provided in subsection (1),* in a detention facility, or in a jail or other facility for the detention of adults only if the facilities in subsection (1) are not available or do not provide adequate security and the detention is in an area physically and visually separate and removed from that of adults. *(Terminates July 1, 1991—sec. 14, Ch. 434, L. 1989.)*

41-5-306. *(Effective July 1, 1991)* **Place of shelter care or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only ~~in~~:

(a) *in* a licensed youth foster home as defined in 41-3-1102;

(b) *in* a facility operated by a licensed child welfare agency; ~~or~~

(c) *in* a licensed youth group home as defined in 41-3-1102*; or*

(d) under home arrest, either in his own home or in one of the facilities described in subsections (1)(a) through (1)(c), as provided in [sections 1 through 6].

(2) A youth alleged to be in need of care ~~shall~~ *may* be placed only in the facilities ~~stated~~ *listed* in subsection (1) ~~of this section~~ and ~~shall~~ *may* not be placed in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in the facilities described in subsection (1), *under home arrest as provided in subsection (1),* or in a detention facility as defined in 41-5-103."

Section 8. Section 41-5-403, MCA, is amended to read:

"**41-5-403. Disposition permitted under informal adjustment.** (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth for substitute care into a youth care facility as defined in 41-3-1102 and as determined by the department;

(c) placement of the youth in a private agency responsible for the care and rehabilitation of ~~such a~~ *the* youth as determined by the department;

(d) restitution upon approval of the youth court judge*;*

(e) placement of the youth under home arrest as provided in [sections 1 through 6].

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim; however, the ability of the victim or his insurer to stand any loss may not be considered in any case.

(3) If the youth violates his aftercare agreement as provided for in 53-30-226, he must be returned to the court for further disposition. ~~No~~ *A* youth may *not* be placed in a state youth correctional facility under informal adjustment."

Section 9. Section 41-5-523, MCA, is amended to read:

"41-5-523. *(Temporary)* **Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home~~;~~*,* provided~~, however,~~ that:

(i) in the case of a youth in need of supervision, the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from his home. The court shall include ~~such~~ *a* determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a youth correctional facility if the judge finds that ~~such~~ *the* placement is necessary for the protection of the public;

(c) order restitution by the youth or his parents;

(d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(e) require the performance of community service;

(f) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish ~~such~~ services as the court may designate;

(i) order ~~such~~ further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. Upon release or discharge from the mental health facility, the youth must be returned to the court for further disposition in accordance with this section unless the court order has expired or the court no longer retains jurisdiction under 41-5-205.

(k) place the youth under home arrest as provided in [sections 1 through 6].

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision may not be placed in a youth correctional facility.

(b) A youth may not be held in a youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(c) ~~No~~ *A* youth may *not* be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a youth correctional facility must be supervised by the department. A youth placed in any other placement must be supervised by the youth probation officer of the youth court having jurisdiction over the youth.

(4) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department for a period not to exceed 45 days. The department shall determine the place and manner of evaluation.

(5) ~~No~~ *An* evaluation of a youth may *not* be performed at the Montana state hospital unless ~~such~~ *the* youth is transferred to the district court under 41-5-206.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court commits a youth to the department, it ~~must~~ *shall* transmit with the dispositional judgment copies of a medical report and ~~such~~ *any* other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

41-5-523. *(Effective July 1, 1991)* **Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home~~;~~, provided~~, however,~~ that:

(i) in the case of a youth in need of supervision, the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from his home. The court shall include ~~such~~ *a* determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a youth correctional facility if the judge finds that ~~such~~ *the* placement is necessary for the protection of the public;

(c) order restitution by the youth or his parents;

(d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(e) require the performance of community service;

(f) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish ~~such~~ services as the court may designate;

(i) order ~~such~~ further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. Upon release or discharge from the mental health facility, the youth must be returned to the court for further disposition in accordance with this section unless the court order has expired or the court no longer retains jurisdiction under 41-5-205.

(k) place the youth under home arrest as provided in [sections 1 through 6].

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision may not be placed in a youth correctional facility.

(b) A youth may not be held in a youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(c) ~~No~~ *A* youth may *not* be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a youth correctional facility must be supervised by the department. A youth placed in any other placement must be supervised by the youth probation officer of the youth court having jurisdiction over the youth.

(4) At any time after the youth has been taken into custody and before final disposition, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated for a period not to exceed 45 days. The county commissioners are responsible for the cost of the evaluation and may contract with the department or other public or private agencies to obtain evaluation services.

(5) ~~No~~ *An* evaluation of a youth may *not* be performed at the Montana state hospital unless ~~such~~ *the* youth is transferred to the district court under 41-5-206.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court commits a youth to the department, it ~~must~~ *shall* transmit with the dispositional judgment copies of a medical report and ~~such~~ *any* other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth."

Section 10. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, ~~excepting~~ *except as provided in 61-8-714 and 61-8-722 for* sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of ~~court appointed~~ *court-appointed* counsel as provided in 46-8-113;

(ix) community service;

(x) home arrest as provided in [sections 1 through 6];

~~(x)~~*(xi)* any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

~~(xi)~~*(xii)* any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in ~~subsections~~ *subsection* (1)(a)~~(i) through (1)(a)(xi)~~.

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution, with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If ~~any~~ *a* financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for ~~any~~ *a* misdemeanor or for a period not exceeding 6 years for ~~any~~ *a* felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail *or home arrest* time already served.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted

of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-502(3), 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of ~~such~~ *the* imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program."

Section 11. Section 61-8-714, MCA, is amended to read:

"**61-8-714. Penalty for driving under the influence of alcohol or drugs.** (1) ~~A~~ *Except as provided in subsection (7), a* person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The ~~jail~~ *imprisonment* sentence may not be suspended unless the judge finds that the imposition of the ~~jail~~ *imprisonment* sentence will pose a risk to the defendant's physical or mental well-being.

(2) On a second conviction, he shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Three days of the ~~jail~~ *imprisonment* sentence may not be suspended unless the judge finds that the imposition of the ~~jail~~ *imprisonment* sentence will pose a risk to the defendant's physical or mental well-being.

(3) On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year, and by a fine of not less than $500 or more than $1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the ~~jail~~ *imprisonment* sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regard-

less of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which must include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure. As long as the alcohol information course and treatment program are approved as provided in this subsection, the defendant may attend the information course and treatment program of his choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to his alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction ~~hereunder~~ *under this section*, then all records and data relating to the prior conviction are confidential criminal justice information as defined in 44-5-103 and public access to the information may only be obtained by district court order upon good cause shown.

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

(7) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in [sections 1 through 6]."

Section 12. Section 61-8-722, MCA, is amended to read:

"**61-8-722. Penalty for driving with excessive blood alcohol concentration.** (1) A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) On a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) On a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d) relating to revocation and suspension of driver's licenses ~~shall~~ apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing ~~such~~ education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction ~~hereunder~~ *under this section*, then ~~such~~ *the* prior offense ~~shall~~ *must* be expunged from the defendant's record.

(7) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in [sections 1 through 6]."

Section 13. **Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to [sections 1 through 6].

Section 14. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. **Applicability.** [This act] applies to sentences imposed after [the effective date of this act].

Approved March 20, 1991.

CHAPTER NO. 106

[HB 156]

AN ACT TO ALLOW THE PUBLIC SERVICE COMMISSION TO PARTICIPATE IN THE COOPERATIVE OR RECIPROCAL REGISTRATION OF INTERSTATE AND INTERNATIONAL MOTOR CARRIERS; AMENDING SECTION 69-12-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-103, MCA, is amended to read:

"69-12-103. **Provision for interstate or international carriers — *cooperative or reciprocal registration.*** (1) (a) Except as provided in subsection (1)(b), the terms and provisions of this chapter ~~shall~~ apply to commerce with foreign nations and to commerce among the ~~several~~ states ~~of this Union, insofar as such~~ *to the extent that* application may be permitted under the provisions of the constitution of the United States, treaties made ~~thereunder~~ *under that constitution,* and the acts of congress. The commission is ~~hereby~~ authorized to exercise any additional power that may from time to time be conferred upon the state by ~~any~~ *an* act of congress.

(b) ~~It shall not be necessary for an~~ *An* interstate or international motor carrier~~, in order to obtain a permit as herein provided, to make any showing of~~ *is not required to show* public convenience and necessity *to obtain a permit under this section* except ~~as to~~ *for* the transportation of passengers ~~and/or~~ *or* freight between points within this state~~;~~. ~~the~~ *The* power to regulate ~~such operation being~~ *the transportation of passengers or freight between points within this state is* specifically reserved ~~herein~~ *in this chapter.* ~~Any~~ *A* motor carrier operating in and about any national park whose rates and methods of accounting are controlled by *a* contract with the United States ~~shall~~ *is* not ~~be~~ subject to ~~any~~ regulation by the commission in conflict with ~~such~~ *the* contract or in conflict with any regulation by the United States made pursuant to ~~such~~ *the* contract or made pursuant to an act of congress of the United States.

(2) When transportation service is rendered partly in this state and partly in an adjoining state or foreign country, motor carriers shall comply with the provisions of this chapter relating to the payment of compensation and to the making of annual or special reports or statements ~~herein~~ required *in this chapter* and shall show the total business performed within ~~the limits of~~ this state and ~~such~~ other information concerning its operation within this state ~~as~~ *that* may be required by the commission, as fully and completely and in the same manner as ~~herein~~ required *in this chapter* of motor carriers operating wholly within this state.

(3) The commission may:

(a) enter into written agreements with agencies of other states to allow for the cooperative or reciprocal state registration of interstate or international motor carriers; and

(b) if all provisions of the agreement meet the requirements of this chapter and of the rules of the commission, authorize the agency of a participating state to:

(i) issue interstate motor carrier registrations, stamps, and permits;

(ii) accept filings of insurance, financial responsibility, and orders;

(iii) collect and disburse fees;

(iv) share and exchange information for audit, reporting, and enforcement purposes; and

(v) perform any other function that the commission determines is justified to facilitate the cooperative or reciprocal registration."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1991.

CHAPTER NO. 107

[HB 177]

AN ACT REMOVING THE REQUIREMENT THAT THE MOTOR VEHICLE ACCOUNT REIMBURSE THE GENERAL FUND FOR DEPARTMENT OF JUSTICE COSTS OF PERFORMING ITS DUTIES RELATING TO MOTOR VEHICLES AND FOR THE MANUFACTURE OF NUMBER PLATES; REPEALING SECTION 61-3-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 61-3-102, MCA, is repealed.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1991.

CHAPTER NO. 108

[HB 189]

AN ACT TO ALLOW THE USE OF WATER MEDIATORS IN DECREED AND NONDECREED BASINS; AND AMENDING SECTION 85-5-110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-5-110, MCA, is amended to read:

"**85-5-110. Appointment of water mediators — duties.** (1) The judge of the district court may appoint a water mediator to mediate a water controversy in a *decreed or* nondecreed basin under the following circumstances:

(a) upon request of the governor; ~~or~~

(b) upon petition by at least 15% of the owners of water rights in a *decreed or* nondecreed basin~~.~~*; or*

(c) in the discretion of the district court having jurisdiction.

(2) A water mediator appointed under this section may:

(a) discuss proposed solutions to a water controversy with affected water right holders;

(b) review options related to scheduling and coordinating water use with affected water right holders;

(c) discuss water use and water needs with persons and entities affected by the existing water use;

(d) meet with principal parties to mediate differences over the use of water; and

(e) hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

(3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall pay all or a majority of the costs of the water mediator, as determined equitable by the district court having jurisdiction.

(4) The governor may use funds appropriated under 75-1-1101 to pay the costs of a water mediator.

(5) Nothing in this section allows a water mediator to require any valid water right holder to compromise or reduce any of his existing water rights.

(6) If an appropriator voluntarily ceases to use all or part of his appropriation right or voluntarily ceases to use his appropriation right

according to its terms and conditions as a result of the efforts of a mediator appointed under this section, the appropriator may not be considered to have abandoned all or any portion of his appropriation right."

Approved March 20, 1991.

CHAPTER NO. 109

[HB 221]

AN ACT TO INCREASE TO $25 A DAY THE RATE AT WHICH FINES FOR TRAFFIC AND VEHICLE EQUIPMENT VIOLATIONS ARE DECREASED FOR EACH DAY OF IMPRISONMENT IN THE COUNTY JAIL; AND AMENDING SECTIONS 61-8-711 AND 61-9-511, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-711, MCA, is amended to read:

"**61-8-711. Violation of chapter — penalty.** (1) It is a misdemeanor for any person to violate any of the provisions of this chapter unless the violation is declared to be a felony by this chapter or other law of this state.

(2) Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not less than $10 or more than $100 or by imprisonment for not more than 10 days. For a second conviction within 1 year thereafter, the person shall be punished by a fine of not less than $25 or more than $200 or by imprisonment for not more than 20 days or by both such fine and imprisonment. Upon a third or subsequent conviction within 1 year after the first conviction, the person shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

(3) On failure of payment of a fine, the offender in case of a misdemeanor shall be imprisoned in the county jail in the county in which the offense was committed, and the imprisonment shall be computed upon the basis of one day's incarceration for each ~~$10~~ *$25* of the fine.

(4) Upon conviction, the court costs or any part thereof may be assessed against the defendant in the discretion of the court."

Section 2. Section 61-9-511, MCA, is amended to read:

"**61-9-511. Violation of chapter — penalty.** (1) It is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other law of this state declared to be a felony.

(2) Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall

for a first conviction thereof be punished by a fine of not less than $10 or more than $100 or by imprisonment for not more than 10 days. For a second conviction within 1 year thereafter such person shall be punished by a fine of not less than $25 or more than $200 or by imprisonment for not more than 20 days or by both such fine and imprisonment. Upon a third or subsequent conviction within 1 year after the first conviction such person shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not more than 6 months or by both fine and imprisonment.

(3) On failure of payment of fines, the offender in cases of misdemeanor shall be imprisoned in the county jail in the county in which the offense has been committed, and said imprisonment shall be computed upon the basis of ~~$2~~ *$25* of said fine for each day's incarceration.

(4) Upon conviction the court costs, or any part thereof, may also be assessed against the defendant in the discretion of the court."

Approved March 20, 1991.

CHAPTER NO. 110

[HB 223]

AN ACT TO ELIMINATE THE REQUIREMENT THAT THE DEPARTMENT OF STATE LANDS USE THE SCRIBNER LOG SCALE FOR MEASURING VOLUME FOR STATE TIMBER SALES; AND AMENDING SECTION 77-5-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-5-206, MCA, is amended to read:

"**77-5-206. Management of timber by department.** (1) The department shall supervise all the management of timber before it is cut and secure the most complete utilization of all forest products consistent with the current forest management practices.

(2) It shall instruct and supervise the cruisers, forest wardens, and scalers in the conduct of their work and fix and establish the standard practice in timber sales administration. ~~It shall require that each merchantable log be scaled by the Scribner Decimal C log rule at the small end on the average diameter inside bark taken to the nearest inch and that deduction be made for any apparent defect, or it shall fix and determine converting factors and units of measure for all forest products, which shall be as nearly as practical equivalent to the Scribner Decimal C log scale.~~

(3) Records of converting factors, units of measure, and the scale of logs shall be kept as a permanent public record showing the date of scale or measurement, the designation of the scale, and the name of the scaler.

(4) Where the volume of timber involved is not in excess of 1 million board feet log scale, the department may designate each tree to be cut and make a tree scale measurement of all trees to be sold."

Approved March 20, 1991.

CHAPTER NO. 111

[HB 225]

AN ACT PERMITTING ELECTION ADMINISTRATORS TO ALLOW REGISTRATION AND VOTING BY FACSIMILE TRANSMISSION FOR ELECTORS IN THE UNITED STATES SERVICE IF FACSIMILE FACILITIES ARE AVAILABLE; REQUIRING THE SECRETARY OF STATE TO ADOPT RULES; REQUIRING THE SECRETARY OF STATE'S ELECTION ADVISORY COUNCIL TO ASSIST THE SECRETARY IN THE ADOPTION OF THE RULES; REQUIRING THE SECRETARY OF STATE TO REPORT TO THE LEGISLATURE; AND PROVIDING EFFECTIVE DATES.

WHEREAS, there is increasing interest on the part of both state and federal agencies in the use of facsimile transmissions for the purpose of voting in state and federal elections, particularly for the casting of absentee ballots by men and women of the Armed Forces serving in Operation Desert Shield; and

WHEREAS, the federal Uniformed and Overseas Citizens Absentee Voting Act authorizes but does not require the use of facsimile ballots in federal elections; and

WHEREAS, state election laws currently present severe obstacles to the use of facsimile voter registration and the sending and receiving of absentee election ballots by facsimile; and

WHEREAS, the adoption of state laws allowing registration of absentee voters and the sending and receiving of absentee ballots by facsimile may increase the likelihood that absentee voters would exercise their right to vote; and

WHEREAS, adoption of rules by the Secretary of State that provide for absentee voter registration and the casting of absentee ballots by facsimile would provide maximum flexibility for state and local election officials to work with one another and appropriate federal officials to see that voting by facsimile becomes a reality in this state.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Legislative findings and purpose.** The legislature finds that the increased use of facsimile transmissions has encouraged the possibility of absentee voter registration and the sending and receiving of absentee ballots by facsimile. The legislature also finds that while federal law encourages but does not require the use of facsimile transmissions in federal elections, there are sufficient reliability in facsimile technology and sufficient evidence that absentee facsimile voting would be of benefit to electors in the United States service, to provide for absentee registration and voting by facsimile. It is the purpose of [sections 1 through 3] to allow for absentee voter registration and voting by facsimile, while recognizing that state and local election officials have the responsibility to maintain the accuracy, integrity, and secrecy of the election process and the individual election ballot. It is the purpose of the legislature to allow facsimile voting for electors in the United States service but to continue to ensure that voting security is maintained for the ultimate purpose of preventing election fraud and maintaining the validity of the election process.

Section 2. **Registration and voting by facsimile authorized — secretary of state to adopt rules — acceptance of funds.** (1) Notwithstanding other provisions of this title, each election administrator may, in any primary election, general election, and special election, take the following acts by facsimile transmission, if facsimile facilities are available, in place of the use of the public mails when requested by an elector or, for the purposes of registration under subsection (1)(a), an individual intending to become an elector, in the United States service, as defined in 13-2-211:

(a) register an individual to vote;

(b) give notice of registration;

(c) receive requests for an absentee ballot;

(d) transmit absentee ballots to electors; and

(e) receive absentee ballots from electors.

(2) The secretary of state shall adopt reasonable rules under the rulemaking provisions of the Montana Administrative Procedure Act to implement subsection (1). The rules are binding upon election administrators. The rules must require compliance with the same time requirements or deadlines as for registration and voting by absentee ballot by use of the public mails, except that the rules may provide for different times for the acceptance of facsimile ballots after the closing of the polls. The rules must maintain the accuracy, integrity, and secrecy of the ballot process and must allow registration and voting by facsimile through use of a private corporation or other private entity for transmission of facsimile messages only if the secretary of state finds that the use is essential to the purposes of [sections 1 through 3].

(3) The secretary of state may apply for and receive a grant of funds from any agency or office of the United States government or from any other public or private source and may use the money for the purpose of implementing [sections 1 through 3].

Section 3. **Advisory council assistance — report to legislature.** (1) The secretary of state shall adopt the rules required by [section 2(2)] with the assistance of the secretary's election administrators advisory council, and the advisory council shall assist and advise the secretary in the implementation of [sections 1 through 3].

(2) The secretary of state shall by January 1, 1995, prepare a written report to the legislature concerning the implementation of [sections 1 through 3] and the activities of the advisory council in implementing [sections 1 through 3]. The report must:

(a) include copies of rules adopted by the secretary of state in accordance with [section 2];

(b) contain a detailed summary of the experience of the secretary of state and local election administrators in implementing [sections 1 through 3]; and

(c) include any recommendations for changes to the applicable laws.

Section 4. **Effective dates.** (1) [Sections 1, 2(2), 2(3), 3, 5, and this section] are effective on passage and approval.

(2) [Section 2(1)] is effective July 1, 1992.

Section 5. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 13, chapter 13, part 2, and the provisions of Title 13, chapter 13, part 2, apply to [sections 1 and 2].

Approved March 20, 1991.

CHAPTER NO. 112

[HB 231]

AN ACT TO ESTABLISH A PROCESS FOR DELIVERING REPORTS TO THE LEGISLATURE; AMENDING SECTIONS 1-11-204, 2-4-411, 2-7-104, 2-8-112, 2-8-203, 2-8-207, 2-8-208, 2-15-2021, 2-18-209, 2-18-811, 2-18-1103, 3-1-702, 3-1-1126, 5-5-216, 5-13-304, 5-17-103, 5-18-203, 5-19-108, 10-4-102, 15-1-205, 17-4-107, 17-5-1650, 18-7-303, 19-4-201, 20-9-346, 20-25-236, 20-25-301, 22-3-107, 23-5-1008, 33-22-1513, 37-1-106, 39-6-101, 39-51-407, 44-2-304, 44-13-103, 46-23-316, 53-2-1107, 53-6-110, 53-20-104, 53-21-104, 53-24-204, 53-24-210, 53-30-133, 69-1-404, 72-16-202, 75-1-203, 75-1-1101, 75-7-304, 75-10-533, 75-10-704, 76-11-203, 76-12-109, 80-7-713, 80-12-402, 82-11-161, 85-1-407, 85-1-621, 85-2-105, 87-2-724, 87-5-123, 90-3-203, AND 90-4-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Clearinghouse for reports to legislature.** (1) For the purposes of this section, "report" means:

(a) a document required to be prepared for the legislature as required in any of the sections listed in subsection (10); and

(b) unless otherwise provided by law, any other report required by law to be given to or filed with the legislature.

(2) On or before September 1 of each year preceding the convening of a regular session of the legislature, an entity required to report to the legislature shall provide, in writing, to the executive director of the legislative council:

(a) the final title of the report;

(b) an abstract or description of the contents of the report, not to exceed one page;

(c) a recommendation on how many copies of the report should be provided to the legislature;

(d) the reasons why the number of copies recommended is, in the opinion of the reporting entity, the appropriate number of copies;

(e) an estimated cost for each copy of the report; and

(f) the date on which the entity will deliver the final, published copies of the report to the legislature.

(3) After considering all of the information available about the report, including the number of legislators requesting copies of the report pursuant to subsection (7), the legislative council or the executive director shall, in writing, direct the reporting entity to provide a specific number of copies. The number of copies required is at the sole discretion of the legislative council. The legislative council or the executive director may require the reporting entity to mail the copies of the report.

(4) The legislative council may require that the report be submitted in an electronic format useable on the legislature's current computer hardware, in a microform, such as microfilm or microfiche, or in a CD-ROM format, meaning compact disc read-only memory.

(5) Costs of preparing and distributing a report to the legislature, including writing, printing, postage, distribution, and all other costs accrue to the reporting agency. Costs incurred in meeting the requirements of this section may not accrue to the legislative council.

(6) The executive director of the legislative council shall cause to be prepared a list of all reports required to be presented to the legislature from the list of titles received under subsection (2).

(7) The executive director shall, as soon as possible following a general election, mail to each holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts prepared pursuant to subsection (2)(b), available from the legislative council. The list must include a form on which each member or member-elect receiving the

list may indicate the report or reports that the member or member-elect would like to receive.

(8) The executive director or the legislative council shall make copies of reports requested pursuant to subsection (7) available to those members or members-elect by either requiring that copies be mailed pursuant to subsection (3) or by delivering copies of the reports during the first week of the legislative session.

(9) The executive director of the legislative council may keep as many copies of a report as he considers necessary, and copies of the report may be discarded at his discretion.

(10) (a) A report to the legislature includes a report required to be made by a board, bureau, commission, committee, council, department, division, fund, authority, or officer of the state or a local government in 1-11-204, 2-4-411, 2-7-104, 2-8-112, 2-8-203, 2-8-207, 2-8-208, 2-15-2021, 2-18-209, 2-18-811, 2-18-1103, 3-1-702, 3-1-1126, 5-5-216, 5-13-304, 5-17-103, 5-18-203, 5-19-108, 10-4-102, 15-1-205, 17-4-107, 17-5-1650, 18-7-303, 19-4-201, 20-9-346, 20-25-236, 20-25-301, 22-3-107, 23-5-1008, 33-22-1513, 37-1-106, 39-6-101, 39-51-407, 44-2-304, 44-13-103, 46-23-316, 53-2-1107, 53-6-110, 53-20-104, 53-21-104, 53-24-204, 53-24-210, 53-30-133, 69-1-404, 72-16-202, 75-1-203, 75-1-1101, 75-7-304, 75-10-533, 75-10-704, 76-11-203, 76-12-109, 80-7-713, 80-12-402, 82-11-161, 85-1-407, 85-1-621, 85-2-105, 87-2-724, 87-5-123, 90-3-203, or 90-4-111.

(b) The procedure outlined in this section may also be used for a report required to be made to the legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact contained in 61-2-201, the Multistate Highway Transportation Agreement contained in 61-10-1101, or the Western Interstate Nuclear Compact contained in 90-5-201.

Section 2. Section 1-11-204, MCA, is amended to read:

"**1-11-204. Duties of code commissioner.** (1) Prior to January 1, 1979, the code commissioner shall recodify all the laws of a general and permanent nature appearing in the codes and session laws and prepare them for publication.

(2) Prior to January 1, 1979, the commissioner shall prepare and submit to the legislature a report which is certified by the commissioner as the "Official Report of the Montana Code Commissioner", together with a bill enacting the Montana Code Annotated. A copy of the report and bill shall be deposited with the secretary of state. The report shall explain and indicate, in tabular or other form, all changes made during recodification, other than punctuation and capitalization, to clearly indicate the character of each change.

(3) Prior to the November 1 immediately preceding each regular legislative session, the commissioner shall prepare and, *as provided in [section 1],* submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation which will:

(a) eliminate archaic or outdated laws;

(b) eliminate obsolete or redundant wording of laws;

(c) eliminate any duplications in law and any laws repealed directly or by implication;

(d) clarify existing laws;

(e) correct errors and inconsistencies within the laws.

(4) The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:

(a) Statutory history of each code section;

(b) Annotations of state and federal court decisions relating to the subject matter of the code;

(c) Such editorial notes, cross-references, and other matter as the commissioner considers desirable or advantageous;

(d) The Declaration of Independence;

(e) The Constitution of the United States of America and amendments thereto;

(f) Acts of congress relating to the authentication of laws and records;

(g) The Organic Act of the Territory of Montana;

(h) The Enabling Act;

(i) The 1972 Constitution of the State of Montana and any amendments thereto;

(j) The Ordinances relating to federal relations and elections;

(k) Rules of civil, criminal, and appellate procedure and such other rules of procedure as the Montana supreme court may adopt; and

(l) A complete subject index, a popular name index, and comparative disposition tables or cross-reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.

(5) After publication of the Montana Code Annotated, the code commissioner shall:

(a) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section;

(b) continue to codify, index, arrange, rearrange, and generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;

(c) prepare and publish a report entitled "Official Report of the Montana Code Commissioner—(year)" which indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation, spelling, and capitalization, to clearly indicate the character of each change made since the last such report.

(6) From time to time the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures."

Section 3. Section 2-4-411, MCA, is amended to read:

"**2-4-411. Report.** The committee shall prepare *and, as provided in [section 1], submit* a report to the legislature ~~at least once each biennium~~ and may recommend amendments to the Montana Administrative Procedure Act or the repeal, amendment, or adoption of a rule as provided in 2-4-412."

Section 4. Section 2-7-104, MCA, is amended to read:

"**2-7-104. Revenue estimate — report to governor and legislature.** The director of revenue shall prepare revenue estimates of state revenue from all sources and shall continuously study fiscal problems and tax structures of state and local governments and submit the studies to the governor and, *as provided in [section 1], to the* legislature ~~at their request~~."

Section 5. Section 2-8-112, MCA, is amended to read:

"**2-8-112. Legislative audit committee review and report — review criteria.** (1) The legislative audit committee is responsible for conducting a review of each agency or program scheduled for termination. The review shall be completed at least 6 months prior to the date set for termination. If for any reason a review of an agency or program cannot be completed as required by this chapter, the legislative audit committee shall submit a proposed bill for the ensuing legislative session to reestablish the agency or program.

(2) The review conducted shall include a performance audit of the agency or program, with emphasis on its effect on the public health, safety, and welfare.

(3) The legislative audit committee shall assist in the implementation of the provisions of this part and shall establish administrative procedures which facilitate the review and evaluation as required in this part.

(4) Upon completion of its review, the legislative audit committee shall, *as provided in [section 1],* make a report of its recommendations for continuation, modification, or termination and submit a proposed bill to the ensuing legislative session. If termination is recommended, the bill should repeal or otherwise deal with all statutes and parts of statutes relating to the agency's or program's activities."

Section 6. Section 2-8-203, MCA, is amended to read:

"**2-8-203. Committee review and report.** (1) Except as provided in subsection (5), the committee shall review and assess the merits of any proposal to:

(a) establish a new licensing board; or

(b) add to the duties of an existing licensing board responsibility for licensing another occupation or profession.

(2) Any proposal subject to review under subsection (1) must be submitted, in the form of a legislative report, to the committee at least 180 days before the first day of the next regular legislative session.

(3) The committee shall conduct the review required by subsection (1) only if the report includes:

(a) the information required by 2-8-204; and

(b) a completed application as provided in 2-8-205.

(4) The committee shall prepare *and, as provided in [section 1], submit* a report to the legislature for its next regular session. The report must include but is not limited to:

(a) the committee's estimate of the cost to the state of licensing the occupation or profession and a proposed schedule of fees that will recover the cost of the licensing program as required by 37-1-134; and

(b) the committee's recommendation as to whether the profession or occupation should be licensed by the state.

(5) The provisions of this part do not apply to an agency, profession, or occupation that is required to be licensed or regulated by federal law."

Section 7. Section 2-8-207, MCA, is amended to read:

"**2-8-207. Consolidation of existing boards.** Any person or organization may propose consolidation of two or more existing boards. The provisions of 2-8-202 through 2-8-205 apply to such a proposal, except that:

(1) the committee shall designate a representative of each of the occupations or professions regulated by the licensing boards proposed for consolidation, and each representative must be treated as an applicant for purposes of 2-8-202 through 2-8-205; and

(2) the committee shall weigh the merits of the proposed consolidation against the merits of retaining a separate licensing board for each affected occupation or profession and *recommend* in its report ~~recommend~~ *submitted* to the legislature *as provided in [section 1]*:

(a) the proposed consolidation;

(b) continuation of the existing licensing boards; or

(c) a modification of the proposed consolidation."

Section 8. Section 2-8-208, MCA, is amended to read:

"**2-8-208. Boards or licensing functions instituted by initiative.** (1) If an initiative to establish a new licensing board or to add a new licensing responsibility to the duties of an existing licensing board is approved by the electorate, the committee shall:

(a) review the initiative to assess the degree to which it meets the criteria in 2-8-204(1);

(b) request that the petitioners provide sufficient information from practitioners or other persons to allow the committee to make an assessment as required by 2-8-204(3); and

(c) evaluate the petitioners' initiative in terms of:

(i) clarity and conciseness;

(ii) conformity to existing statutes and principles of administrative law; and

(iii) specificity of the delegation of authority to promulgate rules and set fees.

(2) The committee shall prepare *and, as provided in [section 1], submit* a report to the ~~next session of the~~ legislature. The report must include:

(a) the committee's findings with respect to each of the criteria in 2-8-204;

(b) an estimate of the cost to the state of licensing the occupation or profession and a proposed schedule of fees that will cover the cost of the licensing program as required by 37-1-134;

(c) the committee's recommendation as to whether the initiative should be amended; and

(d) if amendments are recommended, a legislative proposal.

(3) Committee recommendations for amendments to the initiative must be incorporated in a bill introduced during the next session of the legislature."

Section 9. Section 2-15-2021, MCA, is amended to read:

"**2-15-2021. Gaming advisory council — allocation — composition — compensation — annual report.** (1) There is a gaming advisory council.

(2) The gaming advisory council is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The gaming advisory council consists of nine members. One member must be from the senate, and one member must be from the house of representatives. The senate committee on committees and the speaker of

the house of representatives shall appoint the legislative members of the council. The seven remaining members must be appointed by the department, with one representing the public at large, two representing local governments, one being a Native American, and three representing the gaming industry.

(4) Each gaming advisory council member is appointed to a 3-year term of office, except that three of the first-appointed original members shall serve a 1-year term, three (including both legislative members) shall serve a 2-year term, and three shall serve a 3-year term. A member of the council may be removed for good cause by the appointing body provided for in subsection (3).

(5) The gaming advisory council shall appoint a chairman from its members.

(6) Legislative members of the gaming advisory council are entitled to compensation and expenses, as provided in 5-2-302, while the council is meeting. The remaining members are entitled to travel, meals, and lodging expenses as provided for in 2-18-501 through 2-18-503. Expenses of the council must be paid from licensing fees received by the department.

(7) The gaming advisory council shall, within its authorized budget, hold meetings and incur expenses as it considers necessary to study all aspects of gambling in the state.

(8) (a) The gaming advisory council shall submit an annual report to the department, at a time designated by the department, with recommendations for amendments to the gambling statutes, the need for additional or modified department rules, the clarification of existing rules, and other recommendations on the operation of the department or any other gambling-related matter.

(b) The annual report required under subsection (8)(a) must be affixed to the annual department report on gambling in the state. The department and council shall, *as provided in [section 1]*, submit the two most recent department and council reports to ~~each of the next two regular sessions of~~ the legislature.

(c) The council may submit interim reports to the department as the council considers necessary.

(d) The council shall meet with the department upon request of the department.

(e) The department shall meet with the council upon request of the council.

(9) The department shall give each council member notice and a copy of each proposed change in administrative rules relating to gambling. The notice and copy must be given at the time a notice of proposed rules changes is filed with the secretary of state. The council shall review the proposal, may comment on it, and may attend any hearing on the proposal. The

department shall consider any comment by any council member or by the council as a whole prior to adopting the proposed change."

Section 10. Section 2-18-209, MCA, is amended to read:

"**2-18-209. Status report.** The department of administration shall, *as provided in [section 1],* report to the legislature the status of the study of the comparable worth standard and the extent to which Montana's classification plan and pay schedules adhere to or fall short of the standard of equal pay for comparable worth. The department shall make recommendations to the legislature as to what impediments exist to meeting this standard. The department shall continue to make such reports until the standard is met."

Section 11. Section 2-18-811, MCA, is amended to read:

"**2-18-811. General duties of the department.** The department shall:

(1) adopt rules for the conduct of its business under this part and to carry out the purposes of this part;

(2) negotiate and administer contracts for state employee group benefit plans;

(3) design state employee group benefit plans, establish specifications for bids, and make recommendations for acceptance or rejection of bids;

(4) prepare an annual report which describes the state employee group benefit plans being administered, details the historical and projected program costs and the status of reserve funds, and makes recommendations, if any, for change in existing state employee group benefit plans; ~~and~~

(5) prior to each legislative session, perform or obtain an analysis of rate adequacy of all state employee group benefit plans administered under this part~~.~~*; and*

(6) ~~The department shall make copies of~~ *as provided in [section 1], submit* the report ~~available~~ *required in this section* to the legislature."

Section 12. Section 2-18-1103, MCA, is amended to read:

"**2-18-1103. Powers and duties of the department.** The department shall:

(1) adopt rules to equitably administer the employee incentive award program;

(2) provide an opportunity for all employees to participate in the program;

(3) assist agencies in making incentive awards under the program;

(4) grant or deny incentive awards in consultation with the incentive awards advisory council and determine the amount of each incentive award based on first-year monetary savings;

(5) hear appeals from employees on the operation of the program;

(6) prepare *and submit, as provided in [section 1],* a biennial report to the legislature containing a list of incentive awards and the corresponding savings to the state resulting from each employee's suggestion or invention and providing a general review of and recommendations for improving the program; and

(7) send a copy of all suggestions or inventions submitted under this program to the office of the legislative fiscal analyst."

Section 13. Section 3-1-702, MCA, is amended to read:

"**3-1-702. Duties.** The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide ~~such~~ *the* information to the legislature *pursuant to [section 1]* ~~upon request~~;

(3) recommend to the supreme court improvements in the judiciary; and

(4) perform such other duties as the supreme court may assign."

Section 14. Section 3-1-1126, MCA, is amended to read:

"**3-1-1126. Commission report to legislature.** (1) The commission shall, *as provided in [section 1],* submit to the legislature ~~each year the legislature meets in regular session~~ a report containing the following information:

(a) identification of each complaint, whether or not verified, received by the commission during the preceding biennium by a separate number that in no way reveals the identity of the judge complained against;

(b) the date each complaint was filed;

(c) the general nature of each complaint;

(d) whether there have been previous complaints against the same judge and, if so, the general nature of the previous complaints;

(e) the present status of all complaints filed with or pending before the commission during the preceding biennium; and

(f) whenever a final disposition of a complaint has been made during the preceding biennium, the nature of the disposition, the commission's recommendation, if any, to the supreme court, and the action taken by the supreme court.

(2) The commission must observe the confidentiality provisions of this part in fulfilling the requirements of this section."

Section 15. Section 5-5-216, MCA, is amended to read:

"**5-5-216. Recommendations of subcommittees.** A subcommittee appointed for the purpose of making a study designated by the legislative council may make recommendations for legislation. These recommendations and the study report shall be submitted to the legislature ~~at the next regular session~~ *as provided in [section 1]*."

Section 16. Section 5-13-304, MCA, is amended to read:

"**5-13-304. Powers and duties.** The legislative auditor shall:

(1) conduct a financial and compliance audit of every state agency every 2 years covering the 2-year period since the last audit, unless otherwise required by state law;

(2) conduct a special audit whenever he determines it necessary and shall so advise the members of the legislative audit committee;

(3) make a complete written report of each audit. A copy of each report shall be furnished to the department of administration, the state agency which was audited, each member of the committee, and the legislative council.

(4) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information in his possession relative to the violation;

(5) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(6) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

(7) report to the legislature ~~during the first week of each regular session~~ *as provided in [section 1]*. The report shall contain, among other things, copies of or summaries of audit reports on state agencies and any recommendations relating to such reports.

(8) have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. Whenever a state agency enters into an agreement to grant resources under

its control to others, the agency must obtain the written consent of the grantee to the audit provided for in this subsection."

Section 17. Section 5-17-103, MCA, is amended to read:

"**5-17-103. Report to legislature.** The committee shall prepare a written report of its activities and recommendations and present the report to the legislature ~~at each regular session~~ *as provided in [section 1]* for the purpose of assisting the legislature in determining if such recommendations should be implemented. To prepare its report and recommendations, the committee may receive assistance from the legislative council."

Section 18. Section 5-18-203, MCA, is amended to read:

"**5-18-203. Powers and duties of subcommittee.** (1) The coal tax oversight subcommittee may:

(a) review the programs financed by coal severance tax funds; and

(b) consider any matters relating to coal taxation.

(2) The subcommittee shall:

(a) report and make recommendations to the revenue oversight committee; and

(b) *as provided in [section 1],* prepare for ~~each regular session of~~ the legislature a report on potential uses of the coal tax trust fund to develop a stable, strong, and diversified Montana economy that meets the needs of present and future generations of Montanans while maintaining and improving a clean and healthful environment as required by Article IX, section 1, of the Montana constitution."

Section 19. Section 5-19-108, MCA, is amended to read:

"**5-19-108. Duties of the committee.** The committee shall:

(1) seek opinions of and information from Indian tribes, Indian tribal organizations, state agencies, local governments, non-Indians living on or near Indian reservations, and other interested persons and agencies in order to gain insight into Indian/non-Indian relations;

(2) hold hearings both on and off reservations to promote better understanding between tribes and public agencies and to improve both the Indian people's knowledge of the structure of state agencies and the legislative process and the non-Indian people's knowledge of tribal government and institutions;

(3) encourage and foster participation of Indian people at its meetings;

(4) act as a liaison between the Indian people and the legislature;

(5) encourage tribal-state and tribal-local government cooperation and otherwise promote amicable Indian/non-Indian relations;

(6) cooperate with the commissioner of higher education in a study of Indian students in Montana schools; and

(7) *as provided in [section 1],* report its activities, findings, recommendations, and any proposed legislation to the legislature."

Section 20. Section 10-4-102, MCA, is amended to read:

"**10-4-102. Department of administration duties and powers.** (1) The department shall assist in the development of 9-1-1 systems in the state. The department shall:

(a) establish procedures for determining and evaluating requests for variations from minimum 9-1-1 service;

(b) upon request of a 9-1-1 jurisdiction, assist in planning an emergency 9-1-1 telephone system;

(c) establish criteria for evaluating plans;

(d) monitor implementation of approved plans for compliance with the plan and use of funding; and

(e) *as provided in [section 1],* report ~~biennially~~ to the legislature the progress made in implementing a statewide emergency telephone system.

(2) The department shall obtain input from all 9-1-1 jurisdictions by creating an advisory council to participate in development and implementation of the 9-1-1 program in the state. The council must be established pursuant to 2-15-122. The highway patrol, emergency medical services organizations, telephone companies, the associated public safety communicators, the department of emergency services, police departments, sheriff's departments, local citizens, organizations, and other public safety organizations may submit recommendations for membership on the advisory council."

Section 21. Section 15-1-205, MCA, is amended to read:

"**15-1-205. Biennial report — contents.** (1) The department shall transmit to the governor *20 days before the meeting of the legislature* and ~~upon request to each member of~~, *as provided in [section 1], submit to* the legislature ~~20 days before the meeting of the legislature~~ a report of the department showing all the taxable property of the state, counties, and cities and its value, in tabulated form, with recommendations for improvements in the system of taxation, together with alternative measures as may be formulated for the consideration of the legislature.

(2) The report or supplements to the report may also include:

(a) the gross dollar amount of revenue loss attributable to:

(i) personal income and corporation license tax exemptions;

(ii) property tax exemptions for which application to the department or its agent is necessary;

(iii) deferral of income;

(iv) credits allowed against Montana personal income tax or Montana corporation license tax, reported separately;

(v) deductions from income; and

(vi) any other identifiable preferential treatment of income or property;

(b) any change in tax revenue of the state or any unit of local government attributable to a change in federal tax law; and

(c) any change in the revenue of any unit of local government attributable to a change in state tax law.

(3) The data described in subsection (2), if reported, must be related to the income and age of the taxpayer whenever such information is available.

(4) (a) When reporting the data described in subsection (2)(a), the department shall identify any known purpose of the preferential treatment.

(b) Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.

(5) In reporting the data described in subsection (2), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

(6) The department must identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.

(7) The department may include a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures."

Section 22. Section 17-4-107, MCA, is amended to read:

"**17-4-107. Write-off procedures.** (1) The state auditor may establish procedures for canceling and writing off accounts receivable carried on the books of the various state agencies which have been transferred to him pursuant to 17-4-104 and which are uncollectible or the continued pursuance of the collection thereof would cost the state more than the amount collected. Such procedures shall be established in accordance with subsection (2).

(2) The department of administration may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies which are uncollectible or the continued pursuance of the collection would cost the state more than the amount collected. Such procedures shall include the reporting, *as provided in [section 1]*, of any

canceling and writing off of accounts receivable ~~to the next session of the legislature~~."

Section 23. Section 17-5-1650, MCA, is amended to read:

"**17-5-1650. Annual report.** By December 31 of each year, the board shall publish a financial report for distribution to the governor, the legislature *as provided in [section 1]*, and the public. The report must include a statement of the board's current financial position with respect to its activities under this part, a summary of its activities pursuant to this part during the previous year (including a listing of the local governmental securities purchased by the board, a listing of the bonds and notes sold by the board, and a summary of the performance of any other investments of the board's funds received under this part), an estimate of the levels of such activities for the next year, and a comparison of such activities during the previous year with the estimates of those activities that were made in the previous annual report."

Section 24. Section 18-7-303, MCA, is amended to read:

"**18-7-303. Duties of committee.** The committee shall:

(1) adopt standards for the efficient and economical publication of public documents;

(2) review proposals for publishing of all public documents prior to publication to determine:

(a) that the publication is necessary; and

(b) that the publication meets the standards of efficient and economical publication; and

(3) prepare a report for submission to ~~each~~ *the* legislature, *as provided in [section 1]*, detailing the savings to state government resulting from this part."

Section 25. Section 19-4-201, MCA, is amended to read:

"**19-4-201. Administration by retirement board.** The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and to this end, it is the duty of the retirement board to:

(1) establish rules necessary for the proper administration and operation of the retirement system;

(2) approve or disapprove all expenditures necessary for the proper operation of the retirement system;

(3) keep a record of all its proceedings, which must be open to public inspection;

(4) publish a biennial report by January 1 of each year the legislature meets which reports in detail the fiscal transactions for the 2 fiscal years

immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system and submit the biennial report to the governor and, ~~furnish copies~~ *as provided in [section 1],* to the legislature;

(5) keep in convenient form that data which is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

(6) prepare an annual valuation of the assets and liabilities of the retirement system;

(7) prescribe a form for membership application which will provide adequate and necessary information for the proper operation of the retirement system;

(8) annually determine the rate of regular interest as prescribed in 19-4-501;

(9) establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and

(10) perform such other duties and functions as are required to properly administer and operate the retirement system."

Section 26. Section 20-9-346, MCA, is amended to read:

"20-9-346. Duties of the superintendent of public instruction for state equalization aid distribution. The superintendent of public instruction shall administer the distribution of the state equalization aid by:

(1) establishing the annual entitlement of each district and county to state equalization aid, based on the data reported in the retirement and general fund budgets for each district that have been duly adopted for the current school fiscal year and verified by the superintendent of public instruction and by applying the verified data under the provisions of the state equalization aid allocation procedure prescribed in 20-9-347;

(2) recommending to the board of public education the entitlement of all districts and counties to state equalization aid to enable the board of public education to order the distribution of state equalization aid;

(3) distributing by state warrant or electronic transfer the state equalization aid, for each district or county entitled to the aid, to the county treasurer of the respective county or county where the district is located, in accordance with the distribution ordered by the board of public education;

(4) keeping a record in his office of the full and complete data concerning money available for state equalization aid and the entitlements for state equalization aid of the districts of the state;

(5) reporting to the board of public education the estimated amount that will be available for state equalization aid; and

(6) reporting to ~~both houses of~~ the ~~state~~ legislature ~~in any year when a session is convened~~ *as provided in [section 1]*:

(a) the figures and data available in his office concerning distributions of state equalization aid during the preceding 2 school fiscal years;

(b) the amount of state equalization aid then available;

(c) the apportionment made of the available money but not yet distributed; and

(d) the latest estimate of accruals of money available for state equalization aid."

Section 27. Section 20-25-236, MCA, is amended to read:

"20-25-236. **Report to legislature.** The Montana agricultural experiment station and the cooperative extension service shall, *as provided in [section 1]*, report to the legislature regarding the expenditures, activities, and outcomes of the program provided for in 20-25-233 through 20-25-236."

Section 28. Section 20-25-301, MCA, is amended to read:

"20-25-301. **Regents' powers and duties.** The board of regents of higher education shall serve as regents of the Montana university system, shall use and adopt this style in all its dealings therewith, and shall:

(1) have general control and supervision of the units of the Montana university system, which shall be considered for all purposes one university;

(2) adopt rules, not inconsistent with the constitution and the laws of the state, for its own government which are proper and necessary for the execution of the powers and duties conferred upon it by law;

(3) provide, subject to the laws of the state, rules for the government of the system;

(4) grant diplomas and degrees to the graduates of the system upon the recommendation of the faculties and have discretion to confer honorary degrees upon persons other than graduates upon the recommendation of the faculty of such institutions;

(5) keep a record of its proceedings;

(6) have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the system;

(7) receive from the board of land commissioners, other boards, persons, or from the government of the United States all funds, incomes, and other property the system may be entitled to and use and appropriate the property for the specific purpose of the grant or donation;

(8) have general control of all receipts and disbursements of the system;

(9) appoint a president and faculty for each of the institutions of the system, appoint any other necessary officers, agents, and employees, and fix their compensation;

(10) confer upon the executive board of each of the units of the system such authority as may be deemed expedient relating to immediate control and management, other than authority relating to financial matters or the selection of the teachers, employees, and faculty;

(11) confer, at the regents' discretion, upon the president and faculty of each of the units of the system for the best interest of the unit such authority relating to the immediate control and management, other than financial, and the selection of teachers and employees;

(12) prevent unnecessary duplication of courses at the units of the system;

(13) appoint a certified professional geologist or registered mining engineer as the director of the Montana state bureau of mines and geology, who shall be designated the state geologist, and appoint any other necessary assistants and employees and fix their compensation. The regents shall prepare *and, as provided in [section 1], submit* a report to each regular session of the legislature showing the progress and condition of the bureau, including any other necessary or required information.

(14) supervise and control the agricultural experiment station, along with any executive or subordinate board or authority which may be appointed by the governor with the advice and consent of the regents;

(15) adopt a seal bearing on its face the words "Montana university system", which must be affixed to all diplomas and all other papers, instruments, or documents which may require it;

(16) assure an adequate level of security for data and information technology resources, as defined in 2-15-102, within the state university system. In carrying out this responsibility, the board of regents shall, at a minimum, address the responsibilities prescribed in 2-15-114."

Section 29. Section 22-3-107, MCA, is amended to read:

"**22-3-107. Authority of board.** The powers and duties of the trustees are as follows:

(1) to elect annually from among their number a president, a vice-president, and a secretary;

(2) to adopt bylaws for their own government and to make rules, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people;

(3) to appoint a director, fix his salary, and prescribe his duties and responsibilities;

(4) to create such classes of memberships in the society as they deem desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for such memberships;

(5) to sell or exchange publications and other museum or art objects and use the money arising from such sales for the operation of the society and for the acquisition of historical materials and objects of art;

(6) to sell or exchange surplus or duplicate books, surplus museum or art objects or artifacts not pertinent to the region encompassed by the Montana historical society mission and to use the money arising from such sales exclusively for acquisitions of library, art, and museum artifacts;

(7) to see that the collections and properties of the society are maintained in good order and repair;

(8) to report to the governor and, *as provided in [section 1]*, the legislature biennially. The report shall include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(9) to accept, receive, and administer in the name of the society any gifts, donations, properties, securities, bequests, and legacies that may be made to the society. Moneys received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, shall be deposited in the state treasury and used for the general operation of the society.

(10) to collect, assemble, preserve, and display, where appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular and generally of the Pacific Northwest, Northern Rocky Mountain, and Northern Great Plains regions and of the United States of America when pertinent;

(11) to procure from pioneers, early settlers, and others narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west, and all other related documents of Montana's history, development, and society;

(12) to gather contemporary information, specimens, and all other materials which exhibit faithfully the distinctive historical and contemporary characteristics of the area, with particular attention to Indian, military, and pioneer artifacts and implements;

(13) to collect and preserve such natural history objects as fossils, plants, minerals, and animals;

(14) to collect and preserve books, maps, manuscripts, and other materials as will tend to facilitate historical, scientific, and antiquarian research;

(15) to promote the study of Montana history by lectures and publications;

(16) to publish a roadside history of Montana with maps, photographs, and text that will enable tourists, citizens, and students to understand the history of the countryside seen from the state's main roads;

(17) to generally foster and encourage the fine arts and cultural activities in Montana;

(18) to receive for and on behalf of the state, by donation or otherwise, art objects of any kind and description and to exhibit and circulate such objects in Montana and elsewhere;

(19) to microfilm papers or documents in danger of disappearance or injury; and

(20) to coordinate the administration of the historic records network established in 22-3-211."

Section 30. Section 23-5-1008, MCA, is amended to read:

"**23-5-1008. Legislative liaison committee — bipartisan — compensation from lottery fund.** (1) There is a legislative liaison committee.

(2) The liaison committee consists of four legislators. Two members must be from the senate and two members must be from the house of representatives. The speaker of the house and the senate committee on committees shall appoint the members of the liaison committee, and no more than two members may be of the same political party. No legislator who has any ownership interest in any gambling device or establishment may be appointed to the liaison committee.

(3) A member of the liaison committee is entitled to compensation and expenses as provided in 5-2-302, paid from money appropriated to the lottery, while performing his duties as a member of the liaison committee, as provided in subsection (4) of this section.

(4) The liaison committee shall meet once each fiscal year with the commission at Helena and shall, *as provided in [section 1],* report to each legislature on the activities and operations of the state lottery."

Section 31. Section 33-22-1513, MCA, is amended to read:

"**33-22-1513. Operation of association plan.** (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Not less than 88% of the association plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

(3) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses due to claims expenses of the association plan or be allocated to reduce association plan premiums.

(4) Each participating member of the association shall share the losses due to claims expenses of the association plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs. Claims expenses of the association plan that exceed the premium payments allocated to the payment of benefits are the liability of the association members. Association members shall share in the claims expenses of the association plan and operating and administrative expenses of the association in an amount equal to the ratio of:

(a) the association member's total disability insurance premium received from or on behalf of Montana residents divided by;

(b) the total disability premium received by all association members from or on behalf of Montana residents, as determined by the commissioner.

(5) The association shall make an annual determination of each association member's liability, if any, and may make an annual fiscal yearend assessment if necessary. The association may also, subject to the approval of the commissioner, provide for interim assessments against the association members as may be necessary to assure the financial capability of the association in meeting the incurred or estimated claims expenses of the association plan and operating and administrative expenses of the association until the association's next annual fiscal yearend assessment. Payment of an assessment is due within 30 days of receipt by an association member of a written notice of a fiscal yearend or interim assessment. Failure by a contributing member to tender to the association the assessment within 30 days is grounds for termination of membership. An association member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year during which disability insurance business ceased. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed $10.

(6) Any annual fiscal yearend or interim assessment levied against an association member may be offset, in an amount equal to the assessment paid to the association, against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual fiscal yearend or interim assessment is levied. The insurance commissioner shall, ~~each year the legislature meets in regular session, on or before January 15,~~ *as provided in [section 1],* report to the legislature the total amount of premium tax offset claimed by association members during the preceding biennium."

Section 32. Section 37-1-106, MCA, is amended to read:

"**37-1-106. Biennial report to governor and legislature.** The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant. *The department shall provide a copy of the report to the governor and, as provided in [section 1], to the legislature.*"

Section 33. Section 39-6-101, MCA, is amended to read:

"**39-6-101. Duties of department.** (1) The department of labor and industry shall:

(a) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this chapter;

(b) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this chapter;

(c) keep a record of apprenticeship agreements and, upon performance thereof, issue certificates of completion of apprenticeship;

(d) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and

(e) provide assistance for the development of on-the-job training programs in nonapprenticeable occupations;

(f) establish standards for apprenticeship agreements in conformity with the provisions of this chapter;

(g) issue such rules as may be necessary to carry out the intent and purposes of this chapter; and

(h) perform such other duties as may be required by federal regulations, provided that such federal regulations are not in conflict with this chapter.

(2) Not less *often* than once every 2 years, the department shall make a report ~~through~~ *of its activities and findings to* the governor ~~of its activities~~ and, *as provided in [section 1],* ~~findings~~ to the legislature.~~, which shall be made~~ *The department shall also make the report* available to the public."

Section 34. Section 39-51-407, MCA, is amended to read:

"**39-51-407. Reimbursement of fund by state.** This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future and applied to the replacement of any of the money received from the United States or any agency thereof under Title III of the Social Security Act, any unencumbered balances in the unemployment insurance administration account, any money granted to this state pursuant to the provisions of the Wagner-Peyser Act, and any money made available by the state or its political subdivisions and matched by such money granted to this state pursuant to the provisions of the Wagner-Peyser Act which the secretary of labor finds have, because of any action or contingency, been lost or have been expended for purposes other than or in amounts in excess of those found necessary by the secretary of labor for the proper administration of this chapter. Such money shall be promptly supplied by money furnished by the state of Montana or any of its subdivisions for the use of the department and used only for purposes approved by the secretary of labor. The department shall, if necessary, promptly report to the governor and the governor to the legislature, *by a letter to the speaker of the house of representatives and the president of the senate,* the amount required for such replacement."

Section 35. Section 44-2-304, MCA, is amended to read:

"**44-2-304. Report by attorney general.** The attorney general shall prepare a report in detail covering the operations of the communications network, the accounting of all moneys received and expended, and the need to expand or improve the system. ~~He~~ *As provided in [section 1], he* shall submit ~~such~~ *the* report to the ~~appropriations committee of every~~ legislature ~~at the time funds are requested for the administration of this part~~."

Section 36. Section 44-13-103, MCA, is amended to read:

"**44-13-103. Limitations on use of special law enforcement assistance account.** (1) After property is credited to the account, the attorney general may:

(a) transfer the property to any local or state law enforcement agency to be used for criminal investigation purposes;

(b) sell the property by public sale;

(c) destroy any illegal or controlled substances and sell or destroy raw materials, products, and equipment used or intended for use in manufacturing, compounding, or processing a controlled substance;

(d) compromise and pay claims against the property; and

(e) make any other disposition of the property authorized by law.

(2) Money and proceeds from property credited to the account may be used by the attorney general for:

(a) the payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell seized, detained, or forfeited property, including but not limited to payment for contract services and reimbursement to a federal, state, or local agency for its expenses;

(b) the payment of awards for information or assistance leading to a criminal proceeding or a civil forfeiture proceeding;

(c) the compromise and payment of claims against property;

(d) the payment of sums for criminal investigation purposes, including but not limited to:

(i) payment of informants;

(ii) use by undercover agents to purchase unlawful substances, including, without limitation, counterfeit or real controlled substances, pornographic materials, stolen property, or other contraband;

(iii) use by undercover agents as gambling front money; and

(iv) payment of overtime to state or local law enforcement officers when engaged in special criminal investigations;

(e) the payment of funds into the account created by 53-9-109; and

(f) matching federal grants for criminal investigation purposes.

(3) The attorney general shall, *as provided in [section 1],* ~~give~~ *submit to* the legislature~~, not later than 4 months after the end of each fiscal year,~~ a detailed written report of the amounts and property credited to the account and of the disposition of money and property credited to the account, but may not make any disclosure that would compromise any investigation or prosecution."

Section 37. Section 46-23-316, MCA, is amended to read:

"**46-23-316. Governor's report to legislature.** The governor ~~must communicate~~ *shall, as provided in [section 1], report* to the legislature ~~at each regular session~~ each case of remission of fine or forfeiture, respite, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of remission, commutation, pardon, or respite, with the reason for granting the same, and the objection, if any, of any of the members of the board made thereto."

Section 38. Section 53-2-1107, MCA, is amended to read:

"**53-2-1107. Job training plan — requirements.** (1) Each private industry council shall prepare for the service delivery area a job training plan that has been prepared in accordance with this part and sections 103 through 105 of the Job Training Partnership Act (29 U.S.C. 1513 through 1515).

(2) Each job training plan must include:

(a) the council's priorities for services and groups to be served within the service delivery area;

(b) procedures to be used in identifying and selecting program participants and in determining and verifying their eligibility;

(c) the type of services and training to be provided, including the estimated cost per participant;

(d) criteria for evaluating the content and quality of services and training;

(e) performance standards as required under 53-2-1108;

(f) procedures for selecting service providers as required under section 107 of the Job Training Partnership Act (29 U.S.C. 1517);

(g) a plan for the coordination of services and training with other programs as required in 53-2-1109;

(h) a procedure for preparing and submitting to the governor and, *as provided in [section 1] if practical,* the legislature an annual report that describes the activities conducted in the service delivery area during the program year and the extent to which activities exceeded or failed to meet the performance standards adopted in the job training plan; and

(i) all other information required under section 104 of the Job Training Partnership Act (29 U.S.C. 1514)."

Section 39. Section 53-6-110, MCA, is amended to read:

"**53-6-110. Report and recommendations to legislature on medicaid funding.** (1) At the commencement of each legislative session, the department of social and rehabilitation services shall submit a report, *as provided in [section 1],* to the legislature concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections shall identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health plan prepared pursuant to 42 U.S.C. 300m-2(a)(2).

(2) ~~In addition to~~ *As an integral part of* the report, the department of social and rehabilitation services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health plan.

(3) In arriving at the projections and recommendation required in subsections (1) and (2), the department of social and rehabilitation services shall consult with the department of health and environmental sciences.

(4) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services."

Section 40. Section 53-20-104, MCA, is amended to read:

"53-20-104. **Powers and duties of mental disabilities board of visitors.** (1) The board shall be an independent board of inquiry and review to assure that the treatment of all persons admitted to a residential facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research or hazardous treatment procedures involving persons admitted to any residential facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare. No experimental research project involving persons admitted to any residential facility affected by this part may be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall investigate all cases of alleged mistreatment of a resident.

(4) The board shall at least annually inspect every residential facility which is providing a course of residential habilitation and treatment to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the institution.

(5) The board shall inspect the file of each person admitted to a residential facility pursuant to this part to insure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(6) The board may assist any resident at a residential facility in resolving any grievance he may have concerning his admission or his course of treatment and habilitation in the facility.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any resident, it shall report its findings at once to the professional person in charge of the facility and the director of the department of institutions. If appropriate, after waiting a reasonable time for a response from such professional person, the board may notify the parents or guardian of any resident involved, the next of kin, if known, the responsible person ap-

pointed by the court for any resident involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor and shall, *as provided in [section 1],* report to ~~each session of~~ the legislature concerning the status of the residential facilities and habilitation programs which it has inspected."

Section 41. Section 53-21-104, MCA, is amended to read:

"**53-21-104. Powers and duties of mental disabilities board of visitors.** (1) The board shall be an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare. No experimental research project involving persons admitted to a mental health facility affected by this part may be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall at least annually inspect every mental health facility which is providing treatment and evaluation to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(4) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this part. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(5) The board may assist any patient at a mental health facility in resolving any grievance he may have concerning his commitment or his course of treatment in the facility.

(6) The board shall employ and be responsible for full-time legal counsel at the state hospital, whose responsibility shall be to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine his files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the professional person in charge of the facility and the director of the department, and if appropriate, after waiting a reasonable time for a response from such professional person, the board may notify the next of kin or guardian of any patient involved, the friend of respondent appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor and shall, *as provided in [section 1],* report to ~~each session of~~ the legislature concerning the status of the mental health facilities and treatment programs which it has inspected."

Section 42. Section 53-24-204, MCA, is amended to read:

"**53-24-204. Powers and duties of department.** (1) To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts;

(c) acquire and dispose of property.

(2) The department shall:

(a) approve treatment facilities as provided for in 53-24-208;

(b) prepare a comprehensive long-term state chemical dependency plan every 4 years and update this plan each biennium. These updates or any part thereof may be included in the department's report to the legislature *required in 53-24-210*;

(c) provide for and conduct statewide service system evaluations;

(d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to chemically dependent persons;

(f) establish criteria to be used for the development of new programs;

(g) certify and establish standards for the certification of:

(i) chemical dependency counselors; and

(ii) instructors providing chemical dependency educational courses;

(h) encourage planning for the greatest utilization of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services;

(i) cooperate with the board of pardons in establishing and conducting programs to provide treatment for chemically dependent and intoxicated persons in or on parole from penal institutions; and

(j) establish standards for chemical dependency educational courses provided by state-approved treatment programs and approve or disapprove the courses."

Section 43. Section 53-24-210, MCA, is amended to read:

"**53-24-210. Departmental reports to legislature.** The department shall, *as provided in [section 1]*, report to ~~each legislative session~~ *the legislature* on the status of the implemented chapter. This report or any part thereof may be included as the department's state plan for alcohol abuse and chemical dependency."

Section 44. Section 53-30-133, MCA, is amended to read:

"**53-30-133. Administration of prison industries training program.** (1) (a) The prison industries training program need not be a self-supporting program. The department of institutions may enter into contracts and establish prices for products or services produced by this program. Within budgetary restrictions, the department shall establish prices that tend to maximize the amount of work available for inmates. All revenue raised through the program may be used only for the program.

(b) State agencies, local governments, school districts, authorities, and other local government entities are encouraged to explore the possibilities of using the prison industries training program. State agencies shall cooperate with the department of institutions in notifying governmental entities within the state of the program and of the services and products that are available.

(2) (a) The department of institutions shall adopt rules implementing this program and shall, *as provided in [section 1]*, report to the legislature its continuing plans and recommendations in implementing this program. Any price lists established by the department are exempt from the provisions of Title 2, chapter 4 (the Montana Administrative Procedure Act), but the department may, if it considers it an effective method of dissemination, publish such price lists in the Montana Administrative Register or the Administrative Rules of Montana, or both.

(b) The department of institutions is subject to program audits of the prison industries training program by the legislative auditor."

Section 45. Section 69-1-404, MCA, is amended to read:

"**69-1-404. Annual review by legislative finance committee.** (1) The legislative finance committee shall annually review the department's budget and the calculations made by the department of revenue in the determination of the fee pursuant to 69-1-403.

(2) The legislative finance committee shall, *as provided in [section 1]*, report the results of its review to ~~each regular session of~~ the legislature and shall include in its report any recommendations concerning the manner of funding the department."

Section 46. Section 72-16-202, MCA, is amended to read:

"**72-16-202. Report to governor and legislature.** The department of revenue shall biennially report to the governor and, *as provided in [section 1]*, to the legislature ~~at the opening of the sessions~~ the general result of its labors and investigations in inheritance tax matters during the previous biennial period, together with specific reports of the several counties where the administration of the inheritance tax laws has been lax and unsatisfactory, with such recommendations for action ~~thereon~~ by the legislature as ~~may be deemed~~ *the department considers* advisable and proper."

Section 47. Section 75-1-203, MCA, is amended to read:

"**75-1-203. Fee schedule — maximums.** (1) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate as specified in 75-1-202, an agency may adopt a fee schedule which may be adjusted depending upon the size and complexity of the proposed project. No fee may be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring expenses in excess of $2,500 to compile an environmental impact statement.

(2) The maximum fee that may be imposed by an agency shall not exceed 2% of any estimated cost up to $1 million, plus 1% of any estimated cost over $1 million and up to $20 million, plus 1/2 of 1% of any estimated cost over $20 million and up to $100 million, plus 1/4 of 1% of any estimated cost over $100 million and up to $300 million, plus 1/8 of 1% of any estimated cost in excess of $300 million.

(3) If an application consists of two or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities. The estimated cost shall be determined by the agency and the applicant at the time the application is filed.

(4) Each agency shall review and revise its rules imposing fees as authorized by this part at least every 2 years. Furthermore, each agency shall, *pursuant to [section 1]*, provide the legislature with a complete report on the fees collected prior to the time that a request for an appropriation is made to the legislature."

Section 48. Section 75-1-1101, MCA, is amended to read:

"**75-1-1101. Environmental contingency account objectives.** (1) There is created an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) At the beginning of each biennium, $175,000 must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund with the following exceptions:

(a) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account equals or exceeds $750,000, no allocation will be made; and

(b) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account is less than $750,000, then an amount less than or equal to the difference between the unobligated cash balance and $750,000, but not to exceed $175,000, must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund.

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support water development projects in communities that face an emergency or imminent need for such services or to prevent the physical failure of a water project;

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development; and

(d) to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) Interest from funds in the environmental contingency account accrues to the resource indemnity trust interest account.

(5) The governor shall, *as provided in [section 1],* submit to the legislature ~~at the beginning of each regular session~~ a complete financial report on the environmental contingency account, including a description of all expenditures made since the preceding report."

Section 49. Section 75-7-304, MCA, is amended to read:

"**75-7-304. Duties of the commission.** Duties of the commission are:

(1) to monitor the existing condition of natural resources in the basin and coordinate development of an annual monitoring plan. This plan must involve a cooperative strategy among all land and water management agencies within the Flathead basin and identify proposed and needed monitoring which emphasizes but is not limited to the aquatic resources of the Flathead basin.

(2) to encourage close cooperation and coordination between federal, state, provincial, tribal, and local resource managers for establishment of compatible resource development standards, comprehensive monitoring, and data collection and interpretation;

(3) to encourage and work for international cooperation and coordination between the state of Montana and the Province of British Columbia concerning the undertaking of natural resource monitoring and use of consistent standards for management of resource development activities throughout the North Fork Flathead River drainage portion of the Flathead basin;

(4) to encourage economic development and use of the basin's resources to their fullest extent without compromising the present high quality of the Flathead basin's aquatic environment;

(5) to, in the discretion of the commission, undertake investigations of resource utilization and hold public hearings concerning the condition of Flathead Lake and Flathead basin;

(6) to submit ~~a biennial report~~ to the governor and, *as provided in [section 1], to* the ~~appropriate committees of the~~ legislature *a biennial report* that includes:

(a) a summary of information gathered in fulfillment of its duties under this section;

(b) information on monitoring activities within the Flathead basin concerning the condition of the basin's natural resources, with particular emphasis on Flathead Lake;

(c) the identification of land use and land development trends in the Flathead basin;

(d) any recommendations the commission considers appropriate for fulfillment of its duties and for continued preservation of the Flathead basin in the present high quality of its aquatic resources; and

(e) an accounting of all money received and expended, by source and purpose, for the period since the last report; and

(7) to meet at least semiannually within the Flathead basin, alternating the meeting site between the cities of Kalispell and Polson."

Section 50. Section 75-10-533, MCA, is amended to read:

"**75-10-533. Department to report fees to legislature.** The department shall, *as provided in [section 1]*, report to each legislature the amount collected under this part and 61-3-508 and the cost of administration of this part, except 75-10-520, to date so that any necessary adjustment of the amount of the fee may be made to assure that no more than the actual cost of operation of the program is collected."

Section 51. Section 75-10-704, MCA, is amended to read:

"**75-10-704. Environmental quality protection fund.** (1) There is created in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) establish and implement a system for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify responsible parties, to obtain the participation and financial contribution of responsible parties for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature; and

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) The department shall, *as provided in [section 1],* submit to the legislature ~~at the beginning of each regular session~~ a complete financial report on the fund, including a description of all expenditures made since the preceding report."

Section 52. Section 76-11-203, MCA, is amended to read:

"**76-11-203. Direction to state agencies.** (1) The department of natural resources and conservation shall develop a plan for completing the soil survey and mapping program in cooperation with and according to the standards set forth by the national cooperative soil survey program and the Montana state agricultural experiment station.

(2) The soil survey plan shall identify all projected local participation, all funds available from state and federal agencies, including planning grants, and any and all additional equipment, personnel, facilities, supplies, maps and such other material necessary to complete the soil survey and mapping program.

(3) The soil survey plan shall determine geographic areas without modern soil survey information and shall establish in cooperation with the national cooperative soil survey program priorities for completing soil surveys based upon the needs of the geographic areas.

(4) The department of natural resources and conservation shall oversee the plan for completing the soil survey and mapping program and shall report annually on its progress to the governor ~~and legislature~~ not later than January 1 of each year~~, beginning in 1981~~ *and, as provided in [section 1], to the legislature.*"

Section 53. Section 76-12-109, MCA, is amended to read:

"**76-12-109. Report to legislature.** The board shall, *as provided in [section 1],* submit to each legislature ~~an annual~~ *a* report on its designation and acquisition activities."

Section 54. Section 80-7-713, MCA, is amended to read:

"**80-7-713. Reports.** The department may prepare a biennial report on the status of noxious plants and their management in Montana. Reports may be submitted to the governor ~~and~~, *to the* legislature *as provided in [section 1],* and *to* other such groups and organizations as the department considers necessary."

Section 55. Section 80-12-402, MCA, is amended to read:

"**80-12-402. Report.** The department shall transmit to the governor *at least 30 days before each regular legislative session* and, *as provided in [section 1],* to ~~each member of~~ the legislature ~~at least 30 days before each regular legislative session~~ a report:

(1) detailing the operations of the agricultural loan authority program since the adjournment of the last legislature; and

(2) containing a financial statement showing the program's assets and liabilities."

Section 56. Section 82-11-161, MCA, is amended to read:

"**82-11-161. Oil and gas production damage mitigation account — statutory appropriation.** (1) There is an oil and gas production damage mitigation account within the state special revenue fund established in 17-2-102. The oil and gas production damage mitigation account is controlled by the board.

(2) On July 1, 1991, and at the beginning of each succeeding biennium, there must be allocated to the oil and gas production damage mitigation account $50,000 from the interest income of the resource indemnity trust fund, except if at the beginning of a biennium the unobligated cash balance in the oil and gas production damage mitigation account:

(a) equals or exceeds $200,000, no allocation will be made; or

(b) is less than $200,000, then an amount less than or equal to the difference between the unobligated cash balance and $200,000, but not more than $50,000, must be allocated to the oil and gas production damage mitigation account from the interest income of the resource indemnity trust fund.

(3) In addition to the allocation provided in subsection (2), there must be deposited in the oil and gas production damage mitigation account:

(a) all funds received by the board pursuant to 82-11-136; and

(b) all fees received by the board from owners of producing wells pursuant to 82-11-162.

(4) If a sufficient balance exists in the account, funds are statutorily appropriated, as provided in 17-7-502, from the oil and gas production damage mitigation account, upon the authorization of the board, to pay the reasonable costs of properly plugging a well if the board determines that the well, sump, or hole has been abandoned and the responsible person cannot be identified or located or the responsible person does not have sufficient funds to pay the costs. The responsible person shall, however, pay costs to the extent of his available resources and is subsequently liable to fully reimburse the account or is subject to a lien on property as provided in 82-11-164 for costs expended from the account to properly plug the well and to mitigate any damage caused by the well.

(5) Interest from funds in the oil and gas production damage mitigation account accrues to that account.

(6) The board shall, *as provided in [section 1],* submit to the legislature ~~at the beginning of each regular session~~ a complete financial report on the oil and gas production damage mitigation account, including a description of all expenditures made since the preceding report."

Section 57. Section 85-1-407, MCA, is amended to read:

"**85-1-407. Writeoff accounts receivable.** Upon abandonment or disposition of the project, the department shall cancel and write off accounts receivable carried on the books of the department. The department shall establish procedures for canceling and writing off accounts receivable~~, and the~~. *The* procedures ~~shall~~ *must* include the reporting, *as provided in [section 1]*, of the canceling and writing off of the accounts receivable to the next session of the legislature."

Section 58. Section 85-1-621, MCA, is amended to read:

"**85-1-621. Report to the legislature.** The department shall prepare a biennial report to the legislature describing the status of the water development program. The report must describe ongoing projects and activities and those which have been completed during the biennium. The report must identify and rank in order of priority the projects for which the department desires to seek congressional authorization and funding and the efforts the department will undertake in attempting to secure such authorization and funding. The report must also describe proposed projects and activities for the coming biennium and recommendations for necessary appropriations. A copy of the report shall be submitted to the president of the senate and the speaker of the house, to the members of the water policy committee established in 85-2-105, and, *as provided in [section 1]*, to ~~such other members of~~ the legislature ~~as may request a copy~~."

Section 59. Section 85-2-105, MCA, is amended to read:

"**85-2-105. Water policy committee.** (1) There is a permanent water policy committee of the legislature. The committee consists of eight members. The senate committee on committees and the speaker of the house of representatives shall each appoint four members on a bipartisan basis. The committee shall elect its chairman and vice-chairman. The committee shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the committee shall:

(a) advise the legislature on the adequacy of the state's water policy and of important state, regional, national, and international developments which affect Montana's water resources;

(b) oversee the policies and activities of the department of natural resources and conservation, other state executive agencies, and other state institutions, as they affect the water resources of the state; and

(c) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the committee shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state's water development program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water resources data management system maintained by the department under 85-2-112; and

(e) report to the legislature~~, not less than once every biennium~~ *as provided in [section 1]*.

(4) The environmental quality council shall provide staff assistance to the committee. The committee may contract with experts and consultants, in addition to receiving assistance from the environmental quality council, in carrying out its duties under this section."

Section 60. Section 87-2-724, MCA, is amended to read:

"**87-2-724. Auction of Shiras moose license.** (1) The commission may issue one male Shiras moose license each year through a competitive auction. The commission shall promulgate rules for the use of the license and conduct of the auction. A wildlife conservation organization involved in the conservation of moose may be authorized by the commission to conduct the license auction, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction expenses.

(2) All proceeds remaining from the auction, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of moose. The proceeds from the auction must be used in addition to any other funds the department uses for the management of moose. The department shall, *as provided in [section 1]*, report to each legislature concerning the use or investment of auction proceeds."

Section 61. Section 87-5-123, MCA, is amended to read:

"**87-5-123. Report.** The department shall, *as provided in [section 1]*, report to each legislature the results of any program using money from the nongame wildlife account and shall list in detail how the money collected was used."

Section 62. Section 90-3-203, MCA, is amended to read:

"**90-3-203. Powers and duties of board.** The board shall:

(1) make loans in science and technology development projects pursuant to the provisions of this act in the following areas that have potential to stimulate economic development in Montana:

(a) research capability development;

(b) applied technology research;

(c) technology transfer and assistance; and

(d) startup capital or expansion capital projects for development and commercialization of innovative products and processes;

(2) accept grants or receive devises of money or property to be used in Montana for loans made pursuant to this chapter; and

(3) submit to the governor *by January 1 of each odd-numbered year or at his request* and, *as provided in [section 1], to* the legislature a report describing the board's programs and accomplishments ~~by January 1 of each odd-numbered year or at the request of the governor~~."

Section 63. Section 90-4-111, MCA, is amended to read:

"**90-4-111. Biennial report.** The department shall monitor the grants awarded under 90-4-106 and 90-4-109 and shall, *as provided in [section 1],* report its expenditures and other information concerning the implementation and effectiveness of specific projects or programs for which grants were awarded under this part to the legislature ~~at the beginning of each regular legislative session~~."

Section 64. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 5, chapter 11, and the provisions of Title 5, chapter 11, apply to [section 1].

Section 65. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1991.

CHAPTER NO. 113

[HB 276]

AN ACT CREATING THE OFFENSE OF A CONTINUING CRIMINAL ENTERPRISE; DEFINING THE ELEMENTS OF A CONTINUING CRIMINAL ENTERPRISE; AND PROVIDING PENALTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Continuing criminal enterprise — penalty.** (1) A person who engages in a continuing criminal enterprise is guilty of a crime and upon conviction is punishable by a term of imprisonment and a fine not exceeding two times those authorized for the underlying offense. For purposes of this subsection, a person is engaged in a continuing criminal enterprise if:

(a) the person violates any provision of this chapter that is a felony; and

(b) the violation is a part of a continuing series of two or more violations of this chapter on separate occasions:

(i) that are undertaken by the person in concert with five or more other persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management; and

(ii) from which the person obtained substantial income or resources.

(2) A person who violates the provisions of subsection (1) after a previous judgment of conviction under that subsection has become final is punishable by a term of imprisonment not exceeding three times that authorized for the underlying offense.

(3) A sentence for a conviction under this section runs consecutively with the conviction for the underlying offense. Mandatory minimum sentences must be multiplied as provided in this section and may not be waived or suspended.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 9, part 1, and the provisions of Title 45, chapter 9, part 1, apply to [section 1].

Approved March 20, 1991.

CHAPTER NO. 114

[HB 310]

AN ACT TO CLARIFY THAT THE CRIME OF ESCAPE INCLUDES ESCAPE WHILE IN TRANSIT TO OR FROM A PLACE OF OFFICIAL DETENTION; TO LIMIT TO CHARGED OR CONVICTED FELONS THE PENALTY FOR ESCAPE WITHOUT FORCE OR THREAT OF FORCE FROM CERTAIN PLACES OR WHILE IN TRANSIT TO OR FROM THOSE PLACES; AND AMENDING SECTION 45-7-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-7-306, MCA, is amended to read:

"**45-7-306. Escape.** (1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, supervision while under a supervised release program, participation in a county jail work program under 7-32-2225 through 7-32-2227, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. "Official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if he is participating in a county jail work program under 7-32-2225 through 7-32-2227 and he knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if he escapes from *or while in transit to or from* a state prison, county jail, city jail, or supervised release program by the use or threat of force, physical violence, weapon, or simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if he:

(i) *has been charged with or convicted of a felony and* escapes from *or while in transit to or from* a state prison, county jail, city jail, halfway house, life skills center, or supervised release program; or

(ii) escapes from *or while in transit to or from* another official detention by the use or threat of force, physical violence, weapon, or simulated weapon; or

(c) fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if he commits escape, *including escape while in transit to or from official detention,* under circumstances other than (a) and (b) of this subsection."

Approved March 20, 1991.

CHAPTER NO. 115

[HB 345]

AN ACT INCREASING THE NUMBER OF TIMES A YEAR THE PHYSICAL THERAPIST'S LICENSING EXAMINATION IS OFFERED AND THE NUMBER OF TIMES AN APPLICANT MAY TAKE THE LICENSING EXAMINATION; AMENDING SECTIONS 37-11-201 AND 37-11-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-11-201, MCA, is amended to read:

"**37-11-201. General powers — rulemaking power — records.** (1) The board may:

(a) adopt rules to carry this chapter into effect;

(b) grant, suspend, and revoke licenses;

(c) issue subpoenas requiring the attendance of witnesses or the production of books and papers; and

(d) take any other disciplinary action necessary to protect the public.

(2) The board shall:

(a) examine applicants for licenses ~~twice~~ *three times* a year at reasonable places and times determined by the board;

(b) review the qualifications of applicants who are approved for examination for licensure; and

(c) conduct written examinations that measure the qualifications of individual applicants along with any oral or practical examinations when determined by the board to be appropriate.

(3) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register ~~shall~~ *must* show the name of every living licensed physical therapist, his last-known place of business, last-known place of residence, and the date and number of his license and certificate as a licensed physical therapist.

(4) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail, upon request, a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list so furnished.

(5) The department may change addresses and surnames on the licensee's records only on the specific written request by the individual licensee."

Section 2. Section 37-11-304, MCA, is amended to read:

"**37-11-304. Application for examination — fee.** (1) Unless entitled to a license under 37-11-307, a person who desires to be licensed as a physical therapist shall apply to the department in writing, on a form furnished by the department. He shall*:*

(a) embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to *the* examination required by 37-11-303~~.~~*; and*

~~(2)~~*(b)* ~~He shall~~ pay to the department at the time of filing his application a fee as established by the board by rule. ~~Said~~ *The* fee ~~shall~~ *must* be commensurate with the cost of the examination and its administration and

~~shall~~ *must* be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

~~(3)~~*(2)* Anyone failing to pass the required examination *on his first attempt* is entitled to *sit for* a second examination ~~within 6 months~~ *and, if he fails the second examination, to sit for a third examination.*"

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1991.

CHAPTER NO. 116

[HB 432]

AN ACT PROVIDING A RETIREMENT ALLOWANCE AT AGE 50 FOR MEMBERS OF THE SHERIFFS' RETIREMENT SYSTEM WHO ARE INVOLUNTARILY DISCONTINUED FROM SERVICE AFTER 5 YEARS OF SERVICE; AMENDING SECTION 19-7-504, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-7-504, MCA, is amended to read:

"**19-7-504. Involuntary retirement allowance.** If a member is involuntarily discontinued from service after having completed ~~10~~ *5* years of total service but before reaching retirement age, he shall, upon filing an application, be paid in one of the following ways:

(1) the full amount of his accumulated deductions; or

(2) a retirement allowance beginning on his ~~55th~~ *50th* birthday, calculated under the provisions of 19-7-502."

Section 2. **Applicability.** [This act] applies to members of the sheriffs' retirement system, as established in 19-7-102, involuntarily discontinued from service on or after July 1, 1991.

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved March 20, 1991.

CHAPTER NO. 117

[HB 516]

AN ACT TO ALLOW THE SUPERINTENDENT OF A STATE YOUTH CORRECTIONAL FACILITY TO CONSENT TO ANY NECESSARY MEDICAL TREATMENT FOR A YOUTH COMMITTED TO THE FACILITY; AMENDING SECTION 53-30-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-30-206, MCA, is amended to read:

"**53-30-206. Superintendents to manage facilities.** Each facility provided for ~~herein~~ *in 53-30-202* ~~shall be~~ *is* under the immediate management and control of a superintendent. If the parent or legal guardian of a resident of a facility cannot be located, the superintendent or his designee may consent to ~~emergency~~ *necessary* medical treatment for the resident of the facility under his management and control."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1991.

CHAPTER NO. 118

[HB 585]

AN ACT TO INCREASE THE MINIMUM AMOUNT OF A LOST OR DESTROYED WARRANT NOT REQUIRING AN INDEMNITY BOND; TO ALLOW DUPLICATE WARRANTS TO BE ISSUED TO PUBLIC RETIREES AND STUDENT FINANCIAL AID RECIPIENTS FOR LOST OR DESTROYED WARRANTS WITHOUT REQUIRING AN INDEMNITY BOND; AMENDING SECTION 17-8-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-8-306, MCA, is amended to read:

"**17-8-306. Issuance of duplicate warrant.** (1) The state auditor may issue a duplicate warrant whenever any warrant drawn by him upon the treasurer of the state is lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate", and except as herein provided, no such warrant may be issued or delivered unless the person entitled to receive the same deposits with the state auditor a bond in double the amount for which the duplicate warrant is issued, conditioned to save Montana and its officers harmless on account of the issuance of the duplicate warrant.

(2) No bond of indemnity is required when:

(a) the payee is the United States government, a state of the United States, any agency, instrumentality, or officer of the United States government or of a state, county, city, city and county, town, district, or other political subdivision of a state or any officer thereof;

(b) the owner or custodian is the state of Montana or any agency or officer thereof;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by the state of Montana;

(d) the state auditor has chosen to waive the requirement upon receipt of evidence that the original warrant has been lost or destroyed as a result of a disaster or other major occurrence;

(e) the amount of the lost or destroyed warrant is less than ~~$100~~ *$300*;

(f) it can be established that a crime has been committed and as a result of such crime that a Montana warrant has been stolen or destroyed;

(g) it can be established that a Montana warrant has been mailed to an incorrect payee;

(h) the payee is a vendor or contractor doing business with the state of Montana; ~~or~~

(i) the payee is a recipient of public assistance under Title 53*;*

(j) the payee is a recipient of a monthly annuity under Title 19; or

(k) the payee is a recipient of student financial assistance administered or insured by the guaranteed student loan program pursuant to Title 20, chapter 26.

(3) Whenever the owner or custodian applies under the provisions of subsection (2)(d), (2)(f), (2)(g), (2)(h), ~~or~~ (2)(i), *(2)(j), or (2)(k),* a stop-payment order shall be placed on the original warrant by the state auditor.

(4) Whenever the owner or custodian applies under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), (2)(g), (2)(h), ~~or~~ (2)(i), *(2)(j), or (2)(k),* the application shall include an agreement to indemnify and hold harmless the state or its officers and employees from any loss resulting from the issuance of a duplicate warrant. Any loss incurred in connection with the issuance of a duplicate warrant shall be charged against the account from which the payment was derived."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1991.

CHAPTER NO. 119

[HB 695]

AN ACT AUTHORIZING THE SECRETARY OF STATE TO CREATE ADVISORY COUNCILS; AND AMENDING SECTION 2-15-122, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-122, MCA, is amended to read:

"**2-15-122. Creation of advisory councils.** (1) (a) A department head or the governor may create advisory councils.

(b) An agency or an official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, may also create advisory councils but only if federal law or regulation requires that such official or agency create the advisory council as a condition to the receipt of federal funds.

(c) The board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, *the secretary of state,* and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. They must file a record of each council created by them in the office of the governor and the office of the secretary of state in accordance with subsection (9) of this section.

(2) Each advisory council created under this section shall be known as the ".... advisory council".

(3) The creating authority shall prescribe the composition and advisory functions of each advisory council created; appoint its members, who shall serve at the pleasure of the governor; and specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity as defined in 2-15-102(8).

(5) Unless he is a full-time salaried officer or employee of this state or of any political subdivision of this state, each member is entitled to be paid in an amount to be determined by the department head, not to exceed $25 for each day in which he is actually and necessarily engaged in the performance of council duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in

the performance of council duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year each advisory council shall elect a chairman and such other officers as it considers necessary.

(7) Unless otherwise specified by the creating authority, each advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the chairman or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (1)(c) of this section, an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor must file in his office and in the office of the secretary of state a record of the council created showing the council's:

(a) name, in accordance with subsection (2) of this section;

(b) composition;

(c) names and addresses of the appointed members;

(d) purpose;

(e) term of existence, in accordance with subsection (10) of this section.

(10) An advisory council may not be created to remain in existence longer than 2 years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the governor or by the board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, *the secretary of state,* or the superintendent of public instruction for those advisory councils created in the manner set forth in subsection (1)(c) of this section. If the existence of an advisory council is extended, they shall specify a new date, not more than 2 years later, when the existence of the advisory council ends and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary."

Approved March 20, 1991.

CHAPTER NO. 120

[SB 14]

AN ACT TO ALLOW A SELF-INSURED EMPLOYER UNDER WORKERS' COMPENSATION PLAN NO. 1 THE OPTION OF PROVIDING A CERTIFICATE OF DEPOSIT AS SECURITY; AMENDING SECTION 39-71-2106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent has been prepared for this bill because it amends 39-71-2106 to expressly authorize the department of labor and industry to adopt rules governing security deposits required from employers who elect to be self-insured under workers' compensation plan No. 1.

It is the intent of the legislature that, in adopting rules, the department allow self-insured employers to provide a security deposit as provided in 39-71-2106 that must be:

(1) automatically renewable;

(2) accompanied by a properly executed security instrument that must be filed of record to protect against employer bankruptcy and other insolvency; and

(3) filed with any other information or documentation necessary to protect the department.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2106, MCA, is amended to read:

"39-71-2106. **Requiring security of employer.** (1) The department may require any employer who elects to be bound by compensation plan No. 1 to provide a security deposit *in accordance with rules adopted by the department.* ~~Such~~ *The* security deposit may be a surety bond, government bond, *certificate of deposit,* or letter of credit approved by the department and must be the greater of:

(a) $250,000; or

(b) an average of the workers' compensation liabilities incurred by the employer in Montana for the past 3 calendar years.

(2) ~~If the department finds that an employer has lost his solvency or financial ability to pay the compensation herein provided to be paid which might reasonably be expected to be chargeable to the employer during the fiscal year to be covered by the permission or that the employer is an association, corporation, or organization of individual employers seeking permission to operate under compensation plan No. 1, the department must require the employer, before granting to him permission or before continu-~~

~~ing or engaging in such employment subject to the provisions of compensation plan No. 1, to give security in addition to the security described in subsection (1) for the payment of compensation, which security must be in such an amount as the department finds is reasonable and necessary to meet all liabilities of the employer which may reasonably and ordinarily be expected to accrue during the fiscal year.~~ *(a) The department shall require an employer to give security in addition to the security described in subsection (1) if:*

(i) the department determines that the employer is insolvent or lacks the financial ability to pay the compensation that is required under this chapter and that is chargeable to the employer during the fiscal year to be covered by the permission provided for in 39-71-2103; or

(ii) the employer is an association, corporation, or organization of individual employers seeking permission to operate under compensation plan No. 1.

(b) The additional security required in subsection (2)(a) must be an amount that the department finds reasonable and necessary to meet all liabilities that the employer may accrue under this chapter during the fiscal year.

(3) *(a)* The security provided for in subsection (2) must be deposited with the department and may be ~~a certain~~ *either an* estimated percent of the employer's last preceding annual payroll or a ~~certain~~ percent of the established amount of his annual payroll for the fiscal year~~; or the~~. *The* security may ~~be in the form~~ *consist* of:

(i) a bond or undertaking executed to the department in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that the employer will ~~well and truly~~ pay or cause to be paid *to his employees* all sums and amounts for which the employer ~~shall become~~ *becomes* liable under the terms of this chapter ~~to his employees~~ during the fiscal year; or ~~such security may consist of~~

(ii) any state, county, municipal, or school district bonds or the bonds or evidence of indebtedness of any individuals or corporations ~~which~~ *that* the department ~~deems~~ *considers* solvent~~; and every such~~.

(b) Every deposit and the character and amount of ~~such~~ *the* securities ~~shall~~ *must* at all times be subject to approval, revision, or change by the department as ~~in its judgment~~ *it* may ~~be required, and upon~~ *require.*

(c) Upon proof of the final payment of the liability for which ~~such~~ *the* securities are given, ~~such~~ *the* securities or any ~~remaining part thereof shall~~ *remainder of the securities must* be returned to the depositor.

(4) The department is liable for the value and safekeeping of all ~~such~~ deposits or securities and shall, at any time, upon demand of a bondsman or the depositor, account for the ~~same~~ *deposits or securities* and the earnings ~~thereof~~ *of the deposits or securities.*"

Section 2. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1991.

CHAPTER NO. 121

[SB 22]

AN ACT ELIMINATING THE BONDING REQUIREMENT FOR CERTAIN BULK FUEL USERS; AND AMENDING SECTION 15-70-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-304, MCA, is amended to read:

"**15-70-304. Bonding, release of surety, and additional bond.** (1) Except as provided in this section, a special fuel dealer's license or special fuel user's permit may not be issued to ~~any~~ *a* person or continued in force unless the person has furnished bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any ~~and all~~ taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of ~~any~~ *a* special fuel user not subject to subsection (2)(a) or (2)(b). Upon application, the department shall waive the bond requirement of ~~any~~ *a* public contractor licensed under Title 15, chapter 50, who has posted a performance bond conditioned on payment of all lawful taxes with the contracting entity.

(2) The total amount of the bond or bonds required of ~~any~~ *a* special fuel dealer ~~shall~~ *must* be equivalent to twice his estimated monthly tax payments, and the total amount of the bond or bonds required of ~~any~~ *a* special fuel user ~~shall~~ *must* be equivalent to twice his estimated quarterly tax payments as provided in this part, determined as the department considers proper; ~~provided,~~ however, ~~that~~ the total amount of the bond or bonds may not be less than:

(a) $5,000 for ~~any~~ *a* special fuel user awarded a contract in accordance with 15-70-321;

(b) $500 for any other special fuel user who:

~~(i) possesses special fuel in bulk storage in this state on which the tax has not been paid;~~

~~(ii)~~*(i)* requests a special fuel user's permit to be reissued after being canceled for cause; or

~~(iii)~~*(ii)* fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327; and

(c) $1,000 for a special fuel dealer.

(3) ~~Any~~ *A* surety on a bond furnished by a special fuel dealer or special fuel user, as provided in this section, ~~shall~~ *must* be released and discharged from any ~~and all~~ liability to the state accruing on the bond after the expiration of 30 days from the date ~~upon which~~ *when* the surety has lodged with the department a written request to be released and discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or ~~which shall accrue~~ *that accrues* before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the special fuel dealer or special fuel user who furnished the bond, and unless the special fuel dealer or special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301(2), the department shall cancel the special fuel dealer's license or special fuel user's permit.

(4) The department may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301(2) if, in its opinion, the security of the surety bond previously filed by the special fuel dealer or special fuel user or the market value of the properties deposited as security by the special fuel dealer or special fuel user becomes impaired or inadequate~~, and upon~~. *Upon* failure of the special fuel dealer or special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested ~~so~~ to do *so* by the department, the department shall cancel his license."

Approved March 20, 1991.

CHAPTER NO. 122

[SB 80]

AN ACT REVISING THE PENALTIES FOR OPERATING A VEHICLE OR COMBINATION OF VEHICLES WITHOUT A SPECIAL OVERWEIGHT PERMIT OR IN VIOLATION OF THE CONDITIONS OF THE PERMIT; AND AMENDING SECTIONS 61-10-145 AND 61-10-146, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-145, MCA, is amended to read:

"**61-10-145. Penalties.** (1) A person, firm, or corporation convicted of violating 61-10-101 through 61-10-110 shall be punished by a fine of not less than $30 or more than $100. A person, firm, or corporation convicted of operating a motor vehicle upon the public highways of this state with weight upon a wheel, axle, or group of axles greater than the maximum permitted by 61-10-101 through 61-10-110 shall be fined, in addition to other penalties provided by law for the offense, the following amounts:

(a) $30 for any excess weight up to and including 2,000 pounds;

(b) $50 for any excess weight more than 2,000 pounds and less than 4,001 pounds;

(c) $70 for any excess weight more than 4,000 pounds and less than 6,001 pounds;

(d) $100 for any excess weight more than 6,000 pounds and less than 8,001 pounds;

(e) $160 for any excess weight more than 8,000 pounds and less than 10,001 pounds;

(f) $220 for any excess weight more than 10,000 pounds and less than 12,001 pounds;

(g) $300 for any excess weight more than 12,000 pounds and less than 14,001 pounds;

(h) $400 for any excess weight more than 14,000 pounds and less than 16,001 pounds;

(i) $500 for any excess weight more than 16,000 pounds and less than 18,001 pounds;

(j) $600 for any excess weight more than 18,000 pounds and less than 20,001 pounds;

(k) $1,000 for any excess weight more than 20,000 pounds and less than 25,001 pounds;

(l) $2,000 for any excess weight more than 25,000 pounds.

(2) If a motor vehicle is equipped with a retractable axle that is not fully extended and carrying its proportionate share of the load while the motor vehicle is operated upon the highways of this state, the weight penalties in subsection (1) apply to all weight over the legal maximum allowed by the fixed axles regardless of whether the axle is extended at the time of weighing. In addition to the penalties in subsection (1), the owner or operator shall be fined $100 for failure to have the retractable axle fully extended while the gross weight of the vehicle exceeds the legal maximum allowed by the fixed axles.

(3) A complaint filed and a summons or notice to appear issued pertaining to a violation of the gross weight regulations in 61-10-101 through

61-10-110 ~~shall~~ *must* specify the amount of the overweight ~~which~~ *that* the defendant is alleged to have had upon the vehicle or combination of vehicles.

(4) The penalties in subsection (1) do not apply to an operator who fails to secure a special permit as provided for in 61-10-107(3) if the vehicle or combination of vehicles is not overweight with such a permit. The failure to obtain the special permit is punishable under 61-10-146 *and under this section as provided in 61-10-146,* and the operator is required to purchase the permit. If the vehicle or combination of vehicles exceeds the weight limitations allowed by special permit and the operator fails to obtain a permit under 61-10-107(3), the penalties of subsection (1) apply to the weight exceeding 80,000 pounds.

(5) It is a misdemeanor, punishable as provided in 46-18-212, for ~~any~~ *a* person, firm, or corporation to violate any of the provisions of 61-10-123, 61-10-141, or 61-10-142."

Section 2. Section 61-10-146, MCA, is amended to read:

"**61-10-146. Special permits — misrepresentations and violations as misdemeanor.** (1) A person who knowingly and willfully misrepresents the size or weight of a vehicle, combination of vehicles, load, object, or other thing in obtaining a special permit or who does not follow the requirements and conditions of the special permit or who operates a vehicle, combination of vehicles, load, object, or other thing the size or weight of which requires a special permit without first obtaining a special permit is guilty of a misdemeanor.

(2) A person, firm, or corporation convicted of*:*

(a) operating a vehicle or combination of vehicles with weight upon a wheel, axle, or group of axles greater than the maximum authorized by a special permit or of operating without a special permit a vehicle or combination of vehicles the weight of which requires a special permit shall, in addition to the other penalties provided by law for the offense, be punished by a fine in the amount provided in 61-10-145(1); or

(b) violating any provision of 61-10-124~~(4)~~*(6)* or any restriction on the special permits issued by the department under 61-10-124~~(4)~~*(6)* shall be punished by a fine of not less than $500 or more than $1,000, and all special permits issued for the operation of the combination in violation shall be confiscated. The combination must be separated into combinations of legal length before the units may proceed."

Approved March 20, 1991.

CHAPTER NO. 123

[SB 85]

AN ACT CLARIFYING THE MEANING OF THE TERM "INSTITUTIONS OF PURELY PUBLIC CHARITY"; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"**15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts, except, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) *property owned by* institutions of purely public charity *and directly used for purely public charitable purposes*;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit, *and property owned and used by an organization owning and operating facilities for the care of the retired, aged, or chronically ill, which are not operated for gain or profit*;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section

501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) provided the tools are owned by the taxpayer, the first $15,000 or less of market value of tools that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment; and

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105.

(2) (a) The term "institutions of purely public charity" includes ~~organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.~~ *any organization that meets the following requirements:*

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants; however, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Retroactive applicability.** [Section 1] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved March 20, 1991.

CHAPTER NO. 124

[SB 88]

AN ACT TO CHANGE THE MEMBERSHIP AND TERMS OF APPOINTMENT FOR MEMBERS OF THE CERTIFICATION STANDARDS AND PRACTICES ADVISORY COUNCIL; AMENDING SECTIONS 2-15-1522 AND 20-4-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1522, MCA, is amended to read:

"**2-15-1522. Certification standards and practices advisory council.** (1) There is a certification standards and practices advisory council allocated to the board of public education.

(2) The council consists of seven members appointed by majority vote of the board of public education. The membership of the council must include:

(a) ~~four~~ *three* teachers engaged in classroom teaching, including:

(i) one who teaches within kindergarten through grade 8;

(ii) one who teaches within grades 9 through 12 ~~or at a designated vocational-technical center~~; *and*

~~(iii) one who is employed as a specialist; and~~

~~(iv)~~*(iii)* one additional teacher from any category ~~set forth~~ in ~~this~~ subsection (2)(a) *or (2)(b)*;

(b) one person employed as a specialist or K-12 specialist;

~~(b)~~*(c)* one faculty member from an approved teacher education program offered by an accredited teacher education institution;

~~(c)~~*(d)* one person employed as an administrator, with the certification required in 20-4-106(1)(c); and

~~(d)~~*(e)* one school district trustee.

(3) The board of public education shall select and appoint the members by June 1. If a vacancy occurs on the council, the board of public education shall appoint a person from the category of membership, as provided in subsection (2), in which the vacancy has occurred *to serve the unexpired term*.

(4) ~~The term of office of an appointed member is 2 years~~ *Members shall serve staggered 3-year terms and must be appointed so that no more than three appointments expire in any 1 year.*"

Section 2. Section 20-4-131, MCA, is amended to read:

"**20-4-131. Definitions.** As used in 2-15-1522 and 20-4-131 through 20-4-133, ~~unless the context clearly indicates otherwise,~~ the following definitions apply:

(1) "Approved teacher education program" means a program that is offered by an accredited teacher education institution and approved by the board of public education.

(2) "Council" means the certification standards and practices advisory council created in 2-15-1522.

(3) "K-12 specialist" means a person employed by a school district as a librarian, school counselor, or special education or chapter I teacher or a person who has a K-12 endorsement and who is assigned to teach in a classroom that is not self-contained.

~~(3)~~*(4)* "Specialist" means a person employed by a school district ~~in a profession other than the teaching profession~~ *as a school psychologist.*"

Section 3. **Implementation of staggered terms.** (1) To implement the staggered-term system provided for in 2-15-1522, the first terms of the successors to the five members whose terms expire June 1, 1991, are as follows:

(a) two members shall serve 2-year terms; and

(b) three members shall serve 3-year terms.

(2) Upon expiration of the terms provided for in subsection (1), each member shall serve a 3-year term.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1991.

CHAPTER NO. 125

[SB 89]

AN ACT INCLUDING IN THE DEFINITION OF "BROKER" ONE WHO, FOR A FEE, REFERS A PERSON TO ANOTHER TO BUY OR SELL REAL ESTATE; AND AMENDING SECTION 37-51-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-102, MCA, is amended to read:

"**37-51-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) "Board" means the board of realty regulation provided for in 2-15-1867.

(3) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease; ~~or~~

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesman the name of a prospective buyer or seller of real property; or

~~(f)~~*(g)* advertises or holds himself out as engaged in any of the activities referred to in subsections (3)(a) through ~~(3)(e)~~ *(3)(f)*.

(4) "Broker associate" means a broker who associates with a broker owner and does not own an interest in a real estate firm.

(5) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

(6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(7) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(8) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(9) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(10) "Salesman" includes an individual who for a salary, commission or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate."

Approved March 20, 1991.

CHAPTER NO. 126

[SB 91]

AN ACT TO CLARIFY THAT THE GOVERNOR MAY APPOINT A HIGHWAY TRAFFIC SAFETY ADMINISTRATOR TO CARRY OUT THE GOVERNOR'S RESPONSIBILITIES UNDER THE HIGHWAY TRAFFIC SAFETY PROGRAM; AND AMENDING SECTION 61-2-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-2-103, MCA, is amended to read:

"**61-2-103. Duties.** (1) The governor is responsible for the administration of the highway traffic safety program. The governor may contract and do all other things necessary to secure the full benefits available to this state under the Federal Highway Safety Act of 1966, and, in so doing, may cooperate with federal and state agencies, private and public organizations, and individuals to effectuate the purposes of that enactment and all amendments to it. *The governor may appoint an administrator of the highway traffic safety program to carry out the governor's responsibilities under this part.* For purposes of participation in the Federal Highway Safety Act of 1966, the governor shall designate the superintendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of the programs, certification of teachers, and the acceptance, allocation, and expenditure of funds for driver education in accordance with applicable federal laws and regulations. Nothing in this part interferes with the provisions of 20-9-603 or part 5, chapter 7, of Title 20.

(2) The department of justice shall:

(a) advise and assist the governor in all matters of highway safety and establish comprehensive training programs, including establishment and regulation of driver training schools and certification of the schools and instructors and establishment of adult training and retraining programs;

(b) develop and procure practice driving facilities, simulators, and other teaching aids for school and driver training use;

(c) establish a continuing and adequate research program designed to determine the causes of accidents and effect a program of prevention;

(d) establish a uniform system of driver licensing, including mental and physical standards; and

(e) prescribe and establish safety regulations for motor vehicles and operators."

Approved March 20, 1991.

CHAPTER NO. 127

[SB 95]

AN ACT EXEMPTING POLICE EMERGENCY RESPONSE AND SAFETY EDUCATION VEHICLES FROM THE DEFINITION OF COMMERCIAL MOTOR VEHICLE; AND AMENDING SECTION 61-1-134, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-134, MCA, is amended to read:

"**61-1-134. Commercial motor vehicle defined — exceptions.** (1) "Commercial motor vehicle" means a motor vehicle used to transport passengers or property if the vehicle:

(a) has a gross vehicle weight of 26,001 pounds or more;

(b) is designed to transport more than 15 passengers, including the driver; or

(c) is used to transport hazardous material.

(2) Commercial motor vehicles under this section do not include vehicles operated within the state of Montana that are:

(a) registered as paying the 16% gross weight fee under 61-10-206; ~~or~~

(b) used for firefighting and that are bearing Montana tax-exempt plates*; or*

(c) police emergency response and safety education units.

(3) Vehicles that are operated within the state of Montana by farmers or persons employed by farmers who are transporting farm products or farm supplies and that are operated within 150 miles of the farm headquarters are not considered commercial motor vehicles under this section."

Approved March 20, 1991.

CHAPTER NO. 128

[SB 98]

AN ACT TO PROVIDE THAT A COUNTY, CITY, OR TOWN ATTORNEY SHALL REPORT TO THE DEPARTMENT OF COMMERCE ON ACTIONS TO BE TAKEN FOLLOWING COMPLETION OF A LOCAL GOVERNMENT AUDIT WHEN REQUESTED TO DO SO BY THE DEPARTMENT OF COMMERCE; AND AMENDING SECTION 2-7-515, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-515, MCA, is amended to read:

"**2-7-515. Actions by governing bodies.** (1) Upon receipt of the audit report, the governing bodies of each audited entity shall review the contents and within 30 days shall notify the department in writing as to what action they plan to take on any deficiencies or recommendations contained in the audit report. If no deficiencies or recommendations appear in the audit report, notification shall not be required.

(2) Notification to the department shall include a statement by the governing bodies that noted deficiencies or recommendations for improvement have been acted upon by adoption as recommended, adoption with modification, or rejection.

(3) In cases where a violation of law or nonperformance of duty is found on the part of an officer, employee, or board, the officer, employee, or board must be proceeded against by the attorney general or county, city, or town attorney as provided by law. ~~The~~ *If a written request to do so is received from the department, the* county, city, or town attorney shall report *the proceedings instituted or to be instituted, relating to the violations of law and nonperformance of duty,* to the department within 30 days after receiving the ~~audit report from the department~~ *request* ~~the proceedings instituted or to be instituted relating to the violations of law and nonperformance of duty~~. If the county, city, or town attorney fails or refuses to prosecute the case,

the department may employ an attorney to prosecute the case at the expense of the respective governmental entity."

Approved March 20, 1991.

CHAPTER NO. 129

[SB 102]

AN ACT TO ALLOW THE TRUSTEES OF A RURAL FIRE DISTRICT, A COUNTY GOVERNING BODY PROVIDING RURAL FIRE PROTECTION, OR THE COUNTY COMMISSIONERS OR TRUSTEES FOR A FIRE SERVICE AREA TO ELECT TO PROVIDE WORKERS' COMPENSATION COVERAGE FOR VOLUNTEER FIREFIGHTERS; TO DEFINE THE TERM "VOLUNTEER FIREFIGHTER"; TO PROVIDE THAT A VOLUNTEER FIREFIGHTER WHO RECEIVES WORKERS' COMPENSATION COVERAGE MAY NOT RECEIVE DISABILITY BENEFITS UNDER TITLE 19, CHAPTER 12, MCA; AND AMENDING SECTIONS 19-12-501, 39-71-118, AND 39-71-123, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, ~~and~~ workman,** ***and volunteer firefighter*** **defined.** (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers; or

(e) an airman or other person employed as a volunteer under 67-2-105.

(2) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

~~(2)~~*(3)* (a) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection ~~(2)(d)~~ *(3)(d)*. A partner or sole proprietor is not considered an employee within this chapter until such notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter.

(4) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 12."

Section 2. Section 39-71-123, MCA, is amended to read:

"**39-71-123. Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee. Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) Wages do not include:

(a) employee travel expense reimbursements or allowances for meals, lodging, travel, and subsistence;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in his regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which he is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter covered pursuant to 39-71-118(4) must be based upon a wage of not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter."

Section 3. Section 19-12-501, MCA, is amended to read:

"**19-12-501. Eligibility for disability and death benefits.** *(1)* ~~In order to~~ *To* qualify for benefits under 19-12-504 ~~and 19-12-505~~, a firefighter must, at the time the injury or sickness for which benefits are claimed was incurred ~~or~~, ~~in the case of a claim under 19-12-505, at the time of death,~~ have been an enrolled active member of a fire company *not covered by workers' compensation insurance.*

(2) To qualify for benefits under 19-12-505, a firefighter must, at the time of death, have been an enrolled active member of a fire company."

Approved March 20, 1991.

CHAPTER NO. 130

[SB 116]

AN ACT TO GENERALLY REVISE THE MONTANA CIGARETTE SALES ACT AND THE CIGARETTE SALES TAX LAW; ALLOWING THE USE OF A HEAT-APPLIED MACHINE TO AFFIX TAX STAMPS TO CIGARETTE PACKAGES; REMOVING THE PROHIBITION AGAINST SALE OF CIGARETTES IN COMBINATION WITH OTHER ARTICLES; REMOVING THE LIMIT OF 7 DAYS ON CREDIT SALES OF TOBACCO PRODUCTS; EXTENDING THE RECORDKEEPING REQUIREMENT; REPEALING SECTIONS 16-10-202 AND 16-10-305, MCA; AMENDING SECTIONS 16-11-102, 16-11-111, 16-11-113, 16-11-115, 16-11-116, AND 16-11-118, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-11-102, MCA, is amended to read:

"**16-11-102. Definitions.** (1) As used in this chapter, the following definitions ~~shall~~ apply unless the context requires otherwise:

(a) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.

~~(a)~~*(b)* ~~The word "department" shall mean~~ *"Department" means* the department of revenue ~~of the state of Montana~~ *provided for in 2-15-1301.*

~~(b)~~*(c)* ~~The word "person" shall mean any~~ *"Person" means an* individual, firm, fiduciary, partnership, corporation, trust, organization, or association, however formed.

~~(c) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or~~

~~cover of which is made of nontobacco paper or any other substance or material except tobacco.~~

(2) As used in this part, the following definitions ~~shall~~ apply unless the context requires otherwise:

~~(a) The words "insignia" or "indicia" shall mean the impression or mark approved by the department under the provisions of this part.~~

(a) "Cigarette vendor" means a person doing business in the state who purchases cigarettes through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines that he operates for a profit in premises or locations other than his own. That person must be treated as a wholesaler. A person who operates fewer than 10 cigarette vending machines must be treated as a retailer.

(b) ~~The words "full~~ *"Full* face value of insignia" ~~shall mean~~ *means* the total amount of the tax levied under this part.

~~(c) The words "public warehouses" shall mean agents or representatives of manufacturers who receive cigarettes in carload lots for distribution to wholesaler and retailers in original cases.~~

~~(d) The word "wholesaler" shall mean and include any person resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from the manufacturers thereof and stores, sells, or otherwise disposes of the same after they shall reach this state; and also any person who, within this state, manufactures or produces, directly or indirectly, cigarettes and sells or distributes the same within this state.~~

(c) "Insignia" or "indicia" means the impression, mark, or stamp approved by the department under the provisions of this part.

(d) "Licensed retailer" means any person, other than a wholesaler, subjobber, or cigarette vendor, who is licensed under the provisions of this part.

(e) "Licensed subjobber" means a subjobber licensed under the provisions of this part; he must be treated as a wholesaler.

~~(e)~~*(f)* ~~The words "licensed~~ *"Licensed* wholesaler" ~~shall mean~~ *means* a wholesaler ~~duly~~ licensed under the provisions of this part.

~~(f) The words "cigarette vendor" shall mean and include any person doing business in the state who purchases cigarettes through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines which he operates for a profit in premises or locations other than his own. Such person shall be treated as a wholesaler. Any person who operates less than 10 cigarette vending machines shall be treated as a retailer.~~

~~(g) The word "subjobber" shall mean and include any person who purchases cigarettes from a licensed wholesaler with the Montana cigarette tax insignia affixed thereto and sells or offers to sell such cigarettes to a licensed retailer or cigarette vendor. An isolated sale or exchange of ciga-~~

~~rettes between licensed retailers shall not constitute such retailers as subjobbers. It is further provided that a subjobber shall use the license in the interest of the general public. If during any month more than 35% of volume of cigarette sales be with any retail client whose business is controlled directly or indirectly through sanguinity or affinity with the owner or employer for such retail business, the license shall be deemed to have been used or to be intended to be used in violation of 16-11-144.~~

~~(h) The words "licensed subjobber" shall mean a subjobber duly licensed under the provisions of this part, and he shall be treated as a wholesaler.~~

(g) "Public warehouses" means agents or representatives of manufacturers who receive cigarettes in carload lots for distribution in original cases to wholesalers and retailers.

(h) "Record" means an original document, a legible facsimile, or an electronically preserved copy.

(i) ~~The word "retailer" shall mean any~~ *"Retailer" means a* person, other than a wholesaler, subjobber, or cigarette vendor, who is engaged in the business of selling cigarettes at retail.

~~(j) The words "licensed retailer" shall mean any person, other than a wholesaler, subjobber, or cigarette vendor, who is duly licensed under the provisions of this part.~~

~~(k)~~*(j)* ~~The words "sale"~~ *"Sale"* and "sell" ~~shall~~ mean ~~and include~~ any transfer of cigarettes by sale, as defined by 30-2-106, or by gift, barter, or exchange.

(k) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the Montana cigarette tax insignia affixed and sells or offers to sell the cigarettes to a licensed retailer or cigarette vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those retailers as subjobbers. A licensed subjobber shall use the license in the interest of the general public. If during any month more than 35% of the volume of cigarette sales by a subjobber is with any retail client whose business is controlled directly or indirectly through consanguinity or affinity with the owner or employer for that retail business, the license is considered to have been used or to be intended to be used in violation of this part.

(l) "Wholesaler" means any person resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from their manufacturers and stores, sells, or otherwise disposes of the cigarettes after they reach this state. The term includes a person who, within this state, manufactures or produces cigarettes, directly or indirectly, and sells or distributes the cigarettes within this state."

Section 2. Section 16-11-111, MCA, is amended to read:

"**16-11-111. Cigarette sales tax.** There is ~~hereby~~ levied, imposed, and assessed and there ~~shall~~ *must* be collected and paid to the state of Montana upon cigarettes sold or possessed in this state ~~the following~~ *an* excise tax ~~which shall be paid prior to the time of sale and delivery of cigarettes:~~ *of* 18 cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, ~~then~~ a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes."

Section 3. Section 16-11-113, MCA, is amended to read:

"**16-11-113. Tax insignia.** (1) ~~Within 72 hours after receipt by~~ *Except as provided in this section,* the distributor or dealer of any cigarettes~~,~~ ~~except as hereinafter provided, he~~ shall cause to be securely affixed ~~thereto~~ *to the cigarettes* the required insignia denoting the *applicable* tax ~~thereon~~. A person specifically exempted under the provisions of 16-11-132(2) ~~may~~ *is* not ~~be~~ considered to be acting unlawfully under this section.

(2) ~~Said~~ *The* insignia ~~shall~~ *must* be properly ~~canceled~~ *applied* prior to sale ~~or removal for consumption~~, under ~~such~~ regulations ~~as~~ *that* the department may prescribe.

~~(3) Each package shall have the required insignia to affix thereto in such a manner that the insignia will be destroyed when the package is opened.~~

~~(4)~~*(3)* Wholesalers and retailers licensed under this part may buy, sell, or have in their possession only cigarettes ~~which~~ *that* have *on each package* the insignia provided for in this part ~~on each package~~. The insignia provided for in this part ~~shall~~ *may* be sold *only* to and *must be* affixed *only* by licensed wholesalers and licensed retailers ~~only~~.

~~(5)~~*(4)* ~~Whenever~~ *If* any cigarettes *without the insignia affixed* are found in the place of business of any unlicensed wholesaler, retailer, or other person ~~without the insignia affixed and canceled or not marked as having been received by the unlicensed wholesaler, retailer, or person within the preceding 72 hours~~, the presumption ~~shall be~~ *is* that ~~such~~ *the* cigarettes are kept ~~therein~~ *in that place of business* in violation of the provisions of this part.

(5) Except as provided in 16-11-132(2), the insignia provided for in this part must be affixed before the sale of the cigarettes by a wholesaler."

Section 4. Section 16-11-115, MCA, is amended to read:

"**16-11-115. Tax meter machine — *tax stamp-applying machine — purchase of stamps.*** *(1)* The department may authorize any wholesaler or retailer of cigarettes licensed under this part to use a tax meter machine ~~with which~~ to imprint an insignia upon each package of cigarettes imported, sold, or delivered in this state. The insignia ~~shall~~ *must* be one approved by the department. Each package of cigarettes imported into ~~this state,~~ *or* delivered or sold ~~therein~~ ~~shall~~ *in this state must* be marked with the proper insignia of ~~such~~ *the* tax-stamping meter, and thereafter any original package of cigarettes so marked may be lawfully possessed and sold within the state by any wholesaler or retailer licensed under this part. The department shall supervise and check the operation of ~~such~~ *the* tax meter machines. ~~The operator of such~~ *Before using the* machine, ~~before using the same,~~ *the operator of the machine* shall take the *machine's* meter ~~thereof~~ to the county treasurer of the county in which the machine is operated~~,~~. ~~who~~ *The county treasurer* ~~is authorized to and~~ shall set ~~said~~ *the* meter for the number of packages specified and required by the operator. Prior to setting ~~said~~ *the* meter, the county treasurer shall charge ~~said~~ *the* operator the amount of money proper for ~~said~~ *the* setting, less the expense defrayment provided for in 16-11-114. The county treasurer shall collect this amount in advance unless the department has allowed the purchaser credit as provided in 16-11-117. The county treasurer shall report to the department on forms prescribed by it the name of the licensed wholesaler or licensed retailer and the number of packages for which ~~said~~ *the* meter was set and shall forward to the department any amounts collected from ~~said~~ *the* licensee.

(2) (a) The department may authorize a licensed wholesaler or licensed retailer to affix tax stamps to packages of cigarettes with a heat-applied machine approved by the department. The department shall supervise and check the operation of the stamp-applying machine.

(b) Tax stamps applied as provided in this subsection must be purchased from the department, and payment for the stamps must accompany the order unless the department has allowed the purchaser to delay payment as provided in 16-11-117."

Section 5. Section 16-11-116, MCA, is amended to read:

"**16-11-116. Resale of insignia prohibited — rebate.** ~~No~~ *A* wholesaler or retailer ~~shall~~ *may not* resell to any other wholesaler or retailer any insignia purchased by him from the department. ~~Any~~ *A* wholesaler or retailer who has on hand any meter settings *or tax insignia* at the time of discontinuing his business of selling cigarettes may apply to the department and be paid the face value of ~~said~~ *the* meter settings *or tax insignia* less the amount of the expense defrayment allowed by 16-11-114."

Section 6. Section 16-11-118, MCA, is amended to read:

"**16-11-118. Records of tax meter users *and stampers*.** All tax meter users *and stampers* shall keep for ~~a period of 1 year~~ *5 years* all invoices of cigarettes purchased and imported by them, all receipts issued by them and insignia purchased, ~~also~~ *and* an accurate record of all sales of cigarettes by ~~such~~ *the* tax meter users *or stampers*, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point, and destination. ~~Such~~ *The* tax meter users *or stampers* shall permit the department~~,~~ *and* its assistants, authorized agents, or representatives to examine all taxable items of cigarettes, invoices, receipts, books, paper, memoranda, and records as may be necessary to determine whether the tax meter machine *or tax stamp-applying machine* has been used as required or the insignia required by this part had been purchased and used or to determine the amount of such tax as may be due or unpaid."

Section 7. **Repealer.** Sections 16-10-202 and 16-10-305, MCA, are repealed.

Section 8. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 9. **Effective date.** [This act] is effective July 1, 1991.

Approved March 20, 1991.

CHAPTER NO. 131

[SB 130]

AN ACT LIMITING WORKERS' COMPENSATION PAYMENTS FOR PRESCRIPTION DRUGS TO THE PURCHASE OF GENERIC-NAME PRODUCTS UNLESS A PHYSICIAN SPECIFIES NO SUBSTITUTIONS OR THE GENERIC-NAME DRUG IS UNAVAILABLE; ALLOWING AN INJURED WORKER TO PAY THE DIFFERENCE IN THE COST FOR THE BRAND-NAME PRODUCT; REQUIRING PHARMACISTS TO BILL ONLY FOR THE COST OF THE GENERIC-NAME PRODUCT, EXCEPT WHEN PURCHASE OF THE BRAND-NAME DRUG IS OTHERWISE ALLOWED; AMENDING SECTION 39-71-704, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-704, MCA, is amended to read:

"**39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates.** (1) In addition to the compensation provided ~~by~~ *under* this chapter and as an additional benefit separate and apart from compensation *benefits actually provided,* the following must be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the department for the injuries sustained, *subject to the requirements of [section 2].*

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(c) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, must be established annually by the department and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state fund during the year preceding the adoption of the schedule. The state fund shall report fees billed in the form and at the times required by the department. The department shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules must be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) Beginning January 1, 1988, the department shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The department may coordinate this ratesetting function with other public agencies that have similar responsibilities.

(4) Notwithstanding subsection (2), beginning January 1, 1988, through December 31, 1991, the maximum fees payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), beginning January 1, 1988, through December 31, 1991, the hospital rates payable by insurers must be limited to those set in January 1988."

Section 2. **Payment for prescription drugs — limitations.** (1) For payment of prescription drugs, an insurer is liable only for the purchase of generic-name drugs if the generic-name product is the therapeutic equivalent of the brand-name drug prescribed by the physician, unless the physician specifies no substitutions or the generic-name drug is unavailable.

(2) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist the difference in the cost between the brand-name drug and the generic-name product, and the pharmacist may only bill the insurer for the cost of the generic-name drug.

(3) The pharmacist may bill only for the cost of the generic-name product on a signed itemized billing, except if purchase of the brand-name drug is allowed as provided in subsection (1).

(4) When billing for a brand-name drug, the pharmacist shall certify that the physician specified no substitutions or that the generic-name drug was unavailable.

(5) For purposes of this section, the terms "brand name", "drug product", and "generic name" have the same meaning as provided in 37-7-502.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 39, chapter 71, part 7, and the provisions of Title 39, chapter 71, part 7, apply to [section 2].

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved March 20, 1991.

CHAPTER NO. 132

[SB 131]

AN ACT PROVIDING A MEANS FOR A FOREIGN INSURER TO BECOME A DOMESTIC INSURER; PROVIDING A MEANS FOR A DOMESTIC INSURER TO TRANSFER ITS DOMICILE TO ANOTHER STATE; PROVIDING FOR THE CONTINUATION OF A CERTIFICATE OF AUTHORITY AND OTHER APPROVALS PERTAINING TO AN INSURER TRANSFERRING ITS DOMICILE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants additional rulemaking authority to the commissioner of insurance. Under [section 3] of the bill, the commissioner may adopt rules and regulations to enforce the provisions of [sections 1 and 2] that pertain to changes of domicile by foreign and domestic insurers.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Admission as domestic insurer — conversion to foreign insurer.** (1) An insurer organized under the laws of any other state and admitted to do business in this state for the purposes of writing insurance may become a domestic insurer by complying with all of the laws relative to the organization and licensing of a domestic insurer of the same type, designating its principal place of business in this state, and paying the filing fees specified in 33-2-708. An insurer complying with this subsection is entitled to a certificate of redomestication and a certificate of authority to transact business in this state, is subject to the authority and jurisdiction of this state, and has the same rights and obligations as other domestic insurers.

(2) A domestic insurer may, upon approval of the commissioner, transfer its domicile to any other state in which it is admitted to transact insurance. If the insurer is otherwise qualified, the commissioner shall approve a proposed transfer unless he determines a transfer is not in the

interest of the policyholders of this state. Upon a transfer, the insurer ceases to be a domestic insurer.

Section 2. **Effects of transfer of domicile.** The certificate of authority, producers' appointments and licenses, policy forms, rates, and other items that the commissioner allows, in his discretion, that are in existence at the time an insurer admitted to transact insurance in this state transfers its corporate domicile to this or any other state continue in full force and effect upon transfer if the insurer remains qualified to transact insurance in this state. All rates and outstanding policies of a transferring insurer remain in full force and effect, and policies need not be endorsed as to the new name of the company or its domicile unless required by the commissioner. A transferring insurer either shall file new policy forms for use in this state with the commissioner on or before the effective date of the transfer or may use existing policy forms with the appropriate endorsements, as allowed by the commissioner. A transferring insurer shall notify the commissioner of the proposed transfer and shall promptly file any resulting amendments to corporate documents required to be filed with the commissioner.

Section 3. **Authority to promulgate rules and regulations.** The commissioner may promulgate rules and regulations to carry out the purposes of [sections 1 and 2].

Section 4. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 33, chapter 2, and the provisions of Title 33, chapter 2, apply to [sections 1 through 3].

Section 5. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to January 1, 1991.

Approved March 20, 1991.

CHAPTER NO. 133

[SB 134]

AN ACT REVISING THE LABELING REQUIREMENTS FOR CERTAIN HAMBURGER AND GROUND BEEF TO STATE CONTENT IN TERMS OF LEAN AND FAT; REVISING THE ACCEPTABLE LEVELS OF FAT CONTENT FOR LEAN AND EXTRA LEAN HAMBURGER AND GROUND BEEF; PROVIDING FOR A SUPER LEAN GRADE OF HAMBURGER AND GROUND BEEF; AMENDING SECTIONS 50-31-103 AND 50-31-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-31-103, MCA, is amended to read:

"**50-31-103. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other source that has been found by the department to be of a safe and sanitary quality.

(3) "Artesian water" means water that is forced from below the ground toward the surface through a well by natural underground pressure.

(4) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(5) "Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other water that is from an approved source that is disinfected and placed in a sealed container or package for human consumption.

(6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.

(7) "Color" includes black, white, and intermediate grays.

(8) (a) "Color additive" means a material which:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with other substance) of imparting color thereto.

(b) This term does not include material which has been or is exempted under the federal act.

(9) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus, serum, and toxin act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(10) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(11) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(12) "Counterfeit drug" means a drug, drug container, or drug label which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and contains not more than 10 parts per million total solids.

(14) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(15) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(b) to affect the structure or function of the body of man or other animals.

(16) "Distilled water" means purified water that has been vaporized and condensed.

(17) "Drinking water" means water that has undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

(18) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of man or other animals;

(d) articles intended for use as components of any article specified in subsections (a), (b), or (c) but does not include devices or their components, parts, or accessories.

(19) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301, et seq.).

(20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of not less than 0.7 and not more than 1.4 milligrams per liter and complies with the food and drug administration quality standards set forth in 21 CFR 103.35.

(21) "Food" means:

(a) articles used for food or drink for man or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(22) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) This term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) a color additive;

(iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71, et seq.).

(23) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(24) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are ~~three~~ *four* grades of hamburger or ground beef:

(a) "~~economy~~ *regular* hamburger" or "~~economy~~ *regular* ground beef" may have*:*

(i) a fat content no greater than the federal standard set forth in 9 C.F.R. 319.15; *and*

(ii) a lean content of no less than 70%;

(b) "~~regular~~ *lean* hamburger" or "~~regular~~ *lean* ground beef" may have*:*

(i) a fat content no greater than ~~21%~~ *22%; and*

(ii) a lean content of no less than 78%;

(c) "extra lean hamburger" or "extra lean ground beef" may have*:*

(i) a fat content no greater than ~~18%~~ *16%; and*

(ii) a lean content of no less than 84%; and

(d) "super lean hamburger" or "super lean ground beef" may have:

(i) a fat content no greater than 12%; and

(ii) a lean content of no less than 88%.

(25) "Honey" means the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees; is levorotatory, contains not more than 25% of water, not more than .25% of ash, and not more than 8% sucrose.

(26) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

(27) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(28) "Menu" means any list presented to the patron which states the food items for sale in a food service establishment.

(29) "Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids.

(30) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(31) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(32) "Organic food" means food that conforms to the definition in 50-31-222.

(33) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers but does not include:

(a) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(b) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(34) "Person" includes an individual, partnership, corporation, and association.

(35) "Pesticide chemical" means a substance which alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(36) "Placard" means any nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

(37) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(38) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food, and the enclosure of such food in a package.

(39) "Purified water" means water produced by distillation, deionization, reverse osmosis, or other method and that meets the definition of purified water in the 20th edition of the pharmacopoeia of the United States of America, 1980.

(40) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(41) "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

(42) "Spring water" means water that originates in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth.

(43) "State board" or "board" means the board of health and environmental sciences provided for in 2-15-2104.

(44) "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.

(45) "Water-bottling plant" means any facility in which bottled water is produced.

(46) "Well water" means water that:

(a) is taken from below the ground through a piping device or similar installed device utilizing external force or vacuum;

(b) is not modified in its mineral content; and

(c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process."

Section 2. Section 50-31-208, MCA, is amended to read:

"**50-31-208. Sale of hamburger and beef patty mix.** (1) No food service establishment or retail establishment may use the terms "hamburger", "burger", or other similar term in any advertisement or menu to refer to any beef patty mix. A food service establishment or retail establishment selling or serving beef patty mix may refer to the product as "beef patty mix" or by any other term which accurately informs the customer of the nature of the food product which he is sold or served.

(2) If beef patty mix is sold or served in a food service establishment or retail establishment, a list of ingredients must appear on the menu or label, or, if there is no menu or label, on a placard as follows:

(a) The term "beef patty mix" or any other term which accurately informs the customer of the nature of the food product and its ingredients must be included.

(b) The ingredients must be listed in descending order of predominance by weight.

(c) If there is no menu or label, the lettering on the placard must be at least 1 inch in height (72-point letters) in boldface and in colors that contrast with the placard.

(d) The placard must be posted in a permanent place, conspicuous to the customer, in each room or area where food is served or sold at retail.

(3) If hamburger or ground beef is sold in a retail establishment, the grade, as defined in 50-31-103(24), and the maximum fat *and minimum lean* content must appear on each displayed package or, if the product is not packaged for display, on a placard. If a placard is used, it must satisfy the requirements of subsections (2)(c) and (2)(d) of this section. The provisions of this subsection do not apply to the service of prepared hamburger or ground beef at a food service establishment."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1991.

CHAPTER NO. 134

[SB 135]

AN ACT REQUIRING THE LICENSING OF WHOLESALE DRUG DISTRIBUTORS; PROVIDING FOR LICENSE FEES; PROVIDING PENALTIES FOR VIOLATIONS; AMENDING SECTION 37-7-201, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it is anticipated that promulgation of administrative rules will be necessary to implement this bill. This bill is proposed solely to bring Montana standards on licensing wholesale drug distributors into compliance with rules of the federal food and drug administration (FDA). Unless state law complies with FDA requirements by September 1992, federal law would prohibit the distribution of drugs by manufacturers and wholesalers in Montana. In adopting administrative rules, the department of commerce shall implement the federal Prescription Drug Marketing Act of 1987 as well as guidelines developed by the FDA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-7-201, MCA, is amended to read:

"**37-7-201. Organization — powers and duties.** (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice-president, and secretary.

(2) The board shall:

(a) regulate the practice of pharmacy in this state subject to this chapter;

(b) determine the minimum equipment necessary in and for a pharmacy;

(c) regulate, under therapeutic classification, the sale of drugs, medicines, chemicals, and poisons and their labeling;

(d) regulate the quality of drugs and medicines dispensed in this state, using the United States Pharmacopoeia/National Formulary or revisions thereof as the standards;

(e) request the department to enter and inspect, at reasonable times, places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(f) regulate the practice of interns under national standards;

(g) make rules for the conduct of its business;

(h) perform other duties and exercise other powers as this chapter requires;

(i) adopt and authorize the department to publish rules for carrying out and enforcing parts 1 through 3 of this chapter.

(3) The department shall:

(a) license, register, and examine, subject to 37-1-101, applicants whom the board considers qualified under this chapter;

(b) license pharmacies and certain stores under this chapter; ~~and~~

(c) license wholesale drug distributors;

~~(c)~~*(d)* issue certificates of "certified pharmacy" under this chapter*; and*

(e) establish and collect license fees."

Section 2. **Scope and purpose.** [Sections 2 through 11] apply to a person or entity engaged in the wholesale distribution of prescription drugs in this state. The purpose of [sections 2 through 11] is to implement the federal Prescription Drug Marketing Act of 1987 by providing minimum standards, terms, and conditions for licensing by the department of persons or entities engaged in wholesale distributions of prescription drugs.

Section 3. **Definitions.** As used in [sections 2 through 11] the following definitions apply:

(1) "Blood" means whole blood collected from a single donor and processed either for transfusion or for further manufacturing.

(2) "Blood component" means that part of blood separated by physical or mechanical means.

(3) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(4) "Manufacturer" means a person or entity engaged in the manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug.

(5) "Prescription drug" means any drug for humans that is required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.S. 353).

(6) "Wholesale drug distribution" means distribution of prescription drugs to persons other than a consumer or patient. The term does not include:

(a) intracompany sales;

(b) the purchase or other acquisition, by a hospital or other health care entity that is a member of a group purchasing organization, of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of group purchasing organizations;

(c) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(d) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For purposes of this subsection (d), "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise.

(e) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons. For the purposes of this subsection (e), "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage.

(f) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(g) the distribution of drug samples by manufacturers' representatives or distributors' representatives; or

(h) the sale, purchase, or trade of blood and blood components intended for transfusion.

(7) "Wholesale drug distributor" means a person or entity engaged in wholesale distribution of prescription drugs, including but not limited to manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses (including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses), independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions.

Section 4. **Prohibited purchase or receipt of drugs — restrictions on wholesale drug distributors — penalty.** (1) Except as otherwise provided, it is unlawful for a person to knowingly purchase or receive a prescription drug from a source other than a person or entity licensed under [sections 2 through 11].

(2) Licensed wholesale drug distributors other than pharmacies may not dispense or distribute prescription drugs directly to patients.

(3) A person who violates the provisions of this section is guilty of a misdemeanor.

Section 5. **Wholesale drug distributor licensing requirements — fee — federal compliance.** (1) A person or distribution outlet may not act as a wholesale drug distributor without first obtaining a license from the board and paying the license fee.

(2) A license may not be issued or renewed for a wholesale drug distributor to operate in this state unless the applicant:

(a) agrees to abide by federal and state law and to comply with the rules adopted by the board; and

(b) pays the license fee set by the board.

(3) The board in its discretion may require that a separate license be obtained for:

(a) each facility directly or indirectly owned or operated by the same business entity within the state; or

(b) a parent entity with divisions, subsidiaries, or affiliates within the state if operations are conducted at more than one location and joint ownership and control exists among all entities.

(4) In order to obtain and maintain a wholesale drug distributorship in this state, an applicant shall provide written documentation to the board attesting that the applicant has maintained and will continue to maintain:

(a) adequate storage conditions and facilities;

(b) minimum liability and other insurance that may be required by applicable federal or state law;

(c) a functioning security system that includes:

(i) an after hours central alarm or comparable entry detection system;

(ii) restricted access to the premises;

(iii) comprehensive employee applicant screening; and

(iv) safeguards against employee theft;

(d) a system of records setting forth all activities of wholesale drug distribution as defined in [section 3] for at least a period of the 2 previous years. The system of records must be accessible, as defined by board regulations, for inspections authorized by the board.

(e) principals, including officers, directors, primary shareholders, and management executives, who shall at all times demonstrate and maintain their responsibility for conducting the business in conformity with sound financial practices as well as state and federal law;

(f) complete, updated information, to be provided to the board as a condition for obtaining and retaining a license, pertaining to each wholesale drug distributor to be licensed, including but not limited to:

(i) all pertinent corporate license information, if applicable; and

(ii) other information regarding ownership, principals, key personnel, and facilities;

(g) a written protocol of procedures and policies that assures preparation by the wholesale drug distributor for the handling of security or operational problems, including but not limited to those caused by:

(i) natural disaster or government emergency;

(ii) inventory inaccuracies or product shipping and receiving;

(iii) insufficient inspections for all incoming and outgoing product shipments;

(iv) lack of control of outdated or other unauthorized products;

(v) inappropriate disposition of returned goods; and

(vi) failure to promptly comply with product recalls; and

(h) operations in compliance with all federal requirements applicable to wholesale drug distribution.

(5) An agent or employee of a licensed wholesale drug distributor need not be licensed as a wholesale drug distributor.

(6) For purposes of this section, all rules and regulations promulgated by the board must conform to the wholesale drug distributor licensing guidelines formally adopted by the United States food and drug administration. If a conflict arises between a food and drug administration guideline and a rule or regulation of the board, the former controls.

Section 6. **Out-of-state wholesale drug distributor licensing requirements.** (1) It is unlawful for an out-of-state wholesale drug distributor to conduct business in this state without first obtaining a license from the board and paying the license fee established by the board.

(2) Application for a license under this section must be made on a form furnished by the board.

(3) The issuance of a license may not affect tax liability imposed by the department of revenue on any out-of-state wholesale drug distributor.

(4) A person acting as principal or agent for an out-of-state wholesale drug distributor may not sell or distribute drugs in this state unless the distributor has obtained a license.

Section 7. **Issuance of licenses.** The license for wholesale drug distributors is effective from April 1 to March 31 of the following year. An application for renewal of a license must be mailed to each licensee on or before March 1, and if the renewal application and the fee are not mailed by March 31, the license is void upon its expiration date.

Section 8. **Qualifications for licensure — denial of license application — notice and hearing.** (1) The board shall consider the following factors in determining the qualifications of applicants to engage in wholesale distribution of prescription drugs in this state:

(a) any conviction of the applicant under federal, state, or local law relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;

(b) any felony conviction of the applicant under federal, state, or local law;

(c) the applicant's previous experience in the manufacture or distribution of prescription drugs, including controlled substances;

(d) the furnishing by the applicant of false or fraudulent material in any application made in connection with drug distribution or manufacturing;

(e) suspension or revocation by federal, state, or local government of a license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

(f) compliance with licensing requirements under any previously granted licenses;

(g) compliance with requirements to maintain or to make available to the board or to enforcement officers of the federal government or other states records required to be maintained under this section; and

(h) any other factors the board determines necessary to protect the public interest.

(2) The board may deny a license to an applicant that in the board's discretion fails to meet the qualifications outlined in this section. The board shall give the applicant notice of the proposed action and an opportunity for a hearing pursuant to Title 2, chapter 4.

Section 9. **License discipline — grounds for revocation, suspension, or refusal to renew license — penalty — notice and hearing.** (1) The board may suspend, revoke, or refuse to renew a wholesale drug distribution license:

(a) obtained by misrepresentation or fraud;

(b) upon conviction of a violation of federal, state, or local drug laws;

(c) upon conviction of a violation of:

(i) the Federal Food, Drug, and Cosmetic Act (Title 21, chapter 9, U.S.C.);

(ii) Title 37, chapter 2 or 7;

(iii) Title 45, chapter 9 or 10;

(iv) Title 50, chapter 31 or 32; or rules adopted under subsections (1)(c)(i) through (1)(c)(iv);

(d) upon suspension or revocation by a state or territory of a license to conduct wholesale distribution of prescription drugs; or

(e) upon conviction of a violation of a provision listed in subsection (1) or [section 4, 5, or 6] or the rules implementing them.

(2) It is a misdemeanor punishable by a fine of not more than $500 for a person or entity to distribute wholesale prescription drugs in violation of a provision of subsection (1) or [section 4, 5, or 6] or the rules implementing them.

(3) Before a license can be revoked or suspended, the holder of the license is entitled to notice and the opportunity for a hearing pursuant to Title 2, chapter 4.

Section 10. **Board access to wholesale drug records.** Wholesale drug distributors may keep records at a central location apart from the principal office of the wholesale drug distributor or the location where the drugs are stored and from where they are shipped, provided that the records must be available for inspection within 2 working days of a request by the board. The records may be kept in any form permissible under federal law applicable to prescription drug recordkeeping.

Section 11. **Rulemaking authority.** The board shall adopt rules and regulations necessary to carry out the purpose and enforce the provisions of [sections 2 through 11]. If the rules and regulations conflict with the wholesale drug distribution guidelines promulgated by the United States food and drug administration, the latter control.

Section 12. **Codification instruction.** [Sections 2 through 11] are intended to be codified as an integral part of Title 37, chapter 7, and the provisions of Title 37, chapter 7, apply to [sections 2 through 11].

Section 13. **Applicability.** (1) The provisions of [sections 1 through 11] are applicable to activities that occur on or after April 1, 1992.

(2) Rulemaking by the board may commence on July 1, 1991, to be applicable on April 1, 1992.

Section 14. **Effective date.** [This act] is effective July 1, 1991.

Approved March 20, 1991.

CHAPTER NO. 135

[SB 139]

AN ACT TO AUTHORIZE THE BOARD OF SUPERVISORS OF A CONSERVATION DISTRICT TO INVEST ANY SURPLUS FUNDS OF THE DISTRICT; AMENDING SECTION 76-15-508, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-15-508, MCA, is amended to read:

"**76-15-508. Management of surplus funds.** The board of supervisors of a conservation district may invest any surplus funds of the district~~, except county tax funds,~~ not needed for immediate use in the operations of the district or its activities, to pay bonds or coupons, or to meet current expenses in interest-bearing bonds or securities of the United States or of any agency of the United States if the bonds are guaranteed by the United States or in bonds of the state of Montana or any county or municipal corporation in said state. The board of supervisors of said district may require any funds of the district to be deposited with such depository or bank as may be designated by the board and likewise shall have authority to require the treasurer of the district to take from such depository a bond with corporate surety to ensure payment of any such deposit or to require such depository to pledge securities of the same kind as the district is authorized to invest its funds in to ensure payment of any such deposit."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved March 20, 1991.

CHAPTER NO. 136

[SB 141]

AN ACT EXPANDING SPECIAL EDUCATION COOPERATIVES INTO FULL SERVICE EDUCATION COOPERATIVES FOR THE PURPOSES OF PERFORMING ALL AUTHORIZED EDUCATIONAL ACTIVITIES, PROGRAMS, AND ADMINISTRATIVE SERVICES; AMENDING SECTIONS 20-7-451, 20-7-452, 20-7-454, 20-7-455, 20-7-456, 20-7-457, AND 20-7-458, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-451, MCA, is amended to read:

"20-7-451. Authorization to create *full service* ~~special~~ education cooperatives. (1) A school district may contract with one or more other school districts to establish a cooperative to perform *any or* all ~~special~~ education administrative services, activities, and undertakings that the school district entering into the contract is authorized by law to perform. The cooperative contract must be authorized by the boards of trustees of the districts entering into the contract.

(2) A cooperative contract may allow money allocated to a cooperative to be expended for:

(a) recruitment of professionals or employees for the cooperative; and

(b) facility rental and supportive services, including but not limited to janitorial and communication services."

Section 2. Section 20-7-452, MCA, is amended to read:

"20-7-452. Detailed contents of *full service* ~~special~~ education cooperative contracts. The contract authorized in 20-7-451 may include all necessary and proper matters but must specify the following:

(1) its duration, which may not be less than 3 years *for purposes of providing special education services*;

(2) the precise organization, composition, and nature of the cooperative;

(3) the purpose of the cooperative;

(4) the manner of financing the cooperative and establishing and maintaining a budget for the cooperative;

(5) the permissible method to be employed in accomplishing the partial or complete termination of the cooperative agreement and for disposing of property upon partial or complete termination;

(6) provision for a management board that is responsible for administering the cooperative and that is comprised of trustees of the contracting districts or their authorized representatives;

(7) the manner of acquiring, holding, and disposing of real and personal property used by the cooperative;

(8) any other necessary and proper matters."

Section 3. Section 20-7-454, MCA, is amended to read:

"**20-7-454. Final approval and filing of ~~special~~ *full service* education cooperative contract.** Within 10 days after approval by the attorney general and prior to commencement of its performance, a full service ~~special~~ education cooperative contract made pursuant to 20-7-451 through 20-7-456 must be:

(1) submitted to the superintendent of public instruction who has final approval authority pursuant to the policies of the board of public education;

(2) filed with the county clerk and recorder of the county or counties in which the school districts involved are located; and

(3) filed with the secretary of state."

Section 4. Section 20-7-455, MCA, is amended to read:

"**20-7-455. Authorization to appropriate funds for purpose of full service ~~special~~ education cooperative contract.** A school district entering into a full service ~~special~~ education cooperative contract pursuant to 20-7-451 through 20-7-456 may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative officer, *management board,* or joint board created for the purpose of performance of the cooperative contract such material, personnel, or services as may be within its legal power to furnish."

Section 5. Section 20-7-456, MCA, is amended to read:

"**20-7-456. Tenure of teachers employed by cooperatives.** (1) Teachers who have tenure rights with a district and are employed by a cooperative of which their district is a member do not lose their tenure with the district.

(2) Nontenured teachers employed by a cooperative acquire tenure with a cooperative in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204 through 20-4-207 are applicable to teachers employed by a cooperative.

(3) Tenure for a teacher employed by a cooperative is acquired only with the cooperative and not with a member school district of a cooperative.

(4) For the purposes of tenure of a teacher employed by a cooperative, ~~special education~~ cooperative contract renewals may not be used to limit the teacher's progress toward tenure status."

Section 6. Section 20-7-457, MCA, is amended to read:

"**20-7-457. Funding provisions for special education *purposes of* cooperatives or joint boards.** (1) The superintendent of public instruction shall pay directly to a cooperative or to a joint board formed under 20-3-361 for special education purposes the approved allowable costs for contracted special education services from the state special revenue fund for state equalization aid as provided in 20-9-343. The total of the payments must be within the limit set by the legislature for approved special education budgets.

(2) A school district that elects to participate in a cooperative *for special education purposes* shall agree in the cooperative contract to participate for a period of at least 3 years.

(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint board agreement for the next school fiscal year.

(4) After June 30, 1990, a cooperative that has not met the requirements of 20-7-453 and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service ~~special~~ education cooperatives formed after June 30, 1990."

Section 7. Section 20-7-458, MCA, is amended to read:

"**20-7-458. Reduced caseloads for qualifying cooperatives or joint boards.** The superintendent of public instruction may reduce the caseloads for any itinerant *special education* personnel of a full service ~~special~~ education cooperative or a joint board formed under 20-3-361 for special education purposes if the cooperative or joint board meets the requirements of 20-7-457. The superintendent shall adopt rules to determine the eligibility of a cooperative or a joint board for reduced caseloads under this section."

Section 8. **Effective date.** [This act] is effective July 1, 1991.

Approved March 20, 1991.

CHAPTER NO. 137

[SB 162]

AN ACT ELIMINATING THE REQUIREMENT THAT A COUNTY CLERK AND RECORDER AND A CLAIM LOCATOR PROVIDE THE DEPARTMENT OF STATE LANDS AND THE BOARD OF LAND COMMISSIONERS WITH A COPY OF EACH NOTICE OF CLAIM LOCATION; AND AMENDING SECTIONS 82-2-102 AND 82-4-332, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-2-102, MCA, is amended to read:

"**82-2-102. Record of certificate of location.** (1) Within 60 days after posting the notice of location, the locator shall record his location in the office of the county clerk of the county in which the mining claim is situated~~, and within 20 days thereafter, the county clerk shall provide a copy thereof to the department of state lands, Helena, Montana~~. The record shall consist of a certificate of location for each claim containing:

(a) the name of the lode or claim and whether located as a lode or placer claim;

(b) the name of the locator or locators, if there be more than one, together with the post-office address of such locator or locators;

(c) the date of location and the description of the claim, with reference to some natural object or permanent monument, as will identify the claim and the section, township, and range wherein the claim is situated by projected survey lines, if located in unsurveyed country;

(d) the directions and distances from the discovery point which describe the claim.

(2) The certificate of location must be verified before some officer authorized to administer oaths by the locator or one of the locators, if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. A certificate of location so verified or a certified copy thereof is prima facie evidence of all facts properly recited therein. Failure of the locator or locators to record a certificate of location as herein required shall create a prima facie presumption of intent to abandon. However, recordation after the 60-day period but before the ground is located by another renews the location and saves the rights of the original locator. Nothing contained in 82-2-112 affects the prima facie presumption created by this section."

Section 2. Section 82-4-332, MCA, is amended to read:

"**82-4-332. Exploration license.** (1) An exploration license shall be issued to any applicant therefor who shall:

(a) pay a fee of $5 to the board;

(b) agree to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the board;

(c) not be in default of any other reclamation obligation under this law.

(2) An application for an exploration license shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The department shall by rule determine the precise nature of such exploration map or sketch. The applicant must state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) ~~Upon filing of any certificate of claim location as permitted by federal and state mining laws and regulations, the locator shall provide copies of the certificate to the board.~~

~~(4)~~ Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with 82-4-338.

~~(5)~~*(4)* In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan shall be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department."

Approved March 20, 1991.

CHAPTER NO. 138

[SB 167]

AN ACT REVISING CURRENT DEPOSIT DEADLINES FOR AGENCY AND EMPLOYER REMITTANCES OF CONTRIBUTIONS TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; PROVIDING THAT DEPOSIT DEADLINES FOR CONTRIBUTION REMITTANCES TO RETIREMENT SYSTEMS BE SET BY THE RULES OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD; ESTABLISHING IN THE JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS', STATEWIDE POLICE OFFICERS', AND UNIFIED FIREFIGHTERS' RETIREMENT SYSTEMS PROVISIONS FOR EM-

PLOYER PAYMENT OF CONTRIBUTIONS, ACCOMPANYING REPORTS, AND PENALTIES THAT ARE SIMILAR TO THE PROVISIONS IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTIONS 19-3-802 AND 19-3-804, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 1 through 3] grant to the public employees' retirement board the authority to adopt rules setting timeframes for agency payments into the retirement systems that the board administers and rules requiring reports.

(1) The legislature understands that capabilities for expediting deposits to the retirement systems are afforded by the increasing computer resources of both employers and the retirement systems.

(2) Therefore, it is the intent of the legislature that:

(a) contributions payable to the retirement systems administered by the board be paid within timeframes that are reasonable and cost-effective to contributors and the retirement systems;

(b) while expedited deposits can result in increased investment earnings for the retirement systems and the individual members of those systems, current contribution deadlines may not be shortened unless the resulting increase in investment income would help forestall increases in employer contribution rates required to actuarially fund the systems; and

(c) employers be responsible for providing accurate reports containing sufficient information to allow the board to both account for overall retirement system contributions and precisely record and credit membership service, monthly compensation, and membership contributions to individual member's accounts.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-802, MCA, is amended to read:

"**19-3-802. Payment of contributions by state agencies — accompanying reports — penalty.** (1) ~~No later than the 15th day of each month or 5 working days after payroll warrants have been issued for the last normal pay period of the previous month, whichever is later, the state auditor and~~ *At a time prescribed by the rules of the board,* each agency of the state ~~which is not paid through the state central payroll system~~ shall remit to the public employees' retirement system all contributions required of each employer and its employees under this chapter on the basis of compensation paid during the previous ~~month~~ *pay period,* including any contributions payable with respect to members absent in the armed forces of the United States. ~~These remittances shall be accompanied by such reports as the board requires.~~

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is

greater, from the appropriation account of the reporting agency by submission of a claim to the state treasurer. The board may, in its discretion, waive the interest penalty.

(3) Employers shall submit reports of their covered payroll and contributions remitted as the board requires by rule."

Section 2. Section 19-3-804, MCA, is amended to read:

"**19-3-804. Payment of contributions by contracting employer — accompanying reports — penalty.** (1) ~~No later than the 15th day of each month~~ *At a time prescribed by the rules of the board,* each contracting employer shall remit to the public employees' retirement system all contributions required of the employer and its employees under this chapter on the basis of compensation paid during the previous ~~month~~ *pay period.* ~~These remittances shall be accompanied by such reports as are required by rules of the board.~~

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is greater. The board may, in its discretion, waive the interest penalty. The collection may be made by either of the following means:

(a) by an action ~~therefor~~ in a court of competent jurisdiction against the employer;

(b) by deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) Employers shall submit reports of their covered payroll and contributions remitted as the board requires by rule."

Section 3. **Payment of contributions by employers — accompanying reports — penalty.** (1) At a time prescribed by the rules of the board, each covered employer shall remit to the retirement system all contributions required of the employer and its employees under this chapter on the basis of compensation paid during the previous pay period, including any contributions payable with respect to members absent in the armed forces of the United States.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is greater. The collection may be made by either of the following means:

(a) by an action in a court of competent jurisdiction against the employer;

(b) by deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) The board may waive the interest penalty.

(4) Employers shall submit reports of their covered payroll and contributions remitted as the board rules require.

Section 4. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 19, chapter 5, part 4; Title 19, chapter 6, part 4; Title 19, chapter 7, part 4; Title 19, chapter 8, part 5; Title 19, chapter 9, part 7; and Title 19, chapter 13, part 6, and the provisions of Title 19, chapter 5, part 4; Title 19, chapter 6, part 4; Title 19, chapter 7, part 4; Title 19, chapter 8, part 5; Title 19, chapter 9, part 7; and Title 19, chapter 13, part 6, apply to [section 3].

Section 5. **Effective date.** [This act] is effective July 1, 1991.

Approved March 20, 1991.

CHAPTER NO. 139

[SB 180]

AN ACT REQUIRING THE BOARD OF TRUSTEES OF A SCHOOL DISTRICT TO MAINTAIN ITS GROUP BENEFITS PLAN ON AN ACTUARIALLY SOUND BASIS; AMENDING SECTION 2-18-702, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-702, MCA, is amended to read:

"**2-18-702. Group insurance for public employees and officers.** (1) All counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, and/or group life insurance contracts or plans for the benefit of their officers and employees and their dependents.

(2) State employees and elected officials, as defined in 2-18-701, may participate in such state employee group benefit plans as are provided for under part 8 of this chapter.

(3) For state officers and employees, the premiums required from time to time to maintain the insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct the premiums from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue his warrant therefor to the insurer.

(4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services shall be construed as group insurance and the dues payable under such plans shall be construed as premiums therefor.

(5) If the *board of trustees of a school district implements a self-insured group health plan or the* board of regents implements an alternative to conventional insurance to provide group benefits to its employees, the board shall maintain the alternative plan on an actuarially sound basis."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved March 20, 1991.

CHAPTER NO. 140

[SB 181]

AN ACT TO EXTEND THE $25 PENALTY FOR FAILURE TO MAKE TIMELY RENTAL PAYMENTS TO ALL STATE LAND LEASES AND LICENSES NOT CURRENTLY SUBJECT TO THE PENALTY; AMENDING SECTION 77-6-506, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-6-506, MCA, is amended to read:

"**77-6-506. Date when rental due — penalty — cancellation for nonpayment.** (1) For grazing leases, the grazing portion of leases containing both agricultural and grazing land, and agricultural leases not based on a crop share, the rental for the first year of the lease shall be paid at or before the time of the execution of the lease; however, in the case of leases which take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1 shall be paid and collected at the time of issuing the lease. If the United States is the lessee of state lands for grazing purposes, the rental shall be payable at the end of each year of the lease. The rental for each succeeding year on leases hereafter issued, with the exception of leases wherein the United States is the lessee, is due and payable before March 1. If the rental is not paid before March 1, a $25 penalty shall be imposed on the lessee. If the full rental and the $25 penalty are not paid by April 1, the entire lease is canceled.

(2) For agricultural leases and the agricultural portion of leases containing both grazing and agricultural land, when the rental is paid on a crop share basis or on a crop share/cash basis, the rental is due in cash on or before November 15 of the year in which the crop is harvested. If the rental is not paid on or before November 15 of the year of crop harvest, a $25 penalty shall be imposed on the lessee. If the full rental and the $25 penalty are not paid on or before December 31 of the year in which the crop is harvested, the entire lease is canceled. The department may extend the deadline in writing. If the lessee does not make the rental payment by the date of extension, the entire lease is canceled. Any rental payment made

after November 15 of the year in which the crop is harvested, including payment made after an extension of the deadline, must include the $25 penalty.

(3) For all state land leases and licenses other than those described in subsections (1) and (2), the department shall impose a $25 penalty for failure to make a rental payment by any deadline established by statute, rule, or in the lease or license.

~~(3)~~*(4)* At least 2 weeks prior to the final deadline for payment under subsection (1) or (2), the department shall send by certified mail to each lessee who has not made payment a letter notifying the lessee that the lease is canceled if payment and the $25 penalty are not received by the final deadline. The notice shall be sent to the lessee at the address given in the lease.

~~(4)~~*(5)* When a lease is canceled under subsection (1) or (2), the department shall notify the lessee of the cancellation by letter at the address given in the lease. The land is then open for lease to applicants.

~~(5)~~*(6)* The penalties collected pursuant to this section must be deposited into the same trust account as the rentals from the state land to which the penalties apply."

Section 2. **Applicability.** [This act] applies to state land lease and license payments due after December 31, 1991.

Approved March 20, 1991.

CHAPTER NO. 141

[SB 224]

AN ACT AMENDING THE LAWS RELATING TO ESTABLISHING AND FUNDING LOCAL AIR POLLUTION CONTROL PROGRAMS; CLARIFYING EXISTING AUTHORITY RELATING TO THE COLLECTION OF PERMIT FEES BY LOCAL AIR POLLUTION CONTROL PROGRAMS; CLARIFYING THE RELATIONSHIP BETWEEN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND LOCAL AIR POLLUTION CONTROL PROGRAMS; RESTRICTING THE TYPES OF AIR POLLUTION SOURCES THAT MAY BE REGULATED BY A LOCAL AIR POLLUTION CONTROL PROGRAM; AMENDING SECTIONS 75-2-301 AND 75-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-301, MCA, is amended to read:

"**75-2-301. Local air pollution control programs.** (1) ~~A~~ *After public hearing, a* municipality or county may establish *and administer* a local air pollution control program ~~on being petitioned by 15% of the qualified electors in its jurisdiction and,~~ if the program is consistent with this chapter and is approved by the board. ~~after a public hearing conducted under 75-2-111, may thereafter administer in its jurisdiction the air pollution control program which:~~

~~(a) provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by 75-2-203, 75-2-212, and 75-2-402 and rules issued under these sections;~~

~~(b) provides for the enforcement of these requirements by appropriate administrative and judicial process; and~~

~~(c) provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program.~~

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) Except as provided in subsection (4), the board by order may approve a local air pollution control program that:

(a) provides by ordinance or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, and 75-2-402 and rules adopted under these sections;

(b) provides for the enforcement of requirements established under subsection (3)(a) by appropriate administrative and judicial processes; and

(c) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit fee provisions of 75-2-211. The permit fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of permitting activities.

(4) Except for those emergency powers provided for in 75-2-402, the board may not delegate to a local air pollution control program the authority to control any air contaminant source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons per year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless

the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

~~(2)~~*(5)* If the board finds that the location, character, or extent of particular concentrations of population, air contaminant sources, or geographic, topographic, or meteorological considerations or any combination of these are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

~~(3)~~*(6)* If the board has reason to believe that *any part of* an air pollution control program in force under this section is *either* inadequate to prevent and control air pollution in the jurisdiction to which the program relates or ~~that the program~~ is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

~~(4)~~*(7)* If, after the hearing, the board determines that *any part of* the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

~~(5)~~*(8)* If the jurisdiction fails to take these measures within the time required, the department shall administer within ~~such~~ *that* jurisdiction all of the provisions of this chapter, *including the terms contained in any applicable board order, that are necessary to correct the deficiencies found by the board.* The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the ~~program shall be~~ *department's action is* a charge on the ~~municipality or county~~ *jurisdiction.*

~~(6)~~*(9)* If the board finds that the control of a particular air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that air contaminant source. No charge may be assessed against the jurisdiction therefor. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

~~(7)~~*(10)* A jurisdiction in which the department administers *all or part of* its air pollution control program under subsection ~~(5)~~ *(8)* ~~of this section~~ may, with the approval of the board, establish or resume an air pollution control program ~~which~~ *that* meets the requirements of subsection ~~(1)~~ *(3)* ~~of this section~~.

~~(8)~~*(11)* A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states."

Section 2. Section 75-2-302, MCA, is amended to read:

"**75-2-302. State and federal aid.** (1) Any local air pollution control program meeting the requirements of this chapter and rules made pursuant thereto shall be eligible for state aid in an amount ~~equal~~ *up* to 30% of the locally funded annual operating cost thereof.

(2) Federal aid granted to the state for developing or maintaining a local air pollution control program that is subsequently granted to a local program is not considered state aid.

~~(2)~~*(3)* Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided ~~that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this chapter and any other applicable requirements of law~~ *the program is currently approved by the board under 75-2-301.*"

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1991.

CHAPTER NO. 142

[SB 230]

AN ACT ALLOWING VESTED MEMBERS OF THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM TO QUALIFY, WITH CERTAIN RESTRICTIONS, UP TO 5 YEARS OF OUT-OF-STATE LAW ENFORCEMENT EMPLOYMENT AS SERVICE UNDER THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Election to qualify law enforcement service performed in another state.** (1) Except as provided in subsections (4) through (6), a member with 5 years or more of creditable service in the highway patrol officers' retirement system may qualify 1 year of out-of-state law enforcement employment for each year of creditable service under the highway patrol officers' retirement system, up to a maximum of 5 years, provided that he is not eligible to receive a retirement benefit for that out-of-state law enforcement employment.

(2) To qualify this service, a member shall:

(a) at any time before his retirement, make a written election with the board to qualify the service; and

(b) contribute to the retirement fund the actuarial cost of granting the service in the highway patrol officers' retirement system, as determined by the board, based on:

(i) his compensation for the 12 months immediately preceding the date of his election to cover the service under the highway patrol officers' retirement system; and

(ii) the total contribution rate in effect at the time of purchase of service.

(3) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board.

(4) Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify a member to purchase military service under 19-6-304.

(5) Service qualified under this section may not be used in calculating a member's retirement allowance unless the last 5 years of creditable service were earned under the highway patrol officers' retirement system. If a member's qualified service may not be used in calculating his retirement allowance, he may choose to receive a refund of the contributions made to qualify the service.

(6) The combined total service qualified under this section and military service qualified under 19-6-304 may not exceed 5 years.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 6, part 3, and the provisions of Title 19, chapter 6, part 3, apply to [section 1].

Approved March 20, 1991.

CHAPTER NO. 143

[HB 149]

AN ACT TO CONTINUE THE ADMINISTRATIVE AUTHORITY OF THE BOARD OF OUTFITTERS OVER THE LICENSING OF OUTFITTERS AND PROFESSIONAL GUIDES BY MAKING PERMANENT THE BOARD OF OUTFITTERS; REPEALING SECTION 14, CHAPTER 528, LAWS OF 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 14, Chapter 528, Laws of 1987, is repealed.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1991.

CHAPTER NO. 144

[HB 182]

AN ACT EXPANDING THE AUTHORITY OF RURAL FIRE DISTRICT TRUSTEES TO PROVIDE FIREFIGHTING PERSONNEL AND EMERGENCY RESPONSE EQUIPMENT AND PERSONNEL; AND AMENDING SECTION 7-33-2105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2105, MCA, is amended to read:

"**7-33-2105. Powers and duties of trustees.** (1) The trustees shall prepare and adopt suitable bylaws.

(2) The trustees shall have the authority to provide adequate and standard firefighting *and emergency response* apparatus, equipment, *personnel,* housing, and facilities for the protection of the district. They shall appoint and form fire companies that shall have the same duties, exemptions, and privileges as other fire companies.

(3) The trustees shall prepare annual budgets and request special levies therefor. The budget laws relating to county budgets shall, as far as applicable, apply to fire districts."

Approved March 25, 1991.

CHAPTER NO. 145

[HB 217]

AN ACT TO REQUIRE THAT THE TRUSTEES OF AN ELEMENTARY SCHOOL DISTRICT LOSING TERRITORY AND CERTAIN OWNERS OF TERRITORY TO BE TRANSFERRED BE GIVEN WRITTEN NOTIFICATION; AND AMENDING SECTION 20-6-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-213, MCA, is amended to read:

"**20-6-213. Transfer of territory from one elementary district to another.** (1) A majority of the electors of ~~any~~ *an* elementary district who are qualified to vote under the provisions of 20-20-301 and who reside in territory ~~which~~ *that* is a part of an elementary district may petition the county superintendent to transfer ~~such~~ *the* territory to another elementary district ~~when~~ *if*:

(a) ~~such~~ *the* territory is contiguous to the district to which it is to be attached;

(b) ~~such~~ *the* territory is not located within 3 miles, over the shortest practical route, of an operating school of the district from which it is to be detached;

(c) the transfer of ~~such~~ *the* territory will not reduce the taxable value of the district to less than $100,000 unless the remaining territory of the district will contain not less than 50,000 acres of nontaxable Indian land; and

(d) the board of trustees of the school district that would receive the territory has approved the transfer.

(2) The petition ~~shall~~ *must* be addressed to the county superintendent and ~~shall~~ *must*:

(a) describe the territory that is requested to be transferred and to what district it is to be transferred;

(b) state the reasons why ~~such~~ *the* transfer is requested; and

(c) state the number of elementary school-age children residing in ~~such~~ *the* territory.

(3) On receipt of a valid petition for a territory transfer, the county superintendent shall:

(a) file ~~such~~ *the* petition;

(b) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. The notices ~~shall~~ *must* be posted in the districts affected by the request in the manner prescribed in this title for school elections, with at least one ~~such~~ notice posted in the territory to be transferred. *Notice must also be delivered to the board of trustees of the school district from which the territory is to be transferred.*

(4) The county superintendent shall conduct the hearing as scheduled, and any resident or taxpayer of the affected districts ~~shall~~ *must, upon request,* be heard. If the county superintendent considers it advisable and

in the best interests of the residents of ~~such~~ *the* territory, he shall grant the petitioned request and order the change of district boundaries to coincide with the boundary description in the petition. Otherwise, he shall, by order, deny the request. Either of the orders ~~shall be~~ *is* final 30 days after its date unless it is appealed to the board of county commissioners by a resident or taxpayer of either district affected by the territory transfer. The decision of the board of county commissioners, after a hearing on ~~such~~ *the* matter and consideration of the material presented at the county superintendent's hearing, ~~shall be~~ *is* final 30 days after its date unless a petition to submit the question to a vote of the people in the district from which the land is to be transferred, ~~which has been~~ signed by a majority of the electors of the district who reside in the territory to be transferred and who are qualified to vote in elections for that district under 20-20-301, is presented prior to that time. When a petition is submitted under this subsection, the question of whether the land ~~shall~~ *will* be transferred to another district ~~shall~~ *must* be put before the voters at the next regular school election in the affected district.

(5) Whenever a petition to transfer territory from one elementary district to another elementary district ~~would create~~ *creates* a joint elementary district or ~~affect~~ *affects* the boundary of an existing joint elementary district, the petition ~~shall~~ *must* be presented to the county superintendent of the county where the territory is located. ~~Such~~ *The* county superintendent shall notify any other county superintendents of counties with districts affected by ~~such~~ *the* petition, and the duties prescribed in this section for the county superintendent and the board of county commissioners ~~shall~~ *must* be performed jointly by ~~such~~ *the* county officials."

Approved March 25, 1991.

CHAPTER NO. 146

[HB 227]

AN ACT CLARIFYING PROOF OF ELIGIBILITY TO VOTE FOR RURAL FIRE DISTRICT TRUSTEES; AND AMENDING SECTION 7-33-2106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2106, MCA, is amended to read:

"**7-33-2106. Details relating to board of trustees of fire district.** (1) The five trustees initially appointed by the county commissioners shall hold office until their successors are elected or appointed and qualified as hereinafter provided.

(2) Trustees shall be elected as provided in subsection (3) of this section, 13-1-104(3), and 13-1-401 or appointed as provided in subsection (4) of this

section. The term of office shall be 3 years beginning at the first district meeting following their election or appointment and continuing until their successors are elected or appointed and qualified. Appointments to fill vacancies shall be made by the county governing body and appointees shall hold office until the next regular election. ~~All electors~~ *An elector,* as defined in Title 13, who ~~reside~~ *resides* in the district ~~are eligible to vote in the election, including~~ *or* any holder of title to lands within the district who presents a proof of ~~interest in such land~~ *payment of taxes on the lands* at the polling place~~, regardless of whether he is registered to vote~~ *is eligible to vote in the election.*

(3) Candidates for the office of trustee of the fire district to be filled by election may be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election day and signed by at least five electors of the district.

(4) If no nominations are made for one or more trustee offices, the county governing body shall appoint one or more trustees as necessary to fill those offices.

(5) The trustees shall organize by choosing a chairman and appointing one member to act as secretary."

Approved March 25, 1991.

CHAPTER NO. 147

[HB 266]

AN ACT TO REDEFINE THE TERM "PROSPECTING" IN THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT TO CONFORM WITH FEDERAL REQUIREMENTS; AND AMENDING SECTION 82-4-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-203, MCA, is amended to read:

"**82-4-203. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

(2) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities; but the term does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by un-

concentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities which permit or have the potential to permit economic development as a water source.

(4) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all land overlying any tunnels, shafts, or other excavations used to extract the mineral, lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral, processing facilities at or near the mine site or other mine associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining, and all activities necessary and incident to the reclamation of such operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(6) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(7) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation to include plans for the removal and utilization of minable and marketable coal located within the area planned to be mined.

(8) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation. The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

(9) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

(10) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(11) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(12) "Degree" means from the horizontal and in each case is subject to a tolerance of 5% error.

(13) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(14) "Failure to conserve coal" means the nonremoval or nonutilization of minable and marketable coal by an operation, provided that the nonremoval or nonutilization of minable and marketable coal in accordance with reclamation standards established by the department shall not be considered failure to conserve coal.

(15) "Fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(16) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

(17) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(18) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

(19) "Minable coal" means that coal which can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

(20) "Mineral" means coal and uranium.

(21) "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants, and all activities, including excavation incident thereto, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(22) "Operator" means a person engaged in strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden or a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by

mining within 12 consecutive calendar months in any one location or a person engaged in operating a coal preparation plant.

(23) "Overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of mining.

(24) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

(25) "Prime farmland" means that land previously prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface-layer composition, susceptibility to flooding, and erosion characteristics and which historically has been used for intensive agricultural purposes and as defined in the Federal Register.

(26) "Prospecting" means the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit *and, on areas designated unsuitable for coal mining pursuant to 82-4-227 and 82-4-228, the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal in an area and the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.*

(27) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

(28) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

(29) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral. For the purposes of this part only, strip mining also includes remining and coal preparation. The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

(30) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

(31) "Surface owner" means a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land or who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of his income, if any, from such farming or ranching operations or the state of Montana where the state owns the surface.

(32) "Topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(33) "Underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata are utilized and includes mining by in situ methods.

(34) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this part due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or this part due to indifference, lack of diligence, or lack of reasonable care.

(35) "Waiver" means any document which demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(36) "Written consent" means such written statement as is executed by the owner of the surface estate, upon a form approved by the department, demonstrating that such owner consents to entry of an operator for the purpose of conducting strip-mining operations and that such consent is given only to such strip-mining and reclamation operations which fully comply with the terms and requirements of this part."

Approved March 25, 1991.

CHAPTER NO. 148

[HB 648]

AN ACT REAUTHORIZING FUNDING FOR THE EVERGREEN WASTEWATER FACILITIES PROJECT; AUTHORIZING FLATHEAD COUNTY AS THE LOAN RECIPIENT; CONTINUING BOND AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Evergreen wastewater facilities project loan reauthorization — transfer of authority.** (1) The legislature finds that the Evergreen wastewater facilities project for which coal severance tax bonds were authorized to be issued by the 51st legislature in House Bill No. 778, Laws of 1989, may not complete the requirements necessary for the loan transaction prior to June 30, 1991. Authority established in House Bill No. 778, Laws of 1989, to issue coal severance tax bonds for the Evergreen water and sewer district, wastewater facilities project, in the amount of $3,226,900 is continued to enable financing during the 1992-93 biennium, if necessary. Interest must be at the rates authorized by the 51st legislature in House Bill No. 778, Laws of 1989.

(2) The loan reauthorized in this section may be made to Flathead County on behalf of rural special improvement district No. 132 for the same purposes and under the same conditions as authorized for the Evergreen water and sewer district.

Section 2. **Conditions of loan.** A loan made under [section 1] is subject to conditions established in section 5, House Bill No. 778, Laws of 1989.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1991.

CHAPTER NO. 149

[HB 682]

AN ACT REPEALING SECTION 5, CHAPTER 446, LAWS OF 1989, THAT TERMINATES THE REQUIREMENT THAT SEED DEALERS PROVIDE A BILL OF LADING THAT MUST BE FORWARDED TO THE DEPARTMENT OF AGRICULTURE FOR EACH SHIPMENT OF SEED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 5, Chapter 446, Laws of 1989, is repealed.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1991.

CHAPTER NO. 150

[HB 725]

AN ACT EXTENDING THE PERMISSIBLE TERM FOR LOANS IN EXCESS OF $1,000 BY CONSUMER LOAN BUSINESSES; AND AMENDING SECTION 32-5-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-5-302, MCA, is amended to read:

"**32-5-302. Installment payment — contract period.** (1) No licensee may enter into any contract of loan:

(a) of $300 or less, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 21 calendar months from the date of making such contract;

(b) for more than $300 to and including $1,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 25 calendar months from the date of making; or

(c) for more than $1,000 to and including $2,500, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than ~~37~~ *48* calendar months from the date of making.

(2) Every loan contract shall require payment of principal and charges in installments which shall be payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for may be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within 45 days of the date of the loan and the charges for the number of days in excess of 30 from the date of making may be added to the scheduled amount of the installments.

(3) The amounts of $300, $1,000, and $2,500 in subsection (1) are subject to change pursuant to the provisions of 32-5-104 on adjustment of dollar amounts."

Approved March 25, 1991.

CHAPTER NO. 151

[HB 756]

AN ACT CHANGING THE NURSERYMEN LICENSE EXPIRATION DATE FROM JULY 1 TO DECEMBER 31; AMENDING SECTION 80-7-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-102, MCA, is amended to read:

"**80-7-102. License required of nurserymen — application and payment of fees.** (1) A person, before engaging in the business of selling, dealing in, or importing nursery stock into this state for sale or distribution or acting as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock or soliciting orders for the purchase of nursery stock, must obtain a license for each place of business from the department. A person may not falsely represent that he is an agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock.

(2) The department shall provide application forms for prospective licensees. Applications for licenses may be made at any time before engaging in business, except seasonal nurserymen must make application at least 30 days in advance of doing business in this state.

(3) Licenses ~~shall~~ *must* be in the name of the person licensed and shall indicate the purpose for which issued and the name and location of the nursery or place of business of the nurseryman or dealer licensed or represented by an agent, salesman, or solicitor. Licenses, except seasonal nurserymen's licenses, shall bear the date of issue and expire ~~July 1~~ *December 31* next following the date of issue. Seasonal nurserymen's licenses shall bear the date of issue and expire on the date provided on the license by the department.

(4) The license fee is $50 a year for a general nursery, dealing in all kinds of nursery products; $35 a year for a nursery dealing in small fruits, ornamental shrubs, bulbs, and perennials; $20 a year for a nursery dealing in bulbs and perennials only; and $50 a year for seasonal nurserymen. Agents, salesmen, and solicitors for licensed nurseries shall be granted salesmen's licenses, free of charge, upon the request of the licensee."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1991.

CHAPTER NO. 152

[HB 854]

AN ACT TO ALLOW LIFE INSURANCE LONG-TERM CARE PRODUCTS IN MONTANA; AND AMENDING SECTIONS 33-1-208 AND 33-22-1107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-208, MCA, is amended to read:

"**33-1-208. Life insurance.** Life insurance is insurance on human lives. The transaction of life insurance includes also the granting of endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability, *benefits that provide reimbursement or payment for long-term home health care or long-term care in a nursing home or other related institution,* and optional modes of settlement of proceeds of life insurance. Transaction of life insurance does not include workers' compensation insurance."

Section 2. Section 33-22-1107, MCA, is amended to read:

"**33-22-1107. Definitions.** As used in this part, the following definitions apply:

(1) "Applicant" means:

(a) in the case of an individual long-term care insurance policy, the person who seeks to contract for the insurance; and

(b) in the case of a group long-term care insurance policy, the proposed certificate holder.

(2) "Certificate" means a document issued to a member of the group covered under a group insurance policy that has been delivered or issued for delivery in this state as evidence that the individual named in the certificate is covered under the policy.

(3) "Group long-term care insurance" means a long-term care insurance policy that is delivered or issued for delivery in this state and issued to:

(a) (i) an employer;

(ii) a labor organization;

(iii) a trust established by an employer or labor organization; or

(iv) a trustee of a fund established by an employer or labor organization or a combination thereof for:

(A) employees or former employees or a combination thereof; or

(B) members or former members of the labor organization or a combination thereof;

(b) a professional, trade, or occupational association for its current, former, or retired members or combination thereof, if the association:

(i) is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and

(ii) has been maintained in good faith for purposes other than obtaining insurance; or

(c) an association, a trust, or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations.

(i) Prior to advertising, marketing, or offering the policy within this state, the association or the insurer of the association shall file evidence with the commissioner that the association has:

(A) a minimum of 100 persons at the outset;

(B) been organized and maintained in good faith for purposes other than obtaining insurance;

(C) been in active existence for at least 1 year; and

(D) a constitution and bylaws requiring that the association hold regular meetings at least annually to further purposes of the membership; except for credit unions, the association collect dues or solicit contributions from members; and the members have voting privileges and representation on the governing board and committees.

(ii) Thirty days after filing, the association is considered as having satisfied the organizational requirements unless the commissioner finds after hearing that the association does not satisfy the organizational requirements.

(d) a group other than as described in subsections (3)(a) through (3)(c) if the commissioner determines that the:

(i) issuance of the group policy is not contrary to the best interests of the public;

(ii) issuance of the group policy would result in economies of acquisition or administration; and

(iii) benefits are reasonable in relation to the premiums charged.

(4) (a) "Long-term care insurance":

(i) means a policy as defined in subsection (5) that is advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for a covered person, on an expense-incurred, indemnity, prepaid, or other basis, for a necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care service provided in a setting other than an acute care unit of a hospital; ~~and~~

(ii) includes group and individual insurance policies or riders, whether issued by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health maintenance organization, or similar organization*;*

(iii) includes group and individual annuities and life insurance policies or riders that provide directly or that supplement long-term care insurance; and

(iv) includes any product advertised, marketed, or offered as long-term care insurance regardless of any exceptions to the definition included in this section.

(b) Long-term care insurance does not include an insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

(c) Long-term care insurance does not include life insurance policies that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement and that provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

~~(c)~~*(d)* An insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage and that also contains long-term care insurance benefits of a duration of at least 6 months is not required to meet the requirements of this part unless the premium allocable to the long-term care insurance benefits contained in the policy is greater than 25% of the total policy premium.

(5) "Policy" means a policy as defined in 33-15-102, a membership contract as defined in 33-30-101, a health care services agreement as defined in 33-31-102 delivered or issued for delivery in this state by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health maintenance organization, or similar organization.

(6) "Preexisting condition" means a condition for which medical advice or treatment was recommended by or received from a provider of health care services within 6 months preceding the effective date of coverage of an insured person."

Section 3. **Life insurance policy with long-term care provision — policy summary required.** At the time of policy delivery, a policy summary must be delivered to the insured for an individual life insurance policy that provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request but no later than the time of policy delivery. In addition to complying with all applicable requirements, the summary must also include:

(1) an explanation of how the long-term care benefits interact with other components of the policy, including deductions from death benefits;

(2) an illustration of the amount of benefits, the length of benefits, and the guarantied lifetime benefits, if any, for each covered person;

(3) any exclusions, reductions, and limitations on benefits of long-term care; and

(4) if applicable to the policy type:

(a) a disclosure of the effects of exercising other rights under the policy;

(b) a disclosure of guaranties related to long-term care costs of insurance charges; and

(c) current and projected maximum lifetime benefits.

Section 4. **Life insurance policy paying long-term benefits — quarterly report.** When a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a quarterly report must be provided to the policyholder. The report must include:

(1) the amount of long-term care benefits paid out during each month of the quarter;

(2) an explanation of any changes in the policy, including without limitation death benefits or cash values, resulting from long-term care benefits having been paid out; and

(3) the amount of long-term care benefits existing or remaining.

Section 5. **Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 33, chapter 20, part 1, and the provisions of Title 33 apply to [sections 3 and 4].

Approved March 25, 1991.

CHAPTER NO. 153

[SB 160]

AN ACT REVISING HOW THE DEPARTMENT OF ADMINISTRATION DISTRIBUTES THE 9-1-1 EMERGENCY TELECOMMUNICATIONS ACCOUNT TO CITIES, COUNTIES, AND 9-1-1 JURISDICTIONS; AMENDING SECTION 10-4-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-4-302, MCA, is amended to read:

"**10-4-302. Distribution of account by department.** (1) The department shall make quarterly distributions of the entire account beginning on April 1, 1987. The distributions must be made for the following:

(a) administrative costs incurred during the preceding calendar quarter by the department of revenue in carrying out this chapter. The amount paid may not exceed 1% of the account on the date of distribution or actual expenses incurred, whichever is less.

(b) administrative costs incurred during the preceding calendar quarter by the department in carrying out its duties under this chapter. The ~~amount paid to the department~~ *department's annual recovery of costs* may not exceed 7% of the ~~account on the date of distribution or actual expenses incurred, whichever is less~~ *amount collected by the account during the fiscal year or actual expenses incurred, whichever is less.*

(c) costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

(i) collection of the fee imposed by 10-4-201;

(ii) modification of central office switching and trunking equipment for emergency telephone service only; and

(iii) conversion of pay station telephones required by 10-4-121.

(2) Payments under subsection (1)(c) may be made only after application by the provider to the department for costs incurred in subsection (1)(c). The department shall review all applications relevant to subsection (1)(c) for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid, the balance of the account must be ~~distributed~~ *allocated* to cities *and counties* ~~within a 9-1-1 jurisdiction that have an approved final plan and to counties within a 9-1-1 jurisdiction that have an approved final plan~~ on a per capita basis. However, each county must ~~receive~~ *be allocated* a minimum of 1% of the balance of the counties' share of the account. ~~Cities and counties shall~~

~~distribute amounts received to 9-1-1 jurisdictions within their jurisdiction.~~ A 9-1-1 jurisdiction whose 9-1-1 service area includes more than one city or county is eligible to receive operating funds from *the allocation for* each city or county involved. *The department shall distribute to the accounting entity designated by a 9-1-1 jurisdiction with an approved final plan the proportional amount for each city or county served by the 9-1-1 jurisdiction. The department shall provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.*

(4) If the department through its monitoring process determines that a 9-1-1 jurisdiction is not adhering to an approved plan or is not using funds in the manner prescribed in 10-4-303, the department may, after notice and hearing, suspend payment to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds until such time as the department determines that the jurisdiction is complying with the approved plan and fund usage limitations."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved March 25, 1991.

CHAPTER NO. 154

[SB 179]

AN ACT TO ALLOW THE TRUSTEES OF A SCHOOL DISTRICT TO WAIVE CERTAIN MEETING AND BIDDING REQUIREMENTS WHEN AN UNFORESEEN EMERGENCY OCCURS; AMENDING SECTIONS 20-9-204 AND 20-3-322, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-204, MCA, is amended to read:

"20-9-204. **Conflicts of interests, letting contracts, and calling for bids.** (1) It is unlawful for any trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by him in his official capacity or by the board of trustees of which he is a member; or

(b) be employed in any capacity by the school district of which he is trustee.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation;

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions ~~which~~ *that* are in the business of loaning or receiving money when ~~such~~ *the* investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services other than salaried services or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of ~~such~~ *the* lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) ~~Whenever~~ *Except for district needs that must be met due to an unforeseen emergency as defined in 20-3-322(5), whenever* the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of $7,500, the work done or the purchase made ~~shall~~ *must* be by contract. Each ~~such~~ contract must be let to the lowest responsible bidder after advertisement for bids. ~~Such~~ *The* advertisement ~~shall~~ *must* be published in the newspaper ~~which~~ *that* will give notice to the largest number of people of the district as determined by the trustees. ~~Such~~ *The* advertisement ~~shall~~ *must* be made once each week for 2 consecutive weeks and the second publication ~~shall~~ *must* be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section ~~shall be~~ *is* void.

(4) Whenever bidding is required, the trustees shall award the contract to the lowest responsible bidder, except that the trustees may reject any or all bids.

(5) Nothing in this section ~~shall require~~ *requires* the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service ~~which~~ *that* can be accomplished by district staff whose regular employment with ~~such~~ *the* school district is related to the routine performance of maintenance for ~~such~~ *the* district."

Section 2. Section 20-3-322, MCA, is amended to read:

"**20-3-322. Meetings and quorum.** (1) The trustees of a district shall hold at least the following number of regular meetings:

(a) an organization meeting, as prescribed by 20-3-321;

(b) a preliminary budget meeting, as prescribed by 20-9-113; and

(c) in first-class elementary districts, not less than one regular meeting per month; or

(d) in any other district, regular meetings during the months of April, July, October, and January.

(2) The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c) or (1)(d) and, in addition, any other regular meeting days the trustees wish to establish~~; such~~. *Except for an unforeseen emergency,* meetings ~~shall~~ *must* be conducted in school buildings or on other property belonging to the district.

(3) Special meetings of the trustees may be called by the chairman or any two members of the trustees by giving each member a 48-hour written notice of the meeting, *except that the 48-hour notice is waived in an unforeseen emergency.*

(4) ~~No business shall~~ *Business may not* be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting ~~shall be~~ *is* a majority of the trustees' membership. All trustee meetings ~~shall~~ *must* be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

(5) For the purposes of subsections (2) and (3), "unforeseen emergency" means a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1991.

CHAPTER NO. 155

[SB 200]

AN ACT REVISING THE LICENSING, RECORDKEEPING, AND TRAINING REQUIREMENTS FOR HEARING AID DISPENSERS; PROVIDING CONSUMER PROTECTION FOR PURCHASERS OF HEARING AIDS AND RELATED DEVICES; PROVIDING RULEMAKING AUTHORITY TO THE BOARD OF HEARING AID DISPENSERS; AND AMENDING SECTIONS 37-16-301, 37-16-303, 37-16-402, 37-16-403, 37-16-405, 37-16-407, 37-16-408, AND 37-16-411, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 11] grants the board of hearing aid dispensers authority to adopt rules consistent with the provisions of [sections 1 through 10].

It is the intent of the legislature that rules adopted by the board include rules defining "related devices" and other rules necessary to implement [sections 1 through 10].

It is specifically intended that, in adopting rules, the board define "related devices" to mean those parts, attachments, or accessories, as provided in 37-16-102, that are sold for use with a hearing aid by a licensed hearing aid dispenser. "Related devices" should include assistive listening devices and cordless infrared systems if sold by a hearing aid dispenser. However, the term "related device" should not include general merchandise items, such as hearing aid cleaners, cords, or batteries, that are commonly available at most drugstores, discount stores, or by mail order.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-16-301, MCA, is amended to read:

"**37-16-301. Permanent place of business in state necessary — records — notice — *designation of licensee in charge*.** (1) A person who is actively engaged in dispensing hearing aids *and related devices* as a business must have a permanent place of business in this state that will be opened to serve the public, having the necessary testing, fitting, and hearing aid accessories needed by the hard-of-hearing public in the wearing of hearing aids *and related devices*. All licensed hearing aid dispensers shall identify their permanent place of business in all advertising public notices and in all consumer correspondence, both written and verbal. More than one *hearing aid dispenser* licensee may work from a permanent place of business.

(2) The department shall keep a record of the places of practice of persons who hold regular licenses or trainee licenses. A notice required to be given by the board or department to a person who holds a regular or trainee license may be given by mailing it to him at the address last given by him to the department.

(3) All licensed *hearing aid* dispensers shall notify the board of any change of address within 30 days of the change. A trainee shall notify the board of any change of address within 10 days of the change.

(4) (a) When licensed hearing aid dispensers and trainees work at the same permanent place of business, the licensed hearing aid dispenser shall designate one licensed dispenser as the person in charge. There must be one licensed dispenser in charge at a permanent place of business.

(b) The licensed hearing aid dispenser in charge of a permanent place of business:

(i) is responsible and accountable under the disciplinary authority of the board for the conduct of trainees using that permanent place of business; and

(ii) has custody and control of the business records of that permanent place of business and is responsible for producing the records during an investigation conducted by the board."

Section 2. Section 37-16-303, MCA, is amended to read:

"**37-16-303. Bill of sale — examination by otolaryngologist — notation on receipt that examination not medical opinion.** (1) Any person who practices the selling, fitting, or dispensing of hearing aids *and related devices* shall deliver to each person supplied with a hearing aid *or related device*, by him or at his order or direction, a bill of sale ~~which shall~~ *that must* contain*:*

(a) the seller's signature, ~~and show~~ the name and address of his permanent place of business, and the number of his license~~,~~*;*

(b) ~~together with~~ a description of the make and type of the hearing aid *or related device* furnished and the amount charged~~,~~*;*

(c) ~~with~~ *any warranty or guaranty and the right to cancel, and the* terms of ~~guarantee, if any. The bill of sale shall also reveal~~ *the warranty or guaranty and the right to cancel;*

(d) the condition of the hearing *aid or related* device and whether it is new, used, or reconditioned~~.~~*; and*

(e) a provision that maintenance service for the hearing aid or related device is available.

(2) (a) Any person practicing the selling, dispensing, or fitting of hearing aids *and related devices* shall, ~~when~~ *if* dealing with a person under 19 years of age, ascertain if the person has been examined by an otolaryngologist within 90 days prior to the fitting and shall obtain ~~his~~ *the otolaryngologist's* recommendations. If ~~such not be the case, a recommendation to do so must be made to the purchaser and this fact be noted on the receipt~~ *the person has not been examined, the licensed hearing aid dispenser shall recommend to the parent or guardian or to the person if emancipated that he have a medical examination. The licensed hearing aid dispenser shall issue a separate receipt, signed by the purchaser, indicating that the hearing aid dispenser made this recommendation.*

(b) Any person practicing the selling, dispensing, or fitting of hearing aids *and related devices* shall, ~~when~~ *if* the aid *or device* is to be purchased with state funds, ascertain if the person has been examined by a licensed physician within 90 days prior to the fitting and shall obtain ~~his~~ *the licensed physician's* recommendations. If ~~such not be the case, a recommendation to do so must be made to the purchaser and this fact be noted on the receipt~~ *the person has not been examined, the licensed hearing aid dispenser shall recommend to the person being fitted that he have a medical examination. The licensed hearing aid dispenser shall issue a separate receipt, signed by the purchaser, indicating that the hearing aid dispenser made this recommendation.*

(3) ~~Such~~ *A separate* receipt *issued under subsection (2)* must bear, in no smaller type than the largest used in the body portion, the following: "Any examination(s) or representation(s) made by a licensed hearing aid dispenser in connection with the dispensing, fitting, and selling of this hearing aid(s) *or device* is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice."

(4) The board may establish and adopt minimum requirements for the form of bills of sale and receipts.

(5) All purchase agreements or bills of sale must prominently display the following statement: "If you have any questions regarding your consumer rights with respect to hearing aids and related devices, please contact the Department of Commerce — Board of Hearing Aid Dispensers.""

Section 3. Section 37-16-402, MCA, is amended to read:

"**37-16-402. Application — qualifications — fee.** An applicant for a license shall pay a fee fixed by the board and commensurate with the costs of processing and administering his application and related functions of the board and shall show to the satisfaction of the board that he:

(1) is a person of good moral character;

(2) has an education equivalent to a 4-year course in an accredited high school~~, has continuously engaged in the practice of selling, fitting, or dispensing hearing aids in Montana during the 3 years preceding the date of application,~~ or holds a current license as an audiologist under Title 37, chapter 15; *and*

(3) is free of contagious or infectious disease."

Section 4. Section 37-16-403, MCA, is amended to read:

"**37-16-403. Examination — time and place — *number of failures allowed.*** *(1)* An applicant for a license who is notified by the department that he has fulfilled the requirements of 37-16-402 shall appear at a time and place designated by the board to be examined by written and practical tests in order to demonstrate that he is qualified to practice the fitting of hearing aids *and related devices.*

(2) An applicant who fails two successive practical examinations is eligible for reexamination after a period of 2 years and the completion of additional training or education recognized by the board."

Section 5. Section 37-16-405, MCA, is amended to read:

"**37-16-405. Trainee license.** (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take the practical examination under 37-16-403 may apply to the board for a trainee license.

(2) On receiving an application under subsection (1) ~~of this section~~, accompanied by a fee fixed by the board and commensurate with the cost of administering the license and related functions of the board and verification that the applicant has passed the written portion of the examination with a score of at least 70%, the board shall issue a trainee license ~~which~~ *that* entitles the applicant to engage in a 12-month training period during which he shall:

(a) pass the practical examination administered by the board *before he may be issued a hearing aid dispenser's license*;

(b) work for ~~a period of 60 days during which he~~ *the first 90 days under the direct supervision of the sponsoring licensed hearing aid dispenser during which time he* may do the testing necessary for proper selection and fitting of ~~a~~ hearing ~~aid~~ *aids and related devices* and make necessary impressions~~, but~~. *However,* the delivery and final fitting of the hearing aid *and related devices* must be made by *the trainee and* his supervisor~~; and~~.

(c) work for the balance of the training period during which he may engage in all activities allowed a licensed hearing aid dispenser, ~~but while~~ under *the general* supervision of a licensed hearing aid dispenser.

(3) The training period must consist of a continuous 12-month term. Any break in training requires application for another trainee license under such rules as the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a *qualified* licensed hearing aid ~~dealer~~ *dispenser* accepting responsibility for the trainee. Every ~~licensee~~ *licensed hearing aid dispenser* supervising a trainee license holder must submit a quarterly report of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate his responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) *(a)* If a person who holds a trainee license takes and fails to pass the practical examination given within his training period, the board may authorize the department to renew the trainee license for a period ending 30 days after the next examination. In no event may more than two renewals be permitted.

(b) The fee for renewal shall be set by the board commensurate with the cost of administering the license and related functions of the board.

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, is exempt from the 12-month training period but is required to pass the examinations prescribed in this chapter.

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

(8) For the purposes of this section:

(a) "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available in the same place of business for prompt consultation and treatment; and

(b) "general supervision" means oversight by a licensed hearing aid dispenser of those tasks and procedures that do not require the physical presence of the licensed dispenser on the business premises. However, the trainee remains under the licensed hearing aid dispenser's direction, control, responsibility, and evaluation."

Section 6. Section 37-16-407, MCA, is amended to read:

"**37-16-407. Renewal of license — fee — *inactive status.*** (1) A person who practices the fitting of hearing aids *and related devices* shall annually pay to the department a fee as set by the board for a renewal of his license. The fee ~~shall~~ *must* be fixed by the board to be commensurate with board costs in administering licensure and related board functions. The fee ~~shall~~ *must* be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for a delayed renewal ~~shall~~ *may* not exceed twice the normal renewal fee as set by the board. A person applying for renewal whose license was suspended for failure to renew is required to submit to the examinations described in 37-16-403 as a condition of renewal for a 3-year period after suspension.

(2) Each applicant for license renewal ~~must~~ *shall* submit evidence showing completion of 4 hours of continuing education completed during the preceding 12 months. The requirements of the continuing education programs are to be determined by the board by rule.

(3) (a) The board may set standards and fees for issuing licenses that designate inactive status.

(b) An inactive licensee may be reinstated to active practice if he:

(i) applies for reinstatement;

(ii) pays a fee set by the board; and

(iii) produces proof satisfactory to the board of completion of the continuing education requirements established by the board."

Section 7. Section 37-16-408, MCA, is amended to read:

"**37-16-408. Deposit of fees, ~~and~~ fines, *and costs.*** Fees, ~~and~~ fines, *and costs* collected under this chapter, except those collected by a justice's court, ~~shall~~ *must* be deposited in the state special revenue fund for the use of the board, subject to appropriations and 37-1-101(6)."

Section 8. Section 37-16-411, MCA, is amended to read:

"**37-16-411. Revocation or suspension of license — fines.** A person ~~registered~~ *licensed* under this chapter may have his license revoked or suspended for a fixed period to be determined by the board or be fined not to exceed $500 per incident for any of the following causes:

(1) being convicted of a felony, subject to chapter 1, part 2, of this title. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or certification by the judge of the court is conclusive evidence of the conviction, except that if the person has been pardoned by a governor or the president of the United States, the conviction does not constitute grounds for revocation or suspension.

(2) securing a license under this chapter through fraud or deceit or false statements;

(3) the personal use of a false name or alias in the practice of his profession;

(4) violating any of the provisions of this chapter;

(5) obtaining any fee or making any sale by fraud or misrepresentation;

(6) knowingly employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter;

(7) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is improbable, misleading, deceptive, or untruthful;

(8) representing that the services or advice of a person licensed to practice medicine or possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids ~~when~~ *and related devices if* that is not true or using the terms "doctor", "clinic", "hearing clinic", "state registered", or other like words, abbreviations, or symbols which tend to connote the medical profession when that use is not accurate;

(9) permitting another to use his license or certificate;

(10) defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations or falsely disparaging the products of competitors in any respect or their business methods, selling prices, values, credit terms, policies, or services;

(11) using any method of advertising prohibited by trade practice rules 1 through 17 of the federal trade commission;

(12) obtaining information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unlawful means;

(13) directly or indirectly giving or offering to give or permitting or causing to be given money or anything of value to any person who advises

another in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;

(14) unethical conduct or gross incompetence or negligence in the performance of his duties, including repeated failure to make indicated medical referrals of his customers;

(15) selling a hearing aid *or related device* to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids *or related devices,* except ~~in cases of selling replacement hearing aids.~~ *for the sale of a replacement hearing aid or a related device of the same make and model within 1 year of the original sale;*

(16) falsifying hearing test or evaluation results or any associated client records;

(17) refusing to cooperate with an investigation by the board by:

(a) failing to furnish requested records or documents;

(b) failing to furnish a complete explanation of matters referred to in the complaint;

(c) failing to respond to a subpoena issued by the board;

(d) willfully misrepresenting any relevant fact to a board investigator; or

(e) attempting to discourage a potential witness from cooperating with a board investigator or from testifying by using threats, harassment, extortion, or bribery."

Section 9. **Restitution.** In addition to being disciplined for any of the activities described in 37-16-411, a person licensed under this chapter may be ordered to make restitution to a purchaser of the purchase price of a hearing aid or related device minus the dispensing fee. For the purposes of this section, the dispensing fee may not exceed 20% of the total cost of the hearing aid or related device.

Section 10. **Right to cancel — return of hearing aid or related device — notice — refund.** (1) A purchaser of a hearing aid or related device may cancel the sale within 30 days of the date of delivery of the hearing aid or related device if:

(a) the hearing aid or related device is defective in fit or function; or

(b) a licensed hearing aid dispenser has failed to correct a problem in fit or function.

(2) (a) If a purchaser cancels the sale of a hearing aid or related device for a reason provided in (1), he must provide written notice to the seller indicating his intention not to be bound by the sale contract. The purchaser

must also return the hearing aid or related device in substantially the same condition as it was received by the purchaser.

(b) For the purpose of determining whether cancellation has occurred within 30 days of the date of delivery, written notice:

(i) given by mail is considered given on the date mailed; and

(ii) delivered in person is given when delivered to the hearing aid dispenser's permanent place of business.

(3) A licensed hearing aid dispenser shall refund to the purchaser the amount paid for the hearing aid or related device minus the dispensing fee within 30 days of receipt of written notice of cancellation. For the purposes of this section, the dispensing fee may not exceed 20% of the total cost of the hearing aid or related device.

(4) All sales receipts for refunds issued by the seller of a hearing aid or related device must contain a statement of the reason for the cancellation.

Section 11. **Rulemaking authority.** The board shall adopt rules consistent with the provisions of [sections 1 through 10]. Rules adopted by the department may include, but are not limited to, rules defining the term "related devices" and other rules necessary to implement [sections 1 through 10].

Section 12. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 13. **Codification instruction.** [Sections 9 through 11] are intended to be codified as an integral part of Title 37, chapter 16, and the provisions of Title 37, chapter 16, apply to [sections 9 through 11].

Approved March 25, 1991.

CHAPTER NO. 156

[SB 206]

AN ACT REVISING THE LAWS RELATING TO THE ADMINISTRATION OF BEER AND WINE LICENSES, SPECIAL LICENSES, AND ALL-BEVERAGES LICENSES; LIMITING CONCURRENT APPLICATIONS FOR THE SAME PREMISES; PROHIBITING FOR 5 YEARS AN APPLICATION FOR A LICENSE IN THE VICINITY OF ONE THAT WAS DENIED FOR CERTAIN REASONS; ALLOWING THE DEPARTMENT OF REVENUE TO PLACE SPECIAL RESTRICTIONS ON LICENSES; REQUIRING A DETERMINATION OF PUBLIC

CONVENIENCE AND NECESSITY BEFORE TRANSFER OF LOCATION OF A LICENSE; REQUIRING THE DEPARTMENT TO INVESTIGATE MATTERS RELATING TO LICENSE APPLICATIONS; ALLOWING THE DEPARTMENT TO DENY A LICENSE BASED UPON A FALSE STATEMENT IN AN ORIGINAL OR RENEWAL APPLICATION OR MADE AT A HEARING ON AN APPLICATION; ALLOWING THE DEPARTMENT TO REVOKE A LICENSE OR REFUSE RENEWAL OF A LICENSE IF THE LICENSEE NO LONGER MEETS LICENSING CRITERIA; AND AMENDING SECTIONS 16-1-302, 16-4-203, 16-4-207, 16-4-402, 16-4-404, 16-4-405, AND 16-4-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Limits on concurrent applications.** (1) An application for the issuance of a new license or for the transfer of an existing license may not be considered by the department if a previous application for the same premises is pending. An application is considered pending if a final decision:

(a) has not been made by the department; or

(b) has been made by the department but:

(i) a petition for judicial review can still be filed or has been filed; or

(ii) an appeal to the Montana supreme court can still be filed or has been filed.

(2) This section does not prevent the department from considering more than one application for the same location pursuant to competition for a last available license.

Section 2. **Denial of application — five-year moratorium.** (1) If an application for the issuance of a new license or for the transfer of an existing license has been denied for any reason provided in 16-4-405, the department may not consider an application or issue any retail license, special permit, or special license for those premises for 5 years unless the department, using the criteria described in subsection (3), determines that the proposed use is substantially different from the use that was rejected. The prohibition period commences on the date of the final agency decision or, if judicially reviewed, on the date the judicial decision is final.

(2) If an application is withdrawn after a hearing has been held in which testimony is received regarding any reason for denial provided in 16-4-405, the effect of the withdrawal is the same as if a final decision had been made denying the application for any reason provided in 16-4-405. The 5-year prohibition against considering an application or issuing a license for that vicinity commences on the date of the withdrawal.

(3) The department shall determine whether a proposed use is substantially different by considering:

(a) the capacity of the proposed use;

(b) the nature of the establishment;

(c) the presence and character of any entertainment; and

(d) the characteristics of the neighborhood.

Section 3. Section 16-1-302, MCA, is amended to read:

"**16-1-302. Functions, powers, and duties of department.** The department ~~shall have~~ *has* the following functions, duties, and powers:

(1) to buy, import, have in its possession for sale, and sell liquors and table wine in the manner set forth in this code;

(2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this code;

(3) to determine the municipalities ~~within which~~ *where* state liquor stores ~~shall~~ *are to* be established throughout the state and the situation of the stores within ~~every such municipality~~ *these municipalities*;

(4) to lease, furnish, and equip any building or land required for the operation of this code;

(5) to buy or lease all plants and equipment it may consider necessary and useful in carrying into effect the objects and purposes of this code;

(6) to employ store managers and also every officer, investigator, clerk, or other employee required for the operation or carrying out of this code and to dismiss ~~the same~~ *them*, fix their salaries or remuneration, assign them their title, define their respective duties and powers, and to engage the service of experts and persons engaged in the practice of a profession, if ~~deemed expedient~~ *considered appropriate*;

(7) to determine the nature, form, and capacity of all packages to be used for containing liquor kept or sold under this code;

(8) to grant and issue licenses under and in pursuance to this code;

(9) to place special restrictions on the use of a particular license, which must be endorsed upon the face of the license, if the special restrictions are made pursuant to a hearing held in connection with the issuance of the license or if the special restrictions are agreed to by the licensee;

~~(9)~~*(10)* without ~~in any way~~ limiting or being limited by the foregoing, to do all ~~such~~ things ~~as are deemed~~ *considered* necessary or advisable by the department for the purpose of carrying into effect the provisions of this code or the rules made ~~thereunder~~ *under the provisions of this code*."

Section 4. Section 16-4-203, MCA, is amended to read:

"**16-4-203. Determination of public convenience and necessity.** ~~Any~~ *An* original license issued pursuant to *16-4-104*, 16-4-201, or 16-4-202 ~~subsequent to April 30, 1974,~~ *or the transfer of location of a license* ~~shall~~ *may* be ~~issued~~ *approved* only ~~upon~~ *if* the department ~~having first~~ *has* determined, upon a hearing held pursuant to the Montana Administrative Procedure Act, that the issuance *or transfer* of ~~such~~ *the* license is justified by public convenience and necessity. *If there is no opposition to the application for issuance or transfer of the license, a hearing is not required.*"

Section 5. Section 16-4-207, MCA, is amended to read:

"**16-4-207. Notice of application — *investigation* — publication — protest.** (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer a retail license, *the department shall investigate the application as provided in 16-4-402. If after the investigation the department does not discover a basis to deny the application,* the department shall promptly publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made application for a retail license and that protests against the issuance of a license to the applicant by a person who has extended credit to the transferor or residents of the county from which the application comes or adjoining Montana counties may be mailed to a named administrator in the department of revenue within 10 days after the final notice is published. Notice of application for a new license ~~shall~~ *must* be published once a week for 4 consecutive weeks. Notice of application for transfer of a license ~~shall~~ *must* be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL
ALL-BEVERAGES LICENSE

Notice is ~~hereby~~ given that on the .... day of ...., 19.., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue, to be used at (describe location of premises where beverages are to be sold).~~, and protests by a~~ *A* person who has extended credit to the transferor ~~or~~ *and* residents of ...... counties~~, if any there be,~~ *may protest* against the issuance of ~~such~~ *the* license. *Protests* may be mailed to ...., department of revenue, Helena, Montana, on or before the .... day of ...., 19...

Dated .... Signed ....
ADMINISTRATOR

(2) Each applicant shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) If the administrator receives no written protests, the department may issue or transfer the license without holding a public hearing. If written protests by a person who has extended credit to the transferor or residents of the county from which the application comes or adjoining Montana counties against the issuance or transfer of the license are received, the department shall hold a public hearing ~~at its office in Helena~~."

Section 6. Section 16-4-402, MCA, is amended to read:

"**16-4-402. Application — investigation.** (1) Prior to the issuance of ~~any~~ *a* license under this chapter, the applicant shall file with the department an application in writing, signed by the applicant and containing ~~such~~ information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as ~~may be~~ required by the department. The application ~~shall~~ *must* be verified by the affidavit of the person making ~~the same~~ *it* before a person authorized to administer oaths.

(2) *(a)* Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall within 30 days make a thorough investigation of all matters ~~pertaining thereto~~ *relating to the application.* ~~and~~ *The department* shall determine whether*:*

(i) ~~such~~ *the* applicant is qualified to receive a license ~~and~~*;*

(ii) his premises are suitable for the carrying on of the business*;* and

(iii) ~~whether~~ the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection *(2)* does not apply to a catering endorsement provided in 16-4-204(2) or a special permit provided in 16-4-301.

(3) Upon proof that ~~any~~ *an* applicant made a false statement in any part of the *original* application, *in any part of an annual renewal application, or in any hearing conducted pursuant to an application,* the application for the license may be denied, and if issued, the license may be revoked."

Section 7. Section 16-4-404, MCA, is amended to read:

"**16-4-404. Protest period — contents of license — posting — privilege — transfer.** (1) No license may be issued until on or after the date set in the notice for hearing protests.

(2) Every license issued under this code shall ~~set forth~~ *state* the name of the person to whom *it is* issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under ~~said~~ *the* license, and ~~such~~ other information ~~as~~ the department ~~shall deem~~ *considers* necessary. If the licensee is a partnership or if more than one person has ~~any~~ interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises ~~wherein~~ *in which* the business authorized under the license is conducted, and ~~such~~ *the* license ~~shall~~ *must* be exhibited upon request to any authorized representative of the department or to any peace officer of the state of Montana.

(3) ~~Any~~ *A* license issued under the provisions of this code ~~shall be considered~~ *is* a privilege personal to the licensee named in the license and ~~shall be good~~ *is valid* until the expiration of the license unless sooner revoked or suspended.

(4) A license may be transferred to the executor or administrator of the estate of ~~any~~ *a* deceased licensee when ~~such~~ *the* estate consists in whole or in part of the business of selling alcoholic beverages under a license.~~, and in such event the~~ *The* license may descend or be disposed of with the *licensed* business ~~to which it is applicable~~ under appropriate probate proceedings.

(5) *(a)* ~~In the event of a~~ *A licensee may apply to the department for a transfer of the license to different premises if:*

(i) there has been major loss or damage to *the* licensed premises by unforeseen natural causes ~~or in case of~~*;*

(ii) ~~expiration of~~ *the* lease of the licensed premises *has expired* ~~or~~*;*

(iii) ~~in the event of~~ *in case of rented licensed premises, there has been an* eviction or increase of rent by the landlord ~~(in case of rented licensed premises)~~*;* or

(iv) ~~in case of~~ *the licensee has* proposed removal of *the* license to premises *that are* as substantially suited for the retail alcoholic beverages business as the premises *proposed to be* vacated~~, the licensee may apply to the department for a transfer of the license to different premises~~.

(b) The department may, ~~in its discretion~~ *after notice and opportunity for protest,* permit a transfer in ~~such~~ *the* cases *specified in subsection (5)(a)* if it appears to the department that ~~such~~ a transfer is required to do justice to the licensee applying for the transfer *and is justified by public convenience and necessity*. The department ~~shall in no event nor for any cause permit~~ *may not allow* a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than ~~such~~ facilities ~~which~~ *that* exist or had existed at the premises from which the transfer is proposed to be made.

(6) Upon a bona fide sale of the business operated under ~~any~~ *a* license, the license may be transferred to a qualified purchaser. No transfer of ~~any~~ *a* license ~~as~~ to *a* person or location ~~shall be~~ *is* effective unless ~~and until~~ approved by the department~~, and any~~. *A* licensee or transferee or proposed transferee who operates or attempts to operate under ~~any~~ *a* supposedly transferred license prior to the approval of ~~such~~ *the* transfer by the department, endorsed upon the license in writing, ~~shall be~~ *is* considered ~~as~~ *to be* operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval~~, providing~~ *if there has not been a change in location and* the application for transfer has been filed with the department.

(7) Except as provided in subsections (2) through (6) and 16-4-204, no license ~~shall~~ *may* be transferred or sold ~~nor shall it be~~ *or* used for any place of business not described in the license~~; provided, however, that such~~. *A* license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license."

Section 8. Section 16-4-405, MCA, is amended to read:

"**16-4-405. Denial of license.** (1) The department may deny the issuance of a retail alcoholic beverages license if it determines that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(2) ~~No~~ *A* retail license may *not* be issued by the department for ~~any~~ *a* premises situated within ~~any~~ *a* zone of ~~such~~ *a* city or town where the sale of alcoholic beverages is prohibited by ordinance, a certified copy of which has been filed with the department.

(3) ~~Nor may a~~ *A* license under this code *may not* be issued if the department finds from the evidence at the hearing *held pursuant to 16-4-207(3) that:*

(a) ~~that~~ the welfare of the people residing in the vicinity of the ~~place~~ *premises* for which ~~such~~ *the* license is desired will be adversely and seriously affected*;*

(b) there is not a public convenience and necessity justification;

(c) the applicant or the premises proposed for licensing fail to meet the eligibility or suitability criteria established by this code; or

(d) ~~that~~ the purposes of this code will not be carried out by the issuance of ~~such~~ *the* license."

Section 9. Section 16-4-406, MCA, is amended to read:

"**16-4-406. Renewal — suspension or revocation — penalty.** *(1)* The department may upon its own motion and shall upon a written, verified complaint of ~~any~~ *a* person investigate the action and operation of ~~any~~ *a* brewer, wholesaler, or retailer licensed under this code.

(2) ~~If~~ *Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if* the department, after investigation, ~~shall have~~ *has* reasonable cause to believe that ~~any such~~ *a* licensee has violated ~~any of the provisions~~ *a provision* of this code or ~~any rules~~ *a rule* of the department, it may, in its discretion and in addition to the other penalties prescribed~~,~~*:*

(a) reprimand a licensee~~,~~*;*

(b) proceed to revoke the license of ~~any such~~ *the* licensee ~~or~~*;*

(c) ~~it may~~ suspend the ~~same~~ *license* for a period of not ~~to exceed~~ *more than* 3 months ~~or~~*;*

(d) ~~it may~~ refuse to grant a renewal of ~~said~~ *the* license ~~upon the~~ *after its* expiration ~~thereof~~*;* or

(e) impose a civil penalty not to exceed $1,500~~, subject to the opportunity for a hearing under the Montana Administrative Procedure Act~~.

(3) If the department, after investigation, has reasonable cause to believe that a licensee does not meet the eligibility criteria established by this code or rules of the department or that the premises are not suitable pursuant to the provisions of this code or rules of the department, it may, in its discretion, proceed to revoke the license of the licensee or it may refuse to grant renewal of the license subject to the opportunity of the licensee to contest the action at a hearing under the Montana Administrative Procedure Act."

Section 10. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [sections 1 and 2].

Approved March 25, 1991.

CHAPTER NO. 157

[SB 290]

AN ACT EXEMPTING THE OPERATOR OF A RENTED SINGLE-AXLE DRIVE TRUCK USED FOR MOVING HOUSEHOLD GOODS FROM THE REQUIREMENT TO HAVE A SPECIAL FUEL USER'S PERMIT; AND AMENDING SECTION 15-70-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-302, MCA, is amended to read:

"**15-70-302. Special fuel dealer's licenses and special fuel user's permits required — exceptions.** (1) ~~It is unlawful for a~~ *A* person ~~to~~ *may not* act as a special fuel dealer in this state unless the person is the holder of an uncanceled fuel dealer's license issued to him by the department.

(2) ~~Every~~ *A* special fuel user shall obtain annually from the department, prior to the use of special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel user's permit. Except as provided in subsection (5), a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by him upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.

(3) A special fuel user's permit is not required of any person whose sole use of special fuel is for the propulsion of a privately operated passenger automobile *or of a truck with a single drive axle under 26,000 pounds gross vehicle weight that the user has rented for 30 days or less for the primary purpose of moving his household goods*, provided the person purchases special fuel, tax paid, *except special fuel brought into this state in the fuel supply tank of the vehicle*, from a licensed special fuel dealer in this state.

For purposes of this exemption, a privately operated passenger vehicle does not include a motor vehicle used for the transportation of persons for hire or for compensation or designed, used, or maintained primarily for transportation of property.

(4) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits will be issued at no cost to the user by the department, scale house personnel, and gross vehicle weight patrol crews. The department may require the user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(5) A special fuel user need not display the original or reproduced copy of the special fuel user's permit as required by subsection (2) if:

(a) he is registered and licensed pursuant to the International Fuel Tax Agreement as authorized by 15-70-121 and the vehicle displays a license or decal issued pursuant to the agreement; or

(b) the motor vehicle operated by him is a vehicle that is part of a motor vehicle fleet based in Montana that is proportionally registered under the provisions of 61-3-711 through 61-3-733;

(c) he obtains a registration card issued by the department of highways indicating the special fuel user's permit number; and

(d) the registration card indicating the special fuel user's permit number is carried in the vehicle and is available for inspection.

(6) A person whose use of special fuel is predominantly for agricultural and nonhighway use but who owns or operates one or more passenger cars or light trucks may obtain annually from the department an authorization as provided in 15-70-309."

Approved March 25, 1991.

CHAPTER NO. 158

[SB 399]

AN ACT REQUIRING COPIES OF ALL PROPOSED INITIATIVES TO BE MADE AVAILABLE FOR READING AND SIGNING IN THE OFFICE OF THE ELECTION ADMINISTRATOR IN EACH COUNTY; AND ALLOWING THE SECRETARY OF STATE TO CHARGE A FEE TO REIMBURSE HIM FOR THE COST OF SENDING COPIES OF PETITIONS FOR INITIATIVES TO EACH COUNTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Petitions to be made available in each county election administrator's office.** When the secretary of state sends written notice of the approval of the form of a petition as required under 13-27-202(4), he shall forward a copy of the petition, along with signature sheets, to the election administrator of each county. The election administrator shall make a copy of each approved petition available for reading and signing in his office during business hours in an election year until the petitions are submitted under 13-27-301. The secretary of state may charge the person who submitted the petition a fee sufficient to reimburse the secretary of state for the cost of providing copies of the petition and signature sheets to each county election administrator.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 13, chapter 27, part 2, and the provisions of Title 13, chapter 27, apply to [section 1].

Approved March 25, 1991.

CHAPTER NO. 159

[SB 444]

AN ACT PROVIDING THAT A PERSON'S NAME MAY NOT APPEAR ON A JURY LIST FOR MORE THAN ONE COURT DURING A 1-YEAR TERM; AND AMENDING SECTION 3-15-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-15-402, MCA, is amended to read:

"**3-15-402. Selection of qualified persons.** At the meeting specified in 3-15-401, the officers present must select from the most recent list of all registered electors, as prepared by the county registrar, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. Each name so appearing on said list shall be assigned a number which shall be placed opposite the name on the jury list and shall be considered the number of the juror opposite whose name it appears. Said numbers shall be consecutive from "1" to the total number of jurors. *A person's name may not appear on a jury list for more than one court during a 1-year term.*"

Approved March 25, 1991.

CHAPTER NO. 160

[HB 168]

AN ACT REVISING THE REQUIREMENTS FOR MOTOR CARRIER IDENTIFICATION OF CERTAIN LARGE MOTOR VEHICLES; DELETING THE REDUNDANT PENALTY PROVISION; AMENDING SECTION 69-12-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-408, MCA, is amended to read:

"**69-12-408. Identification of ownership of certain large motor vehicles.** (1) (a) ~~No~~ *A person may not operate a* motor vehicle or combination of vehicles, except farm vehicles, having a gross weight of more than 10,000 pounds ~~shall operate~~ upon the highways of the state unless there ~~shall be~~ *is* displayed on both sides of each vehicle operated under its own power, either alone or in combination, the name or trade name and ~~address or M.R.C. or I.C.C. certificate~~ *city and state of or the name or trade name and the public service commission, interstate commerce commission, or department of transportation* number of the person or corporation under whose jurisdiction the vehicle or vehicles is or are being operated.

(b) The display of name must be in letters in sharp contrast to the background and in size, shape, and color readily legible in daylight from a distance of 50 feet while the vehicle is not in motion. ~~Such~~ *The* display ~~shall~~ *must* be kept and maintained ~~in such manner as~~ to remain ~~so~~ legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device, ~~so~~ prepared ~~as to otherwise meet~~ *so that it meets* the identification and legibility requirements of this section.

(2) This section ~~shall~~ *does* not apply to motor vehicles being transported to dealers from point of manufacture or from one dealer to another or ~~when~~ being demonstrated to a prospect or delivered to a buyer from a dealer or a manufacturer.

~~(3) Any person convicted of violating this section shall be guilty of a misdemeanor and shall be punished for each offense by a fine of not more than $100, by imprisonment for not more than 1 month, or both.~~"

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1991.

CHAPTER NO. 161

[HB 262]

AN ACT REVISING THE MEANING OF TAXABLE VALUATION AS USED IN THE CLASSIFICATION OF COUNTIES; AMENDING SECTION 7-1-2111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-2111, MCA, is amended to read:

"**7-1-2111. Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to that percentage of the true and full valuation of the property in the counties upon which the tax levy is made, except for vehicles subject to taxation under 61-3-504(2), as follows:

(a) first class—all counties having a taxable valuation of $50 million or over;

(b) second class—all counties having a taxable valuation of more than $30 million and less than $50 million;

(c) third class—all counties having a taxable valuation of more than $20 million and less than $30 million;

(d) fourth class—all counties having a taxable valuation of more than $15 million and less than $20 million;

(e) fifth class—all counties having a taxable valuation of more than $10 million and less than $15 million;

(f) sixth class—all counties having a taxable valuation of more than $5 million and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, taxable valuation means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) the amount of interim production and new production taxes levied, as provided in 15-23-607, divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%; ~~and~~

(d) the amount of value represented by new production exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%; *and*

(e) 6% of the taxable value of the county on January 1 of each tax year."

Section 2. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1989.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1991.

CHAPTER NO. 162

[HB 769]

AN ACT CLARIFYING CONTINUED MEMBERSHIP RIGHTS FOR EMPLOYEES IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM WHO TERMINATE COVERED EMPLOYMENT; CLARIFYING RETIREMENT ELIGIBILITY; AMENDING SECTIONS 19-3-401 AND 19-3-901, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-401, MCA, is amended to read:

"**19-3-401. Membership.** (1) All employees shall become members on the first day of employment. Each employee shall file with the board such information affecting his status as a member of the retirement system as the board may require.

(2) (a) A member with at least 5 years of creditable service who terminates covered employment and does not take a refund of his contributions retains the right to purchase service subject to the provisions of part 5 of this chapter.

(b) Upon reaching retirement age, a member becomes eligible to receive a retirement allowance under the provisions of 19-3-901 or 19-3-902.

(3) A member with less than 5 years of creditable service who terminates covered employment and leaves his accumulated contributions on deposit is not eligible for any benefits other than a refund of his accumulated contributions.

~~(2)~~*(4)* Every employee who reenters service shall become a member unless he has had an original election of exemption from membership and his service was not interrupted by a break of more than 1 month. A seasonal employee who has had an original election of exemption from membership will not be subject to the requirement regarding the break in service while continuing in his original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than 1 month in returning to original employment in any ensuing season, such a seasonal employee shall become a member of the retirement system upon reentry.

~~(3)~~*(5)* Time during which an employee of a school district is absent from service during official vacation shall be counted as service in determining eligibility for membership under this chapter."

Section 2. Section 19-3-901, MCA, is amended to read:

"**19-3-901. Eligibility for service retirement.** A member who has attained the age of 60 and completed 5 years of qualified service is eligible for service retirement. A member who has attained age 65 *while employed in a position covered by a public employee retirement system* is eligible for service retirement regardless of his years of creditable service. A member who has completed 30 years or more of ~~state~~ *creditable* service is eligible for service retirement regardless of his age."

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved March 25, 1991.

CHAPTER NO. 163

[SB 28]

AN ACT REQUIRING THE CONCURRENCE OF THE MONTANA SELF-INSURERS GUARANTY FUND IN A DECISION OF THE DEPARTMENT OF LABOR AND INDUSTRY THAT AN EMPLOYER IS ENTITLED TO SELF-INSURE OR TO CONTINUE TO SELF-INSURE UNDER THE WORKERS' COMPENSATION ACT; AND AMENDING SECTIONS 39-71-2101, 39-71-2103, 39-71-2104, 39-71-2109, 39-71-2609, AND 39-71-2611, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2101, MCA, is amended to read:

"**39-71-2101. General requirements for electing coverage under plan.** An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the department *and the Montana self-insurers guaranty fund* of his solvency and financial ability to pay the compensation and benefits in this chapter provided for and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective and may, by order of the department *and with the concurrence of the guaranty fund,* make such payments directly to his employees as they may become entitled to receive under the terms and conditions of this chapter."

Section 2. Section 39-71-2103, MCA, is amended to read:

"**39-71-2103. Employer permitted to carry on business and settle directly with employee — individual liability.** (1) If such employer making such election shall be found by the department *and the Montana self-insurers guaranty fund* to have the requisite financial ability to pay the compensation and benefits in this chapter provided for, then the department, *with the concurrence of the guaranty fund,* shall grant to the employer permission to carry on his business for the fiscal year within which such election is made and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same.

(2) Each individual employer in an association, corporation, or organization of employers given permission by the department to operate as self-insured under plan No. 1 of this chapter is jointly and severally liable for all obligations incurred by the association, corporation, or organization under this chapter. An association, corporation, or organization of employers given permission to operate as self-insured must maintain excess liability coverage in amounts and under such conditions as provided by rules of the department."

Section 3. Section 39-71-2104, MCA, is amended to read:

"**39-71-2104. Renewal of application.** Every employer, so long as he continues in his employment and so long as he continues to be bound by compensation plan No. 1, shall, at least 30 days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the department may, *with the concurrence of the Montana self-insurers guaranty fund,* renew the same from year to year."

Section 4. Section 39-71-2109, MCA, is amended to read:

"**39-71-2109. When employer may be relieved from liability.** Any employer bound by compensation plan No. 1 against whom liability may exist for compensation for permanent benefits under this chapter may, with the approval of the department *and the concurrence of the Montana self-insurers guaranty fund,* be relieved therefrom by:

(1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists for permanent total benefits, assuming interest at 7% per annum, compounded annually, with the department; or

(2) depositing with the department the sum of the unpaid permanent partial benefits for which such liability exists."

Section 5. Section 39-71-2609, MCA, is amended to read:

"**39-71-2609. Establishment of fund — employer participation required.** (1) There is a nonprofit unincorporated legal entity, to be known as the Montana self-insurers guaranty fund, financed as provided in 39-71-2615 and 39-71-2616. The fund shall perform its functions under rules adopted by, and powers exercised through, the board established under 39-71-2604.

(2) A private self-insurer shall participate as a member in the fund as a condition of the authority to self-insure in this state under 39-71-2101.

~~(3) The department shall consult with the board regarding the suitability of allowing an employer to self-insure or to continue as a self-insured employer.~~"

Section 6. Section 39-71-2611, MCA, is amended to read:

"**39-71-2611. Duties, liabilities, and rights of fund.** (1) The fund shall assume the workers' compensation obligations of a private self-insurer that come due after the private self-insurer has been determined to be an insolvent self-insurer.

(2) The fund is not liable for the payment of any penalties or interest assessed for any act or omission of a person acting on behalf of the fund.

(3) The fund is a party in interest in all proceedings involving workers' compensation claims against an insolvent private self-insurer whose workers' compensation obligations have been paid or assumed by the fund. The fund has the same rights and defenses as the insolvent private self-insurer, including but not limited to all of the following:

(a) to appear and deny, defend, and appeal a claim; and

(b) to receive notice of, investigate, adjust, compromise, settle, and pay a claim.

(4) The fund shall concur in department decisions relating to allowing an employer to self-insure."

Approved March 26, 1991.

CHAPTER NO. 164

[SB 146]

AN ACT TO ALLOW THE PRACTICE OF MEDICINE AS THE PARTNER, AGENT, OR EMPLOYEE OF OR IN JOINT VENTURE WITH A

HOSPITAL, MEDICAL ASSISTANCE FACILITY, OR OTHER LICENSED HEALTH CARE PROVIDER; AND AMENDING SECTION 37-3-322, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-322, MCA, is amended to read:

"**37-3-322. Unprofessional conduct.** As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) performing abortion contrary to law;

(3) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(4) employing abusive billing practices;

(5) directly or indirectly giving or receiving a fee, commission, rebate, or other compensation for professional services not actually rendered. This prohibition does not preclude the legal functioning of lawful professional partnerships, corporations, or associations.

(6) willful disobedience of the rules of the board;

(7) conviction of an offense involving moral turpitude or conviction of a felony involving moral turpitude, and the judgment of the conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(8) commission of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine;

(9) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(10) conviction or violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration, and the judgment of conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(11) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(12) conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public as defined by rule of the board;

(13) conduct likely to deceive, defraud, or harm the public;

(14) making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

(15) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(16) use of a false, fraudulent, or deceptive statement in any document connected with the practice of medicine;

(17) practicing medicine under a false or assumed name;

(18) testifying in court on a contingency basis;

(19) conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

(20) aiding or abetting in the practice of medicine by a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(21) allowing another person or organization to use the licensee's license to practice medicine;

(22) malpractice or negligent practice;

(23) *except as provided in this subsection,* practicing medicine as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice medicine within this state; however, this does not prohibit*:*

(a) the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4*;* ~~, nor does it apply to~~

(b) a single consultation with or a single treatment by a person or persons licensed to practice medicine and surgery in another state or territory of the United States or foreign country; *or*

(c) practicing medicine as the partner, agent, or employee of or in joint venture with a hospital, medical assistance facility, or other licensed health care provider. However:

(i) the partnership, agency, employment, or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the physician's independent judgment in the practice of medicine;

(ii) the physician's independent judgment in the practice of medicine must in fact be unaffected by the relationship; and

(iii) the physician may not be required to refer any patient to a particular provider or supplier or take any other action the physician determines not to be in the patient's best interest.

(24) willfully or negligently violating the confidentiality between physician and patient, except as required by law;

(25) failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(26) failing to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by the patient's legally designated representative;

(27) failing to furnish to the board or its investigators or representatives information legally requested by the board;

(28) failing to cooperate with a lawful investigation conducted by the board;

(29) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by them;

(30) having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this section. A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct.

(31) any other act, whether specifically enumerated or not, which, in fact, constitutes unprofessional conduct."

Approved March 26, 1991.

CHAPTER NO. 165

[SB 372]

AN ACT REQUIRING THAT CHILDREN ENTERING A PRESCHOOL OR LICENSED DAY-CARE FACILITY BE IMMUNIZED AGAINST MENINGITIS; AMENDING SECTIONS 20-5-403, 20-5-404, AND 52-2-735, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because it amends 52-2-735 to require the department of health and environmental sciences to adopt rules to require children under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted to a day-care center unless an exemption has been claimed as provided in 20-5-405.

It is the intent of the legislature that the department adopt rules similar to rules established for administration of the school immunization laws, Title 20, chapter 5, part 4.

Furthermore, it is intended that rules allow persons to claim a religious or medical exemption from the immunization requirements contained in 52-2-735 in the same manner as provided in 20-5-405.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-403, MCA, is amended to read:

"20-5-403. **Immunization required — release and acceptance of immunization records.** (1) The governing authority of any school other than a postsecondary school may not allow any person to commence attendance as a pupil unless the person:

(a) has been immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubella, mumps, and measles (rubeola) in the manner and with immunizing agents approved by the department, except that pertussis vaccination is not required for a person 7 years of age or older;

(b) has been immunized against Haemophilus influenza type "b" before enrolling in a preschool if under 5 years of age;

~~(b)~~*(c)* qualifies for conditional attendance; or

~~(c)~~*(d)* files for an exemption.

(2) (a) The governing authority of a postsecondary school may not allow any person to commence attendance as a pupil unless the person:

(i) has been immunized against rubella and measles (rubeola) in the manner and with immunizing agents approved by the department; or

(ii) files for an exemption.

(b) The governing authority of a postsecondary school may impose immunization requirements as a condition of attendance that are more stringent than those required by this part.

(3) A pupil who transfers from one school district to another may photocopy immunization records in the possession of the school of origin. The school district to which a pupil transfers shall accept the photocopy as evidence of immunization. Within 30 days after a transferring pupil ceases attendance at the school of origin, the school shall send the original immunization records for the pupil to the school district to which the pupil transfers."

Section 2. Section 20-5-404, MCA, is amended to read:

"**20-5-404. Conditional attendance.** The governing authority of a school other than a postsecondary school may allow the commencement of attendance in school by a person who has not been immunized against each disease listed in 20-5-403 if that person has received one or more doses of polio, measles (rubeola), mumps, rubella, diphtheria, pertussis, *Haemophilus influenza type "b"*, and tetanus vaccine, except that pertussis vaccine is not required for a person 7 years of age or older *and Haemophilus influenza type "b" vaccine is required only for children under 5 years of age.*"

Section 3. Section 52-2-735, MCA, is amended to read:

"**52-2-735. Health protection — certification required.** (1) The department of health and environmental sciences shall adopt rules for the protection of children in day-care centers from the health hazards of inadequate food preparation, poor nutrition, and communicable diseases. *Rules adopted by the department must include rules requiring children under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted for care in the facility unless an exemption has been claimed as provided in 20-5-405.*

(2) Local public health authorities shall arrange to provide training to day-care center providers and employees regarding health hazards. Upon successful completion of the training the local public health authorities shall issue certificates to the providers and employees.

(3) In lieu of training, local public health authorities may elect to inspect facilities and issue certificates of approval to child-care center providers.

(4) Each applicant for a license to operate a day-care center shall submit to the department a certificate issued pursuant to subsection (2) or (3) before the department will issue a license.

(5) The local public health authority may charge the applicant a reasonable fee, not to exceed $25, for any inspection necessary to issue a certificate of approval, or a fee not to exceed the documented cost for training it provides under this section."

Section 4. **Effective dates.** (1) [Sections 1 and 2] are effective July 1, 1991.

(2) [Section 3 and this section] are effective on passage and approval, except that rules adopted by the department of health and environmental sciences may not be implemented prior to July 1, 1991.

Approved March 26, 1991.

CHAPTER NO. 166

[HB 83]

AN ACT AUTHORIZING THE TELEPHONIC ISSUANCE OF PERMITS FOR EXCESS SIZE AND WEIGHT; AND AMENDING SECTION 61-10-121, MCA.

STATEMENT OF INTENT

The house committee on highways and transportation has determined that a statement of intent is necessary for this bill. It is the intent of the legislature to provide the department of highways the means to facilitate the securing of oversize permits by the motor carrier industry. To that end, the department should issue permits telephonically regardless of whether the weigh stations are equipped with computers.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-121, MCA, is amended to read:

"**61-10-121. Permits for excess size and weight.** (1) ~~The~~ *Upon application and with good cause shown, the* department of highways and local authorities in their respective jurisdictions may ~~in their discretion, upon application in writing and with good cause shown,~~ issue *telephonically or in writing* a special permit ~~in writing~~ authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object, or other thing of a size or weight exceeding the maximum specified in 61-10-101 through 61-10-110 upon a highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible. However, only the department ~~has the discretion to~~ *may* issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of 9 feet in width or exceeding the length, height, or weight specified in 61-10-101 through 61-10-110. This permit ~~shall~~ *must* be issued in the public interest. A carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. A permit may not be issued for a period ~~of time~~ greater than the period for which the GVW license is valid ~~as provided in this title~~, including grace periods, ~~allowed by~~ *as provided in* this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit. The department may issue ~~oversize permits~~ to dealers in implements of husbandry and self-propelled machinery *oversize permits,* which may be transferred from unit to unit by the dealer, for the fee set forth in 61-10-124. These oversize permits may not restrict dealers in implements of husbandry and self-propelled machinery from traveling on a Saturday or Sunday~~. These oversize permits~~ *and* expire on December 31 of each year, with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery must be a resident of the state. A post-office box number is not a permanent address under this section.

(2) The applicant for a special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or other thing to be operated or moved and the particular state highways over which the vehicle, combination of vehicles, load, object, or other thing is to be moved and whether the permit is required for a single trip or for continuous operation."

Approved March 26, 1991.

CHAPTER NO. 167

[HB 87]

AN ACT AUTHORIZING THE DEPARTMENT OF HIGHWAYS TO ENTER INTO AGREEMENTS WITH ADJOINING STATES AND PROVINCES FOR THE PURPOSE OF EXCHANGING MAINTENANCE SERVICES IN EMERGENCY SITUATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Interstate emergency maintenance service agreements.** (1) The department may negotiate and enter into a bilateral agreement with an adjoining state or province to provide for the exchange of emergency maintenance services on highways located in Montana or the adjoining state or province.

(2) An agreement authorized under subsection (1) must be confined to emergency situations. The department is prohibited from entering into agreements with adjoining states or provinces that would result in an adjoining state or province performing routine maintenance on highways located in Montana.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to [section 1].

Approved March 26, 1991.

CHAPTER NO. 168

[HB 90]

AN ACT REVISING THE MONTANA AGRICULTURAL LOAN AUTHORITY ACT; REASSIGNING THE ALLOCATION OF BONDING AUTHORITY BETWEEN CERTAIN STATE PROGRAMS; PROVIDING A CONTINGENCY FOR THE REASSIGNED ALLOCATION TO BE USED FOR AGRICULTURAL PURPOSES; AMENDING SECTIONS

17-5-1302, 17-5-1312, AND 80-12-102, MCA; REPEALING SECTION 2-15-3011, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Montana Agricultural Loan Authority Act and beginning farm loan program have been inactive since adoption of the federal Tax Reform Act of 1986 because of the loss of an effective funding source.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1302, MCA, is amended to read:

"**17-5-1302. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Allocation" means an allocation of a part of the volume cap to an issuer pursuant to this part.

(2) "Board" means the board of examiners.

(3) "Bonds" means bonds, notes, or other interest-bearing obligations of an issuer.

(4) "Cap bonds" means those private activity bonds and that portion of governmental bonds for which a part of the volume cap is required to be allocated pursuant to the tax act.

(5) "Department" means the department of administration.

(6) "Governmental bonds" means bonds other than private activity bonds.

(7) "Issuer" means a state issuer or local issuer.

(8) "Local issuer" means a city, town, county, or other political subdivision of the state authorized to issue private activity bonds or governmental bonds.

(9) "Local portion" means that portion of the volume cap reserved for local issuers.

~~(10) "Montana agricultural loan authority" (MALA) means the authority provided for in 2-15-3011.~~

~~(11)~~*(10)* "Montana board of housing" (MBH) means the board created in 2-15-1814.

~~(12)~~*(11)* "Montana board of investments" (MBI) means the board provided for in 2-15-1808.

~~(13)~~*(12)* "Montana higher education student assistance corporation" (MHESAC) means the nonprofit corporation established under Title 20, chapter 26, part 11.

~~(14)~~*(13)* "Montana health facility authority" (MHFA) means the authority provided for in 2-15-1815.

~~(15)~~*(14)* "Private activity bonds" (PABs) has the meaning prescribed under section 1301 of the tax act.

~~(16)~~*(15)* "State issuer" means the state and any agency thereof authorized to issue private activity bonds. For this part only, the Montana higher education student assistance corporation is considered an agency of the state.

~~(17)~~*(16)* "State portion" means that portion of the volume cap reserved for state issuers.

~~(18)~~*(17)* "Tax act" means the Tax Reform Act of 1986 enacted by the United States congress.

~~(19)~~*(18)* "Volume cap" means, with respect to each calendar year, the principal amount of cap bonds that may be issued in the state in a calendar year as determined under the provisions of the tax act."

Section 2. Section 17-5-1312, MCA, is amended to read:

"**17-5-1312. Allocation to state issuers.** (1) Except as provided in subsection (5), the state portion must be allocated to state issuers pursuant to 17-5-1316.

(2) As a condition of receiving an allocation, each state issuer, upon issuance of the bonds, shall pay 30 cents per thousand of bonds to be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit.

(3) The following set-asides must be made in each calendar year for the following state issuers:

State Issuer	Percentage	Allocation Amount
Board	4	$4,200,000
~~MALA~~	~~2~~	~~2,100,000~~
MBH	~~40~~	~~42,000,000~~
	41	*43,050,000*
MBI	25	26,250,000
MHESAC	~~25~~	~~26,250,000~~
	26	*27,300,000*
MHFA	4	4,200,000
Total	100%	$105,000,000

(4) Each set-aside expires on the first Monday in September.

(5) Prior to the set-aside expiration date, allocations may be made by the department to each state issuer only from its respective set-aside pursuant to 17-5-1316 and no state issuer is entitled to an allocation except from its set-aside unless otherwise provided by the governor.

(6) After the expiration date, the amount of the set-aside remaining unallocated is available for allocation by the department to issuers pursuant to 17-5-1316 without preference or priority."

Section 3. **Reassignment of bonding authority for agricultural purposes — contingency.** If, at some time in the future, federal taxation laws allow the use of tax-exempt bonds to provide loans for the acquisition of farm or ranch land, a downpayment on the acquisition of farm or ranch land, or the acquisition or construction of depreciable property used in the operation of a farm or ranch, the allocation of bonding authority originally assigned to the Montana agricultural loan authority must be reassigned to the Montana board of investments to provide those loans.

Section 4. Section 80-12-102, MCA, is amended to read:

"**80-12-102. Definitions.** (1) As used in this chapter, the following definitions apply:

(a) "Agricultural land" means land actively devoted to agricultural use as defined in 15-7-202.

(b) "Authority" means the ~~agricultural loan authority provided for in 2-15-3011~~ *department of agriculture provided for in 2-15-3001.*

(c) "Bonds" means bonds or bond anticipation notes issued by the authority under the provisions of this chapter.

(2) References to the authority's property, revenues, or assets apply only to property, revenues, and assets generated by the Montana agricultural loan authority program, not those owned or generated by any other program or property over which the authority exercises general authority, direction, and control."

Section 5. **Repealer.** Section 2-15-3011, MCA, is repealed.

Section 6. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 17, chapter 5, and the provisions of Title 17, chapter 5, apply to [section 3].

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved March 26, 1991.

CHAPTER NO. 169

[HB 99]

AN ACT TO ALLOW A PERSON TO OPERATE A BICYCLE ON THE PAVED SHOULDER OF A ROADWAY; AND AMENDING SECTIONS 61-1-206 AND 61-8-605, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-206, MCA, is amended to read:

"**61-1-206. Roadway.** ~~"Roadway"~~ *Except as used in 61-8-605, "roadway"* means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" ~~as used herein shall refer~~ *refers* to any ~~such~~ roadway separately but not to all ~~such~~ roadways collectively."

Section 2. Section 61-8-605, MCA, is amended to read:

"**61-8-605. Riding on roadways ~~and bicycle paths~~.** *(1) As used in this section, "roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, including the paved shoulder.*

~~(1)~~*(2)* A person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as near to the right side of the roadway as practicable except when:

(a) overtaking and passing another vehicle proceeding in the same direction;

(b) preparing for a left turn at an intersection or into a private road or driveway; or

(c) necessary to avoid a condition that makes it unsafe to continue along the right side of the roadway, including but not limited to a fixed or moving object, parked or moving vehicle, pedestrian, animal, surface hazard, or a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

~~(2)~~*(3)* A person operating a bicycle upon a one-way highway with two or more marked traffic lanes may ride as close to the left side of the roadway as practicable.

~~(3)~~*(4)* Persons riding bicycles upon a roadway shall ride in single file except when:

(a) riding on paths or parts of roadways set aside for the exclusive use of bicycles;

(b) overtaking and passing another bicycle;

(c) riding on a paved shoulder or in a parking lane, in which case the persons may ride two abreast; or

(d) riding within a single lane on a laned roadway with at least two lanes in each direction, in which case the persons may ride two abreast if they do not impede the normal and reasonable movement of traffic more than they would otherwise impede ~~such~~ traffic by riding single file and in accordance with the provisions of this chapter.

~~(4) Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway. A person riding a bicycle defined in 61-1-123(2) is excluded from the~~

~~provisions of this subsection when such bicycle is prohibited from using such paths.~~

(5) A bicycle, as defined in 61-1-123(2), is excluded from the provisions of subsections ~~(1)~~ *(2)* and ~~(2)~~ *(3)*."

Approved March 26, 1991.

CHAPTER NO. 170

[HB 109]

AN ACT PROVIDING VICTIMS AND WITNESSES OF JUVENILE FELONY OFFENSES THE SAME SERVICES AND ASSISTANCE THAT MUST BE PROVIDED TO THE VICTIMS AND WITNESSES OF CRIME; REQUIRING THE ATTORNEY GENERAL TO ASSURE THAT VICTIMS AND WITNESSES OF JUVENILE FELONY OFFENSES ARE PROVIDED THE SAME SERVICES AND ASSISTANCE AS THE VICTIMS AND WITNESSES OF CRIME; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Victims and witnesses of juvenile felony offenses.** (1) The services and assistance that must be provided under this chapter to a victim or witness of a crime must also be provided to the victim or witness of a juvenile felony offense.

(2) The attorney general shall assure that a victim or witness of a juvenile felony offense is provided the same services and assistance required under this chapter for the victim or witness of a crime.

(3) For purposes of this section, "juvenile felony offense" means an offense committed by a juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 46, chapter 24, part 2, and the provisions of Title 46, chapter 24, part 2, apply to [section 1].

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved March 26, 1991.

CHAPTER NO. 171

[HB 123]

AN ACT ALLOWING SELF-INSURED GOVERNMENTS TO TRANSFER UNUSED EMPLOYER GROUP INSURANCE CONTRIBUTIONS TO A SPECIAL ACCOUNT; AND AMENDING SECTION 2-18-703, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-703, MCA, is amended to read:

"**2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701, other than members of collective bargaining units, and for members of the legislature, the employer contribution for group benefits shall be $130 per month for the fiscal year ending June 30, 1990, and $150 per month for the fiscal year ending June 30, 1991, and for each fiscal year thereafter. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act of 1965, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 per month.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon ~~such~~ transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group."

Approved March 26, 1991.

CHAPTER NO. 172

[HB 137]

AN ACT CONFORMING THE VALUATION AND TAXATION OF AGRICULTURAL LAND TO THE EXTENSION OF THE CURRENT REVALUATION CYCLE ENACTED BY CHAPTER 13, LAWS OF 1989; AMENDING SECTION 15-7-201, MCA; SECTION 10, CHAPTER 681, LAWS OF 1985; AND SECTION 3, CHAPTER 705, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-201, MCA, is amended to read:

"**15-7-201.** *(Applicable to ~~1991~~ 1993 land valuation schedules)* **Legislative intent — value of agricultural property.** (1) Since the market value of many agricultural properties is based upon speculative purchases which do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties shall be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land shall be classified according to its use, which classifications shall include but not be limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land shall be assessed at a value that is fairly based on its productive capacity.

(4) In computing the agricultural land valuation schedules to take effect on January 1, ~~1991~~ *1993*, or on the date that the revaluation cycle commencing January 2, 1986, takes effect pursuant to 15-7-111, the department of revenue shall determine the productive capacity value of all agricultural lands using the formula $V = I/R$ where:

(a) V is the per-acre productive capacity value of agricultural land in each land use and production category;

(b) I is the per-acre net income of agricultural land in each land use and production category and is to be determined by the department using the formula $I = (P - C) U$ where:

(i) I is the per-acre net income;

(ii) P is the per-unit price of the commodity being produced;

(iii) C is the per-unit production cost of the commodity being produced; and

(iv) U is the yield in units per acre; and

(c) R is the capitalization rate to be determined by the department as provided in subsection (9).

(5) Net income shall be:

(a) calculated for each year of a base period, which is the most recent 3-year period for which data are available, prior to a revaluation of property as provided in 15-7-111; and

(b) based on commodity price and production cost data for the base period from such sources as may be considered appropriate by the department, which sources shall include Montana state university.

(6) To the degree available, the department shall compile:

(a) commodity price data reflecting the average prices received per unit of measure by Montana farmers and ranchers. Such data may be obtained from all geographical areas of the state. Commodity prices may include wheat, barley, alfalfa hay, grass hay, corn for grain, corn for silage, sugar beets, dry beans, potatoes, cattle, and sheep. Government payments may be considered. Typical rental arrangements may be considered.

(b) production cost data reflecting average costs per unit of measure paid by Montana farmers and ranchers. Such data may be obtained from all geographical areas of the state. Such production costs may include costs relating to irrigation, fertilization, fuel, seed, weed control, hired labor, management, insurance, repairs and maintenance, and miscellaneous items. Variations in specific production cost data, when affected by different levels of production, and typical rental arrangements may be considered.

(7) The department shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics to review the data prepared by Montana state university and advise the department on the implementation of subsections (2) through (6). The advisory committee shall include one member of the Montana state university staff.

(8) Net income shall be determined separately for lands in irrigated use, nonirrigated use, and grazing use and shall be calculated for each use and production level according to the provisions of subsections (4) through (7).

(9) The capitalization rate shall be calculated for each year of the base period and is the annual average interest rate on agricultural loans as reported by the federal land bank association of Spokane, Washington, plus the effective tax rate in Montana.

(10) The effective tax rate shall be calculated by the department for each year of the base period by dividing the total estimated tax due on agricultural land in the state by the total productive capacity value of agricultural land in the state."

Section 2. Section 10, Chapter 681, Laws of 1985, is amended to read:

"Section 10. **Effective date — termination date.** *(1)* This act is effective January 1, 1986, and, except for ~~section~~ *sections 1 and* 3, terminates January 1, 1991.

(2) Section 1 terminates January 1, 1993."

Section 3. Section 3, Chapter 705, Laws of 1985, is amended to read:

"Section 3. **Effective date — applicability date.** This act is effective January 1, 1986, and applies to any revaluation of property as provided in 15-7-111 ~~after January 1, 1986~~ *to take effect January 1, 1993."*

Section 4. **Effective date.** [This act] is effective on passage and approval.

Section 5. **Retroactive applicability.** [Sections 1 through 3] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990.

Approved March 26, 1991.

CHAPTER NO. 173

[HB 167]

AN ACT TO AMEND SPECIAL PROVISIONS RELATING TO MOTOR CARRIER TRANSPORTATION OF BUILDINGS AND TO DELETE THE GRANDFATHER PROVISIONS AND RULEMAKING AUTHORITY AS BEING SURPLUSAGE; AMENDING SECTION 69-12-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-331, MCA, is amended to read:

"**69-12-331. Special provisions relating to transportation of buildings.** ~~(1)~~ A certificate that permits the transportation of a building other than a mobile home, as defined in 15-1-101, from its existing foundation to a new location ~~shall~~ *must* permit ~~such~~ transportation throughout the state and may not restrict ~~such~~ transportation to a particular region of the state.

~~(2) The provisions of this section shall apply only to those licensed motor carriers who have specifically identified the moving of buildings or certain types of buildings as an area of authorization on their present public service commission certification or to those motor carriers operating under an authority broad enough to include the moving of buildings who have been actively engaged in the business of moving buildings for a period of 2 years prior to July 1, 1979. For purposes of this subsection, a motor carrier has been actively engaged in the business of moving buildings if the moving of~~

~~buildings has constituted a substantial part of his business during the 2-year period prior to July 1, 1979.~~

~~(3) The commission shall adopt rules to implement subsection (1).~~"

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 26, 1991.

CHAPTER NO. 174

[HB 197]

AN ACT CLARIFYING THAT THE PENALTY IMPOSED UPON INSURERS WHO UNREASONABLY DELAY PAYING WORKERS' COMPENSATION CLAIMS MAY BE IMPOSED WHEN AN INSURER ACCEPTS LIABILITY BUT UNREASONABLY DELAYS PAYING A CLAIM WHETHER OR NOT THE WORKERS' COMPENSATION COURT ORDERS PAYMENT OF THE CLAIM; APPLYING THE MONTANA SUPREME COURT'S DECISION IN HANDLOS V. CYPRUS, 47 ST. REP. 1329, 794 P.2D 702 (1990); AMENDING SECTION 39-71-2907, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2907, MCA, is amended to read:

"**39-71-2907. Increase in award for unreasonable delay or refusal to pay.** (1) ~~When payment of compensation has been unreasonably delayed or refused by an insurer, either~~ *The workers' compensation judge may increase by 20% the full amount of benefits due a claimant during the period of delay or refusal to pay, when:*

(a) the insurer agrees to pay benefits but unreasonably delays or refuses to make the agreed-upon payments to the claimant; or

(b) prior or subsequent to the issuance of an order by the workers' compensation judge granting a claimant ~~compensation~~ benefits, the ~~full amount of the compensation benefits due a claimant between the time compensation benefits were delayed or refused and the date of the order granting a claimant compensation benefits may be increased by the workers' compensation judge by 20%~~ *insurer unreasonably delays or refuses to make the payments.*

(2) The question of unreasonable delay or refusal shall be determined by the workers' compensation judge, and such a finding constitutes good cause to rescind, alter, or amend any order, decision, or award previously made in the cause for the purpose of making the increase provided herein.

~~(2)~~*(3)* A finding of unreasonableness under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18."

Section 2. **Applicability.** [This act] applies to workers' compensation claims filed on or after October 1, 1991.

Approved March 26, 1991.

CHAPTER NO. 175

[HB 211]

AN ACT MAKING THE PENALTY FOR SEXUAL INTERCOURSE WITHOUT CONSENT UNIFORM FOR BOTH HETEROSEXUAL AND HOMOSEXUAL RAPE; AND AMENDING SECTIONS 45-5-501, 45-5-503, AND 45-5-505, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with ~~a person of the opposite sex~~ *another* commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of his spouse as provided in 45-5-501(2)(c).

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(b) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Section 2. Section 45-5-505, MCA, is amended to read:

"**45-5-505. Deviate sexual conduct.** (1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

~~(3) A person convicted of deviate sexual conduct without consent shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.~~"

Section 3. Section 45-5-501, MCA, is amended to read:

"**45-5-501. Definition.** As used in 45-5-503 ~~and 45-5-505~~, the term "without consent" means:

(1) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone; or

(2) the victim is incapable of consent because he is:

(a) mentally defective or incapacitated;

(b) physically helpless; or

(c) less than 16 years old."

Approved March 26, 1991.

CHAPTER NO. 176

[HB 269]

AN ACT INCREASING THE PENALTY FOR REPEAT OFFENSES OF INDECENT EXPOSURE; MAKING A THIRD OR SUBSEQUENT INDECENT EXPOSURE OFFENSE A FELONY; AND AMENDING SECTION 45-5-504, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-504, MCA, is amended to read:

"**45-5-504. Indecent exposure.** (1) A person who, for the purpose of arousing or gratifying sexual desire of himself or of any person other than his spouse, exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) *(a)* A person convicted of the offense of indecent exposure shall be fined *an amount* not to exceed $500 or be imprisoned in the county jail for ~~any~~ *a* term *of* not ~~to exceed~~ *more than* 6 months, or both.

(b) On a second conviction, he shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both.

(c) On a third or subsequent conviction, he shall be fined an amount not to exceed $10,000 or be imprisoned in the state prison for a term of not more than 5 years, or both."

Approved March 26, 1991.

CHAPTER NO. 177

[HB 270]

AN ACT RELATING TO THE PENALTY FOR THE OFFENSE OF VIOLATING PRIVACY IN COMMUNICATIONS; INCREASING THE PENALTY FOR CERTAIN REPEAT OFFENSES INVOLVING ILLEGAL TELEPHONE CALLS; MAKING A THIRD OR SUBSEQUENT OFFENSE A FELONY; AND AMENDING SECTION 45-8-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-213, MCA, is amended to read:

"**45-8-213. Privacy in communications.** (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if he knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with any person by telephone and uses any obscene, lewd, or profane language, suggests any lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of any person (the use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend);

(b) uses a telephone to attempt to extort money or any other thing of value from any person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received;

(c) records or causes to be recorded any conversation by use of a hidden electronic or mechanical device which reproduces a human conversation without the knowledge of all parties to the conversation. Subsection (c) does not apply to duly elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty, to persons speaking at public meetings, or to persons given warning of the recording.

(d) by means of any machine, instrument, or contrivance or in any other manner:

(i) reads or attempts to read any message or learn the contents thereof while it is being sent over a telegraph line;

(ii) learns or attempts to learn the contents of any message while it is in a telegraph office or is being received thereat or sent therefrom; or

(iii) uses, attempts to use, or communicates to others any information so obtained;

(e) discloses the contents of a telegraphic message or any part thereof addressed to another person without the permission of such person, unless directed to do so by the lawful order of a court; or

(f) opens or reads or causes to be read any sealed letter not addressed to himself without being authorized to do so by either the writer of the letter or the person to whom it is addressed or, without the like authority, publishes any of the contents of the letter knowing the same to have been unlawfully opened.

(2) *(a)* A person convicted of the offense of violating privacy in communications shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed $1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $10,000, or both."

Approved March 26, 1991.

CHAPTER NO. 178

[HB 274]

AN ACT PROVIDING THAT ALL SERVICE TIME PURCHASED BY A MEMBER OF THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM MAY BE CREDITED TOWARD THE MEMBER'S ELIGIBILITY FOR SERVICE RETIREMENT; DEFINING "QUALIFIED SERVICE"; AMENDING SECTIONS 19-9-104, 19-9-403, AND 19-9-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-104, MCA, is amended to read:

"**19-9-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Administrator" means the public employees' retirement division of the department of administration.

(2) "Base salary" means the sum of the monthly compensations for each month in a given calendar year.

(3) "Board" means the retirement board described in 2-15-1009.

(4) "Credited service" means the aggregate of a member's prior service and membership service.

(5) "Death benefit" means a monthly annuity paid to a surviving spouse or dependent child or a lump-sum payment made to a beneficiary on behalf of a member who dies before retirement.

(6) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(7) "Employer" means any city which participated in a prior plan or which elects to join this plan under 19-9-107.

(8) "Employer annuity" means monthly payments for life derived from employer and state contributions.

(9) "Final average salary" means the monthly compensation of a member, averaged over the last 36 months of his active service or, in the event he has not been a member that long, over the period of his membership.

(10) "Fund" means the pension trust fund in the treasury system designated for the use of the plan.

(11) "Member" means a person who is employed by an employer as a police officer or who is entitled to a retirement allowance by virtue of his service to an employer as a police officer.

(12) "Member contributions" means the total of the deductions from the compensation of a member, either made during a period of active membership hereunder or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(13) "Member's annuity" means monthly payments for life derived from member contributions.

(14) "Membership service" means a period of employment with an employer occurring after June 30, 1977, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(15) "Minimum retirement date" or "normal retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 20 or more years of credited service.

(16) "Monthly compensation" means the wage, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, a member receives as an active police officer.

(17) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(18) "Plan" means the municipal police officers' retirement system created by this chapter.

(19) "Police officer" means a law enforcement officer employed by an employer.

(20) "Prior plan" means the local police reserve or retirement fund of a city which elects to join the plan under 19-9-107 or the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974.

(21) "Prior service" means a period of employment as a police officer for which credit was granted to a member under a prior plan and has been transferred to this plan.

(22) "Qualified service" means credited service plus any service purchased under the provisions of part 4 of this chapter.

~~(22)~~*(23)* "Retirement allowance" means the employer annuity plus the member's annuity.

~~(23)~~*(24)* "Retirement date" means the date on which the first payment of the retirement, disability, or survivor benefits of a member or a beneficiary is payable.

~~(24)~~*(25)* "Surviving spouse" means the spouse married to a member at the time of the member's death.

~~(25)~~*(26)* "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a police officer."

Section 2. Section 19-9-403, MCA, is amended to read:

"**19-9-403. Election to qualify previous military service.** (1) A member with 15 years or more of service may, at any time prior to his retirement, make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit. To qualify this service he must contribute to the account the actuarial cost of granting the service to be determined by the board based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of his military service than he has service in excess of 15 years. ~~Military service purchased under this section may not be used in the determination of eligibility for a service retirement requiring a minimum of 20 years service.~~

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, he may not qualify his military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) if his active duty in the armed forces of the United States is not more than 25% of the total of all his years of military service, including reserve and active duty time."

Section 3. Section 19-9-801, MCA, is amended to read:

"**19-9-801. Eligibility for service retirement — commencement of allowance.** Members are eligible for retirement and shall retire as provided in this section:

(1) A member who was employed by an employer as a police officer on July 1, 1975, is eligible to receive a service retirement allowance when he has completed 20 years or more ~~in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank,~~ *of qualified service* and has terminated covered employment.

(2) A member who was or is first employed by an employer as a police officer after July 1, 1975, is eligible to receive a service retirement allowance when he has reached the age of 50, has completed 20 years or more ~~in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank,~~ *of qualified service,* and has terminated covered employment.

(3) (a) Except as provided in subsection (3)(b), the retirement allowance may commence on the first day of the month following the member's last day of membership service or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application.

(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 55th birthday."

Section 4. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to retirements on or after January 1, 1991.

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved March 26, 1991.

CHAPTER NO. 179

[HB 275]

AN ACT TO PROVIDE THAT IN ADDITION TO OR INSTEAD OF A PRISON TERM FOR FRAUDULENTLY OBTAINING DANGEROUS DRUGS, A CONVICTED PERSON MAY BE FINED AN AMOUNT NOT TO EXCEED $50,000; AND AMENDING SECTION 45-9-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-9-106, MCA, is amended to read:

"45-9-106. **Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs.** (1) A person convicted of altering labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed 6 months.

(2) A person convicted of fraudulently obtaining dangerous drugs included in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 shall:

(a) upon his first conviction be imprisoned in the state prison for a term of not less than 1 year or not more than 5 years *or fined an amount not to exceed $50,000, or both*;

(b) upon his second conviction be imprisoned in the state prison for a term of not less than 5 years or not more than 10 years *or fined an amount not to exceed $50,000, or both.*"

Approved March 26, 1991.

CHAPTER NO. 180

[HB 297]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SURPLUS LINES INSURANCE; ELIMINATING THE PLACEMENT FEE; ALLOWING NONRESIDENT INSURANCE PRODUCERS TO BECOME SURPLUS LINES PRODUCERS; REQUIRING PURCHASING GROUPS TO IDENTIFY A MONTANA-LICENSED INSURANCE PRODUCER WHEN REGISTERING WITH THE DEPARTMENT OF INSURANCE; SUBJECTING SURPLUS LINES INSURERS TO PROVISIONS OF THE MONTANA INSURANCE CODE CONCERNING PREMIUM CHANGES AND CANCELLATION; AND AMENDING SECTIONS 33-2-305, 33-2-306, 33-11-108, AND 33-15-1102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-305, MCA, is amended to read:

"**33-2-305. Licensing of surplus lines insurance producer — fee and bond.** (1) A person may not procure a contract of surplus lines insurance with an unauthorized insurer unless he is licensed as a ~~resident~~ property, casualty, and surety insurance producer and possesses a current surplus lines insurance license issued by the commissioner.

(2) The commissioner shall issue a surplus lines insurance license to any qualified holder of a current property, casualty, and surety insurance producer license only if the insurance producer has:

(a) remitted to the commissioner the annual fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application on a form supplied by the commissioner;

(c) been licensed as a property, casualty, and surety insurance producer continuously for 5 years or more; and

(d) filed with the commissioner and thereafter for as long as the license remains in effect kept in force a bond in favor of the state of Montana in the amount of $10,000, with authorized corporate sureties approved by the commissioner. The bond must be conditioned that the insurance producer will conduct business under the license in accordance with the provisions of The Surplus Lines Insurance Law and that he will promptly remit the taxes provided in 33-2-311. The bond may not be terminated unless the surety gives the surplus lines insurance producer, the producing insurance producer, and the commissioner at least 30 days' prior written notice thereof.

(3) The license expires on April 1 after its date of issue. A surplus lines insurance producer shall renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed in 33-2-708. A surplus lines insurance producer who fails to apply for a renewal of the

license on or before March 1 shall pay a fine of $100 before the commissioner renews the license.

(4) A corporation is eligible to be licensed as a surplus lines insurance producer if:

(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the corporate license transact surplus lines insurance."

Section 2. Section 33-2-306, MCA, is amended to read:

"**33-2-306. Surplus lines insurance producer's authority under license — acceptance of business from other insurance producers ~~— placement fee~~.** (1) Under a surplus lines insurance producer license the licensee may place surplus lines insurance, in compliance with The Surplus Lines Insurance Law, with a foreign or alien insurer not authorized to transact insurance in this state and may act as a surplus lines insurance producer in this state for the insurer.

(2) The surplus lines insurance producer may accept surplus lines insurance from a licensed insurance producer of an authorized insurer or, if the commissioner agrees in advance, through an individual, partnership, or corporation that has not been appointed as an insurance producer in this state and may compensate him therefor.

(3) A surplus lines insurance producer who places or renews surplus lines insurance in accordance with subsection (1) may collect~~:~~

~~(a)~~ an inspection fee for the actual costs of inspecting the risk to be covered~~; and~~

~~(b) a placement fee of 0.5% of the premium charged to cover the costs of issuing and servicing the policy. The fee may not be less than $10 or more than $100~~."

Section 3. Section 33-11-108, MCA, is amended to read:

"**33-11-108. Notice and registration requirements of purchasing groups.** (1) A purchasing group that intends to do business in this state shall furnish notice to the commissioner that:

(a) identifies the state where the group is domiciled;

(b) specifies the lines and classifications of liability insurance that the purchasing group intends to purchase;

(c) identifies the insurer from which the purchasing group intends to purchase its insurance and the domicile of the insurer;

(d) identifies the Montana-licensed insurance producer or Montana-licensed surplus insurance lines producer through which the purchasing group intends to place its business;

~~(d)~~*(e)* identifies the principal place of business of the purchasing group; and

~~(e)~~*(f)* provides information required by the commissioner to verify that the purchasing group is qualified under 33-11-102(6).

(2) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process. However, such requirements do not apply in the case of a purchasing group:

(a) (i) that was domiciled before April 2, 1986, in any state of the United States; and

(ii) that was domiciled on and after October 27, 1986, in any state of the United States;

(b) (i) that, before October 27, 1986, purchased insurance from an insurer licensed in any state; and

(ii) that, since October 27, 1986, purchased its insurance from an insurer licensed in any state;

(c) that was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through 3904) before it was amended by P.L. 99-563, approved on October 27, 1986; and

(d) that does not purchase insurance that was not authorized for purposes of an exemption under the federal Product Liability Risk Retention Act of 1981, as in effect before October 27, 1986."

Section 4. Section 33-15-1102, MCA, is amended to read:

"**33-15-1102. Definitions.** As used in this part, the following definitions apply unless the context requires otherwise:

(1) "Anniversary date" means the month and day that rates, rating plans, and rating systems are initially applied to a policy in effect. The term includes each annual anniversary thereafter unless the insurer establishes a different date by a filing with the commissioner.

(2) "Cancellation" means the decision by the insurer to terminate an insurance policy prior to the expiration of its term.

(3) "Classification" means an arrangement of insurance risks into an underwriting or rating group according to a classification system used by an insurer as a basis for tabulating statistical experience and determining premium rates.

(4) "Classification system" means a schedule of classifications and a rule used by an insurer for determining the classifications applicable to an insured.

(5) "Insurer" means an insurer authorized to transact property or casualty insurance in this state *or an unauthorized insurer transacting surplus lines insurance in this state.*

(6) "Premium" means the contractual consideration charged to an insured for insurance for a specified period of time, regardless of the timing of actual charges.

(7) "Rate" means a monetary amount applied to the units of exposure assigned to a classification and used by an insurer to determine the premium for an insured.

(8) "Rating plan" means a rule used by an insurer to calculate:

(a) the premium for an insured; and

(b) the parameter values used in such calculation after application of classification premium rates to units of exposure.

(9) "Renewal" means an agreement between an insurer and an insured to extend or continue an existing insurance policy for 90 days or more."

Section 5. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 26, 1991.

CHAPTER NO. 181

[HB 313]

AN ACT REVISING THE PROCEDURE FOR THE ISSUANCE OF A TAX DEED; CANCELING THE PROPERTY TAX LIEN IF THE PURCHASER OF THE TAX LIEN, OTHER THAN THE COUNTY, FAILS TO GIVE NOTICE TO INTERESTED PARTIES; ELIMINATING THE COUNTY TREASURER'S DUTY TO NOTIFY INTERESTED PARTIES IF THE PURCHASER FAILS TO GIVE NOTICE; AMENDING SECTION 15-18-212, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-18-212, MCA, is amended to read:

"**15-18-212. Notice — proof of notice — penalty for failure to notify.** (1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111, a notice must be given as follows:

(a) for each property for which there has been issued to the county a tax sale certificate or for which the county is otherwise listed as the purchaser or assignee, the county clerk shall notify all persons considered interested parties in the property and the current occupant of the property, if any, that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which there has been issued a tax sale certificate to a purchaser other than the county or for which an assignment has been made, the purchaser or assignee, as appropriate, shall notify all persons considered interested parties in the property, if any, that a tax deed will be issued to the purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.

(2) (a) Except as provided in subsection (2)(b), if the county is the purchaser, no assignment has been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1) but the board of county commissioners at a time subsequent to the period described in subsection (1) does direct the county treasurer to issue a tax deed, the county clerk must provide notification to all interested parties and the current occupant, if any, in the manner provided in subsection (1)(a). The notification required under this subsection must be made not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed.

(b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after giving the notice required by subsection (1)(a), no additional notice need be given.

(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b), which failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall ~~proceed to give notice in the manner provided in subsection (1)(a)~~ *notify the purchaser or assignee of his obligation to give notice under subsection (1)(b). The notice of obligation may be sent by certified mail to the purchaser or assignee at the address contained on the tax sale certificate provided for in 15-17-212 or on the assignment form provided for in 15-17-323.*

(b) If within 120 days after the county treasurer mails the notice of obligation the purchaser or assignee fails to give notice as required by subsection (1)(b), as evidenced by failure to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall cancel the property tax lien evidenced by the tax sale certificate or the assignment.

~~(b) Notice given under this subsection (3) must be given not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed.~~

~~(c) A purchaser or assignee who fails to give notice as required by subsection (1)(b), thereby forcing notification to be given under this subsection (3), must be charged a penalty of $500 plus all actual costs of notification incurred by the county proceeding under this subsection (3).~~

(4) The notice required under subsections (1) ~~through (3)~~ *and (2)* must be made by certified mail to each interested party and the current occupant, if any, of the property. The address to which the notice must be sent is, for each interested party, the address disclosed by the records in the office of the county clerk and, for the occupant, the street address or other known address of the subject property.

(5) In all cases in which the address of an interested party is not known, the person required to give notice shall, within the period described in subsection (1) or not less than 60 days or more than 120 days prior to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, commence publishing once a week for 2 successive weeks, in the official newspaper of the county or such other newspaper as the board of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

(a) the name of the interested party for whom the address is unknown;

(b) a statement that the address of the interested party is unknown;

(c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and

(d) a statement that the interested party's rights in the property may be in jeopardy.

(6) The notices required by subsections (1), ~~through (3)~~ *(2),* and (5) must contain the following:

(a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

(b) a description of the property on which the taxes are or were delinquent, which description must be the same as the description of the property on the tax sale certificate or in the record described in 15-17-214(2)(b);

(c) the date that the property taxes became delinquent;

(d) the date that the property tax lien attached as the result of a tax sale;

(e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;

(f) the name and address of the purchaser;

(g) the name of the assignee if an assignment was made as provided in 15-17-323;

(h) the date that the redemption period expires or expired;

(i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed that a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.

(7) Proof of notice in whatever manner given must be filed with the county clerk. If the purchaser or assignee is other than the county, the proof of notice must be filed with the county clerk within 30 days of the mailing or publishing of the notice. If the purchaser or assignee is the county ~~or if the county treasurer is required to give notice pursuant to subsection (3)~~, the proof of notice must be filed before the issuance of the tax deed under this chapter. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

(8) A county or any officer of a county may not be held liable for any error of notification."

Section 2. **Applicability.** [Section 1] applies to all real property tax liens that have not been redeemed on October 1, 1991, or that attach after October 1, 1991.

Approved March 26, 1991.

CHAPTER NO. 182

[HB 348]

AN ACT REQUIRING THAT IMITATION INDIAN ARTS OR CRAFTS ARTICLES BE DISPLAYED NEAR A SIGN PROMINENTLY AND LEGIBLY DESIGNATING THE ARTICLES AS IMITATION; AND AMENDING SECTION 30-14-602, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-14-602, MCA, is amended to read:

"30-14-602. **Articles to be designated and segregated.** ~~No~~ *A* person ~~shall~~ *may not* distribute, sell, or offer for sale in this state any imitation American Indian arts or crafts articles unless the articles are at all times clearly and legibly designated as imitation. All imitation articles ~~shall~~ *must* be physically segregated from authentic Indian articles for display purposes. *All imitation Indian arts or crafts articles must be displayed near a sign prominently and legibly designating the articles as imitation.*"

Approved March 26, 1991.

CHAPTER NO. 183

[HB 425]

AN ACT REVISING THE GROSS VEHICLE WEIGHT LAWS TO ALLOW CERTAIN TRAILERS AND SEMITRAILERS TO BE MOVED IN THE LOCAL DELIVERY ZONE WITHOUT ADDITIONAL FEE; AMENDING SECTION 61-10-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-203, MCA, is amended to read:

"**61-10-203. Alternative gross weight fees on truck trailer combinations.** (1) In addition to other fees for the licensing of vehicles, there may be paid and collected annually instead of the fees provided in 61-10-201, for each motortruck or truck tractor, based upon the maximum combined gross loaded weight of a truck tractor with a semitrailer, a truck tractor with a semitrailer and a full trailer, a motortruck and a trailer, or a motortruck and trailers, as set by the licensee in his application, the following fees:

Schedule III

Truck tractor with a semitrailer, a truck tractor with a semitrailer and a full trailer, a motortruck and a trailer, or a motortruck and trailers:

Up to 42,000 lbs	$ 571.00
42,001 to 44,000 lbs	631.00
44,001 to 46,000 lbs	691.00
46,001 to 48,000 lbs	752.00
48,001 to 50,000 lbs	812.00
50,001 to 52,000 lbs	871.00
52,001 to 54,000 lbs	931.00
54,001 to 56,000 lbs	992.00
56,001 to 58,000 lbs	1,052.00
58,001 to 60,000 lbs	1,112.00
60,001 to 62,000 lbs	1,172.00
62,001 to 64,000 lbs	1,233.00
64,001 to 66,000 lbs	1,293.00
66,001 to 68,000 lbs	1,352.00

68,001 to 70,000 lbs	1,412.00
70,001 to 72,000 lbs	1,473.00
72,001 to 74,000 lbs	1,533.00
74,001 to 76,000 lbs	1,593.00
76,001 to 78,000 lbs	1,653.00
78,001 and over	65.50 per ton or fraction thereof.

(2) Payment of the fees provided in this section exempts a semitrailer or trailer in combination with a motortruck or truck tractor so licensed from the fees provided in 61-3-701, 61-10-202, 61-10-210, and 61-10-211.

(3) The trailers or semitrailers must be currently registered in another state or county.

(4) A trailer or semitrailer entering the state in combination with a truck or truck tractor licensed under the above schedule *or a trailer or semitrailer registered to a Montana based carrier with trucks or truck tractors licensed under the above schedule* may be moved in the local delivery zone *within a 15-mile radius of the city or town* in combination with a truck or truck tractor, licensed under 61-10-201, without payment of any additional fees on the truck or truck tractor, trailer, or semitrailer."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 26, 1991.

CHAPTER NO. 184

[HB 445]

AN ACT INDEFINITELY EXTENDING THE CERTIFICATE OF NEED LAW BY REPEALING THE EXPIRATION DATE OF THE LAW; REPEALING SECTION 3, CHAPTER 377, LAWS OF 1989, SECTION 9, CHAPTER 477, LAWS OF 1987, AND SECTION 13, CHAPTER 329, LAWS OF 1983; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 3, Chapter 377, Laws of 1989, Section 9, Chapter 477, Laws of 1987, and Section 13, Chapter 329, Laws of 1983, are repealed.

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved March 26, 1991.

CHAPTER NO. 185

[HB 481]

AN ACT TO AUTHORIZE LAND SUBJECT TO A TAX DEED TO BE SOLD FOR NOT LESS THAN MARKET VALUE TO A PERSON AT A PRIVATE SALE IF THE LAND WAS NOT SOLD AT A TAX-SALE AUCTION; AMENDING SECTION 7-8-2301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2301, MCA, is amended to read:

"**7-8-2301. Auction sale of county tax-deed land.** (1) Whenever the county acquires land by tax deed, it is the duty of the board of county commissioners, within 6 months after acquiring title, to make and enter an order for sale of the lands at public auction at the front door of the courthouse.

(2) A sale may not be made for a price less than the fair market value of the land, as determined and fixed by the board prior to making the order of sale. In determining fair market value, the board shall subtract the amount of outstanding assessments that are a lien on the land from the unencumbered value of the land, but the minimum sale price for a parcel of land may not be less than $10.

(3) If no bids are received at a sale of tax-deed land, the board shall order another auction sale of the land under this part within 6 months and may, if required by the circumstances, redetermine the fair market value of the land under subsection (2). *In the period of time between the auction conducted under subsection (1), in which there were no qualifying bids for the property, and an auction held pursuant to this subsection, the board may sell the land by negotiated sale at a price that is not less than the fair market value that was fixed for the original auction under subsection (1).*

(4) If no bid is received at the sale conducted under subsection (3), the board may dispose of the land as provided in 7-8-2218."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 26, 1991.

CHAPTER NO. 186

[HB 521]

AN ACT PROVIDING THAT THE DEPARTMENT OF INSTITUTIONS HAS THE DUTY AND RESPONSIBILITY TO ASSIST INTERESTED AGENCIES AND ORGANIZATIONS IN DEVELOPING EDUCATION AND PREVENTION PROGRAMS FOR CHEMICAL DEPENDENCY; AND AMENDING SECTION 53-24-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-24-204, MCA, is amended to read:

"**53-24-204. Powers and duties of department.** (1) To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts;

(c) acquire and dispose of property.

(2) The department shall:

(a) approve treatment facilities as provided for in 53-24-208;

(b) prepare a comprehensive long-term state chemical dependency plan every 4 years and update this plan each biennium. These updates or any part thereof may be included in the department's report to the legislature~~;~~.

(c) provide for and conduct statewide service system evaluations;

(d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to chemically dependent persons;

(f) establish criteria to be used for the development of new programs;

(g) certify and establish standards for the certification of:

(i) chemical dependency counselors; and

(ii) instructors providing chemical dependency educational courses;

(h) encourage planning for the greatest utilization of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services;

(i) cooperate with the board of pardons in establishing and conducting programs to provide treatment for chemically dependent and intoxicated persons in or on parole from penal institutions; ~~and~~

(j) establish standards for chemical dependency educational courses provided by state-approved treatment programs and approve or disapprove the courses*; and*

(k) assist all interested public agencies and private organizations in developing education and prevention programs for chemical dependency."

Approved March 26, 1991.

CHAPTER NO. 187

[HB 529]

AN ACT TO EXTEND THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-205, MCA, is amended to read:

"**17-5-205. Application.** The application of the Bond Validating Act, Title 17, chapter 5, part 2, as hereby amended, is extended to bonds issued and proceedings taken prior to ~~March 20, 1989~~ *[the effective date of this act]."*

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 26, 1991.

CHAPTER NO. 188

[HB 555]

AN ACT TO REMOVE UNLAWFUL PRESUMPTIONS AND BURDEN-SHIFTING LANGUAGE FROM CRIMINAL OFFENSE STATUTES; AMENDING SECTION 45-5-201, MCA; REPEALING SECTION 45-6-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-201, MCA, is amended to read:

"45-5-201. Assault. (1) A person commits the offense of assault if he:

(a) purposely or knowingly causes bodily injury to another;

(b) negligently causes bodily injury to another with a weapon;

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another. ~~The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of another, whether or not the offender believes the firearm to be loaded.~~

(2) Except as provided in subsection (3), a person convicted of assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) If the victim is less than 14 years old and the offender is 18 or more years old, the offender, upon conviction under subsection (1)(a), shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both."

Section 2. **Repealer.** Section 45-6-304, MCA, is repealed.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 26, 1991.

CHAPTER NO. 189

[HB 622]

AN ACT REVISING THE MONTANA GROWTH THROUGH AGRICULTURE ACT; ELIMINATING THE AGRICULTURAL BUSINESS INCUBATOR PROGRAM; AMENDING SECTION 90-9-103, MCA; AND REPEALING SECTION 90-9-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-9-103, MCA, is amended to read:

"90-9-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Act" means the Montana Growth Through Agriculture Act.

(2) "Agricultural business" means an enterprise engaged in the production, processing, marketing, distribution, or exporting of agricultural prod-

ucts. The term includes any related business the primary function of which is providing goods or services to an agricultural enterprise.

(3) "Agricultural development project" means either a seed capital or research and development project designed to discover, develop, transfer, use, or commercialize existing or new agricultural products or processes in order to strengthen and enhance agricultural economic development in the state.

(4) "Agricultural development project loan agreement" or "loan" means an agreement entered into between the council and the loan recipient of a seed capital project loan or a research and development project loan that:

(a) creates a debt relationship between the parties;

(b) provides for a financial return to the council;

(c) provides economic development potential to the state; and

(d) contains various provisions and terms as required by the act.

(5) "Company" means a natural person, firm, partnership, corporation, association, or other entity authorized to conduct business in the state.

(6) "Convertible debenture" means a debenture convertible into stock under certain conditions by an individual or company, but not by the council.

(7) "Council" means the Montana agriculture development council established in 2-15-3015.

(8) "Debenture" or "note" means a writing or certificate issued as evidence of debt.

(9) "Department" means the department of agriculture established in 2-15-3001.

(10) "Expansion capital project" means an agricultural technology development project undertaken to enable an individual or a company to expand its manufacturing and marketing activities in order to move its agricultural products or services into new markets or to expand existing markets.

(11) "Innovative agricultural technology" means the involvement of an agricultural product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.

(12) "Investment" means an award of money, with or without repayment requirements, for the purposes provided for in ~~90-9-302 and~~ 90-9-401.

(13) "Matching funds" means the funds received in cash by the agricultural development project loan recipient from nonstate appropriated sources and contributed by the loan recipient to the project in an amount

that is at least equal to the funds loaned to the recipient by the council for use in the agricultural development project.

(14) "Portfolio company" means a startup or expansion stage company that has received a seed capital project loan from the council.

(15) "Private sector" means any entity or individual, not principally a part of or associated with a governmental unit, that is associated with or involved in commercial activity.

(16) "Research and development project" means an agricultural development project that falls into the category of applied technology research or agricultural technology transfer and assistance.

(17) "Research and development project loan" means an agricultural development project loan agreement entered into between the council and a loan recipient for a research and development project.

(18) "Seed capital project" means a startup or expansion capital project.

(19) "Seed capital project loan" means an agricultural development project loan entered into between the council and a loan recipient for a seed capital project.

(20) "State" means the state of Montana.

(21) "Technology transfer and assistance project" means an agricultural development project that:

(a) transfers technology research from the laboratory to the marketplace; or

(b) provides better access and exposure to business development assistance or information for researchers or early-stage agricultural businesses that commercialize agricultural technology products.

(22) "Warrant" means an instrument issued by a corporation giving a holder other than the council the right to purchase stock of a corporation at a fixed price, either for a limited time or perpetually."

Section 2. **Repealer.** Section 90-9-302, MCA, is repealed.

Approved March 26, 1991.

CHAPTER NO. 190

[SB 3]

AN ACT EXTENDING THE SUNSET PROVISIONS OF THE AGRICULTURAL ASSISTANCE PROGRAM; AMENDING SECTION 8, CHAP-

TER 269, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 8, Chapter 269, Laws of 1989, is amended to read:

"Section 8. **Effective dates.** (1) [Sections 1 through 4 and 6 through 8] are effective July 1, 1989.

(2) [Section 5] is effective July 1, ~~1991~~ *1993.*"

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 27, 1991.

CHAPTER NO. 191

[SB 122]

AN ACT EXTENDING THE HIGHWAY RECONSTRUCTION TRUST PROGRAM; ALLOCATING CERTAIN REVENUE TO THE HIGHWAY RECONSTRUCTION TRUST ACCOUNT; AMENDING SECTION 7, CHAPTER 541, LAWS OF 1983, AND SECTIONS 15-36-108 AND 60-3-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7, Chapter 541, Laws of 1983, is amended to read:

"Section 7. **Effective date — termination date.** Sections 1 through 5 are effective July 1, 1983, and terminate July 1, ~~1993~~ *2003.*"

Section 2. Section 60-3-216, MCA, is amended to read:

"60-3-216. *(Temporary)* **Highway reconstruction trust account.** (1) There is a highway reconstruction trust account created in the state special revenue fund.

(2) The highway reconstruction trust fund account consists of allocations:

(a) from the taxes collected pursuant to 15-35-103 for each fiscal year beginning on or after July 1, 1986, and ending on or before June 30, ~~1993~~ *2003,* the amounts allocated to the account pursuant to 15-35-108; and

(b) from the taxes collected pursuant to 15-70-204 and 15-70-321, for each fiscal year beginning on or after July 1, 1983, and ending on or before

June 30, ~~1993~~ *2003,* in an amount that will equal appropriated expenditures. *(Terminates July 1, ~~1993~~ 2003—sec. 7, Ch. 541, L. 1983.)* "

Section 3. Section 15-35-108, MCA, is amended to read:

"**15-35-108.** *(Temporary)* **Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, ~~1993~~ *2003,* 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) 17.5% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) 1/3 for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) 2/3 for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102;

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 1/4% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. *(Terminates July 1, ~~1993~~ 2003—sec. 7, Ch. 541, L. 1983.)*

15-35-108. *(Effective July 1, ~~1993~~ 2003)* **Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17.5% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) 1/3 for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) 2/3 for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102;

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 ¼% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 4. **Effective date — applicability — termination date.** (1) [This act] is effective on passage and approval.

(2) [Section 1] applies retroactively, within the meaning of 1-2-109, to April 16, 1983.

(3) [Sections 1 through 3] terminate July 1, 2003.

Approved March 27, 1991.

CHAPTER NO. 192

[SB 170]

AN ACT ESTABLISHING QUALIFICATIONS FOR SEXUAL OFFENDER EVALUATORS; PROVIDING FOR PAYMENT OF SEXUAL OFFENDER PRESENTENCE EVALUATIONS BY THE DEFENDANT OR DISTRICT COURT; PROVIDING REIMBURSEMENT FROM THE STATE IF THE DISTRICT COURT PAYS; AMENDING SECTION 46-18-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-111, MCA, is amended to read:

"**46-18-111. Presentence investigation.** *(1)* ~~No~~ *A* defendant convicted of an offense under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 against a victim who was less than 16 years old when the offense was committed may *not* be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the court.

(2) The investigation must include an evaluation of the defendant and a recommendation as to treatment by a person qualified ~~by professional experience~~ *under guidelines established by the department of institutions. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the court to be indigent, all costs related to the evaluation are the responsibility of the district court, which costs shall be reimbursed by the department of commerce under Title 3, chapter 5, part 9.*

(3) ~~No~~ *A* defendant convicted of any other offense that may result in commitment for 1 year or more in the state prison may *not* be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the court unless the court deems such report unnecessary.

(4) The court may, in its discretion, order a presentence investigation for a defendant convicted of any lesser crime or offense."

Section 2. **Coordination instruction.** If Senate Bill No. 51 is passed and approved and if it includes a section amending 46-18-111, then 46-18-111 is amended by the insertion of the following language at the end of subsection (1) of 46-18-111 and [section 1 of this act] is void:

"The investigation must include an evaluation of the defendant and a recommendation as to treatment by a person qualified under guidelines established by the department of institutions. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the department of commerce under Title 3, chapter 5, part 9."

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved March 27, 1991.

CHAPTER NO. 193

[SB 305]

AN ACT AUTHORIZING MULTIJURISDICTIONAL SERVICE DISTRICTS TO PROVIDE AMBULANCE SERVICE; AND AMENDING SECTION 7-11-1102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-11-1102, MCA, is amended to read:

"**7-11-1102. Services that may be provided.** (1) A multijurisdictional service district may provide only those services that are authorized to be provided by local governments.

(2) The services that a multijurisdictional service district may provide are:

(a) recreation programs other than park and recreation programs in a county park district established under Title 7, chapter 16, part 24;

(b) road, street, and highway maintenance;

(c) libraries;

(d) jails; ~~and~~

(e) dog control programs~~.~~*; and*

(f) ambulance service."

Approved March 27, 1991.

CHAPTER NO. 194

[SB 334]

AN ACT REVISING THE PERSONAL LIABILITY OF COUNTY OFFICIALS WHO EXCEED BUDGET APPROPRIATIONS; APPLYING THE FORFEIT PROVISION TO DEPARTMENT OFFICIALS; PROVIDING THAT A COUNTY OFFICIAL MAY NOT EXCEED A DEPARTMENT'S TOTAL BUDGET APPROPRIATION; AND AMENDING SECTION 7-6-2323, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2323, MCA, is amended to read:

"**7-6-2323. Effect of exceeding budget appropriations — personal liability.** (1) Expenditures made, liabilities incurred, or warrants issued in excess of ~~any of the detailed~~ *a department's total* budget ~~appropriations~~ *appropriation*, as originally determined or as ~~thereafter~~ *later* revised by transfer as provided in this part, ~~shall~~ *are* not ~~be~~ a liability of the county, but the official ~~making~~ *authorizing* or incurring ~~such~~ *the* expenditure ~~or issuing such warrant shall be~~ *is* liable ~~therefor~~ *for it* personally and upon his official bond.

(2) (a) The board of county commissioners ~~shall~~ *may* not approve any claim and the county clerk and recorder ~~shall~~ *may* not issue ~~any~~ *a* warrant for any expenditure in excess of ~~said detailed~~ *a department's total* budget ~~appropriations~~ *appropriation*, as finally adopted or as revised under the provisions of this part, except upon an order of a court of competent jurisdiction or for an emergency as ~~hereinafter~~ provided *in this part*. ~~Any county commissioner or commissioners or county clerk and recorder~~ *A department official* approving any claim ~~or issuing any warrant~~ in excess of ~~any such~~ *a* budget appropriation, except as ~~above~~ provided *in this section*, shall forfeit to the county the amount of ~~such~~ *the* claim ~~or warrant~~.

(b) The amount forfeited under subsection (2)(a) ~~shall~~ *must* be recovered in an action against ~~such county commissioner or commissioners or county clerk and recorder or all of them~~ *the responsible official* and ~~their several sureties~~ *the surety* on ~~their~~ *his* official ~~bonds~~ *bond*. It ~~shall be~~ *is* the duty of the county attorney of ~~such~~ *the* county to bring an action ~~therefor~~ *for recovery* in the name of the county."

Approved March 27, 1991.

CHAPTER NO. 195

[SB 350]

AN ACT REVISING AND CLARIFYING THE LAW CONCERNING THE REVIEW OF NEW LICENSING BOARDS OR THE CONSOLIDATION OF EXISTING LICENSING BOARDS; AMENDING SECTIONS 2-8-205, 2-8-206, 2-8-207, AND 5-4-207, MCA; AND REPEALING SECTION 2-8-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-8-205, MCA, is amended to read:

"**2-8-205. Procedure.** (1) The committee shall adopt an appropriate form for use by applicants, containing a copy of this part and requiring applicants to ~~list~~ *provide*:

(a) proposed qualifications of licensed practitioners;

(b) disciplinary procedures that would be applied to practitioners;

(c) proposed requirements for continuing education, if any; ~~and~~

(d) the information required by 2-8-204*; and*

(e) draft legislation that meets the bill drafting requirements of the legislative council.

(2) After the committee has initiated its review under 2-8-203, it may request any additional information it considers necessary to complete its assessment of the proposal.

(3) The committee shall hold at least one public hearing during which the applicant and members of the public have an opportunity to testify.

(4) At least one copy of the report must be kept on file with the legislative auditor and made available for public inspection."

Section 2. Section 2-8-206, MCA, is amended to read:

"**2-8-206. Application fee.** An application for review under 2-8-203 *or 2-8-207* must include an application fee of $1,000. The fee must be used by the committee to pay the cost of the review, and any unused portion must be refunded to the applicant."

Section 3. Section 2-8-207, MCA, is amended to read:

"**2-8-207. Consolidation of existing boards.** *(1)* Any person or organization may propose consolidation of two or more existing boards *and is considered an applicant.* The provisions of ~~2-8-202 through~~ 2-8-205*(2) through (4)* apply to ~~such a~~ *the* proposal~~, except that:~~.

~~(1) the committee shall designate a representative of each of the occupations or professions regulated by the licensing boards proposed for consolidation, and each representative must be treated as an applicant for purposes of 2-8-202 through 2-8-205; and~~

(2) An application for consolidation must:

(a) describe any administrative savings that could result from the proposed consolidation, such as reduced staff time, reduced paperwork, or reduced travel time;

(b) describe the public support that has been shown for the consolidation proposal;

(c) describe how the public will benefit from the consolidation, such as improved quality of service;

(d) describe any other benefits from the consolidation;

(e) describe any positive or negative effects on current or future licensees;

(f) describe the membership of the proposed licensing board and the qualifications of the proposed members;

(g) estimate the yearly cost to the state of administering the consolidated program, including board travel and per diem, personnel costs, materials, testing costs, investigative costs, and other relevant costs;

(h) list the proposed fees to cover the estimated costs of the program and the estimated number of each type of fee, including application fees, examination fees, license fees, and license renewal fees;

(i) describe the proposed period a license will be effective; and

(j) provide draft legislation that meets the bill drafting requirements of the legislative council.

~~(2)~~*(3)* ~~the~~ *The* committee shall weigh the merits of the proposed consolidation against the merits of retaining a separate licensing board for each affected occupation or profession and in its report recommend to the legislature:

(a) the proposed consolidation;

(b) continuation of the existing licensing boards; or

(c) a modification of the proposed consolidation."

Section 4. Section 5-4-207, MCA, is amended to read:

"5-4-207. **Legislative audit committee report required with licensing bills.** A legislative audit committee report provided for in 2-8-203 must be attached to any bill reported out of a committee of the legislature that proposes to:

(1) establish a new occupational or professional licensing board as defined in 2-8-202;

(2) ~~initiate a legislative or executive department study of the need for a new occupational or professional licensing board;~~

~~(3)~~ add to the duties of an existing licensing board responsibility for licensing another occupation or profession; or

~~(4)~~*(3)* consolidate two or more existing licensing boards."

Section 5. **Repealer.** Section 2-8-209, MCA, is repealed.

Approved March 27, 1991.

CHAPTER NO. 196

[SB 358]

AN ACT REVISING THE REQUIREMENTS FOR A POLITICAL PARTY TO NOMINATE ITS CANDIDATES BY PRIMARY ELECTION; AND AMENDING SECTION 13-10-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-601, MCA, is amended to read:

"13-10-601. **Parties eligible for primary election — petitions by minor parties.** (1) ~~Every~~ *Each* political party that had a candidate for a statewide office who received a total vote that was 5% or more of the total votes cast for the successful candidate for governor ~~at~~ *in either of* the last *two* general ~~election~~ *elections* shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.

(2) A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, in a form prescribed by the secretary of state, requesting the primary election and signed by a number of registered voters equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election, which number must include the registered voters in more than one-third of the legislative districts equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election in those districts. The petition must be presented to the election administrator of the county in which the signatures were gathered to be verified under the procedures provided in 13-27-303 through

13-27-306. The election administrator shall forward the verified petition to the secretary of state at least 75 days before the date of the primary. The petition must be submitted to the election administrator at least 1 week before the deadline for submitting the verified petition to the secretary of state."

Approved March 27, 1991.

CHAPTER NO. 197

[SB 360]

AN ACT TO LIMIT THE LIABILITY OF PERSONS SERVING ON ACCOUNTING REVIEW BOARDS OR OF NONPROFIT CORPORATIONS PERFORMING THE FUNCTION OF ACCOUNTING REVIEW BOARDS; AND TO EXCLUDE FROM EVIDENCE THE PROCEEDINGS AND RECORDS OF ACCOUNTING REVIEW BOARDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Nonliability — evidential privilege — application to nonprofit corporations.** (1) A member of a peer review, professional standards review, or ethics review committee of a society composed of persons licensed to practice the accounting profession is not liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts.

(2) The proceedings and records of peer review, professional standards review, and ethics review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge; however, he may not be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member of the committee.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, professional standards review, or ethics review committee with respect to the profession of accounting.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 50, part 4, and the provisions of Title 37, chapter 50, part 4, apply to [section 1].

Approved March 27, 1991.

CHAPTER NO. 198

[SB 367]

AN ACT AUTHORIZING THE YELLOWSTONE COUNTY COMMISSIONERS TO DONATE THE YELLOWSTONE ART CENTER AND ITS APPURTENANCES TO THE PRIVATE, NONPROFIT ENTITY KNOWN AS THE YELLOWSTONE ART CENTER FOUNDATION; PROVIDING FOR REVERSION OF THE PROPERTY UPON CERTAIN CONDITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Property donation authorization.** (1) The board of county commissioners of Yellowstone County may donate to the Yellowstone art center foundation, by July 1, 1992, the property known as the Yellowstone art center and its appurtenances.

(2) The donation of the Yellowstone art center and its appurtenances to the foundation is contingent on the continued use of the property and all improvements on the property for the purpose of maintaining an art museum on the property. If the property is used for any other purpose for a period of 2 consecutive years, title to the property reverts to Yellowstone County.

Section 2. **Effective date — termination.** [This act] is effective on passage and approval and terminates July 1, 1992.

Approved March 27, 1991.

CHAPTER NO. 199

[SB 371]

AN ACT REQUIRING INSURANCE COMPANIES AND HEALTH SERVICE CORPORATIONS TO PROVIDE COVERAGE FOR WELL-CHILD CARE FOR CHILDREN FROM BIRTH THROUGH 2 YEARS OF AGE; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Coverage for well-child care.** (1) Each policy of disability insurance or certificate issued under the policy that is delivered, issued for delivery, renewed, extended, or modified in this state by a disability insurer and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through 2 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the policy or certificate issued under the policy.

(2) Coverage for well-child care under subsection (1) must include:

(a) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, medicare supplement, or hospital indemnity policies.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered by a physician or a health care professional supervised by a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the guidelines for health supervision II, published by the American academy of pediatrics.

(6) When a policy of disability insurance or a certificate issued under the policy provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the insurer that issued or delivered the policy or certificate is located inside or outside of this state.

Section 2. **Coverage for well-child care.** (1) Each group disability policy or certificate of insurance that is delivered, issued for delivery, renewed, extended, or modified in this state by a disability insurer and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through 2 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the policy or certificate issued under the policy.

(2) Coverage for well-child care under subsection (1) must include:

(a) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, medicare supplement, or hospital indemnity policies.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered by a physician or a health care professional supervised by a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the guidelines for health supervision II, published by the American academy of pediatrics.

(6) When a group disability policy or certificate of insurance issued under the policy provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the insurer that issued or delivered the policy or certificate is located inside or outside of this state.

Section 3. **Coverage for well-child care.** (1) Each disability insurance plan or group disability insurance plan that is delivered, issued for delivery, renewed, extended, or modified in this state by a health service corporation and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through 2 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the plan.

(2) Coverage for well-child care under subsection (1) must include:

(a) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, medicare supplement, or hospital indemnity policies.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered at the intervals required in that subsection by a physician or a health care professional supervised by a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the guidelines for health supervision II, published by the American academy of pediatrics.

(6) When a disability insurance plan or group disability insurance plan issued by a health service corporation provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the health service corporation that issued or delivered the policy or certificate is located inside or outside of this state.

Section 4. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 3, and the provisions of Title 33, chapter 22, part 3, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 33, chapter 22, part 5, and the provisions of Title 33, chapter 22, part 5, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 33, chapter 30, part 10, and the provisions of Title 33, chapter 30, part 10, apply to [section 3].

Section 5. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Applicability.** [This act] applies to individual or group disability policies or plans issued or renewed on or after October 1, 1991, by a disability insurer or health service corporation.

Approved March 27, 1991.

CHAPTER NO. 200

[SB 424]

AN ACT REVISING THE TERMS OF CONVERSION OF CERTAIN INSURANCE POLICIES; AND AMENDING SECTIONS 33-22-508 AND 33-30-1007, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-508, MCA, is amended to read:

"**33-22-508. Conversion on termination of eligibility.** (1) A group disability insurance policy issued or renewed after October 1, 1981, shall contain a provision that if the insurance or any portion of it on a person, his dependents, or family members covered under the policy ceases because of termination of his employment or of his membership in the class or classes eligible for coverage under the policy or as a result of his employer discontinuing his business or as a result of his employer discontinuing the group disability insurance policy and not providing for any other group disability insurance or plan, such person shall, provided he had been insured for a period of 3 months *and that he is not insured under another major medical disability insurance policy or plan,* be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of hospital or medical service insurance on himself, his dependents, or family members, provided application for the individual policy shall be made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy, at the option of the insured, shall be on any of the forms then customarily issued by the insurer to individual policyholders with the exception of those policies whose eligibility is determined by affiliation other than by employment with a common entity.

(3) The premium on the individual policy shall be at the insurer's then customary rate applicable to the coverage of the individual policy."

Section 2. Section 33-30-1007, MCA, is amended to read:

"**33-30-1007. Conversion on termination of eligibility.** (1) The group hospital or medical service plan contract issued or renewed by a health service corporation after October 1, 1981, shall contain a provision that if the insurance or any portion of it on a person, his dependents, or family members covered under the policy ceases because of termination of his employment or of his membership in the class or classes eligible for coverage under the policy, as a result of an employer discontinuing his business, or as a result of an employer discontinuing the policy issued by the health service corporation and not providing for any other group disability insurance or plan, such person shall, provided he has been insured for a period of 3 months *and that he is not insured under another major medical disability insurance policy or plan,* be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of hospital or medical service insurance on himself, his dependents, or family members, provided application for the individual policy shall be made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy shall, at the option of the insured, be on any of the forms then customarily issued by the insurer to individual policyholders with the exception of those whose eligibility is determined by their affiliation other than by employment with a particular entity.

(3) The premium on the individual policy shall be at the insurer's then customary rate applicable to the coverage of the individual policy but may not be greater than 150% of the insurer's highest group rate for a policy with the same benefits as the conversion policy."

Section 3. **Limitation of eligibility on conversion.** A person who purchases a policy of insurance under 33-22-508 ceases to be eligible for a conversion policy if the person insured by the policy:

(1) becomes eligible for medicare part A and part B, pursuant to Title XVIII of the federal Social Security Act, 42 U.S.C. 1395;

(2) fails to pay the premium on the policy purchased under 33-22-508;

(3) enrolls under another major medical disability insurance policy or plan, except that the person may maintain the conversion policy during any waiting period established under any new disability insurance policy or plan that the insured person purchases.

Section 4. **Limitation of eligibility on conversion.** A person who purchases a policy of insurance under 33-30-1007 ceases to be eligible for a conversion policy if the person insured by the policy:

(1) becomes eligible for medicare part A and part B, pursuant to Title XVIII of the federal Social Security Act, 42 U.S.C. 1395;

(2) fails to pay the premium on the policy purchased under 33-30-1007;

(3) enrolls under another major medical disability insurance policy or plan, except that the person may maintain the conversion policy during any waiting period established under any new disability insurance policy or plan that the insured person purchases.

Section 5. **Codification instruction.** (1) [Section 3] is intended to be codified as an integral part of Title 33, chapter 22, part 5, and the provisions of Title 33, chapter 22, part 5, apply to [section 3].

(2) [Section 4] is intended to be codified as an integral part of Title 33, chapter 30, part 10, and the provisions of Title 33, chapter 30, part 10, apply to [section 4].

Section 6. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved March 27, 1991.

CHAPTER NO. 201

[SB 432]

AN ACT TO CLARIFY THE RESPONSIBILITY OF THE DEPARTMENT OF FAMILY SERVICES AND OF YOUTH PROBATION OFFICERS REGARDING THE SUPERVISION OF YOUTH IN PLACEMENT FACILITIES; TO CLARIFY THE APPLICABILITY OF AN AFTERCARE AGREEMENT IF A DELINQUENT YOUTH IS TRANSFERRED FROM A STATE YOUTH CORRECTIONAL FACILITY TO A MENTAL HEALTH FACILITY AND SUBSEQUENTLY RELEASED; AMENDING SECTIONS 41-5-523 AND 53-30-226, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-523, MCA, is amended to read:

"41-5-523. *(Temporary)* **Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home; provided, however, that:

(i) in the case of a youth in need of supervision, the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from his home. The court shall include such determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a youth correctional facility if the judge finds that such placement is necessary for the protection of the public;

(c) order restitution by the youth or his parents;

(d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(e) require the performance of community service;

(f) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish such services as the court may designate;

(i) order such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. Upon release or discharge from the mental health facility, the youth must be returned to the court for further disposition in accordance with this section unless the court order has expired or the court no longer retains jurisdiction under 41-5-205.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision may not be placed in a youth correctional facility.

(b) A youth may not be held in a youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(c) No youth may be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a youth correctional facility must be supervised by the department. A youth placed in any other placement must be supervised by the youth probation officer of the youth court having jurisdiction over the youth.

(4) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department for a period not to exceed 45 days. The department shall determine the place and manner of evaluation.

(5) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court commits a youth to the department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

41-5-523. *(Effective July 1, 1991)* **Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home; provided, however, that:

(i) in the case of a youth in need of supervision, the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from his home. The court shall include such determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a *state* youth correctional facility if the judge finds that such placement is necessary for the protection of the public;

(c) order restitution by the youth or his parents;

(d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(e) require the performance of community service;

(f) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish such services as the court may designate;

(i) order such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. Upon release or discharge from the mental health facility, the youth must be returned to the court for further disposition in accordance with this section unless the court order has expired or the court no longer retains jurisdiction under 41-5-205.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision may not be placed in a *state* youth correctional facility.

(b) A youth may not be held in a *state* youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(c) No youth may be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a *state* youth correctional facility must be supervised by the department. A youth placed in any other placement must be supervised by the youth probation officer of the youth court having jurisdiction over the youth *whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:*

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) At any time after the youth has been taken into custody and before final disposition, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated for a period not to exceed 45 days. The county commissioners are responsible for the cost of the evaluation and may contract with the department or other public or private agencies to obtain evaluation services.

(5) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court commits a youth to the department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth."

Section 2. Section 53-30-226, MCA, is amended to read:

"53-30-226. **Youth aftercare agreement.** *(1)* A youth released by the department of family services from one of the *state* youth correctional facilities to the supervision, custody, and control of the department shall, before his release, sign an aftercare agreement containing:

~~(1)~~*(a)* a statement of the terms and conditions of his release, including a list of the acts which, if committed by the youth, may result in his return to the facility; and

~~(2)~~*(b)* a statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in 53-30-229 before he may be returned to the facility.

(2) A youth who is released from a state youth correctional facility for commitment to a mental health facility pursuant to Title 53, chapter 21, part 1, shall sign an aftercare agreement that will remain in effect until the youth is returned to the court for further disposition as provided in 41-5-523(1)(j). If the youth is not returned to a state youth correctional facility following the hearing for further disposition, the aftercare agreement becomes void unless amended or extended by the department or the court."

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved March 27, 1991.

CHAPTER NO. 202

[SB 433]

AN ACT PROHIBITING THE USE OF COERCION TO OBTAIN NEW MOTOR VEHICLE DEALERS' PARTICIPATION IN ADVERTISING CAMPAIGNS OR SALES PROMOTIONS; AND AMENDING SECTION 61-4-208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-208, MCA, is amended to read:

"**61-4-208. Coercion prohibited.** ~~(1)~~ A manufacturer of new motor vehicles, factory branch, distributor, distributor branch, importer, field representative, officer, agent, or any representative thereof may not coerce or attempt to coerce a new motor vehicle dealer to*:*

(1) accept delivery of a new motor vehicle, a part, or an accessory therefor or any other commodity that has not been ordered by the dealer~~.~~*;*

(2) participate in or contribute to any local, regional, or national advertising fund or to participate in or to contribute to contests, giveaways, or other sales devices; or

~~(2) A manufacturer, factory branch, distributor, distributor branch, importer, field representative, officer, or agent or representative thereof may not coerce or attempt to coerce a new motor vehicle dealer to~~

(3) enter into an agreement with ~~such~~ *a* manufacturer, factory branch, distributor, distributor branch, or representative thereof or do any other act unfair to the dealer by:

(a) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative thereof and the dealer; or

(b) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent thereof."

Approved March 27, 1991.

CHAPTER NO. 203

[HB 63]

AN ACT TO AMEND CLASS C MOTOR CARRIER CONTRACT PROVISIONS TO REMOVE REFERENCE TO CLASS B CONVERSION;

AMENDING SECTION 69-12-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-302, MCA, is amended to read:

"69-12-302. ~~Conditions resulting in~~ Class C ~~carrier considered as Class B carrier~~ *contract requirements.* (1) A Class C motor carrier ~~operating with~~ *may operate under no* more than six contracts ~~which are in effect~~ *that are effective* at any given time, and each ~~of which are~~ *contract must be* effective for a minimum of 180 days ~~is considered to be operating as a Class B motor carrier~~. Before transportation service may commence, pertinent contract information ~~shall~~ *must* be furnished to the commission for each contract on forms prescribed by the commission. The commission shall retain a duplicate of the information in its files, and a copy of the form, confirmed by the commission, must be kept in the cab of the motor carrier when operating under that contract.

(2) All Class C motor carriers ~~must~~ *shall* annually submit to the commission the names and addresses of all persons, corporations, or other legal entities with whom the Class C carrier has executed a contract, charter, agreement, or undertaking for the distribution, delivery, or collection of wares, merchandise, or commodities or for transporting persons.

(3) The provisions of this section ~~shall~~ *do* not apply to solid waste contractors, household goods carriers, or house movers, as defined by the department of public service regulation, or any carrier whose authority is limited to the pickup and delivery of property and is confined by certificate to transportation within a distance of 50 miles or less from a particular location. ~~Any~~ *A* carrier whose property authority is incidental to the transportation of persons is not included in the exemption under this subsection."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 27, 1991.

CHAPTER NO. 204

[HB 105]

AN ACT TO PROVIDE FOR TRANSFER OF A TENURE TEACHER BETWEEN ADMINISTRATIVE AND TEACHING POSITIONS; AMENDING SECTION 20-4-203, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-203, MCA, is amended to read:

"**20-4-203. Teacher tenure.** (1) ~~Whenever~~ *Except as provided in [section 2], whenever* a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher is considered to be reelected from year to year thereafter as a tenure teacher at the same salary and in the same or a comparable position of employment as that provided by the last executed contract with the teacher unless the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204.

(2) The tenure of a teacher with a district may not be impaired upon termination of services of the teacher if the following conditions exist:

(a) the tenure teacher is terminated because the financial condition of the district requires a reduction in the number of teachers employed; and

(b) continued employment rights are provided for in a collectively bargained contract of the district."

Section 2. **Transfer from administrative position.** (1) A tenure teacher serving in an administrative position may be assigned to a teaching position with a reduction in salary when the economic conditions of the district require a reduction of administrative staff. The salary for the new position must be the same as the salary that the teacher would have received if the teacher had been continuously employed in the new position rather than in the administrative position.

(2) As used in this section, the term:

(a) "administrative position" means a position that the trustees of a district designate as administrative or supervisory in nature, not including the position of district superintendent; and

(b) "reduction of administrative staff" is limited to reductions necessary because of declining enrollment or financial exigency.

(3) When a tenure teacher serving in an administrative position is to be transferred under this section, the teacher must be notified prior to May 1 by certified letter or by personal notification for which a signed receipt must be obtained. The notification must include:

(a) a statement of the reason or reasons for the reduction of administrative staff; and

(b) a printed copy of this section for the teacher's information.

(4) A tenure teacher who receives notice under subsection (3) may request in writing, within 10 days of the notice, a hearing before the board of trustees. The board of trustees shall set the hearing not less than 10 days or more than 20 days from receipt of the request unless both parties agree to an extension. If a hearing is requested, the trustees shall:

(a) conduct the hearing to determine whether the reason or reasons for the transfer were in compliance with the provisions of subsection (1); and

(b) resolve at the end of the hearing to uphold the transfer or to reject the transfer and return the teacher to the administrative position.

(5) A tenure teacher may appeal a decision under this section to the county superintendent as provided in 20-3-210. The county superintendent shall conduct a hearing to determine whether the reason or reasons for the transfer were in compliance with the provisions of subsection (1).

(6) The teacher or the trustees may appeal the determination of the county superintendent to the superintendent of public instruction as provided in 20-3-107.

(7) A tenure teacher who is transferred to a teaching position under this section must be offered the next comparable administrative position for which he is endorsed that becomes available in the district.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 20, and the provisions of Title 20 apply to [section 2].

Section 4. **Applicability.** [This act] does not apply to a person who was employed in an administrative position before October 1, 1991.

Approved March 27, 1991.

CHAPTER NO. 205

[HB 120]

AN ACT CREATING THE FARM ANIMAL AND RESEARCH FACILITIES PROTECTION ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 5] may be cited as the "Farm Animal and Research Facilities Protection Act".

Section 2. **Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Animal" means any warmblooded or coldblooded animal lawfully confined for food, fur, or fiber production, agriculture and its related activities, research, testing, or education. The term includes but is not limited to dogs, cats, poultry, fish, and invertebrates.

(2) "Animal facility" includes a vehicle, building, structure, research facility, or premises where an animal is lawfully kept, handled, housed, exhibited, bred, or offered for sale.

(3) "Consent" means agreement in fact, whether express or apparent.

(4) "Deprive" means to:

(a) withhold an animal or other property from the owner permanently or for such a period of time that a major portion of the value or enjoyment of the animal or property is lost to the owner;

(b) restore the animal or other property only upon payment of reward or other compensation; or

(c) dispose of an animal or other property in a manner that makes recovery of the animal or property by the owner unlikely.

(5) "Effective consent" means consent by the owner or by a person legally authorized to act for the owner. Consent is not effective if it is:

(a) induced by force or threat;

(b) given by a person that the offender knows is not legally authorized to act for the owner; or

(c) given by a person who by reason of youth, mental disease or defect, or being under the influence of drugs or alcohol is known by the offender to be unable to make reasonable decisions.

(6) "Notice" means:

(a) oral or written communication by the owner or someone with apparent authority to act for the owner;

(b) fencing or other enclosure obviously designed to exclude intruders or to contain animals; or

(c) a sign or signs posted on the property or at the entrance to a building that are reasonably likely to come to the attention of intruders and that indicate that entry is forbidden.

(7) "Owner" means a person who has:

(a) title to the property; or

(b) lawful possession of the property.

(8) "Person" means an individual, state agency, corporation, association, nonprofit corporation, joint-stock company, firm, trust, partnership; two or more persons having a joint or common interest; or some other legal entity.

(9) "Possession" means actual care, custody, control, or management.

(10) "Research facility" means a place, laboratory, institution, medical care facility, elementary school, high school, college, or university at which a scientific test, experiment, or investigation involving the use of a living animal is lawfully carried out, conducted, or attempted.

Section 3. **Unlawful acts.** (1) A person who does not have the effective consent of the owner may not acquire or otherwise exercise control over an animal facility, an animal from an animal facility, or other property from an animal facility with the intent to deprive the owner of the facility, animal, or property or to damage the enterprise conducted at the animal facility.

(2) A person who does not have the effective consent of the owner and who intends to damage the enterprise conducted at an animal facility may not:

(a) damage or destroy an animal facility or an animal or property in or on the premises of an animal facility;

(b) enter an animal facility that is at the time closed to the public with the intent to commit an act prohibited by [sections 1 through 5];

(c) remain concealed in an animal facility with the intent to commit an act prohibited by [sections 1 through 5];

(d) enter an animal facility and commit or attempt to commit an act prohibited by [sections 1 through 5];

(e) enter an animal facility to take pictures by photograph, video camera, or other means with the intent to commit criminal defamation; or

(f) enter or remain on the premises of an animal facility if the person:

(i) had notice that the entry was forbidden; or

(ii) received notice to depart but failed to do so.

(3) The provisions of [sections 1 through 5] do not apply to lawful activities of a:

(a) government agency or its employees who are carrying out their duties under law or to lawful activities of a financial institution or other secured party; and

(b) humane animal treatment shelter or its employees whose primary purpose is the bona fide control or humane care of animals or the enforcement of 45-8-211.

Section 4. **Action for damage.** (1) A person who has been damaged by reason of a violation of [section 3] may bring against the person who caused the damage an action in the district court to recover:

(a) an amount equal to three times all actual and consequential damages; and

(b) court costs and reasonable attorney fees.

(2) [Sections 1 through 5] may not be construed to affect any other rights of a person who has been damaged by reason of a violation of [sections 1 through 5]. The provisions of subsection (1) may not be construed to limit the exercise of any rights arising out of or relating to a violation of [section 3].

Section 5. **Penalty.** (1) A person convicted of violating [section 3(2)(f)] shall be fined not less than $50 or more than $500 or be imprisoned in the county jail for a term not to exceed 3 months, or both.

(2) A person convicted of an act that violates [section 3(1) and (2)(a) through (2)(e)] and that results in $500 or less in damage or destruction shall be fined not more than $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person convicted of an act that violates [section 3(1) and (2)(a) through (2)(e)] and that results in more than $500 in damage or destruction shall be fined not more than $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved March 27, 1991.

CHAPTER NO. 206

[HB 166]

AN ACT TO ADDRESS THE DECISION OF THE MONTANA SUPREME COURT IN STATE V. AUSTIN, 217 MONT. 265, 704 P.2D 55 (1985), BY REPEALING SECTION 87-3-122, MCA.

WHEREAS, the Montana Supreme Court in State v. Austin, 217 Mont. 265, 704 P.2d 55 (1985), held that section 87-3-122, MCA, violated equal protection by including wildlife in its purview and exempting landowners, lessees, and others on their own land since the statute was not rationally related to the state's interest in protecting its wildlife; and

WHEREAS, subsequent attempts to amend section 87-3-122, MCA, to conform to the court's decision have not been successful; and

WHEREAS, the Legislature considers it appropriate to remove the statute from the law while at the same time encouraging the Departments of Livestock and Fish, Wildlife, and Parks to work together to develop for future legislative consideration a viable spotlighting law that will address the concerns of the court and Montana landowners.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 87-3-122, MCA, is repealed.

Approved March 27, 1991.

CHAPTER NO. 207

[HB 411]

AN ACT TO MAKE PERMISSIVE THE REPORTS COMMON CARRIERS OF BEER, TABLE WINE, AND CIGARETTES FILE WITH THE DEPARTMENT OF REVENUE; TO REQUIRE RECORDKEEPING; AND AMENDING SECTIONS 16-3-235, 16-3-405, AND 16-11-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-235, MCA, is amended to read:

"**16-3-235. Carriers' reports of beer transported.** Every railroad and every motor carrier transporting beer manufactured out of this state from points without this state and delivering the same to points within this state shall, *if requested by the department,* on or before the 15th day of each month, make an exact return to the department of the amount of such beer so transported and delivered by such railroad or motor carrier during the previous month and shall state in such return the name and address of the consignor, the name and address of the consignee, the date of delivery, and the amount delivered. *A carrier shall retain for 30 months all pertinent and relevant records necessary for the preparation of this report and any other information the department may require.*"

Section 2. Section 16-3-405, MCA, is amended to read:

"**16-3-405. Carriers' reports of table wine transported.** Every railroad, motor carrier, and airline transporting table wine manufactured out of this state from points outside this state and delivering to points within this state shall, *if requested by the department,* on or before the fifteenth day of each month, make an exact return to the department of revenue of the amount of such table wine so transported and delivered by such railroad, motor carrier, or airline during the previous month, and shall state in such return the name and address of the consignor and consignee, the date of delivery, and the amount delivered. *A carrier shall retain for 30 months all pertinent and relevant records necessary for the preparation of this report and any other information the department may require.*"

Section 3. Section 16-11-104, MCA, is amended to read:

"**16-11-104. Carriers to report cigarette shipments.** Every common carrier hauling, transporting, or shipping into or out of the state of Montana from or to any other state any cigarettes shall, *if requested by the* *department*, report in writing such shipments or deliveries to the department on forms furnished by the department, giving the date, the person to whom the same was consigned and delivered, the quantity as shown by the bill of lading, and such other information as the department may require. *A carrier shall retain for 30 months all pertinent and relevant records necessary for the preparation of this report and any other information the department may require.*"

Section 4. **Coordination instruction.** If Senate Bill No. 116 is passed and approved, including a section extending the statute of limitations for assessments by the state from 2 years to 5 years, the code commissioner shall change the language in the amendment to 16-11-104, requiring the retention of records regarding cigarette shipments, from 30 months to 66 months.

Approved March 27, 1991.

CHAPTER NO. 208

[HB 424]

AN ACT TO DIRECT THAT ALL APPOINTING AUTHORITIES OF ALL APPOINTIVE BOARDS, COMMISSIONS, COMMITTEES, AND COUNCILS OF STATE GOVERNMENT TAKE POSITIVE ACTION TO ATTAIN GENDER BALANCE AND PROPORTIONAL REPRESENTATION OF MINORITY RESIDENTS TO THE GREATEST EXTENT POSSIBLE; TO REQUIRE THAT THE SECRETARY OF STATE PUBLISH INFORMATION ON APPOINTMENTS; TO REQUIRE THAT THE GOVERNOR REPORT TO SUCCEEDING LEGISLATURES THE PROGRESS MADE TOWARD GENDER BALANCE AND PROPORTIONAL REPRESENTATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Article II, section 8, of the Montana Constitution provides the right of public participation in government and the public right to expect governmental agencies to afford such reasonable opportunity for citizen participation; and

WHEREAS, the 51st Legislature adopted House Joint Resolution No. 28, urging that all appointive boards, commissions, committees, and councils be gender-balanced; and

WHEREAS, the 52nd Legislature acknowledges that women and minorities are significantly underrepresented on all appointive boards, commissions, committees, and councils of state government; and

WHEREAS, the 52nd Legislature strongly supports progress toward the goal of full participation in state government by both genders and all races.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Gender and racial balance.** (1) As vacancies occur and appointments are made, all appointing authorities of all appointive boards, commissions, committees, and councils of state government shall take positive action to attain gender balance and proportional representation of minorities resident in Montana to the greatest extent possible.

(2) Pursuant to subsection (1), the secretary of state shall publish in the Montana Administrative Register on a monthly basis the recent appointments made by the executive branch and the upcoming vacancies on executive boards and commissions.

Section 2. **Report to legislature.** Prior to the 10th legislative day of each regular session, the governor shall report to the legislature on the progress made toward achieving the goals set forth in [section 1].

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 1, and the provisions of Title 2, chapter 15, part 1, apply to [section 1].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved March 27, 1991.

CHAPTER NO. 209

[HB 537]

AN ACT CREATING A DROUGHT ADVISORY COMMITTEE; DEFINING THE COMMITTEE'S RESPONSIBILITIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Drought advisory committee.** (1) There is a drought advisory committee allocated to the department of natural resources and conservation for administrative purposes only as provided in 2-15-121.

(2) The drought advisory committee is chaired by a representative of the governor and consists of representatives of the departments of natural resources and conservation; agriculture; commerce; fish, wildlife, and parks; military affairs; health and environmental sciences; state lands; and livestock. The governor's representative must be appointed by the governor, and the representative of each department must be appointed by the head of that department. Additional, nonvoting members who represent drought-affected federal and local government agencies and public and private interests may also be appointed by the governor.

(3) The drought advisory committee shall:

(a) with the approval of the governor, develop and implement a state drought plan;

(b) review and report drought monitoring information to the public;

(c) coordinate timely drought impact assessments;

(d) identify areas of the state with a high probability of drought and target reporting and assistance efforts to those areas;

(e) upon request, assist in organizing local drought advisory committees for the areas identified under subsection (3)(d);

(f) request state agency staff to provide technical assistance to local drought advisory committees; and

(g) promote ideas and activities for groups and individuals to consider that may reduce drought vulnerability.

(4) The department of natural resources and conservation shall provide staff assistance to the drought advisory committee.

(5) The drought advisory committee shall meet, at a minimum, on or around the 15th day of the months of October and February of each year to assess moisture conditions and, as appropriate, begin preparations for drought mitigation.

(6) By March 15th of each year, the drought advisory committee shall submit a report to the governor describing the potential for drought in the coming year. If the potential for drought merits additional activity by the drought advisory committee, the report must also describe:

(a) activities to be taken by the drought advisory committee for informing the public about the potential for drought;

(b) a schedule for completing activities;

(c) geographic areas for which the creation of local drought advisory committees will be suggested to local governments and citizens; and

(d) requests for the use of any available state resources that may be necessary to prevent or minimize drought impacts.

(7) Nothing in this section is intended to remove or interfere with the duties and responsibilities of the governor or the division of disaster and emergency services for disaster coordination and emergency response, as provided in Title 10, chapter 3, part 1. The duties and responsibilities of the drought advisory committee supplement and are consistent with those of the division of disaster and emergency services for drought planning, preparation, coordination, and mitigation.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 33, and the provisions of Title 2, chapter 15, part 33, apply to [section 1].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 27, 1991.

CHAPTER NO. 210

[HB 610]

AN ACT CLARIFYING THE AUTHORITY OF THE PUBLIC SERVICE COMMISSION TO APPROVE THE IMPLEMENTATION OF ALTERNATIVE FORMS OF REGULATION BY PROVIDERS OF REGULATED TELECOMMUNICATIONS SERVICES; AUTHORIZING THE COMMISSION TO PERMIT CERTAIN DETARIFFING; PROVIDING THE MANNER OF OFFERING AND WITHDRAWING SERVICES; AUTHORIZING PROVIDERS TO OFFER PROMOTIONAL REBATES; AMENDING SECTIONS 69-3-305, 69-3-802, 69-3-807, AND 69-3-808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Montana Telecommunications Act, which recognizes and encourages competition in the telecommunications industry to the extent consistent with maintaining universal telephone service, was intended to serve as a bridge between a regulated telecommunications industry and a fully competitive market environment; and

WHEREAS, rapid technological and market changes within the telecommunications industry have prompted regulators nationwide to reexamine traditional regulation and adopt alternative regulatory systems; and

WHEREAS, although the intent of the Montana Telecommunications Act was to allow substantial flexibility to the Public Service Commission, the extent of the Commission's authority to implement alternative forms of regulation is uncertain and enactment of this legislation will clarify the Public Service Commission's authority.

STATEMENT OF INTENT

A statement of intent is necessary for this bill because [section 8] grants the public service commission general rulemaking authority and [section 6] grants the commission authority to adopt rules relating to the appropriate scope of promotions, rebates, and market trials. The legislature intends that if rules are adopted by the commission, the rules should permit reasonable flexibility to providers of regulated telecommunications services in the marketing of their services.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-802, MCA, is amended to read:

"69-3-802. **Purpose.** The legislature declares that it remains the policy of the state of Montana to maintain universal availability of basic telecommunications service at affordable rates. To the extent that it is consistent with maintaining universal service, it is further the policy of this state to encourage competition in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of this part to provide a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment, *and it is further the purpose of this part to clarify that the commission has authority to implement alternative forms of regulation for providers of regulated telecommunications services.*"

Section 2. **Alternative forms of regulation.** (1) The commission may authorize a provider of regulated telecommunication services, as defined in 69-3-803, to implement alternatives to the ratemaking practices required under parts 2, 3, and 9 of this chapter, including but not limited to price caps and equitable sharing of earnings or revenues between a provider of regulated telecommunications services and its customers.

(2) A provider of regulated telecommunications services may petition the commission to regulate the provider under an alternative form of regulation. The provider shall submit its plan for an alternative form of regulation with its petition. The commission's order on the petition must be issued no later than 9 months after the filing of the petition. The commission shall review and may authorize implementation of the plan if it finds, after notice and hearing, that the plan:

(a) will not degrade the quality of or the availability of efficient telecommunications services;

(b) will produce fair, just, and reasonable rates for telecommunications services;

(c) will not unduly or unreasonably prejudice or disadvantage a customer class;

(d) will reduce regulatory delay and costs;

(e) is in the public interest;

(f) will enhance economic development in the state;

(g) will result in the improvement of the telephone infrastructure in the state; and

(h) conforms to the purpose stated in 69-3-802 more nearly than regulation under part 2, 3, or 9 of this chapter conforms to the stated purpose.

(3) If the commission determines that the plan does not satisfy the requirements of this section, it may either reject the petition or issue a proposed order modifying the plan as submitted by the provider.

(4) A proposed order modifying the plan submitted by a provider of regulated telecommunications service may not be final until 60 days after issuance. During that 60-day period, the provider may withdraw its petition for alternative regulation or the consumer counsel may object to the proposed order. If a petition for alternative regulation is withdrawn or the consumer counsel objects to the proposed order, the provider:

(a) remains subject to the same regulation that applied when the petition was filed; and

(b) may petition the commission to be regulated under a revised alternative plan.

(5) Upon petition or upon its own motion, the commission may rescind its approval or amend an alternative form of regulation if, after notice and hearing, it finds that the conditions in subsection (2) are no longer satisfied.

(6) Nothing contained in this section may be construed as limiting or otherwise affecting the commission's authority to conduct investigations or hear complaints as provided in part 3 of this chapter.

Section 3. Section 69-3-807, MCA, is amended to read:

"**69-3-807. Regulation of rates and charges.** (1) As to ~~that~~ telecommunications service ~~which~~ *that* is provided under regulation, the commission may establish specific rates, tariffs, or fares for the provision of ~~such~~ *the* service to the public. The rates, tariffs, or fares must be just, reasonable, and nondiscriminatory.

(2) Alternatively, the commission may authorize the provision of regulated telecommunications service under ~~such~~ terms and conditions ~~as may~~ *that* best serve the declared policy of this state. *For a service detariffed under this subsection, the provider shall maintain a current price list on file with the commission and shall provide notice of changes in the price list as prescribed by the commission.* The commission is not required to fix and determine specific rates, tariffs, or fares for the service and in lieu thereof may:

(a) totally detariff the service;

(b) detariff rates for the service but retain tariffs for service standards and requirements;

~~(c) detariff rates but require notice of price changes to the commission and subscribers;~~

~~(d)~~*(c)* establish only maximum rates, only minimum rates, or permissible price ranges as long as the minimum rate is cost compensatory; or

~~(e)~~*(d)* provide such other rate or service regulation as will promote the purposes of this part.

(3) ~~In~~ *Except as provided in subsection (4), in* determining applications under subsection (2), the commission shall consider the following factors:

(a) the number, size, and distribution of alternative providers of service;

(b) the extent to which services are available from alternative providers in the relevant market;

(c) the ability of alternative providers to make functionally equivalent or substitute services readily available;

(d) the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates; and

(e) ~~such~~ other factors ~~as~~ *that* the commission may prescribe through rulemaking ~~which~~ *that* are appropriate to fulfill the purposes of this part.

(4) ~~Nothing in this section shall authorize the application of subsection (2) to any services for which there are no alternative providers of such services~~ *Notwithstanding the provisions of subsection (3), the commission may exercise its power under subsection (2)(c) with respect to any services of a telecommunications provider if the commission finds that action consistent with the provisions of 69-3-802 and with the public interest. Noncompetitive local exchange access to end-users and carrier access services may not be detariffed.*

(5) A provider of regulated message telecommunications service and related services shall average its service rates on its routes of similar distance within the state unless otherwise authorized by the commission. Nothing contained in this subsection may be construed to prohibit volume discounts, discounts in promotional offerings, or other discounts as long as the discounts are not offered in a discriminatory manner.

~~(5)~~*(6)* All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation. For purposes of this section, regulated telecommunications services are comparable to the extent alternative providers can make functionally equivalent substitutes or substitute services readily available."

Section 4. Section 69-3-808, MCA, is amended to read:

"**69-3-808. Forbearance of rate regulation to facilitate competition.** (1) In accordance with the provisions of this section, the commission shall forbear regulation as to rates, tariffs, fares, or charges to facilitate competition and shall authorize the provision of all or any portion of regulated telecommunications service under stated or negotiated terms to any person or entity that has acquired or is contemplating acquisition of, through construction, lease, or any other form of acquisition, similar telecommunications service from an alternative source.

(2) At any time, the provider of regulated telecommunications service may file a verified application with the commission for forbearance of regulation to facilitate competition. The application ~~shall~~ *must* describe the telecommunications service to be offered, the customer to be served, and the party or parties offering similar service, together with ~~such~~ other

information and in ~~such~~ *a* form ~~as~~ *that* the commission may prescribe. ~~Such~~ *The* additional information must be reasonably related to the determination of the existence of an alternative offer but may not require information relating to the cost of providing ~~such~~ *the* service.

(3) The commission shall approve or deny ~~any such~~ *an* application for forbearance of regulation to facilitate competition within ~~10~~ *15* days after the filing of the application~~, except that the commission may by order defer action for an additional 5-day period~~. If the commission has not acted on ~~any~~ *an* application within the permitted time period, the application is considered granted. The commission shall deny the application only upon a finding that the application is incomplete or that the subject or similar service is not being offered to the customer by parties other than the applicant. *If a customer or potential customer of the provider seeking forbearance requests a quotation of prices from another provider of telecommunications service having tariffs or price lists for similar services on file with the commission, the commission may presume the existence of competition.*

(4) The provisions of 2-4-601, relating to notice and hearing, do not apply to this section.

(5) Upon approval of the application, the provider of telecommunications service may negotiate with ~~such~~ *a* person or *an* entity for the provision of ~~such~~ *the* service without regard to its tariffs *or price lists* on file ~~and approved by~~ *with* the commission.

(6) Within 10 days after the conclusion of ~~such~~ *the* negotiations, the provider of regulated telecommunications service shall file with the commission the final contract or other evidence of the service to be provided, together with the charges and other conditions of the service. Thereafter, *for the term of the contract,* the provider of regulated telecommunications service may provide ~~such~~ *the* service to the customer without regard to its tariffs *or price lists* on file ~~and approved by~~ *with* the commission.

(7) Services provided pursuant to subsection (1) remain subject to the regulatory powers of the commission."

Section 5. **New service — withdrawal of services.** (1) A provider of regulated telecommunications service shall provide notice, in the form prescribed by the commission, of its intent to offer a new service to its customers. The notice must include a description of the service, a minimum price, and the terms and conditions under which it will be offered. At the end of a 10-day comment period for interested parties, the commission may immediately approve, suspend, or disapprove the new service offering or it may allow the interim introduction of the service pending a hearing at a later date. If the commission has not acted at the end of 30 days following issuance of notice, the provider may proceed to offer the service.

(2) A new service may be offered on a detariffed basis. A price list containing the price of the new service must be filed with the commission at the time the service is offered to the public.

(3) For purposes of this section, "new service" means any service that is introduced separately or in combination with other services and that is not functionally required to provide local exchange service or that is not a repackaged current service or a direct replacement for a regulated telecommunications service.

(4) A provider of regulated telecommunications service may withdraw a service upon 30 days' notice to the commission and to the users of the service. The commission may, however, suspend the withdrawal of the service, either on its own motion or at the request of an interested person, and shall then proceed to hearing.

Section 6. Section 69-3-305, MCA, is amended to read:

"**69-3-305. Deviations from scheduled rates, tolls, and charges.** (1) ~~It shall be unlawful for any~~ *A* public utility ~~to~~ *may not*:

(a) charge, demand, collect, or receive a greater or less compensation for ~~any~~ *a* utility service performed by it within the state or for any service in connection ~~therewith~~ *with a utility service* than is specified in ~~such~~ *the* printed schedules, including schedules of joint rates, ~~as~~ *that* may at the time be in force;

(b) demand, collect, or receive ~~any~~ *a* rate, toll, or charge not specified in ~~such~~ *the* schedules; or

(c) grant ~~any~~ *a* rebate, concession, or special privilege to ~~any~~ *a* consumer or user~~, which~~ *that*, directly or indirectly, shall or may have the effect of changing the rates, tolls, charges, or payments.

(2) The rates, tolls, and charges named ~~therein shall be~~ *in the printed schedules are* the lawful rates, tolls, and charges until the ~~same~~ *rates, tolls, and charges* are changed, as provided in this chapter.

(3) The commission may order refunds or credits of rates, tolls, or charges collected in violation of this section and may ~~in its discretion~~ order payment of interest at a reasonable rate on the refunded amount.

(4) *The provisions of this section do not prohibit the sharing of profits or revenues with customers in conjunction with an alternative form of regulation approved under [section 2]. Additionally, a provider of regulated telecommunications service may offer, for a limited period of time, either rebates or reductions or waivers of installation charges in conjunction with promotions, market trials, or other sales-related activities that are common business practices. Promotional pricing of services that remain fully tariffed requires advance approval of the commission. No promotional offering may combine monopoly services with competitive services. The commission may define the appropriate scope of promotions, rebates, and market trials, either by rule or in response to complaints. The commission may determine whether a particular sales activity under this subsection is unfairly discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to sales activities that the commission determines are unfairly dis-*

criminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the commission.

(5) A public utility violating the provisions of this section is subject to the penalty prescribed in 69-3-206. This, however, does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts."

Section 7. **Costs for services provided — jurisdiction over complaints.** (1) Prices charged for a regulated telecommunications service must be above relevant costs unless otherwise ordered by the commission. If the commission determines that a price is below relevant costs, it may ensure that shareholders and not ratepayers are responsible for any relevant costs not recovered through prices.

(2) With regard to competitive services, the term "relevant costs" includes the price for any components that are used by the telecommunications provider and that would be essential for alternative providers to use in providing the competitive services pursuant to commission-approved methodology.

(3) The commission has jurisdiction to consider complaints and initiate investigations to determine whether the price charged by a provider of regulated telecommunications service is above relevant costs. The commission may also consider complaints that a pricing or promotional practice violates any provision of this title.

Section 8. **Rulemaking authority.** The commission may adopt rules to implement this part.

Section 9. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Codification instruction.** (1) [Sections 2, 5, and 7] are intended to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3, part 8, apply to [sections 2, 5, and 7].

(2) [Section 8] is intended to be codified as an integral part of Title 69, chapter 3, part 3, and the provisions of Title 69, chapter 3, part 3, apply to [section 3].

Section 11. **Effective date.** [This act] is effective on passage and approval.

Approved March 27, 1991.

CHAPTER NO. 211

[HB 774]

AN ACT TO AUTHORIZE A PERSON TO IMPORT ILLEGAL GAMBLING DEVICES IF THE PERSON IS LICENSED TO MANUFACTURE THE DEVICES FOR EXPORT; AMENDING SECTION 23-5-152, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-152, MCA, is amended to read:

"**23-5-152. Possession of illegal gambling device prohibited — exception.** (1) Except as provided in 23-5-153 and subsection (2) of this section, it is a misdemeanor punishable under 23-5-161 for a person to purposely or knowingly have in his possession or under his control or to purposely or knowingly permit to be placed, maintained, or kept in any room, space, enclosure, or building owned, leased, or occupied by him or under his management or control an illegal gambling device. This section does not apply to a public officer or to a person coming into possession of an illegal gambling device in or by reason of the performance of an official duty and holding it to be disposed of according to law.

(2) (a) The department may adopt rules to license persons to manufacture gambling devices that are not legal for public play in the state and are manufactured only for export from the state.

(b) A person may not manufacture or possess an illegal gambling device for export from the state without having obtained a license from the department. The department may charge an administrative fee for the license that is commensurate with the cost of issuing the license.

(c) A person licensed under subsection (2) may bring an illegal gambling device into the state after notifying the department and receiving authorization from the department. The person is subject to reporting requirements provided for in rules adopted under subsection (2)(a)."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 27, 1991.

CHAPTER NO. 212

[HB 779]

AN ACT REVISING THE SMALL TRACT FINANCING ACT OF MONTANA; PROVIDING A LIMITATION ON THE TIME THAT NONJUDI-

CIAL FORECLOSURES MAY BE DELAYED BY THE INTERVENTION OF STAYS; AND AMENDING SECTION 71-1-315, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-1-315, MCA, is amended to read:

"**71-1-315. Notice — sale — payment.** A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided:

(1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) the grantor, at the grantor's address as set forth in the trust indenture or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold. Upon request of the trustee, the notice of sale shall be posted by a sheriff or constable of the county wherein the property to be sold is located.

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property or some part thereof is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least three public places in each county in which the property or some part thereof is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be recorded in the office of the clerk and recorder of each county where the property or some part thereof is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section.

(3) On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given. *In the event a sale cannot be held at the scheduled time by reason of the automatic stay provision of the United States Bankruptcy Code, 11 U.S.C. 362, or of a stay order issued by any court of competent jurisdiction, the person making the sale may, as often as he considers expedient, postpone the sale. Each postponement may not exceed 30 days, and all postponements, in the aggregate, may not exceed 120 days. Each postponement must be effected by a public proclamation at the time and place fixed in the notice of sale or fixed by previous postponement. No other notice of the postponed sale need be given.*

(4) The purchaser at the sale shall pay the price bid in cash, and upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to resell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person."

Approved March 27, 1991.

CHAPTER NO. 213

[HB 918]

AN ACT TO REVISE THE DEFINITION OF SOLID WASTE; AND AMENDING SECTION 75-10-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-103, MCA, is amended to read:

"**75-10-103. Definitions.** Unless the context clearly requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negoti-

ation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

(4) "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

(5) "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.

(6) "Local government" means a county, incorporated city or town, or refuse disposal district organized under the laws of this state.

(7) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other state, federal, or private entity, whether organized for profit or not.

(8) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(9) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ~~hazardous wastes,~~ ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; ~~septic tank and cesspool pumpings;~~ construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; *and* wood ~~wastes~~ *products or wood byproducts* and inert materials~~; but~~. *"Solid waste"* does not ~~include~~ *mean* municipal sewage, industrial wastewater effluents, ~~or~~ mining wastes ~~as~~ regulated under the mining and reclamation laws administered by the department of state lands, *slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.*

(10) "Solid waste management system" means any system which controls the storage, treatment, recycling, recovery, or disposal of solid waste.

(11) "State solid waste plan" means the statewide plan formulated by the department as authorized by this part."

Approved March 27, 1991.

CHAPTER NO. 214

[HB 941]

AN ACT ALLOWING MEMBERS OF THE SHERIFFS' RETIREMENT SYSTEM TO PURCHASE AN ADDITIONAL YEAR OF SERVICE FOR EVERY 5 YEARS OF CREDITABLE SERVICE; LIMITING THE COMBINED PURCHASE OF SERVICE TO 5 YEARS; AMENDING SECTION 19-7-310, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Election to purchase additional service.** (1) Except as provided in subsection (6), at any time before retirement, a member may make a written election with the board to purchase 1 additional year of service for every 5 years of creditable service.

(2) Service purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits.

(3) To qualify this service, a member shall:

(a) make a written election with the board to qualify the service; and

(b) contribute to the retirement fund the actuarial cost of granting the service in the sheriffs' retirement system, as determined by the board, based on:

(i) the member's compensation for the 12 months immediately preceding the date of his election to cover the service under the sheriffs' retirement system; and

(ii) the total contribution rate in effect at the time the service is purchased.

(4) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board. Payments must be completed prior to retirement.

(5) Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify for the purchase of military service under 19-7-310.

(6) The combined total of additional years of service purchased under the provisions of 19-7-310 and this section may not exceed 5 years.

Section 2. Section 19-7-310, MCA, is amended to read:

"19-7-310. Election to qualify previous military service. (1) A member with 15 years or more of service may, at any time prior to his retirement, make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, *except as provided in subsection (3),* if he is not otherwise eligible to receive credit. To qualify military service, he must contribute to the account the actuarial cost of granting the service, to be determined by the board based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, plus accrued interest. Interest accrues from the date on which the member has completed the number of service years in excess of 15 needed to qualify the military service to the date he contributes. He may not qualify more of his military service than he has service in the sheriffs' retirement system in excess of 15 years. Military service purchased under this section may not be used in determining eligibility for a service retirement.

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, he may not qualify his military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) if his active duty in the armed forces of the United States is not more than 25% of the total of all his years of military service, including reserve and active duty time.

(3) The combined total purchase of additional years of service under the provisions of [section 1] and this section may not exceed 5 years."

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 7, part 3, and the provisions of Title 19, chapter 7, part 3, apply to [section 1].

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved March 27, 1991.

CHAPTER NO. 215

[SB 357]

AN ACT REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO CONSULT WITH LOCAL GOVERNMENTS WHEN LICENSING SOLID WASTE MANAGEMENT FACILITIES; AND AMENDING SECTION 75-10-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-102, MCA, is amended to read:

"**75-10-102. Public policies.** (1) To implement this part, the following are declared to be public policies of this state:

(a) Maximum recycling from solid waste is necessary to protect the public health, welfare, and quality of the natural environment.

(b) Solid waste management systems shall be developed, financed, planned, designed, constructed, and operated for the benefit of the people of this state.

(c) Private industry is to be utilized to the maximum extent possible in planning, designing, managing, constructing, operating, manufacturing, and marketing functions related to solid waste management systems.

(d) Local governments shall retain primary responsibility for adequate solid waste management with the state preserving those functions necessary to assure effective solid waste management systems throughout the state.

(e) Encouragement and support be given to individuals and municipalities to separate solid waste at its source in order to maximize the value of such wastes for reuse.

(f) The state shall provide technical advisory assistance to local governments and other affected persons in the planning, developing, financing, and implementation of solid waste management systems.

(g) Actions and activities performed or carried out by persons and their contractors in accordance with this part shall be in conformity with the state solid waste plan.

(h) When licensing a solid waste management system, the department shall consult with units of local government that have jurisdiction over the area encompassing the proposed system.

(2) This part is in addition and supplemental to any other law providing for the financing of a solid waste management system and does not amend or repeal any other law."

Approved March 28, 1991.

CHAPTER NO. 216

[HB 60]

AN ACT TO EXCLUDE A MEAL ALLOWANCE FROM THE MINIMUM WAGE PAID TO MONTANA EMPLOYEES; AMENDING SECTION 39-3-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-402, MCA, is amended to read:

"39-3-402. **Definitions.** As used in this part, the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Employ" means to suffer or permit to work.

(3) "Employee" ~~includes any~~ *means an* individual employed by an employer.

(4) "Farm or ranch" ~~shall mean~~ *means* any endeavor primarily engaged in cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and wildlife.

(5) "Farm worker" means ~~any~~ *a* person employed to do any service performed on a farm or ranch.

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(7) "Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to ~~such~~ *an* allowance as may be permitted by regulations of the commissioner under 39-3-403. The term "wage" includes the reasonable cost to the employer of furnishing ~~such~~ *the* employee with ~~board,~~ lodging~~,~~ or other ~~facilities,~~ *facility* if ~~such board,~~ *the* lodging~~,~~ or other ~~facilities are~~ *facility is* customarily furnished by ~~such~~ *the* employer to his employees; ~~provided,~~ however, ~~that in no case shall such~~ *the* inclusion *may not* exceed an amount equal to 40% of the total wage paid by ~~such~~ *the* employer to ~~such~~ *the* employee. The term "wage" does not include *the cost to the employer of providing meals or a meal allowance to the employee or* the value of any tips received by an employee as a gratuity for service."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1991.

CHAPTER NO. 217

[HB 107]

AN ACT REVISING THE SAFETY INSTRUCTION REQUIREMENTS NECESSARY FOR ISSUANCE OF A BOW AND ARROW LICENSE; AMENDING SECTION 87-2-105, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-105, MCA, is amended to read:

"**87-2-105. Safety instruction required.** (1) ~~No~~ *A* hunting license may *not* be issued to ~~any~~ *a* resident person under the age of 18 years unless he presents to the person authorized to issue ~~such~~ *the* license a certificate of competency as provided by this section.

(2) ~~No~~ *A* hunting license may *not* be issued to ~~any~~ *a* nonresident person under the age of 18 years unless he presents to the person authorized to issue ~~such~~ *the* license a certificate of competency, as provided in this section, or a certificate verifying that he has successfully completed a course in the safe handling of firearms in any state or province.

(3) ~~No~~ *A* bow and arrow license may *not* be issued to ~~any~~ *a* resident or nonresident ~~person under the age of 18 years~~ unless he presents to the person authorized to issue ~~such~~ *the* license ~~a~~ *an archery license issued for a prior hunting season or a* certificate of ~~competency in the safe handling of bow hunting tackle, in addition to the certificate of competency in the safe handling of firearms~~ *completion from the national bowhunter education foundation. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bow hunter education requirements. As part of those public information efforts, the department shall notify by mail all individuals who purchased a Class A-2 special bow and arrow license during the 1990-91 hunting season.*

(4) The department shall provide for a course of instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate as an instructor any person it finds to be competent to give instructions in the handling of firearms. A person ~~so~~ appointed shall give ~~such~~ *the* course of instruction and shall issue a certificate of competency in the safe handling of firearms to ~~any~~ *a* person successfully completing the course.

(5) The department shall provide for a course of instruction ~~in the safe handling of bow hunting tackle~~ *from the national bowhunter education foundation* and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give ~~instructions in the handling of bow hunting tackle~~ *the national bowhunter education foundation instruction.* A person ~~so~~ appointed shall give ~~such~~ *the* course of instruction and shall issue a certificate of ~~competency in the safe handling of bow hunting tackle~~ *completion from the national bowhunter education foundation* to any person successfully completing the course."

Section 2. **Effective date.** [This act] is effective March 1, 1992.

Approved March 29, 1991.

CHAPTER NO. 218

[HB 113]

AN ACT TO DEFINE THE TERM "FORCE" AS IT RELATES TO SEXUAL INTERCOURSE WITHOUT CONSENT AND TO DEVIATE SEXUAL CONDUCT; AND AMENDING SECTIONS 45-5-501 AND 45-5-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-501, MCA, is amended to read:

"**45-5-501. Definition.** *(1)* As used in 45-5-503 and 45-5-505, the term "without consent" means:

~~(1)~~*(a)* the victim is compelled to submit by force ~~or by threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone~~ *against himself or another*; or

~~(2)~~*(b)* the victim is incapable of consent because he is:

~~(a)~~*(i)* mentally defective or incapacitated;

~~(b)~~*(ii)* physically helpless; or

~~(c)~~*(iii)* less than 16 years old.

(2) As used in subsection (1), the term "force" means:

(a) the infliction or attempted infliction of bodily injury or the commission of a forcible felony by the offender;

(b) the threatened infliction of bodily injury or the threat of another crime by the offender that causes the victim to reasonably believe that the offender has the present ability to execute the threat; or

(c) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat."

Section 2. Section 45-5-503, MCA, is amended to read:

"**45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with a person of the opposite sex commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of his spouse as provided in 45-5-501~~(2)(c)~~*(1)(b)(iii).*

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(b) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Approved March 29, 1991.

CHAPTER NO. 219

[HB 118]

AN ACT ALLOWING A LICENSED PHARMACIST TO USE THE SERVICES OF A PHARMACY TECHNICIAN OR AUXILIARY UNDER THE TERMS OF AN APPROVED UTILIZATION PLAN; PROVIDING FOR FEES AND PENALTIES; AMENDING SECTIONS 37-7-101, 37-7-301, AND 37-7-323, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

It is the intent of the legislature that the board of pharmacy, to implement [sections 3 through 5], adopt rules that, among other issues, describe the functions that a pharmacist is permitted to delegate to a pharmacy technician or auxiliary, including but not limited to:

(1) removing a stock bottle from the shelf and counting and pouring the contents into a suitable container under direct supervision of a pharmacist;

(2) typing a prescription label and affixing it to a prescription bottle, with a final check and any patient counseling performed by the pharmacist;

(3) entering prescription information into a data processing system under supervision of a pharmacist who must be able to check all entries;

(4) maintaining prescription records, including prescription numbers, refill data, and other information on the patient profile system;

(5) prepackaging unit dose drugs for internal distribution. These prepackage unit dose drugs must be quarantined together with bulk containers

until a pharmacist performs a final check and maintains appropriate records.

(6) selling nonprescription drugs in their original containers without engaging in patient counseling;

(7) receiving and checking in pharmaceuticals, including controlled substances, if the pharmacy technician or auxiliary initials and dates all invoices with the actual date the drugs were received;

(8) participating in the biennial inventory of controlled substances, provided a pharmacist supervises the process. The supervising pharmacist must cosign the inventory list with the participating pharmacist and pharmacy technician or auxiliary.

(9) compounding intravenous solutions if a mechanism for verification exists that includes checking of the original order, solutions, additives, dosages, and clarity.

The legislature further intends that the board's rules allow a supervising pharmacist to use the services of only one technician or auxiliary at a time, except that the pharmacist may use two at a time if both are performing any of the following procedures:

(1) intravenous admixture and other sterile product preparation;

(2) filling of unit dose cassettes;

(3) prepackaging; and

(4) bulk compounding.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-7-101, MCA, is amended to read:

"**37-7-101. Definitions.** Unless the context requires otherwise, in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Board" means the board of pharmacy provided for in 2-15-1843.

(2) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(3) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(4) "Continuing education" means professional pharmaceutical postgraduate education in the following areas:

(a) the socioeconomic and legal aspects of health care;

(b) the properties and actions of drugs and dosage forms; and

(c) the etiology, characteristics, and therapeutics of the disease state.

(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(6) (a) "Drug" means:

(i) articles recognized in the official United States Pharmacopoeia/National Formulary or a supplement to them;

(ii) articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(iii) articles (other than food) intended to affect the structure or function of the body of man or other animals; and

(iv) articles intended for use as a component of an article specified in subsection (i), (ii), or (iii).

(b) "Drug" does not include devices or their components, parts, or accessories.

(7) "Intern" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons under the supervision of a registered and licensed pharmacist.

(8) "Medicine" means a remedial agent which has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(9) "Person" includes an individual, partnership, corporation, or association.

(10) "Pharmacist" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons and who may affix to his name the term "R.Ph.".

(11) "Pharmacy" means an established place registered by the department of commerce in which prescriptions, drugs requiring a prescription, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold.

(12) "Pharmacy technician or auxiliary" means an individual who assists a pharmacist in the practice of pharmacy pursuant to an approved utilization plan.

~~(12)~~*(13)* "Poison" means a substance which, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or which destroys living tissue with which it comes in contact.

~~(13)~~*(14)* "Prescription" means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, his license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations apply to both written and telephoned prescriptions.

(15) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician or auxiliary in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

~~(14)~~*(16)* "Wholesale" means a sale for the purpose of resale."

Section 2. Section 37-7-301, MCA, is amended to read:

"**37-7-301. Sale of drugs or medicines unlawful except as provided.** *Except as provided in [sections 3 through 5], it is unlawful for a:*

(1) ~~It is unlawful for any~~ person to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons in any place other than a pharmacy, except as hereinafter provided~~.~~*;*

(2) ~~It is unlawful for any~~ proprietor, owner, or manager of a pharmacy or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an intern registered and licensed by the department~~,~~ *and* under the supervision of a registered and licensed pharmacist~~.~~*;*

(3) ~~It is unlawful for any~~ person to assume or pretend to the title of pharmacist or intern unless ~~such~~ *the* person has a license as such, issued and in force pursuant to parts 1 through 3 of this chapter~~.~~*;*

(4) ~~It is unlawful for any~~ person other than a licensed and registered pharmacist or a licensed and registered intern under the supervision of a licensed and registered pharmacist to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons except as provided in parts 1 through 3."

Section 3. **Utilization plan — contents — responsibility of pharmacist.** (1) A utilization plan must set forth:

(a) the name and qualifications of the supervising pharmacist or pharmacists;

(b) the nature and location of the supervising pharmacist's pharmacy practice;

(c) a summary of the tasks delegated by the pharmacist and the methods by which a supervising pharmacist may verify and document the tasks. "Verify" means the personal confirmation by a supervising pharmacist of the correctness of the tasks undertaken by the pharmacy technician.

(d) any other information the board considers relevant.

(2) The board shall approve a utilization plan if it determines that the duties to be delegated are:

(a) assigned, verified, and documented by the supervising pharmacist; and

(b) within the scope of the training and competence of the person to whom the authority is delegated.

(3) A supervising pharmacist is responsible for the actions of a pharmacy technician or auxiliary who performs services for the pharmacist under the terms of a utilization plan.

Section 4. **Preparation and approval of utilization plan — revocation of or refusal to renew plan — contested case hearing.** (1) A supervising pharmacist shall:

(a) prepare the utilization plan and submit a summary of the plan to the board for approval;

(b) keep on file in the pharmacy a copy of the utilization plan for inspection by the board; and

(c) annually review the utilization plan and provide documentation to the board that the plan accurately reflects the current use of the services of a pharmacy technician or auxiliary.

(2) The board shall refuse to approve or shall revoke or fail to renew approval of a utilization plan if it does not conform to the provisions of [sections 3 through 5] and rules adopted under those sections.

(3) One year after the board revokes approval of a utilization plan, the supervising pharmacist may reapply for approval by complying with the requirements of [sections 3 through 5] and with rules adopted under those sections.

(4) Before refusing to approve or before revoking or failing to renew approval of a utilization plan, the board shall provide the supervising pharmacist a reasonable time in which to supply additional information demonstrating compliance with the requirements of [sections 3 through 5] and with rules adopted under those sections and the opportunity to request a hearing.

(5) If a supervising pharmacist requests a hearing, the board shall conduct the hearing in accordance with the contested case procedures in Title 2, chapter 4, part 6.

Section 5. **Utilization plan approval fee — renewal of approval — renewal fee.** (1) A pharmacy in which a pharmacist uses the services of a pharmacy technician or auxiliary under an approved utilization plan shall pay to the board a utilization plan approval fee in an amount set by the board as provided in 37-1-134. Payment must be made when the utilization plan is submitted and is not refundable.

(2) Approval of a utilization plan expires 1 year from the date of approval. The board shall grant renewal of approval upon payment of a renewal fee in an amount set by the board and documentation as required by [section 4(1)(c)].

(3) The board may adopt fees, as provided in 37-1-134, for other costs associated with implementation of [sections 3 through 5], including the costs of onsite inspection of the utilization plan at the participating pharmacy.

(4) The board shall deposit fees received in the state special revenue fund for use by the board in administration of [sections 3 through 5], subject to 37-1-101(6).

Section 6. Section 37-7-323, MCA, is amended to read:

"**37-7-323. Penalty** — ***enforcement.*** *(1)* ~~Any~~ *A* person, firm, partnership, or corporation violating any of the provisions of parts 1 through 3 of this chapter ~~shall be~~ *is* guilty of a misdemeanor and upon conviction for each violation shall be punished accordingly~~,~~ and ~~any thereof convicted~~ shall automatically lose any license issued by the board.

(2) In addition to the penalty provided in subsection (1), the board may withdraw its approval of a utilization plan previously approved for a supervising pharmacist who:

(a) violates any provision of [sections 3 through 5] or rules adopted under those sections;

(b) obtained the approval of the utilization plan through fraud; or

(c) acts in a manner contrary to the terms of the utilization plan.

(3) The board may seek an injunction to enforce the provisions of subsection (2)."

Section 7. **Codification instruction.** [Sections 3 through 5] are intended to be codified as an integral part of Title 37, chapter 7, part 3, and the provisions of Title 37, chapter 7, part 3, apply to [sections 3 through 5].

Section 8. **Effective dates.** (1) [Section 7 and this section] are effective on passage and approval.

(2) [Sections 1 through 6] are effective January 1, 1992.

Approved March 29, 1991.

CHAPTER NO. 220

[HB 153]

AN ACT TO CONFORM THE FILING DATES FOR THE WORKERS' COMPENSATION PAYROLL TAX TO THE FILING DATES FOR THE STATE INCOME WITHHOLDING TAX; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2503, MCA, is amended to read:

"**39-71-2503. Workers' compensation payroll tax.** (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% of the employer's payroll in the preceding week. This payroll tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. The department must report past and projected future tax proceeds to the legislature, which shall consider the report and determine the tax rate necessary for repayment of loans with interest.

(b) Each employer shall maintain the records the department requires concerning the employer's payroll. The records are subject to inspection by the department and its employees and agents during regular business hours.

(2) All collections of the tax are appropriated to and must be deposited as received in the tax account. The tax is in addition to any other tax or fee assessed against employers subject to the tax.

(3) (a) On or before the ~~20th day of May, August, November, and February~~ *last day of April, July, October, and January,* each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a).

(c) A tax payment required by subsection (1)(a) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who

willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved March 29, 1991.

CHAPTER NO. 221

[HB 158]

AN ACT REMOVING LIMITATIONS ON THE AMOUNTS AVAILABLE FOR INVESTMENT IN SHORT- AND LONG-TERM INVESTMENTS FROM THE PUBLIC EMPLOYEES', HIGHWAY PATROL OFFICERS', SHERIFFS', AND GAME WARDENS' RETIREMENT SYSTEMS; AMENDING SECTIONS 19-3-602, 19-6-405, 19-7-405, AND 19-8-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-602, MCA, is amended to read:

"**19-3-602. Investment of fund.** (1) The fund ~~shall~~ *must* be invested by the state board of investments as part of the ~~long-term investment fund~~ *unified investment program described in Title 17, chapter 6, part 2.*

(2) ~~Interest~~ *All income* earned on any ~~cash deposited in a bank by the state treasurer and income on other~~ assets constituting a part of the fund ~~shall~~ *must* be paid into the fund as received. ~~Income, of whatever nature, earned on the retirement fund during any fiscal year in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.~~"

Section 2. Section 19-6-405, MCA, is amended to read:

"**19-6-405. Investment of retirement ~~account~~ *fund*.** ~~When there is on deposit in the Montana highway patrol officers' retirement account a sum in excess of $25,000, the excess will~~ *(1) The fund must* be invested by the board of investments as part of the ~~long-term investment fund and any of the account less than $25,000 in amount shall be invested by the board of investments as part of the short-term investment fund when so directed by the board~~ *unified investment program described in Title 17, chapter 6, part 2.*

(2) All income earned on any assets constituting a part of the fund must be paid into the fund as received."

Section 3. Section 19-7-405, MCA, is amended to read:

"**19-7-405. Investment of ~~account~~ *fund*.** ~~Whenever there is over $25,000 on deposit in the account, that amount will~~ *(1) The fund must* be invested by the board of investments as part of the ~~long-term investment fund. Any of the account in an amount of $25,000 or less shall be invested by the board of investments as part of the short-term investment fund when so directed by the board~~ *unified investment program described in Title 17, chapter 6, part 2.*

(2) All income earned on any assets constituting a part of the fund must be paid into the fund as received."

Section 4. Section 19-8-403, MCA, is amended to read:

"**19-8-403. Investment of ~~account~~ *fund*.** ~~Whenever there is on deposit in the account a sum in excess of $25,000, such excess shall~~ *(1) The fund must* be invested by the board of investments as part of the ~~long-term investment fund. The part of the account not in excess of $25,000 shall be invested by the board of investments as part of the short-term investment fund when so directed by the board~~ *unified investment program described in Title 17, chapter 6, part 2.*

(2) All income earned on any assets constituting a part of the fund must be paid into the fund as received."

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1991.

CHAPTER NO. 222

[HB 160]

AN ACT ESTABLISHING A SOLID WASTE REDUCTION TARGET; ESTABLISHING INTEGRATED WASTE MANAGEMENT PRIORITIES; ESTABLISHING A STATE GOVERNMENT SOURCE REDUCTION AND RECYCLING PROGRAM; DIRECTING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP PROCUREMENT GUIDELINES FOR RECYCLED MATERIALS; AUTHORIZING THE PREPARATION OF A STATE SOLID WASTE MANAGEMENT PLAN; AND AMENDING SECTION 75-10-104, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because the department of health and environmental sciences will need to promulgate rules in order to implement this bill. It is the intent of the legislature that these regulations reflect an emphasis on integrated waste management and achieving the 25% waste reduction goal by 1996. In addition, the regulations must be designed to protect the public health, safety, and welfare and the environment. It is also the intent of the legislature that state government assume a leadership role in the development and implementation of source reduction and recycling programs and in the establishment of markets for the purchase and use of recyclable materials.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 7] may be cited as the "Montana Integrated Waste Management Act".

Section 2. **Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Composting" means the controlled biological decomposition of organic matter into humus.

(2) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(3) "Integrated waste management" means the coordinated use of a priority of waste management methods, including waste prevention, as specified in [section 4].

(4) "Postconsumer material" means only those paper products generated by a consumer that have served their intended end uses and have been separated or diverted from the solid waste stream.

(5) "Recycling" means all activities involving the collection of recyclable material, including but not limited to glass, paper, or plastic; the processing of recyclables to prepare them for resale; the marketing of recovered material for use in the manufacture of similar or different products; and the purchase of products containing recycled material.

(6) "Special waste" means solid waste that has unique handling, transportation, or disposal requirements to ensure protection of the public health, safety, and welfare and the environment.

(7) "Waste reduction" means practices that decrease the weight, volume, or toxicity of material entering the solid waste management stream after consumer or commercial use but prior to incineration or disposal.

Section 3. **Solid waste reduction target.** It is the goal of the state, by January 1, 1996, to reduce by at least 25% the volume of solid waste that is either disposed of in a landfill or incinerated.

Section 4. **Integrated waste management priorities.** It is the policy of the state to plan for and implement an integrated approach to solid waste management, which must be based upon the following order of priority:

(1) reduction of waste generated at the source;

(2) reuse of waste;

(3) recycling of waste;

(4) composting of biodegradable waste; and

(5) landfill disposal or incineration.

Section 5. **State government source reduction and recycling program.** (1) In order to progress toward achieving the waste reduction target identified in [section 3], each state agency, the legislature, and the university system shall:

(a) prepare a source reduction and recycling plan by January 1, 1992, to reduce the solid waste generated by state government. This plan must be submitted to the department and must include, at a minimum, provisions for the composting of yard wastes and the recycling of office and computer paper, cardboard, used motor oil, and other materials produced by the state for which recycling markets exist or may be developed.

(b) establish and implement a source reduction and recycling program by July 1, 1992; and

(c) apply computer technology to reduce the generation of waste paper through:

(i) the use of electronic bulletin boards;

(ii) the transfer of information in electronic rather than paper form; and

(iii) other applications of computer technology.

(2) The plan must be evaluated every 5 years and updated as necessary.

Section 6. **State government procurement of recycled supplies and materials.** (1) The department of administration shall write purchasing specifications that incorporate requirements for the purchase of materials and supplies made from recycled materials if the use is technologically practical and reasonably cost-effective. By January 1, 1992, these requirements must be incorporated into the purchase of:

(a) paper and paper products;

(b) plastic and plastic products;

(c) glass and glass products;

(d) automobile and truck tires;

(e) motor oil and lubricants; and

(f) other materials and supplies as determined by the department of administration.

(2) It is the goal of the state that by January 1, 1996, 95% of the paper and paper products used by state agencies, universities, and the legislature must be made from recycled material that maximizes postconsumer material content.

(3) Prior to January 1, 1996, the state shall, to the maximum extent possible, purchase for use by state agencies paper and paper products that contain postconsumer material rather than new material.

(4) To the extent practical, guidelines for the recycled material content of paper should be consistent with nationwide standards for recycled paper.

(5) The department and the department of administration shall establish a joint recycling market development task force. Task force membership must include but is not limited to representatives of the recycling industry, wholesalers, state agencies, and citizen and environmental organizations, as well as other interested persons. The task force shall:

(a) assist the department of administration in developing purchasing specifications as required in subsection (1);

(b) develop additional mechanisms for state government to develop markets for recycled materials;

(c) identify procurement barriers that discriminate against the purchase of supplies and products that contain recycled material; and

(d) develop recommendations for an informational program designed to educate state employees on how to reduce waste and recycle in the workplace.

Section 7. **Requirement to prepare and implement state solid waste management plan.** (1) As a basis for developing an integrated waste management program and ensuring adequate disposal capacity, the department shall prepare and implement a state solid waste management plan in accordance with [sections 1 through 7].

(2) The plan must be comprehensive and integrated and must include at least the following elements:

(a) a capacity assurance element that identifies existing disposal capacity, estimates waste generation rates, and determines the disposal capacity needed for the future and that assesses the potential effect of interstate disposal on capacity;

(b) an element that incorporates federal regulations 40 CFR, parts 257 and 258;

(c) an element that identifies the role of each of the components of the integrated waste management priorities contained in [section 4] in meeting the solid waste reduction target in [section 3];

(d) a technology assessment element that assesses the availability and practicality of alternative technologies for solid waste management;

(e) an education and public information element that identifies existing education and information programs and describes how the state will increase the awareness and cooperation of the public in environmentally safe solid waste management;

(f) a special waste and household hazardous waste element that identifies types and quantities of wastes that create special disposal problems and recommends methods for reducing, handling, collecting, transporting, and disposing of those wastes and that identifies existing and future strategies for managing those wastes;

(g) an element that identifies the needs of rural communities and management strategies to address those needs;

(h) an element that identifies mechanisms to ensure proper training of landfill operators; and

(i) a timeline and implementation strategy for each of the plan elements.

(3) The plan must be developed with the involvement of local officials, citizens, solid waste and recycling industries, environmental organizations, and others involved in the management of solid waste.

(4) The department shall conduct hearings as provided in 75-10-111.

(5) The plan must be evaluated every 5 years and updated as necessary.

Section 8. Section 75-10-104, MCA, is amended to read:

"**75-10-104. Duties of department.** The department shall:

(1) prepare a state solid waste management and resource recovery plan *as required by [section 7]* for submission to the board;

(2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

(b) governing procedures to be followed in applying for and making loans;

(c) governing agreements between a local government and the department for grants or loans under this part;

(d) establishing, for the purpose of determining the solid waste management fee to which a facility is subject under 75-10-115, methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility;

(e) providing procedures for the quarterly collection of the solid waste management fee provided for in 75-10-115; ~~and~~

(f) providing guidelines for a waiver of fees for certain incineration or disposal of solid waste, as provided for in 75-10-115(2); *and*

(g) providing guidelines for integrated waste management;

(3) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system which is compatible with the state plan whenever financial assistance is available;

(4) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating*:*

(a) a solid waste management system in order to ~~insure~~ *ensure* that the system conforms to the state plan;

(b) integrated waste management programs; and

(c) collection, disposal, reduction, and educational programs for household hazardous waste and conditionally exempt small quantities of hazardous waste as defined in Rule 16.44.402, Administrative Rules of Montana;

(5) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for loans are available;

(6) enforce and administer the provisions of this part;

(7) administer loans made by the state under the provisions of this part; ~~and~~

(8) approve plans for a proposed solid waste management system submitted by a local government*; and*

(9) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility."

Section 9. **Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [sections 1 through 7].

Approved March 29, 1991.

CHAPTER NO. 223

[HB 193]

AN ACT RELATING TO THE EXEMPTIONS FROM STATE INHERITANCE TAXES; ELIMINATING THE 10-YEAR TIME PERIOD REQUIREMENT FOR AN ACKNOWLEDGED PARENT-CHILD RELATIONSHIP BETWEEN A NONLINEAL DESCENDANT AND A DECEDENT; REQUIRING THAT THE RELATIONSHIP MUST BEGIN ON OR BEFORE THE CHILD'S 18TH BIRTHDAY; CLARIFYING THAT THE RELATIONSHIP MAY BE ONE OF A STEPCHILD TO A STEPPARENT; AMENDING SECTION 72-16-313, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-16-313, MCA, is amended to read:

"**72-16-313. Exemptions of spouse and other relatives.** (1) The clear value of all property distributed or passing to decedent's surviving spouse is exempt.

(2) The clear value of all property distributed or passing to the following is exempt:

(a) any child or lineal descendant of the decedent. A determination as to establishment of the parent and child relationship or establishment of a person as a lineal descendant must be made in accordance with the rules for determining relationship for purposes of intestate succession under Title 72, chapter 2, part 2.

(b) any child to whom ~~such~~ *the* decedent ~~for not less than 10 years~~, prior to ~~such~~ *the* transfer, stood in the mutually acknowledged ~~relation~~ *relationship* of a parent *or stepparent*, provided ~~such~~ *the* relationship began ~~at~~ *on* or before the child's ~~15th~~ *18th* birthday ~~and was continuous for 10 years~~.

(3) The following amounts are exempt:

(a) property of the clear value of $7,000 transferred to each of the persons who have attained majority described in 72-16-321(1); and

(b) property of the clear value of $1,000 transferred to each of the persons described in 72-16-321(2)."

Section 2. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to estates in which the date of death is after December 31, 1990.

Approved March 29, 1991.

CHAPTER NO. 224

[HB 230]

AN ACT ALLOWING THE TRUSTEES OF A FIRE DISTRICT TO ESTABLISH A CAPITAL IMPROVEMENT FUND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Fire district capital improvement fund.** The trustees of a fire district may establish a capital improvement fund. The fund may be used for the acquisition and replacement of equipment or facilities. The cost of the equipment must exceed $5,000 and have a life expectancy of 5 years or more.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 33, part 21, and the provisions of Title 7, chapter 33, part 21, apply to [section 1].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1991.

CHAPTER NO. 225

[HB 232]

AN ACT TO ALLOW A HIGHWAY PATROL OFFICER COVERED BY A COLLECTIVE BARGAINING AGREEMENT TO APPEAL A SUSPENSION, DEMOTION, OR DISCHARGE PURSUANT TO A GRIEVANCE PROCEDURE CONTAINED IN A COLLECTIVE BARGAINING AGREEMENT; AND AMENDING SECTIONS 44-1-901, 44-1-902, AND 44-1-903, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-1-901, MCA, is amended to read:

"44-1-901. Right to appeal. (1) ~~Any~~ *A* patrol officer who is suspended, demoted, or discharged has a right of appeal*:*

(a) to the district court ~~of~~ *in the county in which the claim arose or to the district court of* Lewis and Clark County*; or*

(b) pursuant to the terms of a grievance procedure contained in a collective bargaining agreement if the officer is covered by a collective bargaining agreement.

(2) The appeal *to the district court* must be made within 10 days after the decision or determination of the department of justice."

Section 2. Section 44-1-902, MCA, is amended to read:

"**44-1-902. Action by court.** The district court shall review ~~such~~ *a* decision or determination *appealed pursuant to 44-1-901(1)(a)* in a summary manner and render its decision ~~upon such appeal~~ within 90 days from the filing of ~~such~~ *the* appeal ~~in said court~~."

Section 3. Section 44-1-903, MCA, is amended to read:

"**44-1-903. Reinstatement and backpay upon reversal or modification.** If the decision or determination of the department of justice is finally reversed or modified ~~by the district court~~, the accused patrol officer must be reinstated in his position. Upon reinstatement, the department shall pay to the patrol officer any salary or wages withheld from him pending the determination of the charge or charges or take such action as may be directed by *resolution of the grievance procedure or* the court."

Approved March 29, 1991.

CHAPTER NO. 226

[HB 236]

AN ACT TO DELETE THE 200-MILE SAFETY STANDARD EXEMPTION FOR DRIVERS WHO ARE NOT MOTOR CARRIERS; AND AMENDING SECTION 44-1-1005, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-1-1005, MCA, is amended to read:

"**44-1-1005. Motor carriers safety — enforcement — violations.** (1) The department of justice shall:

(a) adopt, by rule, standards for safety of operations of motor carriers, each of whom is considered to consent impliedly to reasonable safety inspections of its motor vehicles utilized in furtherance of its business as a motor carrier;

(b) provide standards for the safe operation of all motor vehicles used in commerce that exceed 26,000 pounds gross vehicle weight, except farm vehicles; and

(c) provide for the safe operation of vehicles of less than 26,000 pounds gross vehicle weight if they are used to transport passengers for hire or to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with rules adopted by the department.

(2) Standards of safety adopted pursuant to subsections (1)(b) and (1)(c) must be the same as prescribed for motor carriers, and the same inspection standards and procedures apply. ~~However, standards relating to drivers, other than drivers for motor carriers, do not apply to a vehicle operated exclusively within a 200-mile radius of its work reporting location.~~

(3) The highway patrol has responsibility for enforcement of standards adopted pursuant to subsection (1)(a). Inspection of a vehicle based in Montana may, at the request of the carrier, be made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection site, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to subsection (1)(a) is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. Nothing in this section prohibits the inspection of a motor vehicle as provided for by subsection (1)(a) at a safe location on a public road.

(4) The department shall cooperate with the department of highways to assure minimum duplication and maximum coordination of enforcement effort.

(5) The department may designate and train civilian employees as inspectors within the motor carrier safety assistance program. Each civilian inspector is a peace officer whose jurisdiction is limited to enforcement of violations of chapters 5 and 9 of Title 61 and any standards adopted pursuant to subsections (1) and (2) of this section. Each employee so designated as a peace officer may:

(a) issue citations and make arrests;

(b) issue summonses;

(c) accept bail;

(d) serve warrants of arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles; and

(g) require production of documents relating to the cargo, driver, routing, maintenance, or ownership of such vehicles.

(6) Violations of the standards adopted pursuant to subsection (1) are punishable as provided in 61-9-512."

Approved March 29, 1991.

CHAPTER NO. 227

[HB 237]

AN ACT TO EXPAND THE PERMISSIBLE PROJECTS FINANCED BY HARD-ROCK MINING IMPACT BONDS; TO CLARIFY THE PROCEDURE FOR THE ISSUANCE OF BONDS; TO PROVIDE FOR INTERLOCAL AGREEMENTS TO FACILITATE BOND ISSUES; AMENDING SECTIONS 15-16-201, 82-4-335, 82-4-339, 90-6-302, 90-6-307, 90-6-310, AND 90-6-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-302, MCA, is amended to read:

"**90-6-302. Definitions.** In this part the following definitions apply:

(1) "Board" means the hard-rock mining impact board established in 2-15-1822.

(2) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(3) "Facility" means a facility that is owned, operated, or maintained by a local government unit and that, under the impact plan submitted under the provisions of 90-6-307, can be expected to have increased capital and operating costs as a result of the large-scale mineral development.

~~(3)~~*(4)* "Local government unit" means a county, city, town, school district, or any of the following independent special districts:

(a) rural fire district;

(b) public hospital district;

(c) refuse disposal district;

(d) county water and sewer district;

(e) county water district; ~~or~~

(f) county sewer district*; or*

(g) park district.

~~(4)~~*(5)* "Large-scale mineral development" means the construction or operation of a hard-rock mine and the associated milling facility for which a permit is applied for under 82-4-335 on or after May 18, 1981, and for which the average number of persons on the payroll of the mineral developer and of contractors at the mineral development exceeds or is projected to exceed 75 for any consecutive 6-month period. A mining operation that would qualify as a large-scale mineral development under this subsection is not a large-scale mineral development if the mine owner and operator are small miners as defined in 82-4-303."

Section 2. Section 90-6-310, MCA, is amended to read:

"**90-6-310. ~~Education~~ *Local government facility* impact bonds.** (1) When the need for ~~new school~~ *the construction, renovation, improvement, or acquisition of local government* facilities *as a result of the large-scale mineral development* is determined *under 90-6-307,* the owners of a large-scale mineral development may enter into a written agreement with the ~~trustees of a school district that has~~ *local government unit having* the burden for the ~~issuance of bonds to cover the cost of such new construction~~ *increased capital and operating costs expected to be incurred by the facilities.* The ~~trustees of a school district~~ *local government unit* may execute a written agreement with the owner of a large-scale mineral development for the issuance of any special industrial ~~educational~~ *local government facility* impact bonds provided for in this section.

(2) The agreement with the owners of a large-scale mineral development shall provide for a payment guarantee, in addition to the taxes imposed by the ~~school district~~ *local government unit* on property owners generally, of the principal and interest on the bonds provided for in this section. Payment will then be made by an annual special tax levy on the property of the large-scale mineral development sufficient to retire the principal and interest on these special impact bonds. The bonds shall not be an obligation of the ~~trustees or the school district~~ *local government unit, but shall be special obligations limited to the revenue derived from the special tax levy. A local government unit shall establish a levy and, to the extent bonds are issued as provided in this section, shall pledge the special fund and all revenues of the special tax levy to the repayment of the bonds.*

(3) The debt limits set forth in *7-7-2203, 7-7-4201, and* 20-9-406 ~~and the provisions of 20-9-410 and 20-9-421 through 20-9-432, inclusive,~~ do not apply to bonds issued in accordance with this section. The interest on such bonds shall not be subject to state taxes.

(4) The impact bonds shall be authorized by the governing body of the local government unit by a resolution that states:

(a) the facility for which the bonds are issued;

(b) the amount of the bonds;

(c) the rate of interest the bonds bear;

(d) the date of the bonds and the maturity date or dates of the bonds;

(e) the dates interest is payable on the bonds;

(f) the redemption options, if any, with respect to the bonds; and

(g) the manner of execution of the bonds.

(5) The impact bonds shall be:

(a) in registered form as to principal and interest;

(b) payable in installments and at times not exceeding 30 years from their date of issuance; and

(c) payable at a place or places and be evidenced in a manner the governing body determines is in the best interest of the local government unit.

(6) Any impact bonds issued under the authority of this section may be sold at public or private sale in a manner, at a time or times, and at a price above or below par as may be determined by the governing body of the local government unit. All expenses, premiums, and commissions that the local government unit considers necessary or advantageous in connection with the authorization, sale, and issuance of the bonds may be paid by the governing body of the local government unit from the proceeds of the sale of the bonds.

(7) If more than one local government unit adopts a resolution to issue impact bonds, the local government units may enter into an interlocal agreement under 7-11-101 through 7-11-108, providing for the issue of impact bonds of the local government units to be combined in a single offering, if the governing body of each local government unit authorizing the bonds determines that the pooling of bonds:

(a) is in the best interest of the local government units;

(b) will facilitate the sale of the bonds under more advantageous terms;

(c) will lower the interest rates; or

(d) will lower the cost of issuance.

(8) In addition to the specific requirements of 7-11-105, the interlocal agreement shall provide:

(a) that the bond titles shall denote that impact bonds of different local government units have been pooled and shall refer to each local government unit executing the interlocal agreement;

(b) for a single debt service fund, to be held by a qualified trust company, to which each local government unit shall pledge and pay the annual special tax levies levied against the large-scale mineral development; and

(c) that the bonds are payable solely from and against the debt service funds under the interlocal agreement."

Section 3. Section 15-16-201, MCA, is amended to read:

"**15-16-201. Tax prepayment — new industrial facilities.** (1) A person intending to construct or locate a major new industrial facility, as defined in subsection (2) of this section, shall upon request of the board of county commissioners of the county in which the facility is to be located, prepay, when permission is granted to construct or locate by the appropriate governmental agency, an amount equal to three times the estimated property tax due the year the facility is completed. The person who is to prepay under this section shall not be obligated to prepay the entire amount at one time but, upon request of the board of county commissioners of the county, shall prepay only that amount shown to be needed from time to time. To assure this payment or payments, the person who is to prepay shall guarantee to the board of county commissioners and also have a bank or banks guarantee that these amounts will be paid as needed for expenditures created by the impact. When the facility is completed and assessed by the department of revenue, it shall be subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that one-fifth of the amount prepaid shall be allowed as a credit against property taxes in each of the first 5 years after the start of productive operation of the facility.

(2) A major new industrial facility is a manufacturing or mining facility other than a large-scale mineral development as defined in 90-6-302~~(4)~~*(5)* which will employ on an average annual basis at least 100 people in construction or operation of the facility and which will create a substantial adverse impact on existing state, county, or municipal services."

Section 4. Section 82-4-335, MCA, is amended to read:

"**82-4-335. Operating permit — limitation.** (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the board. A separate operating permit is required for each complex.

(2) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of his operation where the cyanide ore-processing reagent will be used or disposed of.

(3) Prior to receiving an operating permit from the board, a person shall pay the basic permit fee of $25 and shall submit an application on a form provided by the board, which must contain the following information and any other pertinent data required by rule:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built, and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to the applicant;

(f) types of access roads to be built and manner of reclamation of road sites on abandonment;

(g) a plan which will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(h) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(i) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(j) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

(k) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

(4) Except as provided in subsection (6), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the board, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(5) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and

90-6-302~~(4)~~*(5)* and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the board with proof that he has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that he has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the board that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the board shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(6) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(7) A person may not be issued an operating permit if that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond unless that person meets the conditions described in 82-4-360."

Section 5. Section 82-4-339, MCA, is amended to read:

"**82-4-339. Annual report of activities by permittee — fee — notice of large-scale mineral developer status.** (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules of the board and each year thereafter until reclamation is completed and approved, the permittee shall pay the annual fee of $25 and shall file a report of activities completed during the preceding year on a form prescribed by the board which report shall:

(a) identify the permittee and the permit number;

(b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;

(c) estimate acreage to be newly disturbed by operation in the next 12-month period;

(d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302~~(4)~~*(5)*; and

(e) update any maps previously submitted or specifically requested by the board. Such maps shall show:

(i) the permit area;

(ii) the unit of disturbed land;

(iii) the area to be disturbed during the next 12-month period;

(iv) if completed, the date of completion of operations;

(v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and

(vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located."

Section 6. Section 90-6-311, MCA, is amended to read:

"**90-6-311. Impact plan amendments.** (1) The impact plan may provide for amendment under definite conditions specified in the plan. Also, the governing body of an affected county or the mineral developer may petition the board for an amendment to an approved impact plan if:

(a) employment at the large-scale mineral development is forecast to increase or decrease by at least 75 persons, as determined under 90-6-302~~(4)~~*(5)*, over or under the employment levels contemplated by the approved impact plan; or

(b) it becomes apparent that an approved impact plan is materially inaccurate because of errors in assessment and 2 years have not elapsed since the date the facility begins commercial production; or

(c) the governing body of an affected county and the mineral developer join in a petition to amend the impact plan.

(2) Within 10 days of receipt the board shall publish notice of the petition at least once in a newspaper of general circulation in the affected county. The petition must include:

(a) an explanation of the need for an amendment;

(b) a statement of the facts and circumstances underlying the need for an amendment; and

(c) a description of the corrective measures proposed by the petitioner.

(3) Within 60 days after notice that the petition has been received, an affected local government unit or the mineral developer must notify the board in writing if such person objects to the amendments proposed by the petitioner, specifying the reasons why the impact plan should not be amended as proposed. If no objection is received within the 60-day period, the impact plan must be amended by the board as proposed by the petitioner.

(4) If an objection is received, within 10 days of its receipt, the board shall notify the petitioner and include a copy of all objections received by the board. If the objecting party and the petitioner cannot resolve the objections within 30 days after the expiration of the 60-day period, the board shall conduct a hearing on the validity of the objections within 30 days after the failure of the parties to resolve the objections. The hearing must be held in the affected county or, if objections are received from local government units in more than one county, must be held in the county which in the board's judgment is more greatly affected. The provisions of the Montana Administrative Procedure Act apply to the conduct of the hearing.

(5) Following the hearing, the board shall make findings as to those portions of the amendments which were objected to and, if appropriate, amend the impact plan accordingly. The board shall cause the findings and impact plan, as amended, to be served on all parties. Any local government unit or the developer is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court for the judicial district in which the hearing was held."

Section 7. Section 90-6-307, MCA, is amended to read:

"**90-6-307. Impact plan to be submitted.** (1) After an application for a permit for a large-scale mineral development is made under 82-4-335, the person seeking the permit shall submit to the affected counties and the board an impact plan describing the economic impact the large-scale mineral development will have on local government units and shall file proof of such submission to the counties with the board. Whenever an environmental impact statement on the permit application is prepared under 75-1-201, the lead agency shall cooperate to the fullest extent practicable with the affected local government units to eliminate duplication of effort in data collection. The governing bodies of the affected counties shall publish notice of the submission of an impact plan at least once in a newspaper of general circulation in the county. The mineral developer and the affected local government units shall ensure that the impact plan includes:

(a) a timetable for development, including the opening date of the development and the estimated closing date;

(b) the estimated number of persons coming into the impacted area as a result of the development;

(c) the increased capital and operating cost to local government units for providing services which can be expected as a result of the development;

(d) the financial or other assistance the developer will give to local government units to meet the increased need for services.

(2) In the impact plan, the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, as identified in the impact plan, either from tax prepayments, as provided in 90-6-309, special industrial ~~educational~~ *local government facility* impact bonds, as provided in 90-6-310, or

other funds obtained from the developer, and shall provide a time schedule within which it will do so. The plan may provide for funding from other revenue sources or funding mechanisms if the developer guarantees that the amount to be provided from these sources will be paid.

(3) Upon request of the governing body of an affected unit of local government, the mineral developer, prior to the end of the 90-day review period, shall provide financial or other assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county must contract with the developer to obtain the requested financial assistance for each unit of local government within the county. Any disbursements to a unit of local government under this subsection shall be credited against future tax liabilities, if any.

(4) The governing body of the county where the fiscal impacts on local government units are forecasted in the impact plan to be most costly shall, within 90 days after receipt of the impact plan from the developer, conduct a public hearing on the impact plan.

(5) An affected local government unit that has not been identified in an impact plan submitted to the board as being likely to experience increased capital and operating costs for providing services which can be expected as a result of the development may object to the impact plan under the provisions of this section if the local government unit clearly demonstrates that it is likely to experience increased capital and operating costs from the mineral development.

(6) An affected local government unit shall, within 90 days after receipt of the impact plan from the developer, notify the board in writing if that local government unit objects to the impact plan, specifying the reasons why the impact plan is objected to. During the 90-day period, an affected local government unit may petition for one 30-day extension by submitting a written request to the board stating the need and justification for the extension. The board shall grant the extension unless it finds there is no reasonable basis for the request. If no objection is received within the 90-day period or any extension thereof, the impact plan is approved without any review by the board. An approved plan is binding and may only be altered under the amendment provisions of 90-6-311.

(7) If objections are received from a local government unit, the board shall, within 10 days, notify the developer and forward a copy of the local government unit's objections to the developer. The local government unit and the developer have 30 days, or a longer period if both the local government unit and the developer request an extension, to resolve the objection. If the objections are not resolved, the board shall conduct a hearing on the validity of the objections, which shall be held in the affected county or, if objections are received from local government units in more than one county, shall be held in the county which, in the board's judgment, is more greatly affected. The provisions of the Montana Administrative Procedure Act shall apply to the conduct of the hearing. The impact plan filed by the developer shall carry no presumption of correctness at the hearing.

(8) Following the hearing, the board shall, within 60 days, make findings as to those portions of the impact plan which were objected to and, if appropriate, amend the impact plan accordingly. The findings and impact plan, as amended, shall be served by the board upon all parties. Any local government unit or the developer, if aggrieved by the decision of the board, is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court in and for the judicial district in which the hearing was held.

(9) The developer shall, within 30 days of receipt of the approved impact plan, provide the board with a written guarantee that the developer will meet the increased costs of public services and facilities as specified in the approved impact plan and according to the time schedule contained in the approved impact plan.

(10) The developer may make payments as specified in the approved impact plan directly to a local government unit or to the board. The governing body of a local government unit receiving payments shall deposit the payments into an impact fund. The developer and the affected governing body shall each issue to the board written verification of each payment and its intended use in compliance with the impact plan. The board shall deposit payments received from a developer into the hard-rock mining impact account established by 90-6-304.

(11) The board shall notify the department of state lands of its receipt of the written guarantee of payment and of any failure of the developer to comply with this section.

(12) Upon receipt of evidence that an affected local government unit identified in the approved impact plan is providing or is preparing to provide an additional service or facility provided for in the approved impact plan, the board shall, if the hard-rock mining impact account is used to deliver payments to the local government unit, pay to that local government unit, in one sum or in parts, the money from the hard-rock mining impact account identified in the plan as the increased cost to the local government unit of providing that public service or facility.

(13) If it is determined that an objection filed by an affected local government unit under subsections (5) and (6) or 90-6-311(3) is valid and it results in some remedial order by the board or court of competent jurisdiction, the local government unit shall be awarded and the developer shall pay reasonable costs and attorney fees associated with any administrative or judicial appeals filed under this section. Any attorney fees and costs awarded shall be in addition to any amounts paid by the developer under this part.

(14) Upon a determination by the department of state lands that a permittee under 82-4-335 has become or will become a large-scale mineral developer, the permittee may petition the board for a waiver of the impact plan requirement. The board may grant a waiver or conditional waiver of this requirement only if it has provided notice and opportunity for hearing to the permittee and to all affected local government units. The board shall adopt criteria under which a waiver may be granted. A waiver issued by the

board may be revoked as provided in the conditional waiver or if the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more persons, provided the revocation is requested by an affected local government unit and notice and opportunity for hearing are given to the permittee and all affected local government units. The board shall notify the board of land commissioners of any waiver that has been revoked.

(15) When a person who holds an operating permit under 82-4-335 and who has filed an impact plan fails to comply with the review and implementation requirements in this part and part 4 of this chapter, the board shall certify to the board of land commissioners that the failure to comply has occurred and shall certify when a permittee who has previously failed to comply comes into compliance."

Section 8. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1991.

CHAPTER NO. 228

[HB 248]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SECURITIES REGULATION; PROVIDING FOR THE REGULATION OF VARIABLE ANNUITY PRODUCTS; ESTABLISHING AN EXEMPTION FOR CERTAIN INSURANCE SECURITIES; AND AMENDING SECTIONS 30-10-103 AND 30-10-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-103, MCA, is amended to read:

"**30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (8), (9), (10), or (11) of 30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(4) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(5) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of such real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(6) "Commodity Exchange Act" means the federal statute of that name as amended on the effective date of this subsection.

(7) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(8) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(9) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(11) (a) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents himself as providing the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(iv) a registered broker-dealer;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1); or

(vii) such other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) (a) "Investment adviser representative" means any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

(i) makes any recommendation or otherwise renders advice regarding securities to clients;

(ii) manages accounts or portfolios of clients;

(iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(iv) supervises employees who perform any of the foregoing.

(b) Investment adviser representative does not include an individual registered as a salesman pursuant to 30-10-201.

(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(16) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) such other items as the commissioner may by rule or order specify.

(17) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(18) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(19) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a *fixed* sum of money either in a lump sum or periodically for life or some other specified period.

(20) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(21) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer"."

Section 2. Section 30-10-104, MCA, is amended to read:

"**30-10-104. Exempt securities.** Sections 30-10-202 through 30-10-207 do not apply to any of the following securities:

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; provided, however, 30-10-202 through 30-10-207 apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through (13) of this section;

(2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by any bank organized under the laws of the United States or any bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) any security issued by and representing an interest in or a debt of or guaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(6) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:

(a) subject to the jurisdiction of the interstate commerce commission;

(b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by such railroad or public utility would be exempt under this subsection;

(7) any security that meets all of the following conditions:

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

(b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the 3 years immediately preceding the offering date;

(c) neither the issuer nor a significant subsidiary has had a material default during the last 7 years (or the issuer's existence if less than 7 years) in the payment of:

(i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

(d) the issuer has had consolidated net income (before extraordinary items and the cumulative effect of accounting changes) of at least $1 million in 4 of its last 5 fiscal years, including its last fiscal year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" as used in this subsection (7)(d), means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, such securities have voting rights and such rights include the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, such securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200 persons and on such date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least $3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(8) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of $50 and files with the commissioner 20 days prior to the offering a

written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within such 20-day period;

(9) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal, when such commercial paper is sold to banks or insurance companies;

(10) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(11) any security for which the commissioner determines by order that an exemption would better serve the purposes of 30-10-102 than would registration. The fee for this exemption must be as prescribed in 30-10-209(4).

(12) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(13) any national market system security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation system or any other national quotation system approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the securities listed in this subsection~~.~~*;*

(14) any security issued by and representing an interest in or a debt of or any security guaranteed by any insurer organized and authorized to transact business under the laws of any state."

Approved March 29, 1991.

CHAPTER NO. 229

[HB 258]

AN ACT REQUIRING THAT COMPENSATION PAID BY MOTOR VEHICLE MANUFACTURERS TO MOTOR VEHICLE DEALERS FOR PARTS AND SERVICES PERFORMED UNDER WARRANTY MUST BE AT THE SAME RATE CHARGED BY THE DEALER FOR RETAIL

WORK; PROVIDING ADMINISTRATIVE PENALTIES; AND AMENDING SECTIONS 61-4-204 AND 61-4-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-204, MCA, is amended to read:

"**61-4-204. Filing agreement — product liability.** (1) A franchisee must, at the time he applies for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of his written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured vehicles or by an authorized agent of the manufacturer or importer of foreign made vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that he has filed with the department one such agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer must file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only; provided, however, that this section shall not affect the obligations of new motor vehicle dealers to perform such warranty repair and maintenance as may be required by law or contract. ~~The~~ *Except as regards household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle, as defined in 61-1-132, and except as regards a truck rated at more than 10,000 pounds gross vehicle weight, the* manufacturer must compensate an authorized dealer *for labor, parts, and*

other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or *for* delivery and preparation obligations at the ~~dealer's regular established retail~~ *same* rate *and time the dealer charges to its retail customers* for ~~similar~~ *nonwarranty* work *of a like kind, based upon a published, nationally recognized, retail flat rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.*

(5) The dealer must furnish the purchaser of a new vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed."

Section 2. Section 61-4-210, MCA, is amended to read:

"**61-4-210. Penalties — *administrative penalties.*** (1) Except as provided in subsection (2), a person who violates any provision of this part is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $1,000 for each violation. Each day that a violation continues or occurs constitutes a separate violation.

(2) A manufacturer on direct dealerships, distributor on indirect dealerships, or importer on direct dealerships who has filed with the department an agreement used by all its franchisees in this state together with a list of all such franchisees and who fails to notify the department within 30 days of any revision, change, or addition thereto is guilty of a misdemeanor and upon conviction shall be fined not to exceed $500.

(3) If any new motor vehicle dealer incurs pecuniary loss due to a violation of this part by a manufacturer, distributor, importer, or factory branch or representative or agent thereof, the dealer may recover damages therefor in a court of competent jurisdiction in amount equal to three times the pecuniary loss, together with costs including reasonable attorney's fees.

(4) In addition to any other penalty provided for in this part, the department may take appropriate enforcement action on its own initiative in accordance with the contested case procedures of Title 2, chapter 4. A person who violates the provisions of this part may be subject to administrative action and a civil penalty not to exceed $500 for each violation."

Approved March 29, 1991.

CHAPTER NO. 230

[HB 279]

AN ACT PROHIBITING THE USE OF AUTOMATED TELEPHONE SYSTEMS, DEVICES, OR FACSIMILE MACHINES FOR SPECIFIC PURPOSES; PROVIDING EXCEPTIONS; AND IMPOSING A FINE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Unlawful automated telephone solicitation — exceptions — penalties.** (1) A person may not use an automated telephone system, device, or facsimile machine for the selection and dialing of telephone numbers and playing of recorded messages if a message is completed to the dialed number for the purpose of:

(a) offering goods or services for sale;

(b) conveying information on goods or services in soliciting sales or purchases;

(c) soliciting information;

(d) gathering data or statistics; or

(e) promoting a political campaign or any use related to a political campaign.

(2) This section does not prohibit the use of an automated telephone system, device, or facsimile machine described under subsection (1) for purposes of informing purchasers of the receipt, availability for delivery, delay in delivery, or other pertinent information on the status of any purchased goods or services, of responding to an inquiry initiated by any person, or of providing any other pertinent information when there is a preexisting business relationship. This section does not prohibit the use of an automated telephone system or device if the permission of the called party is obtained by a live operator before the recorded message is delivered.

(3) A person violating subsection (1) is subject to a fine of not more than $2,500.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, part 2, and the provisions of Title 45, chapter 8, part 2, apply to [section 1].

Approved March 29, 1991.

CHAPTER NO. 231

[HB 286]

AN ACT TO CHANGE THE DEFINITION OF A YOUTH IN NEED OF SUPERVISION FOR PURPOSES OF THE MONTANA YOUTH COURT ACT; TO PROVIDE THAT IN INFORMAL PROCEEDINGS REGARDING A YOUTH, THE PROBATION OFFICER SHALL BELIEVE THAT THE PARENTS OR OTHER GUARDIAN EXERTED ALL REASONABLE EFFORTS TO CONTROL THE YOUTH AND THE YOUTH REMAINS BEYOND CONTROL; AND AMENDING SECTIONS 41-5-103 AND 41-5-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-103, MCA, is amended to read:

"**41-5-103. Definitions.** For the purposes of the Montana Youth Court Act, unless otherwise stated the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "Department" means the department of family services provided for in 2-15-2401.

(6) "Foster home" means a private residence licensed by the department for placement of a youth.

(7) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(8) "Judge", when used without further qualification, means the judge of the youth court.

(9) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(10) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(11) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(12) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth,

a youth in need of supervision, or a youth in need of care and includes the youth court judge and probation officers.

(13) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(14) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) ~~habitually disobeys the reasonable and lawful demands~~ *continues to exhibit behavior beyond the control* of his parents, foster parents, physical custodian, or guardian ~~or is ungovernable and beyond their control~~ *despite the attempt of his parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or*

(c) ~~being subject to compulsory school attendance, is habitually truant from school; or~~

~~(d)~~ has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(15) "Youth in need of care" means a youth as defined in 41-3-102.

(16) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(17) "Necessary parties" include the youth, his parents, guardian, custodian, or spouse.

(18) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills school in Miles City, and Mountain View school in Helena.

(19) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(20) "Detention" means the temporary substitute care of youth in physically restricting facilities.

(21) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will.

(22) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.

(23) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

(24) "Serious juvenile offender" means a youth who has committed an offense against the person, an offense against property, or an offense involving dangerous drugs which would be considered a felony offense if committed by an adult."

Section 2. Section 41-5-401, MCA, is amended to read:

"**41-5-401. Consent adjustment without petition.** (1) Before a petition is filed, the probation officer may enter into an informal adjustment and give counsel and advice to the youth and other interested parties if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public; *and*

(c) the youth may be a youth in need of supervision and if the probation officer believes that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment shall be reduced to writing and signed by the youth and his parents or the person having legal custody of the youth.

(b) If the probation officer believes the youth is a youth in need of supervision, the probation officer shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

~~(b)~~*(c)* Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained."

Approved March 29, 1991.

CHAPTER NO. 232

[HB 295]

AN ACT ALLOWING A COUNTY OFFICER TO BE ABSENT FROM THE STATE FOR UP TO 15 DAYS WITHOUT THE PERMISSION OF THE COUNTY COMMISSIONERS; AND AMENDING SECTION 7-4-2208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2208, MCA, is amended to read:

"**7-4-2208. Absence of county officers from state.** (1) Except as provided in subsection (2), a county officer must in no case absent himself from the state for a period of more than 60 days and for no period longer than ~~5~~ *15* days without the consent of the board of county commissioners, and if he does so absent himself, he forfeits his office.

(2) The sheriff, undersheriff, or deputy sheriffs of any county may absent themselves from the state, with the permission of the board, for a period of more than 60 days for the sole purpose of attending a recognized and accredited law enforcement training school without effecting forfeiture of their offices."

Approved March 29, 1991.

CHAPTER NO. 233

[HB 296]

AN ACT ALLOWING A COUNTY GOVERNING BODY TO ENTER INTO AN INSTALLMENT PURCHASE CONTRACT FOR A TERM OF UP TO 10 YEARS; AND AMENDING SECTION 7-5-2306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2306, MCA, is amended to read:

"**7-5-2306. Use of installment purchase contracts.** When the amount to be paid as the purchase price for any vehicle or road machinery of any kind, for any other machinery, apparatus, appliance, or equipment, or for any materials or supplies of any kind ~~shall exceed~~ *exceeds* $4,000, the county governing body may provide for the payment of ~~such~~ *the* purchase price in installments extending over a period of not more than ~~5~~ *10* years, provided that at the time of entering into the agreement for ~~such~~ *the* purchase, there ~~shall be~~ *is* an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to meet and take care of ~~such~~ *the* portion of the purchase price as is payable during the then-current fiscal year and the budget for each following year in which any portion of ~~such~~ *the* purchase price is to be paid ~~shall contain~~ *contains* an appropriation for the purpose of paying the ~~same~~ *purchase price.*"

Approved March 29, 1991.

CHAPTER NO. 234

[HB 304]

AN ACT ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE DEPARTMENT OF LIVESTOCK TO DISPOSE OF SURPLUS HANDGUNS; AMENDING SECTIONS 18-4-226 AND 18-6-101, MCA; AND PROVIDING A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 1 and 4] grant to the department of fish, wildlife, and parks and the department of livestock the authority to adopt rules regarding the disposal of surplus handguns. It is intended that the rules address, at a minimum:

(1) the process for determining what handguns are surplus;

(2) the manner of disposal, whether by destruction, sale, or other appropriate means;

(3) the proper crediting of any proceeds derived from the disposal of surplus handguns; and

(4) a procedure to allow a preference to a warden and to a department of livestock state inspector or detective for the purchase of a handgun previously used by that person, provided that the purchase price is established by bid or equal to the appraised value of the handgun.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authority to dispose of surplus handguns — accounting.** (1) The department may destroy, sell, or dispose of surplus handguns owned by the department.

(2) All money received under subsection (1) must be credited to the account from which the handguns were purchased.

(3) The department may adopt rules to implement this section.

Section 2. Section 18-6-101, MCA, is amended to read:

"**18-6-101. Power to sell state property — proceeds credited to general fund.** (1) ~~The~~ *Except as otherwise provided by law, the* department has exclusive power, subject to the approval of the governor, to sell or otherwise dispose of or to authorize the sale or other disposition of all materials and supplies, service equipment, or other personal property of every kind owned by the state but not needed or used by any state institution or by any department of state government.

(2) Unless otherwise provided by law, the department shall credit the general fund with all money received.

(3) Whenever the personal property was accounted for in an enterprise or internal service fund or designated subfund account, the proceeds of the sale shall be credited to the appropriate enterprise or internal service fund or designated subfund account."

Section 3. Section 18-4-226, MCA, is amended to read:

"**18-4-226. Surplus supply — rules.** (1) As used in this section, the following definitions apply:

(a) "Supplies" means supplies owned by the state *but does not include surplus handguns described in [sections 1 and 4]*.

(b) "Surplus supplies" means any supplies having a remaining useful life but that are no longer required by the using agency in possession of them. This includes obsolete supplies, scrap materials, and supplies that have completed their useful life cycle.

(2) The department shall adopt rules governing:

(a) the management of supplies during their entire life cycle;

(b) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by rule;

(c) transfer of surplus supplies.

(3) No employee of the owning or disposing agency directly involved with the disposal may purchase supplies sold by his agency.

(4) Proceeds from the sale, lease, or disposal of surplus supplies must be allocated as provided by 18-6-101, less a reasonable handling fee."

Section 4. **Authority to dispose of surplus handguns.** (1) The department may destroy, sell, or dispose of surplus handguns owned by the department.

(2) All money received under subsection (1) must be credited to the account from which the handguns were purchased.

(3) The department may adopt rules to implement this section.

Section 5. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 1].

(2) [Section 4] is intended to be codified as an integral part of Title 81, and the provisions of Title 81 apply to [section 4].

Section 6. **Termination.** [This act] terminates October 1, 1993.

Approved March 29, 1991.

CHAPTER NO. 235

[HB 307]

AN ACT TO EXTEND THE FILING TIME REQUIREMENTS AND TO EXCEPT THE REPORTING LIMITATIONS FOR OBTAINING CRIME VICTIM COMPENSATION IN CASES INVOLVING SEXUAL OFFENSES AGAINST MINORS; AND AMENDING SECTION 53-9-125, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-9-125, MCA, is amended to read:

"**53-9-125. Limitations on awards.** (1) ~~Compensation~~ *Except as otherwise provided in this section, compensation* may not be awarded unless the claim is filed with the division within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. *Compensation in cases involving sexual offenses against minors may not be awarded unless the claim is filed with the division within 1 year after the day the criminally injurious conduct was reported to a law enforcement agency or an agency of the state responsible for provision of child welfare services, or within 1 year after the day the victim reaches 18 years of age, whichever occurs last.* The time for filing a claim may be extended by the division for good cause shown.

(2) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice. Unless the division determines that the interests of justice otherwise require in a particular case, compensation may not be awarded to the spouse of or a person living in the same household with the offender or his accomplice or to the parent, child, brother, or sister of the offender or his accomplice.

(3) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer. *The report must be made* within 72 hours after its occurrence ~~or~~, *except in a case involving a sexual offense against a minor or when* the division finds there was good cause for the failure to report within that time.

(4) In order to be entitled to benefits under this part, a claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally

injurious conduct. The division, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.

(5) Compensation otherwise payable to a claimant shall be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.

(6) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of such person are not entitled to the benefits of this part.

(7) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection shall be in proportion to what the division finds to be the victim's contribution to the infliction of death or injury."

Approved March 29, 1991.

CHAPTER NO. 236

[HB 331]

AN ACT AUTHORIZING THE DEPARTMENT OF JUSTICE TO RESTRICT THE DISCLOSURE OF INFORMATION RELATING TO A VEHICLE OWNER UPON REQUEST OF THE VEHICLE OWNER; AND AMENDING SECTION 61-3-101, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill to provide guidelines for the adoption of administrative rules to implement 61-3-101(8). The department of justice is granted authority to reasonably restrict by rule the dissemination of vehicle registration information if the restriction is requested in writing by the vehicle owner and the department determines the demands of individual privacy clearly outweigh the merits of public disclosure.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-101, MCA, is amended to read:

"**61-3-101. Duties of department — records.** (1) The department shall keep a record as hereinafter specified of all motor vehicles, trailers, and semitrailers of every kind, and of certificates of registration and ownership thereof, and of all dealers in motor vehicles.

(2) In the case of motor vehicles, trailers, and semitrailers, the record shall show the following:

(a) name of owner, residence by town and county, and business address;

(b) name and address of conditional sales vendor, mortgagee, or other lienholder and amount due under contract or lien;

(c) manufacturer of car;

(d) manufacturer's designation of style of car or vehicle;

(e) identifying number;

(f) year of manufacture;

(g) character of motive power and shipping weight of car as shown by the manufacturer;

(h) the distinctive license number assigned to the vehicle;

(i) if a truck or trailer, the number of tons' capacity or GVW if imprinted on manufacturer's identification plate;

(j) such other information as may from time to time be found desirable.

(3) The department shall file applications for registration received by it from the county treasurers of the state and register the vehicles therein described and the owners thereof in suitable books or on index cards, as follows:

(a) under the distinctive license number assigned to the vehicle by the county treasurer;

(b) alphabetically under the name of the owner;

(c) numerically under make and identifying number of the vehicle;

(d) such other index of registration as the department considers expedient.

(4) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(5) In the case of dealers, the records shall show the information contained in the application for dealer's license as required by 61-4-101 through 61-4-105, as well as the distinctive license number assigned to the dealer.

(6) In order to prevent an accumulation of unneeded records and files, the department shall have the authority and it shall be its duty to destroy all records and files which have ceased to be of any value.

(7) The department may establish and maintain a short-wave radio station in order to report motor vehicle registration information to the highway patrol, to sheriffs, and to the chiefs of police of each incorporated city of the state who are able to communicate with such short-wave radio station.

(8) All records shall be open to inspection during all reasonable business hours, and the department shall furnish any information from the records upon payment by the applicant of the cost of transcribing the information requested. *However, the department may, by rule, reasonably restrict disclosure of information on an owner or the owner's vehicle if the owner has requested in writing that the department not disclose the information.*"

Approved March 29, 1991.

CHAPTER NO. 237

[HB 341]

AN ACT REVISING THE LICENSURE OF PHYSICAL THERAPISTS AND THE PRACTICE OF PHYSICAL THERAPY; AUTHORIZING A LICENSED PHYSICAL THERAPIST TO APPLY AND ADMINISTER PRESCRIBED TOPICAL MEDICATIONS AS PART OF THE PRACTICE OF PHYSICAL THERAPY; DEFINING AND DESCRIBING TOPICAL MEDICATIONS; PROVIDING PRESCRIPTION, PURCHASING, AND RECORDKEEPING REQUIREMENTS APPLICABLE TO PHYSICAL THERAPISTS WHO ADMINISTER TOPICAL MEDICATIONS; REQUIRING THE BOARD OF PHYSICAL THERAPY EXAMINERS TO ESTABLISH BY RULE WRITTEN PROTOCOLS FOR THE DESCRIPTION, APPLICATION, AND ADMINISTRATION OF TOPICAL MEDICATIONS BY PHYSICAL THERAPISTS; NARROWING PRACTICE EXEMPTIONS; AND AMENDING SECTIONS 37-11-101 AND 37-11-102, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] requires the board of physical therapy examiners to adopt rules to govern the process of application of topical medications by licensed physical therapists. It is intended that the rules:

(1) be adopted after consultation with the board of medical examiners and the board of pharmacy;

(2) be in the form of written protocols that include:

(a) a description of the topical medication;

(b) a description of its actions, indications, and contraindications; and

(c) the proper procedure and technique for the application and administration of the medication; and

(3) apply only to topical medications for which a prescription is required under state or federal law.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-11-101, MCA, is amended to read:

"**37-11-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Physical therapy" means the evaluation, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise, *prescribed topical medications,* and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

(2) "Physical therapist" or "physiotherapist" means a person who practices physical therapy.

(3) "Physical therapy student" or "physical therapy intern" means an individual enrolled in an accredited physical therapy curriculum and who, as part of his professional, educational, and clinical training, is practicing in a physical therapy setting under the direction, guidance, and observation of a licensed physical therapist.

(4) "Physical ~~therapy~~ *therapist* assistant" means a person who is a graduate of an accredited curriculum approved by the board and who assists a physical therapist in the practice of physical therapy and whose activities require an understanding of physical therapy.

(5) "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", or "manual therapists" are equivalent terms, and any derivation of the above or any letters implying the above are equivalent terms; any reference to any one of them in this chapter includes the others but does not include certified corrective therapists or massage therapists.

(6) "Physical therapy aide" means a person who aids in the practice of physical therapy and whose activities require on-the-job training and supervision by a licensed physical therapist who must be available for periodic checks during any procedure or treatment involving a patient.

(7) "Board" means the board of physical therapy examiners provided for in 2-15-1858.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(9) "Hearing" means the adjudicative proceeding concerning the issuance, denial, suspension, or revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined by the board.

(10) "Topical medications" means medications applied locally to the skin and includes only medications listed in [section 2(2)] for which a prescription is required under state or federal law."

Section 2. **Application and administration of topical medications — prescription, purchasing, and recordkeeping requirements.** (1) A licensed physical therapist may apply or administer topical medications by:

(a) direct application;

(b) iontophoresis, a process whereby topical medications are applied through the use of electricity; or

(c) phonophoresis, a process whereby topical medications are applied through the use of ultrasound.

(2) A licensed physical therapist may apply or administer the following topical medications:

(a) bactericidal agents;

(b) debriding agents;

(c) anesthetic agents;

(d) anti-inflammatory agents;

(e) antispasmodic agents; and

(f) adrenocortico-steroids.

(3) Topical medications applied or administered by a physical therapist must be prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe topical medications and must be purchased from a pharmacy certified under 37-7-321. Topical medications dispensed under this section must comply with packaging and labeling guidelines developed by the board of pharmacists under Title 37, chapter 7.

(4) Appropriate recordkeeping is required of a physical therapist who applies or administers topical medications as authorized in this section.

Section 3. **Board adoption of protocols.** The board, in consultation with the board of medical examiners and the board of pharmacy, shall by rule adopt written protocols for each class of topical medication listed in [section 2(2)] for which a prescription is required under state or federal law. Protocols must include a description of each topical medication and its actions, indications, and contraindications, as well as the proper procedure and technique for the application or administration of the medication.

Section 4. Section 37-11-102, MCA, is amended to read:

"**37-11-102. Exemptions.** This chapter ~~shall~~ *may* not be construed to limit or regulate any other business or profession or any services rendered or performed in connection ~~therewith~~ *with another business or profession*, including osteopathy, chiropractic, chiropractic physiotherapy, *or* massage therapists, ~~masseurs, or Swedish masseurs~~ *to the extent they do massage.*"

Section 5. **Codification instruction.** [Sections 2 and 3] are intended to be codified as an integral part of Title 37, chapter 11, part 1, and the provisions of Title 37, chapter 11, part 1, apply to [sections 2 and 3].

Approved March 29, 1991.

CHAPTER NO. 238

[HB 347]

AN ACT REVISING THE NEPOTISM LAW TO AUTHORIZE SCHOOL DISTRICT TRUSTEES TO APPOINT A TRUSTEE'S RELATIVE; AMENDING SECTION 2-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-302, MCA, is amended to read:

"**2-2-302. Appointment of relative to office of trust or emolument unlawful — *exceptions — publication of notice.*** (1) ~~It shall be~~ *Except as provided in subsection (2), it is* unlawful for any person or any member of any board, bureau, or commission or employee at the head of any department of this state or any political subdivision thereof to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of this section and 2-2-303 do not apply to:

(a) sheriffs in the appointment of persons as cooks ~~and/or~~ *or* attendants;

(b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee; and

~~(b)~~*(c)* the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom he is related assumed the duties of the office.

(3) Prior to the appointment of a person referred to in subsection (2), the school district trustees shall give written notice of the time and place of their intended action. The notice must be published at least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in which the school district is located."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1991.

CHAPTER NO. 239

[HB 356]

AN ACT TO REQUIRE APPOINTMENT TO THE BOARD OF PERSONNEL APPEALS OF TWO PERSONS WHO ARE FULL-TIME EMPLOYEES OR ELECTED OFFICIALS OF A LABOR UNION OR AN ASSOCIATION RECOGNIZED BY THE BOARD; TO REQUIRE APPOINTMENT OF TWO FULL-TIME MANAGEMENT EMPLOYEES TO THE BOARD OF PERSONNEL APPEALS; AMENDING SECTION 2-15-1705, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1705, MCA, is amended to read:

"**2-15-1705. Board of personnel appeals — allocation — composition — vote necessary for decision — quasi-judicial.** (1) There is a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(3) (a) The board consists of five members appointed by the governor as follows:

(i) two members~~, each having management experience involving collective bargaining~~ *who are full-time management employees in organizations with collective bargaining units or who represent management in collective bargaining activities*;

(ii) two members~~, each having experience as a member or employee of an employee organization~~ *who are full-time employees or elected officials of a labor union or an association recognized by the board*; and

(iii) one other member having general labor-management experience, who shall be the chairperson.

(b) All members of the board shall serve as impartial decisionmakers and are not appointed to serve the interests ~~represented by their experience~~ *of the organizations they represent.*

(4) When the chairperson is unable to participate in a proceeding before the board, the remaining members of the board shall select an individual, who shall be a person who qualifies under subsection (3)(a)(iii), to serve in the place of the chairperson in that proceeding and he shall participate in the decision in that proceeding. There shall be only one additional chairperson replacement appointed and serving at any one time. The individual selected is entitled to the same compensation and per diem that members of the board receive.

(5) In all proceedings before the board, a favorable vote of at least a majority of a quorum is sufficient to adopt any resolution, motion, or other decision.

(6) The board is designated a quasi-judicial board for purposes of 2-15-124."

Section 2. **Applicability.** [This act] applies to members appointed after [the effective date of this act].

Approved March 29, 1991.

CHAPTER NO. 240

[HB 379]

AN ACT PROVIDING FOR GOOD TIME CREDIT FOR PERSONS ON PAROLE; AMENDING SECTION 53-30-105, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-30-105, MCA, is amended to read:

"53-30-105. Good time allowance. (1) The department of institutions shall adopt rules providing for the granting of good time allowance for inmates employed in any prison work or activity. The good time allowance shall operate as a credit on his sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules made by the department or the warden. The rules adopted by the department may not grant good time allowance to exceed:

(a) 10 days per month for inmates assigned to maximum, close, and medium I security classifications;

(b) 13 days per month for those classified as medium II and minimum security classifications;

(c) 15 days per month for inmates after having been assigned as medium II or minimum security for an uninterrupted period of 1 year;

(d) 13 days per month for those inmates enrolled in school who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole;

(e) 3 days per month for those inmates participating in self-improvement activities designated by the department.

(2) In the event of an attempted escape by an inmate or a violation of the rules prescribed by the department or warden, the inmate may be punished by the forfeiture of part or all good time allowances. The warden

of the state prison shall advise the department of any attempted escape or violation of rules on the part of the inmate. Any punishment by forfeiture of good time allowance must be approved by the department.

(3) A person may not earn good time under this section while he is on probation. ~~or~~ *A person may earn good time while on* parole *at the rate of 30 days per month. If the department determines that a person has violated his conditions of parole, it may, in its discretion, deduct good time credit accumulated under this subsection in an amount up to and including all credit accumulated on the date of the violation.*

(4) The warden of the state prison may request that all or portions of any previously forfeited good time be restored as a result of subsequent good behavior. Any restoration of good time allowance must be approved by the department."

Section 2. **Applicability.** [Section 1] applies to persons on parole or paroled on or after July 1, 1991.

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved March 29, 1991.

CHAPTER NO. 241

[HB 389]

AN ACT TO REDEFINE AND CLARIFY THE TERMS "MENTAL HANDICAP" AND "PHYSICAL HANDICAP", AS USED IN THE DISCRIMINATION LAWS, TO INCLUDE AN IMPAIRMENT THAT LIMITS A MAJOR LIFE ACTIVITY, A RECORD OF SUCH AN IMPAIRMENT, OR A CONDITION REGARDED AS SUCH AN IMPAIRMENT AND TO INCLUDE THE REQUIREMENT OF REASONABLE ACCOMMODATION; AND AMENDING SECTIONS 49-2-101 AND 49-3-101, MCA.

WHEREAS, the Legislature has previously included physical and mental handicaps as subjects of discrimination law in the Montana Human Rights Act and the Montana Governmental Code of Fair Practices; and

WHEREAS, the definitions previously adopted lack clarity and are inconsistent with definitions used in federal civil rights statutes and court interpretations on the subject; and

WHEREAS, federal handicap discrimination law requires reasonable accommodation for mental and physical handicaps.

THEREFORE, it is appropriate for the Legislature to redefine the terms "mental handicap" and "physical handicap" and to include the requirement of reasonable accommodation.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-2-101, MCA, is amended to read:

"**49-2-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor. It includes without limitation the right to incur and defer debt which is secured by residential real property.

(4) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(5) "Creditor" means a person who, regularly or as a part of his business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(6) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(7) "Employee" means any individual employed by an employer.

(8) "Employer" means an employer of one or more persons but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(9) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(10) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, *credit union,* investment company, or insurance company.

(11) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

(12) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

~~(13) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.~~

~~(14)~~*(13)* "National origin" means ancestry.

~~(15)~~*(14)* "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, or labor organizations.

~~(16)~~*(15) (a)* "Physical *or mental* handicap" means*:*

(i) a physical ~~disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It includes without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device~~ *or mental impairment that substantially limits one or more of a person's major life activities;*

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental handicap includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental handicap. Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

~~(17)~~*(16)* (a) "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons alike. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection ~~(17)~~*(16)*, any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

~~(18)~~*(17)* "Staff" or "commission staff" means the staff of the commission for human rights."

Section 2. Section 49-3-101, MCA, is amended to read:

"**49-3-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility, which may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

~~(3) "Mental handicap" means any mental disability resulting in sub-average intellectual functioning or impaired social competence.~~

~~(4)~~*(3)* *(a)* "Physical *or mental* handicap" means*:*

(i) a physical ~~disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It includes without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device~~ *or mental impairment that substantially limits one or more of a person's major life activities;*

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based upon, because of, on the basis of, on the grounds of, or with regard to physical or mental handicap includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental handicap. Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

~~(5)~~*(4)* "State or local governmental agency" means:

(a) any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; or

(b) a county, city, town, school district, or other unit of local government and any instrumentality of local government.

~~(6)~~*(5)* "Qualifications" means such qualifications as are genuinely related to competent performance of the particular occupational task."

Approved March 29, 1991.

CHAPTER NO. 242

[HB 392]

AN ACT REQUIRING A COUNTY TAX APPEAL BOARD TO HOLD AN ANNUAL ORGANIZATIONAL MEETING ON THE DATE OF ITS FIRST SCHEDULED HEARING; AMENDING SECTION 15-15-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-15-101, MCA, is amended to read:

"**15-15-101. County tax appeal board — meetings and compensation.** (1) The board of county commissioners of each county shall appoint a three-member county tax appeal board, with the members to serve staggered terms of 3 years each. The members of each county tax appeal board shall be residents of the county in which they serve. They shall receive compensation of $45 a day and travel expenses as provided for in 2-18-501 through 2-18-503, as amended, only when the county tax appeal board is in session to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation shall be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards shall be furnished by the county. All other incidental expenses shall be paid from the appropriation of the state tax appeal board.

(2) *The county tax appeal board shall hold an organizational meeting each year on the date of its first scheduled hearing, immediately before conducting the business for which the hearing was otherwise scheduled.* ~~The county tax appeal board must meet on the third Monday of April in each year to hear protests concerning assessments made by the department of revenue.~~ It must continue in session ~~for that purpose~~ from time to time *to hear protests concerning assessments made by the department of revenue* until the business of hearing protests is disposed of, but, except as provided in 15-2-201, not later than 60 days after the department of revenue or its agent:

(a) has mailed notice of classification and appraisal to all property owners and purchasers under contracts for deed as required in 15-7-102; and

(b) has notified the county tax appeal board that classification and appraisal notices have been mailed to all property owners and purchasers under contracts for deed.

(3) In connection with any such appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. The county clerk shall publish a notice to taxpayers, giving the time the county tax appeal board will meet to hear protests concerning assessments and the latest date the county tax appeal board may take applications for such hearings. The notice shall be published in a newspaper if any is printed in the county or, if none, then in such manner as the board may direct. The notice shall be published at least 7 days prior to the first meeting of the county tax appeal board.

(4) Challenges to a department of revenue rule governing the assessment of property or to an assessment procedure shall apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers unless an action is brought in the district court as provided in 15-2-307 through 15-2-310."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1991.

CHAPTER NO. 243

[HB 403]

AN ACT REQUIRING THE FISH AND GAME COMMISSION TO REGULATE CERTAIN ASPECTS OF THE USE AND BREEDING OF RAPTORS AND THE SPORT OF FALCONRY BY ADMINISTRATIVE RULE, IN ORDER TO MAINTAIN CONFORMITY WITH FEDERAL LAW; AMENDING SECTIONS 87-5-204, 87-5-208, AND 87-5-210, MCA; AND REPEALING SECTION 87-5-206, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because 87-5-204 and 87-5-210 require the fish and game commission to adopt rules regarding certain aspects of the use and breeding of raptors and the sport of falconry. Because the regulation of raptors and the sport of falconry are in large part regulated by federal law and because detailed and precise standards are rapidly changing, the rules must comply with federal law and regulations as adopted or amended from time to time. The legislature recognizes that the commission has the power to determine the extent and nature of measures that control wildlife in Montana and that the commission's expertise makes it the proper forum for addressing the regulation of raptors and the sport of falconry. At a minimum, the rules must address:

(1) the regulation of raptors and restrictions on taking, possessing, and selling raptors, including:

(a) the number of raptors that may legally be possessed;

(b) appropriate times and areas for trapping raptors and removing of raptors from the nest;

(c) notification requirements regarding transfer of ownership;

(d) permitting requirements regarding sale and transportation of raptors; and

(e) possession of and hunting with raptors by nonresidents;

(2) licenses and rules for falconry and the allowable uses of raptors in the sport of falconry, including:

(a) appropriate falconry license fees;

(b) age requirements regarding issuance of falconry licenses;

(c) the necessity of possessing other valid game licenses when practicing falconry; and

(d) the transfer and revocation of falconry licenses; and

(3) the regulation of captive breeding of raptors, including:

(a) appropriate breeding permit fees;

(b) transferability and revocation of breeding permits; and

(c) any other aspects of captive breeding considered appropriate by the commission.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-5-204, MCA, is amended to read:

"**87-5-204. License and rules for falconry *and raptors*.** (1) The ~~department may~~ *commission shall* adopt specific rules for the keeping of records and for the trapping, taking, possession *by residents and nonresidents, selling or transfer of possession,* or training of raptors used in the practice of falconry and may authorize the issuance of licenses to persons for the practice of falconry *and set license qualifications and fees. Rules adopted under this section are intended to conform to standards and regulations adopted under federal law by being at least as restrictive.* Except as provided in 87-5-210, it is unlawful for any person to possess a raptor or to train a raptor in the practice of falconry without a license.

~~(2) The fee for a falconry license is $3 a year or any part of a year. A license expires April 30 each year.~~

~~(3) A license may not be issued to a person under the age of 12 years.~~

~~(4)~~*(2)* Licensees ~~shall~~ *must* have in possession a valid falconer's license when engaged in the practice of falconry. In addition, falconers loosing raptors at game birds ~~shall~~ *must* have in possession a valid resident or nonresident upland game bird license or waterfowl stamp, as appropriate.

~~(5)~~*(3)* Falconry licenses or permits are not transferable and may be revoked for due cause at any time by the department."

Section 2. Section 87-5-210, MCA, is amended to read:

"87-5-210. **Captive breeding of raptors — permit — ~~fee — transfer and revocation —~~ rules.** (1) The department may grant permits to a person, whether or not licensed under this part, for the taking and holding of raptors for captive breeding purposes under such conditions, consistent with this part *and with rules adopted by the commission,* as the department may specify in the permit. *The commission may set permit qualifications and fees by rule.*

~~(2) The fee for a captive breeding permit is $20 a year.~~

~~(3)~~*(2)* Captive breeding permits are not transferable and may be revoked at any time by the department for violation of any conditions of the permit or regulations of the ~~department~~ *commission.*

~~(4)~~*(3)* The ~~department may~~ *commission shall* adopt rules ~~for the keeping of records on, the trapping, taking, possession, propagation, and release of, and the sale of progeny of~~ *regarding* raptors taken and held for captive breeding projects. *Rules adopted under this section are intended to conform to standards and regulations adopted under federal law by being at least as restrictive.*"

Section 3. Section 87-5-208, MCA, is amended to read:

"87-5-208. **Nonresidents allowed raptors in state.** ~~Nonresidents who are working, attending schools, or otherwise living temporarily in the state of Montana may obtain a Montana falconry license and bring raptors, legally acquired in other states or countries, into the state of Montana. Such nonresidents shall be~~ *(1) A nonresident who possesses a valid federal falconry license may practice falconry in the state of Montana with legally acquired and permitted raptors. A nonresident is* allowed to hunt with falcons in the state of Montana subject to all Montana laws and rules.

(2) A nonresident is not allowed to capture raptors from the wild in the state of Montana for falconry or captive breeding purposes."

Section 4. **Repealer.** Section 87-5-206, MCA, is repealed.

Approved March 29, 1991.

CHAPTER NO. 244

[HB 410]

AN ACT TO CLARIFY THAT CERTIFICATE OF NEED REQUIREMENTS DO NOT APPLY TO OFFICES OF PRIVATE PHYSICIANS, DENTISTS, OR OTHER HEALTH CARE PROFESSIONALS; AND AMENDING SECTION 50-5-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-301, MCA, is amended to read:

"**50-5-301.** *(Temporary)* **When certificate of need is required — definitions.** (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, he may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure, other than to acquire an existing health care facility or to replace major medical equipment with equipment performing substantially the same function and in the same manner, that exceeds the expenditure thresholds established in subsection (4). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made must be included in determining if the expenditure exceeds the expenditure thresholds.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds (if fractional, rounded down to the nearest whole number), whichever figure is smaller, in any 2-year period;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility which was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and which will result in additional annual operating and amortization expenses of $150,000 or more;

(d) the acquisition by any person of major medical equipment, provided such acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) if it had been made by or on behalf of a health care facility;

(e) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(f) the construction, development, or other establishment of a health care facility which is being replaced or which did not previously exist, by any person, including another type of health care facility;

(g) the expansion of the geographical service area of a home health agency;

(h) the use of hospital beds to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; or

(i) the provision by a hospital of services for ambulatory surgical care, home health care, long-term care, inpatient mental health care, inpatient chemical dependency treatment, inpatient rehabilitation, or personal care.

(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.

(3) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, long-term care facility, medical assistance facility, mental health center with inpatient services, inpatient chemical dependency facility, rehabilitation facility with inpatient services, or personal care facility. The term does not include*:*

(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(i)*; or*

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including chemical dependency counselors.

(b) (i) "Long-term care facility" means an entity which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more persons.

(ii) The term does not include adult foster care, licensed under 53-5-303; community homes for the developmentally disabled, licensed under

53-20-305; community homes for persons with severe disabilities, licensed under 53-19-203; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(c) "Obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

(d) "Personal care facility" means an entity which provides services and care which do not require nursing skills to more than four persons who are not related to the owner or administrator by blood or marriage and who need some assistance in performing the activities of everyday living. The term does not include those entities excluded from the definition of "long-term care facility" in subsection (3)(b).

(4) Expenditure thresholds for certificate of need review are established as follows:

(a) For acquisition of equipment and the construction of any building necessary to house the equipment, the expenditure threshold is $750,000.

(b) For construction of health care facilities, the expenditure threshold is $1,500,000. *(Repealed effective July 1, 1991—sec. 2, 3, Ch. 377, L. 1989.)*"

Approved March 29, 1991.

CHAPTER NO. 245

[HB 413]

AN ACT REDUCING THE INTERNSHIP PERIOD FOR DENTURISTS TO 1 YEAR; AMENDING THE PROCEDURE FOR APPROVING CONTINUING EDUCATION REQUIREMENTS; AUTHORIZING A DENTURIST TO APPLY TISSUE CONDITIONING AGENTS; AND AMENDING SECTIONS 37-29-303, 37-29-306, AND 37-29-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-29-303, MCA, is amended to read:

"**37-29-303. Application for license.** Upon application and payment of the appropriate fee, the board shall issue a license to practice denturitry to any applicant who meets one of the following criteria and scores a passing grade on the examination for licensure:

(1) (a) Applications for persons engaged in the practice of denturitry on December 1, 1984, must be filed prior to April 1, 1985, and must include the following:

(i) three signed affidavits by persons other than family members that the applicant has been employed in denture technology for at least 5 years prior to application, is able to demonstrate competency in intraoral procedures, and has been a resident of the state of Montana for at least 6 months prior to April 1, 1985; and

(ii) documentation that the applicant has successfully completed courses approved by the board in head and oral anatomy and physiology, oral pathology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, medical emergencies, and cardiopulmonary resuscitation.

(b) Subsection (1)(a) must be applied retroactively to permit qualification of license applicants initially qualified and applying prior to the appointment and qualification of the original board under this chapter and section 27 of I.M. No. 97.

(2) Applications filed on or after April 1, 1985, must include:

(a) documentation that the applicant has completed formal training of not less than 2 years at an educational institution accredited by a national or regional accrediting agency recognized by the Montana state board of regents, the curriculum of which includes courses in head and oral anatomy and physiology, oral pathology, microbiology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, and medical emergencies, including cardiopulmonary resuscitation; and

(b) documentation that the applicant:

(i) has completed ~~2 years~~ *1 year* of internship under the direct supervision of a licensed denturist; or

(ii) has 3 years of experience as a denturist under licensure in another state or Canada.

(3) A denturist who has been lawfully licensed or certified by initial licensing provisions in any state or territory that maintains a standard of denturitry which is equal to that of Montana must submit a certificate from the examining body of the state or territory in which he is certified or licensed, attesting to 5 years' practice under the certificate of license. However, no applicant may be licensed under the provisions of this subsection unless the state or territory in which he is licensed or certified extends a like privilege to denturists licensed by the state of Montana to practice denturitry. The board may enter into reciprocal relations with those states or territories whose laws are compatible with this chapter."

Section 2. Section 37-29-306, MCA, is amended to read:

"**37-29-306. Licensing.** (1) After March 1, 1985, a denturist license is valid for a period of 1 year. A renewal license must be issued upon payment of the renewal fee and the submission of proof of the completion of not less than 12 hours of continuing education, which may include programs sponsored by an educational institution, state denturist licensing board, or a recognized denturist organization. Subject matter must be pertinent to denturitry as enumerated in 37-29-305(3). ~~Requests for approval of continuing education programs must be made to the board, providing sufficient outline of the program on which the board may base its determination~~ *Approval of acceptable hours of continuing education must be made by the board. The board may approve, in one action, all the courses presented by a particular organization if the board is satisfied that the courses presented by that organization meet the requirements of this section.* Hours pertain to clock hours actually attended by the licensee. In addition, the denturist shall submit proof that he holds a current cardiopulmonary resuscitation card. A license issued effective as of a date other than March 1 will be valid until midnight February 28 next following the date it was issued. The license shall bear on its face the address where the licensee's denturist services will be performed.

(2) Applications must be submitted on forms approved by the board and furnished by the department. Each application must include all other documentations necessary to establish that the applicant meets the requirements for licensure and is eligible to take the licensure examination. Applications must be accompanied by the appropriate fees.

(3) After April 1, 1985, the board may by rule alter future renewal dates for licenses under this chapter."

Section 3. Section 37-29-402, MCA, is amended to read:

"**37-29-402. Prohibitions.** No licensed denturist may:

(1) extract or attempt to extract teeth;

(2) initially insert immediate dentures in the mouth of the intended wearer;

(3) diagnose or treat any abnormalities, *except that a licensed denturist may apply tissue conditioning agents*;

(4) recommend any prescription drug for any oral or medical disease; or

(5) construct or fit orthodontic appliances."

Approved March 29, 1991.

CHAPTER NO. 246

[HB 420]

AN ACT CHANGING FROM TRANSACTIONAL IMMUNITY TO USE IMMUNITY THE TYPE OF IMMUNITY MANDATED WHEN TESTIMONY IS COMPELLED IN A PROCEEDING HELD BY OR UNDER THE AUTHORITY OF THE COMMISSIONER OF INSURANCE; ALLOWING THE COMMISSIONER TO IN ADDITION GRANT TRANSACTIONAL IMMUNITY; AMENDING SECTION 33-1-316, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-316, MCA, is amended to read:

"**33-1-316. Testimony compelled — immunity from prosecution.** ~~No~~ *A* person ~~shall~~ *may not* be excused from attending and testifying or producing any evidence upon any examination, investigation, or hearing conducted by or under authority of the commissioner on the ground that his testimony or the evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. ~~No person shall be prosecuted or punished in any criminal action or proceeding for or on account of any act, transaction, matter, or thing concerning which he is so compelled to produce evidence or to testify under oath, except for perjury committed in such testimony.~~ *However, compelled testimony or evidence or any information directly or indirectly derived from compelled testimony or evidence may not be used against the person in a criminal prosecution. The commissioner may grant immunity from prosecution for or on account of any act, occurrence, transaction, matter, or other thing concerning which a person is compelled to testify if the commissioner determines that the ends of justice would be served by granting the additional immunity. Immunity does not extend to prosecution or punishment for false statements by the person that are contained in the compelled testimony or evidence.*"

Section 2. **Applicability.** [This act] applies to acts, occurrences, transactions, and matters that occur on or after October 1, 1991.

Approved March 29, 1991.

CHAPTER NO. 247

[HB 422]

AN ACT AUTHORIZING THE STATE TAX APPEAL BOARD TO USE HEARING OFFICERS TO EXPEDITE ITS WORK; AMENDING SECTION 15-2-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-2-301, MCA, is amended to read:

"**15-2-301. Appeal of county tax appeal board decisions.** (1) The county tax appeal board shall mail a copy of its decision to the taxpayer and to the property assessment division of the department of revenue. Any person or the department ~~in~~ *on* behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state board by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the decision of the county board.~~, which~~ *The* notice ~~shall~~ *must* specify the action complained of and the reasons assigned for ~~such~~ *the* complaint. Notice of acceptance of an appeal must be given to the county tax appeal board by the state tax appeal board. The state board shall set ~~such~~ *the* appeal for hearing either in its office in the capital or ~~such~~ *the* county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest. ~~and~~ *The board* shall give to the appellant and to the respondent at least 15 calendar days' notice of the time and place of ~~such~~ *the* hearing.

(2) At the time of giving notice of acceptance of an appeal, the state board may require the county board to certify to it the minutes of the proceedings resulting in ~~such~~ *the* action and all testimony taken in connection ~~therewith~~ *with its proceedings*. The state board may, in its discretion, determine the appeal on ~~such~~ *the* record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work, the state board may refer any appeal to one of its members *or to a designated hearing officer.* ~~and the person so designated shall have and~~ *The board member or hearing officer may* exercise all the powers of the board in conducting ~~such hearings~~ *a hearing* and shall, as soon as possible ~~thereafter~~ *after the hearing*, report the proceedings, together with a transcript or a tape recording of the hearing, to the board.~~, and the~~ *The* state board shall determine ~~such~~ *the* appeal on the record ~~so made~~.

(3) On all hearings at county seats throughout the state, the state board or the member *or hearing officer* designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received. ~~and the~~ *The* cost ~~thereof~~ *of taking and transcribing testimony* may be paid out of the general appropriation for the board.

(4) In connection with any appeal under this section, the state board ~~shall~~ *is* not ~~be~~ bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. The decision of the state tax appeal board ~~shall be~~ *is* final and binding upon all interested parties unless reversed or modified by judicial review. To the extent this section is in conflict with the Montana Administrative Procedure Act, this section ~~shall supersede~~ *supersedes* that act. The state tax appeal board may not amend or repeal any administrative rule of the department. The state tax appeal board ~~must~~ *shall* give an administrative rule full effect unless

the board finds ~~any such~~ *a* rule arbitrary, capricious, or otherwise unlawful."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1991.

CHAPTER NO. 248

[HB 429]

AN ACT PROVIDING FOR MEDICAL PAROLE OF INCARCERATED PERSONS; AND AMENDING SECTION 46-23-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Medical parole.** (1) The board may release on medical parole by appropriate order a person placed in a correctional institution or program, except a person under sentence of death. To be eligible for a medical parole, a person must have an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The diagnosis must include:

(a) a determination that the person suffers from an incapacitating physical condition, disease, or syndrome that renders the person incapable of presenting a danger to society;

(b) a description of the physical condition, disease, or syndrome and a detailed description of the person's physical incapacity; and

(c) a prognosis addressing the likelihood of the person's recovery from the physical condition, disease, or syndrome and the extent of any potential recovery.

(2) The diagnosis must be reviewed and accepted by the department before the board may consider granting a medical parole.

(3) The board shall require as a condition of medical parole that the person agree to placement in an environment chosen by the department during the parole period, including but not limited to a hospital, nursing home, or family home. The board may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's physical capacity has improved to the extent that the person poses a possible detriment to society, the board may revoke the parole and return the person to the custody of the department.

(4) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the administrator of the correctional institution in which the person is incarcerated.

(5) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

(6) Sections 46-23-203 through 46-23-207 and 46-23-215 through 46-23-218 apply to nonmedical parole.

Section 2. Section 46-23-201, MCA, is amended to read:

"**46-23-201. Prisoners eligible for *nonmedical* parole.** (1) Subject to the restrictions contained in subsections (2) through (4), the board may release on *nonmedical* parole by appropriate order any person confined in the Montana state prison or the women's correction center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A convict serving a time sentence may not be paroled *under this section* until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105; except that a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 ½ years.

(3) A convict serving a life sentence may not be paroled *under this section* until he has served 30 years, less the good time allowance provided for in 53-30-105.

(4) A parole may be ordered *under this section* only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

(5) If the department of institutions certifies to the board that the population at the Montana state prison exceeds its design capacity of 744 by 96 inmates or that the population at the women's correction center exceeds its design capacity of 35 inmates and that the prison or the center has exceeded its capacity for a period of more than 30 days, the board shall consider convicts in the institution in which the design capacity has been exceeded eligible for parole 120 days prior to the eligibility dates provided for in subsections (2) and (3).

(6) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration at Montana state prison, the provisions of subsection (5) do not apply."

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 46, chapter 23, part 2, and the provisions of Title 46 apply to [section 1].

Approved March 29, 1991.

CHAPTER NO. 249

[HB 436]

AN ACT TO GENERALLY REVISE THE DEFINITIONS AND PROVISIONS RELATED TO SPECIAL EDUCATION OF CHILDREN WITH DISABILITIES; AMENDING SECTIONS 20-3-103, 20-5-102, 20-7-401, 20-7-411, 20-7-412, 20-7-414, 20-7-461, 20-9-321, AND 53-4-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-102, MCA, is amended to read:

"**20-5-102. Compulsory enrollment and excuses.** (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:

(a) the child's 16th birthday;

(b) the date of completion of the work of the 8th grade.

(2) ~~Such~~ *A* parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless the child is:

(a) enrolled in a school of another district or state under any of the tuition provisions of this title;

(b) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;

(c) ~~excused from enrollment in a school of the district when it is shown that his bodily or mental condition does not permit his attendance and the child cannot be instructed under the special education provisions of this title;~~

~~(d)~~ excused from compulsory school attendance upon a determination by a district judge that ~~such~~ attendance is not in the best interest of the child;

~~(c)~~*(d)* excused by the board of trustees upon a determination that ~~such~~ attendance by a child who has attained the age of 16 is not in the best interest of the child and the school; or

~~(f)~~*(e)* enrolled in a nonpublic or home school that complies with the provisions of 20-5-109. For the purposes of this subsection ~~(f)~~*(e)*, a home school is the instruction by a parent of his child, stepchild, or ward in his residence and a nonpublic school includes a parochial, church, religious, or private school.

~~(3) The excuse provided for in subsection (2)(c) of this section shall be issued by the district superintendent or the county superintendent when there is no district superintendent employed by the district. Whenever an excuse is denied by the applicable official, an appeal of such decision may be made to the district court of the county within 10 days after the decision upon giving a bond in the amount set by the court to pay all costs of the appeal. The decision of the district court shall be final.~~"

Section 2. Section 20-3-103, MCA, is amended to read:

"**20-3-103. Deputy superintendent — staff.** (1) The state superintendent of public instruction shall appoint a deputy who, in the absence of the ~~principal~~ *superintendent* or in the case of vacancy in his office, shall perform all the duties of office until ~~such~~ *the* disability ~~be~~ *is* removed or *the* vacancy ~~be~~ *is* filled. ~~Such~~ *The* deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of his duties.

(2) The superintendent of public instruction ~~shall have~~ *has* the power to employ, organize, and administer a staff of personnel to assist him in the administration of the duties and services of the office. In organizing his staff, the superintendent of public instruction may employ:

(a) a supervisor of physical education who is a graduate of an accredited institution of higher education with a master's degree in physical education;

(b) a professional staff for the state supervision and administration of K-12 vocational education; and

(c) a special education supervisor who is a graduate of an accredited institution of higher education with a master's degree in a field ~~of~~ *related to* special education for ~~the mentally retarded or physically handicapped~~ *persons with disabilities* and who has not less than 2 years' experience in special education."

Section 3. Section 20-7-401, MCA, is amended to read:

"**20-7-401. Definitions.** In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) ~~"Appropriate public education" means the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped are met.~~ *"Autism" means a condition that is*

manifested by severe communication and other developmental and educational problems.

(2) "Child with disabilities" means a child with cognitive delay; hearing impairment, including deafness; speech-language impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments; or specific learning disabilities, who because of those impairments needs special education and related services. A child who is 5 years of age or younger may be identified as a child with disabilities without the specific disabilities being specified.

(3) "Cognitive delay" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

~~(2)~~*(4)* ~~"Deaf"~~ *"Deafness"* means a hearing impairment ~~which~~ *that* is so severe that the child's hearing is nonfunctional for the purpose of educational performance.

~~(3) "Deaf/blind" means concomitant hearing and visual impairments, the combination of which causes such severe educational problems for the child so impaired that the child cannot be accommodated in a special education program designed solely for deaf or blind children.~~

~~(4)~~*(5)* ~~"Emotionally disturbed"~~ *"Emotional disturbance"* means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects educational performance: an inability to learn ~~which~~ *that* cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes ~~a child who is schizophrenic~~ *schizophrenia.* The term does not include ~~a child who is socially maladjusted~~ *social maladjustment,* unless it is determined that the child is emotionally disturbed.

~~(5) "Handicapped child" means a child evaluated as being mentally retarded, hard-of-hearing, deaf, speech impaired, visually handicapped, emotionally disturbed, deaf/blind, multihandicapped, orthopedically impaired, other health impaired, or as having specific learning disabilities, who because of those impairments needs special education and related services. A child who is 5 years of age or younger may be identified as handicapped without the handicapping condition being specified.~~

(6) "Free appropriate public education" means the provision of regular or special education and related aids and services that are designed to meet individual educational needs of children with disabilities as adequately as the needs of children without disabilities are met.

~~(6)~~*(7)* ~~"Hard-of-hearing" means a hearing impairment~~ *"Hearing impairment" means an impairment,* whether permanent or fluctuating, ~~which~~ *that* adversely affects a child's educational performance but ~~which~~ *that* is not included within the definition of ~~deaf~~ *deafness.*

~~(7) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.~~

~~(8) "Multihandicapped" means concomitant impairments (e.g., mentally retarded/blind or mentally retarded/orthopedically impaired), the combination of which causes such severe educational problems for the child so impaired that the child cannot be accommodated in a special education program designed solely for one of the impairments. The term does not include deaf/blind children.~~

~~(9)~~*(8)* ~~"Orthopedically impaired"~~ *"Orthopedic impairment"* means a severe orthopedic ~~impairment which~~ *disability that* adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis~~,~~ *or* bone tuberculosis), and impairments from other causes (e.g., fractures or burns ~~which~~ *that* cause contractures, amputation, cerebral palsy).

~~(10)~~*(9)* ~~"Other health impaired"~~ *"Other health impairment"* means~~:~~

~~(a) having an autistic condition that is manifested by severe communication and other developmental and educational problems; or~~

~~(b) having~~ limited strength, vitality, or alertness due to chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, *that adversely affects a child's educational performance.*

~~(11)~~*(10)* "Related services" means transportation and ~~such~~ *any* developmental, corrective, and other supportive services ~~as~~ *that* are required to assist a ~~handicapped~~ child *with disabilities* to benefit from special education and includes speech-language pathology, audiology, occupational therapy, and physical therapy.

~~(12)~~*(11)* "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a ~~handicapped~~ child *with disabilities,* including but not limited to ~~classroom~~ instruction~~,~~ *conducted in a classroom, home, hospital, institution, or other setting and* instruction in physical education~~, home instruction, and instruction in hospitals and institutions~~.

~~(13)~~*(12)* "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, ~~which~~ *that* may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems ~~which~~ *that* are primarily the result of visual, hearing, or motor handicaps; ~~mental retardation~~ *cognitive delay*; or environmental, cultural, or economic disadvantages.

~~(14)~~*(13)* ~~"Speech/language impaired"~~ *"Speech-language impairment"* means a communication disorder, such as stuttering, impaired articulation, or a language or voice impairment~~,~~ ~~which~~ *that* adversely affects a child's interpersonal relationships or educational performance.

~~(15)~~*(14)* "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.

~~(16)~~*(15)* ~~"Visually handicapped"~~ *"Visual impairment"* means ~~a visual~~ *an* impairment ~~which~~ *that,* after correction, adversely affects a child's educational performance. The term includes both ~~partially seeing~~ *partial blindness* and ~~blind children~~ *blindness.*"

Section 4. Section 20-7-411, MCA, is amended to read:

"20-7-411. Regular classes preferred — obligation to establish special education program. (1) All ~~handicapped~~ children *with disabilities* in Montana are entitled to a free appropriate public education provided in the least restrictive alternative setting. To the maximum extent appropriate, ~~handicapped~~ children *with disabilities,* including children in public or private institutions or other care facilities, ~~shall~~ *must* be educated with children who ~~are not handicapped~~ *do not have disabilities.* Separate schooling or other removal of ~~handicapped~~ children *with disabilities* from the regular educational environment may occur only when the nature or severity of the ~~handicap~~ *disability* is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) After September 1, 1977, the board of trustees of every school district ~~must~~ *shall* provide or establish and maintain a special education program for every ~~handicapped~~ person *with a disability* as herein defined between the ages of 6 and 18, inclusive.

(3) On or before September 1, 1990, the board of trustees of each elementary district shall provide or establish and maintain a special education program for each ~~handicapped~~ preschool child *with disabilities* between the ages of 3 and 6, inclusive.

(4) The board of trustees of ~~any~~ *a* school district may meet its obligation to serve ~~handicapped~~ persons *with disabilities* by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program."

Section 5. Section 20-7-412, MCA, is amended to read:

"**20-7-412. Establishment of individual district special education program.** (1) The trustees of ~~any~~ *a* district, upon obtaining the approval of the superintendent of public instruction, shall establish and maintain a special education program whenever, in the judgment of the trustees and the superintendent of public instruction:

(a) there are sufficient numbers of ~~handicapped~~ children *with disabilities* in the district to justify the establishment of a program; or

(b) an individual child requires special education services such as home or hospital tutoring, school-to-home telephone communication, or other individual programs.

(2) Programs may be established for ~~handicapped~~ persons *with disabilities* between the ages of 0 and 21 when the superintendent of public instruction and the trustees have determined that ~~such~~ *the* programs will:

(a) assist a person to achieve levels of competence that will enable him to participate in the regular instruction of the district when he could not participate without special education;

(b) permit the conservation or early acquisition of skills ~~which~~ *that* will provide the person with an equal opportunity to participate in the regular instruction of the district; or

(c) provide other demonstrated educational advantages ~~which~~ *that* will materially benefit the person.

(3) Approval and operation of programs established pursuant to subsection (2) do not obligate the state or a school district to offer regular educational programs to a similar age group unless specifically provided by law.

(4) When an agency ~~which~~ *that* has responsibility for a ~~handicapped~~ person *with disabilities* over 21 but not more than 25, inclusive, cannot provide appropriate services to that person, the agency may contract with the local school district to provide ~~such~~ *the* services."

Section 6. Section 20-7-414, MCA, is amended to read:

"**20-7-414. Determination of children in need and type of special education needed — approval of classes and programs by superintendent.** (1) The determination of the children requiring special education and the type of special education needed by these children is the responsibility of the trustees, and the determination must be made in compliance with the procedures established in the rules of the superintendent of public instruction. Whenever the trustees of a school district or the governing authority of an institution learn of a ~~handicapped~~ child *with disabilities* in their jurisdiction who is in need of special education, they shall determine ~~whether~~ *that* the child is in need of a surrogate parent ~~by determining whether~~ *if* the parents or guardian ~~is unknown or unavailable~~ *cannot be identified or, after reasonable efforts, the whereabouts of the parents cannot be discovered* or if the child is a ward of the state. The determination must be made within 10 days of the date on which the trustees of a school district or the governing authority of an institution learned of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or the governing authority of an institution ~~must~~ *shall* nominate a surrogate parent for the child as provided in 20-7-461.

(2) Whenever the trustees of ~~any~~ *a* district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. ~~No~~ *A* special education class may *not* be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the foundation program for special education."

Section 7. Section 20-7-461, MCA, is amended to read:

"**20-7-461. Appointment *and termination of appointment* of surrogate parent.** (1) Any person may advise the trustees of a school district or the governing authority of an institution of a ~~handicapped~~ child *with disabilities* within the district who may be in need of a surrogate parent. The trustees of a school district or the governing authority of an institution ~~must~~ *shall* determine whether the child is in need of a surrogate parent as provided in 20-7-414. If the trustees of a school district or the governing authority of an institution determine that the child is in need of a surrogate parent, they shall nominate a surrogate parent for the child within 30 days of that determination.

(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local educational agency. The surrogate parent may not have a vested interest that will conflict with his representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child.

(3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. ~~If the court does not appoint the nominee, the~~ *The* trustees of a school district or the governing authority of an institution ~~must make another nomination under this section~~ *shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within 45 days of the court's receipt of all necessary supporting documents. If the youth court denies an appointment, the trustees of a district or the governing authority of an institution shall nominate another person to be appointed as the surrogate parent.*

(4) The superintendent of public instruction shall adopt rules for a procedure to terminate the appointment of a surrogate parent when:

(a) a child's parents are identified;

(b) the whereabouts of the parents are discovered;

(c) the child is no longer a ward of the state; or

(d) the surrogate parent wishes to discontinue his appointment."

Section 8. Section 20-9-321, MCA, is amended to read:

"**20-9-321. Foundation program and contingency funds for special education.** (1) For the purpose of establishing the foundation program amount for a current year special education program for a school district, the superintendent of public instruction shall determine the total estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget must be prepared on forms provided by the superintendent of public instruction and must set out for each program:

(a) the estimated allowable costs associated with operating the program where allowable costs are as defined in 20-7-431;

(b) the number of pupils expected to be enrolled in the program; and

(c) any other data required by the superintendent of public instruction for budget justification purposes and to administer the provisions of 20-9-315 through 20-9-321.

(2) The total amount of allowable costs approved by the superintendent of public instruction is the special education foundation program amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget may not, under any condition, be less than the foundation program amount for one regular ANB for each full-time special pupil in the school district.

(3) Any amount of the special education allowable costs for a district approved under the provisions of subsection (2) that is an increase in the approved allowable costs from the previous school fiscal year and is a result of expanded programs or recalculations of the special education allowable costs base may be deposited and managed in the separate account of the miscellaneous programs fund of the district that is prescribed in subsection (4).

(4) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district foundation program for the school year as prescribed in this part, allowable costs approved under the budgeting provisions of subsections (1) and (2) for the operation of the program during the given year must be funded from any legislative appropriation for contingency financing for special education. Contingency funds granted under this subsection must be deposited in a separate account of the miscellaneous programs fund of

the district as provided in 20-9-507. However, if contingency funds are not available, then subject to the approval of the program by the superintendent under the emergency budget provisions of 20-9-161(5), allowable costs for the given year may be added to the foundation program amount for special education for the subsequent school year. The allowable costs must be recorded as previous year special education expenses in the school district budget for the subsequent school year.

(5) (a) The special education contingency funds in subsection (4):

(i) are biennially appropriated;

(ii) are for emergencies that may arise in the special education programs of school districts or special education cooperatives; and

(iii) may be used to fund positions that have gone unfilled for a full school fiscal year and for which state special education funds were not awarded.

(b) The board of trustees of a district or the management board of a special education cooperative may apply for contingency funding by submitting to the superintendent of public instruction, in the form prescribed by the superintendent of public instruction, written documentation that describes the need for the funds.

~~(4)~~*(6)* The sum of the previous year special education expenses as defined in ~~subsection~~ *subsections* (3) *and (4)* and the foundation program amount for current year special education as defined in subsections (1) and (2) is the special education budget for accounting purposes.

~~(5)~~*(7)* The foundation program amount for special education must be added to the foundation program amount of the regular program ANB defined in 20-9-311 and 20-9-313 to obtain the total foundation program amount for the district."

Section 9. Section 53-4-101, MCA, is amended to read:

"53-4-101. **Definitions.** As used in this part, the following definitions apply:

(1) "Child welfare services" means the establishing, extending, and strengthening of child welfare services (especially in predominantly rural areas) for the protection and care of abused, dependent, or neglected children.

(2) "Department" means the department of family services provided for in 2-15-2401.

(3) (a) "Emotionally disturbed child" means a child determined by a psychologist, psychiatrist, licensed social worker, or special education child study team (established under rules adopted by the superintendent of public instruction to implement Title 20, chapter 7, part 4) to have:

(i) an identifiable mental health problem as identified in a nationally recognized classification system or as defined in 20-7-401~~(4)~~*(5)*; and

(ii) a substantial impairment, evident for a reasonable length of time, that is characterized by a dysfunction in any of the following areas:

(A) relationships;

(B) behavior;

(C) cognition; or

(D) education.

(b) The nationally recognized classification system referred to in subsection (3)(a)(i) must be one recognized by rules established by the department.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance."

Section 10. **Name change — code commissioner instruction.** Whenever it appears in Title 20 and in all law enacted by the 52nd legislature, the code commissioner is directed to change the term "handicapped child" to "child with disabilities" and the term "handicapped children" to "children with disabilities".

Section 11. **Effective date.** [This act] is effective July 1, 1991.

Approved March 29, 1991.

CHAPTER NO. 250

[HB 462]

AN ACT TO REVISE AND TO PHASE IN THE METHOD OF CALCULATING THE AVERAGE NUMBER BELONGING OF CERTAIN SCHOOL DISTRICTS FOR SCHOOL FUNDING PURPOSES; AMENDING SECTION 20-9-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

STATEMENT OF INTENT

A statement of intent is necessary for this bill to clarify that the superintendent of public instruction shall promulgate rules that prescribe procedures for the aggregation of the average number belonging of pupils in school districts for foundation program purposes. The authority for rulemaking to secure compliance with school budgeting laws is granted the superintendent of public instruction in 20-9-102 and 20-9-201. The rules must address the various circumstances concerning location of school districts and the schools within those districts.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-311, MCA, is amended to read:

"20-9-311. Calculation of average number belonging (ANB). (1) Average number belonging must be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year and by dividing the total by 180. However, when a school district has approval to operate less than 180 school days under 20-9-804, the total must be calculated in accordance with the provisions of 20-9-805. For the purpose of calculating ANB under this section, the days of attendance for a regularly enrolled pupil may not exceed 180 pupil-instruction days and 7 pupil-instruction-related days. Attendance for a part of a morning session or a part of an afternoon session by a pupil must be counted as attendance for one-half day. In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), attendance at or absence from a regular session of the program for at least 2 hours of either a morning or an afternoon session will be counted as one-half day attended or absent as the case may be. If a variance has been granted as provided in 20-1-302, ANB will be computed in a manner prescribed by the superintendent of public instruction, but in no case may the ANB exceed one-half for each kindergarten pupil. When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, including pupil-instruction-related days, his absence after the 10th day of absence may not be included in the aggregate days of absence and his enrollment in the school may not be considered in the calculation of the average number belonging until he resumes attendance at school.

(2) If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he is considered a full-time special pupil but is not considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program, he is considered regularly enrolled for ANB purposes.

(3) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) *(i)* a school of the district is located more than 3 miles beyond the incorporated limits of a city or town ~~or~~ *located in the district and 3 miles* from ~~another~~ *any other* school of the district, all of the regularly enrolled, full-time pupils of the school must be calculated ~~individually~~ *separately* for ANB purposes; *or* *(ii) a school of the district is located more than 3 miles from any other school of the district and no incorporated territory is involved in the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes;*

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the foundation program for the district.

(4) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Applicability.** [This act] is applicable during school fiscal years 1992 through 1996 in the following manner:

(1) one-fifth of the reduction in the foundation program schedule amount resulting from the aggregation of ANB required by [this act] and as calculated under the provisions of 20-9-311(1), applies in budgeting for school fiscal year 1992;

(2) two-fifths of the reduction in the foundation program schedule amount resulting from the aggregation of ANB required by [this act] and as calculated under the provisions of 20-9-311(1), applies in budgeting for school fiscal year 1993;

(3) three-fifths of the reduction in the foundation program schedule amount resulting from the aggregation of ANB required by [this act] and as calculated under the provisions of 20-9-311(1), applies in budgeting for school fiscal year 1994;

(4) four-fifths of the reduction in the foundation program schedule amount resulting from the aggregation of ANB required by [this act] and as calculated under the provisions of 20-9-311(1), applies in budgeting for school fiscal year 1995;

(5) 100% of the reduction in the foundation program schedule amount resulting from the aggregation of ANB required by [this act] and as calcu-

lated under the provisions of 20-9-311(1), applies in budgeting for school fiscal year 1996.

Approved March 29, 1991.

CHAPTER NO. 251

[HB 479]

AN ACT TO REQUIRE THE BOARD OF INVESTMENTS TO ALLOW CERTAIN NONPROFIT CORPORATIONS TO QUALIFY FOR IN-STATE INVESTMENTS OF STATE FUNDS; AMENDING SECTION 17-6-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-308, MCA, is amended to read:

"**17-6-308. Authorized investments.** (1) Except as provided in subsection (4), the Montana in-state investment fund must be invested as authorized by rules adopted by the board. For purposes of this section, "investment" includes the guaranty of loans or bonds in consideration for a fee, in lieu of the actual acquisition of such loans or bonds.

(2) The board may use the in-state investment fund to guarantee loans or bonds issued under the provisions of 17-5-1501 through 17-5-1529, Title 17, chapter 5, part 16, or Title 90, chapter 7. Each guaranty must be given in consideration of a fee. The fees must be paid to the board. The guaranty must provide directly or by separate agreement that the board is fully subrogated to the rights of the obligee under the loan or bond. The board shall by rule establish the maximum ratio between guaranty funds available and loans or bonds to be guaranteed. The board may covenant in bond issues to maintain such ratio. Unless bonds issued to finance a project are secured by a common capital reserve account and a common guaranty fund, the maximum amount of the guaranty authorized by this section may not exceed $3,000,000 with respect to the bonds or loans to finance the project.

(3) The board may make loans from the in-state investment fund to the capital reserve account created pursuant to 17-5-1515 and the guaranty fund created pursuant to 17-5-1520 to establish balances or restore deficiencies therein. The board may agree in connection with the issuance of bonds or notes secured by such account or fund to make such loans. Loans must be on such terms and conditions as the board determines and must be repaid from revenues of the board realized from the exercise of its powers under 17-5-1501 through 17-5-1529, subject to the prior pledge of the revenues to the bonds and notes.

(4) The board shall allow the Montana board of science and technology development provided for in 2-15-1818 to administer $7.5 million of the in-state investment fund for seed capital project loans pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, 1994. Until such time as the Montana board of science and technology development makes a loan pursuant to those provisions, the funds under its administration must be invested by the board of investments pursuant to the provisions of 17-6-201.

(5) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1991.

CHAPTER NO. 252

[HB 507]

AN ACT CLARIFYING THAT EXHAUSTION OF ADMINISTRATIVE REMEDIES IS A PREREQUISITE TO FILING AN ACTION IN DISTRICT COURT CONCERNING A SCHOOL BOARD OF TRUSTEES' DECISION; AND AMENDING SECTION 20-3-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-210, MCA, is amended to read:

"**20-3-210. Controversy appeals and hearings.** (1) Except as provided under 20-3-211, the county superintendent shall hear and decide all matters of controversy arising in his county as a result of decisions of the trustees of a district in the county. *Except as provided in subsection (2), exhaustion of administrative remedies under this chapter is required prior to filing an action in district court concerning a decision of the trustees.* When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction under the provisions for appeal of controversies in this title. Furthermore, he shall hear and decide all controversies arising under:

(a) section 20-5-304 or 20-5-311 relating to the approval of tuition applications; or

(b) any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.

(2) Exhaustion of administrative remedies is not a prerequisite to filing an action in district court concerning a decision of the trustees of a district in the following instances:

(a) a state agency has been granted primary jurisdiction over the matter;

(b) the matter is governed by a specific statute; or

(c) the board of trustees has acted without jurisdiction or in excess of its jurisdiction.

~~(2)~~*(3)* The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. He shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy which is made by the county superintendent shall be based upon the facts established at such hearing.

~~(3)~~*(4)* The decision of the county superintendent may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction.

~~(4)~~*(5)* Cost incurred by the office of the county superintendent shall be paid from the general fund budget of the county in which the controversy is initiated."

Approved March 29, 1991.

CHAPTER NO. 253

[HB 515]

AN ACT TO CLARIFY THE REQUIREMENT THAT CHILDREN RECEIVE A MEDICAL EXAMINATION PRIOR TO ADMISSION TO THE MOUNTAIN VIEW SCHOOL, THE PINE HILLS SCHOOL, OR OTHER FACILITY UNDER AN ORDER OF COMMITMENT TO THE DEPARTMENT OF FAMILY SERVICES; AMENDING SECTIONS 53-30-203 AND 53-30-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-30-203, MCA, is amended to read:

"**53-30-203. Control and management of youth correctional facilities.** The facilities provided for in 53-30-202 shall exercise their functions under the supervision and general management of the department of family services. Except where otherwise provided by law, the department by rules shall establish standards of care~~,~~ *and* policies of admission, transfers, discharge, and aftercare supervision in order to provide adequate care for children and adequate service to the courts. *Policies of admission may include criteria for medical examinations required under 53-30-209.* The department shall develop special programs within each facility which are adaptable to the particular needs of its operation."

Section 2. Section 53-30-209, MCA, is amended to read:

"**53-30-209. Medical examination before ~~commitment~~ *admission* — records required to accompany child committed.** *(1)* Before a child is ~~committed~~ *admitted for any purpose or for any length of time* to the Mountain View school, the Pine Hills school, or *other facility under an order of commitment to* the department of family services, he ~~shall~~ *must* be examined by a licensed physician. A child committed to one of the schools or the department ~~shall~~ *must* be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

(2) The medical examination required under this section must be a current, complete physical examination of the child."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1991.

CHAPTER NO. 254

[HB 562]

AN ACT AUTHORIZING THE COPYING OF ELECTRONIC INFORMATION IN THE CUSTODY OF PUBLIC AGENCIES; PROVIDING THAT THE PUBLIC AGENCY MAY CHARGE FOR THE COST OF ELECTRONIC MEDIA USED TO COPY THE INFORMATION AND MAY CHARGE AN HOURLY RATE FOR TIME SPENT BY AGENCY EMPLOYEES AFTER ONE-HALF HOUR OF COPY SERVICE HAS BEEN PROVIDED; AND AMENDING SECTION 2-6-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Electronic information — public access.** (1) Except as provided by law, each person is entitled to a copy of information compiled, created, or otherwise in the custody of public agencies that is in electronic format, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic information.

(2) Except as provided by law, an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media; or

(b) expenses incurred by the agency as a result of mainframe processing charges or other out-of-pocket expenses directly associated with the request for information.

(3) An agency may also charge an hourly fee for each hour, or fraction of an hour, after one-half hour of copying service has been provided. The hourly fee may not exceed the hourly rate for the current fiscal year for a state employee classified as grade 10, step 2, under 2-18-312.

(4) For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(5) This section does not authorize the release of electronic security codes giving access to private information.

Section 2. Section 2-6-103, MCA, is amended to read:

"**2-6-103. Filing and copying fees.** (1) The secretary of state, for services performed in his office, shall charge and collect the following fees:

(a) for each copy of any law, resolution, record, or other document or paper on file in his office, except corporate papers, 40 cents per folio or, if the copy is made by any process of reproduction by photographic, photostatic, or similar process, the fee shall be 50 cents per page or fraction thereof;

(b) for affixing certificate and seal, $2;

(c) for receiving and recording each official bond, $10;

(d) for each commission or other document signed by the governor and attested by the secretary of state (pardon, military commissions, and extraditions excepted), $5;

(e) for issuing each certificate of record, $5;

(f) for filing and recording miscellaneous papers, records, or other documents, $5;

(g) for filing and recording any other paper not otherwise herein provided for, $5;

(h) for filing and recording any paper, record, or other document or other than a standard form when recommended by the secretary of state, $5;

(i) when a copy of any law, resolution, record, or other document or paper on file in the office of the secretary of state is presented for comparison and certification, 10 cents per folio must be charged and collected for proofreading the same.

(2) No member of the legislature or state or county officer may be charged for any search relative to matters appertaining to the duties of his office or for a certified copy of any law or resolution passed by the legislature relative to his official duties.

(3) The secretary of state may not charge a fee, other than the fees authorized in [section 1], for providing electronic information.

~~(3)~~*(4)* Fees shall be collected in advance and when collected by the secretary of state shall be deposited pursuant to 17-6-105."

Approved March 29, 1991.

CHAPTER NO. 255

[HB 587]

AN ACT TO PROVIDE THAT THE DATE FOR ANNUAL RENEWAL OF A NUTRITIONIST LICENSE BE SET BY THE BOARD OF MEDICAL EXAMINERS; TO AMEND THE DATE FOR IMPOSING AN ADDITIONAL FEE FOR LATE RENEWAL OF APPLICATIONS; AND AMENDING SECTION 37-25-307, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-25-307, MCA, is amended to read:

"**37-25-307. Renewal of license — continuing education.** (1) An application for renewal of license must be made annually ~~within 30 days after the expiration of the existing license~~ *on a date set by the board.*

(2) A renewal license must be issued when the applicant submits proof that requirements for continuing education have been met and pays a renewal fee set by the board commensurate with costs.

(3) An additional fee may be imposed on applications for renewal received by the board more than 30 days after the ~~expiration of the existing license~~ *annual renewal date.*"

Section 2. **Transition period.** A person applying for license renewal under the annual renewal date set by the board must be credited for any portion of the upcoming year for which the person has previously paid the fee.

Approved March 29, 1991.

CHAPTER NO. 256

[HB 630]

AN ACT TO REQUIRE THAT THE EMERGENCY OR DISASTER FUND BE REPLENISHED IN AN AMOUNT EQUAL TO THE AMOUNT RECOVERED FOR EXPENDITURES UNDER THE DISASTER AND EMERGENCY SERVICES LAWS; AND AMENDING SECTION 10-3-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-312, MCA, is amended to read:

"**10-3-312. Maximum expenditure by governor — appropriation.** (1) Whenever an emergency or disaster is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and he is authorized to expend from the general fund, an amount not to exceed $2 million in any biennium. *In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.*

(2) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and he is authorized to expend from the general fund, an amount not to exceed $500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178."

Approved March 29, 1991.

CHAPTER NO. 257

[HB 654]

AN ACT TO ELIMINATE THE REQUIREMENT THAT A PERSON OBTAIN A CERTIFICATE FROM A PHYSICIAN ATTESTING TO SATISFACTORY HEALTH TO QUALIFY FOR TEACHER CERTIFICATION; TO REMOVE UNCONSTITUTIONAL LANGUAGE REGARDING AGE DISCRIMINATION FOR TEACHER CERTIFICATION; AND AMENDING SECTION 20-4-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-104, MCA, is amended to read:

"**20-4-104. Qualifications.** (1) ~~Any~~ *A* person may be certified as a teacher when he satisfies the following qualifications:

(a) He is 18 years of age or older ~~but is not more than 70 years of age~~.

~~(b) He has a certificate of a licensed physician attesting to his satisfactory health.~~

~~(c)~~*(b)* He is of good moral and professional character.

~~(d)~~*(c)* He has completed the teacher education program of a unit of the Montana university system or an essentially equivalent program at an accredited institution of equal rank and standing as that of any unit of the Montana university system, and ~~such~~ *his* training ~~shall be~~ *is* evidenced by at least a bachelor's degree and a certification of the completion of the teacher education program, except as provided for in 20-4-106(1)(d).

~~(e)~~*(d)* He has subscribed to the following oath or affirmation before an officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support The Constitution of the United States of America and The Constitution of the State of Montana."

(2) Any person may be certified as a specialist when he satisfies the requirements of subsections (1)(a) ~~through (1)(e)~~ *and (1)(b)* and the requirement for a specialist certificate provided in 20-4-106(2)."

Approved March 29, 1991.

CHAPTER NO. 258

[HB 663]

AN ACT TO EXPAND THE APPLICATION OF THE UNIFORM ARBITRATION ACT BY PROVIDING THAT THE CONFIRMATION OF A COURT AWARD AND THE ENFORCEMENT OF AN AWARD PROVISIONS OF THE ACT APPLY TO ALL LABOR AGREEMENTS; AMENDING SECTION 27-5-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-5-113, MCA, is amended to read:

"**27-5-113. Application to labor agreements.** Arbitration agreements between employers and employees or between their respective representatives are valid and enforceable and may be subject to all or portions of this chapter if the agreement so specifies, except *27-5-115, 27-5-311,* 27-5-312(1) and (3) through (5), ~~and~~ 27-5-313, *and 27-5-322* apply in ~~every~~ *each* case."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1991.

CHAPTER NO. 259

[HB 675]

AN ACT REVISING TEMPORARY INJUNCTION PROCEDURES IN DOMESTIC CASES; ALLOWING ISSUANCE OF A TEMPORARY INJUNCTION UPON THE THREAT OF PHYSICAL ABUSE, HARM, OR BODILY INJURY; AND AMENDING SECTION 40-4-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-121, MCA, is amended to read:

"**40-4-121. Temporary order or temporary injunction.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

(a) alleging physical abuse, harm, or bodily injury against the petitioner by a family or household member *or the threat of physical abuse, harm, or bodily injury against the petitioner by a family or household member that causes the petitioner to reasonably believe that the offender has the present ability to execute the threat*; and

(b) requesting relief under Title 27, chapter 19, part 3. Any preliminary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208. Persons who may request relief under this subsection include spouses, former spouses, and persons cohabiting or who have cohabited with the other party within 1 year immediately preceding the filing of the petition.

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(7) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(c) terminates upon order of the court or when a final decree is entered or when a petition for dissolution or legal separation is voluntarily dismissed; and

(d) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626."

(8) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown."

Approved March 29, 1991.

CHAPTER NO. 260

[HB 794]

AN ACT CLARIFYING THE DEFINITION OF A PAID HOLIDAY; AND AMENDING SECTION 2-18-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-601, MCA, is amended to read:

"**2-18-601. Definitions.** For the purpose of this part, except 2-18-620, the following definitions apply:

(1) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision thereof.

(2) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts.

(3) "Permanent employee" means an employee who is assigned to a position designated as permanent on the appropriate list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget.

(4) "Part-time employee" means an employee who normally works less than 40 hours a week.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Temporary employee" means an employee assigned to a position designated as temporary on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months.

(7) "Seasonal employee" means an employee assigned to a position designated as seasonal on the appropriate agency list of authorized positions referenced in 2-18-206 and for which the agency has a permanent need but which is interrupted by the seasonal nature of the assignment.

(8) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

~~(8)~~*(9)* "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer.

~~(9)~~*(10)* "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or his immediate family.

~~(10)~~*(11)* "Sick-pay plan" means a plan that:

(a) provides for an agency to make payments in lieu of wages to employees on account of sickness or accident disability; and

(b) meets the requirements of 42 U.S.C. 409(b) or (d).

~~(11)~~*(12)* "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

~~(12)~~*(13)* "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

~~(13)~~*(14)* "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment."

Approved March 29, 1991.

CHAPTER NO. 261

[HB 812]

AN ACT TO INCLUDE CERTAIN EMPLOYEE EXPENSE REIMBURSEMENTS IN THE EXCLUSION FROM WAGES FOR WORKERS' COMPENSATION AND UNEMPLOYMENT COMPENSATION PURPOSES; AND AMENDING SECTIONS 39-51-201 AND 39-71-123, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-201, MCA, is amended to read:

"**39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that

the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter shall be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant

and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(14) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(15) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(16) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(17) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(18) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer, if the payment was made under a plan established for the employees in general or for a specific class or classes of employees, to or on behalf of the employee for:

(A) retirement;

(B) sickness or accident disability, but in the case of payments made by an employer directly to an employee, only those payments made under a workers' compensation law are excluded from "wages";

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office~~.~~*; or*

(iii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules.

(19) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(20) An individual's "weekly benefit amount" means the amount of benefits the individual would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-71-123, MCA, is amended to read:

"39-71-123. **Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee. Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) Wages do not include:

(a) employee ~~travel~~ expense reimbursements or allowances for meals, lodging, travel, ~~and~~ subsistence, *and other expenses, as set forth in department rules*;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in his regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which he is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred."

Approved March 29, 1991.

CHAPTER NO. 262

[HB 848]

AN ACT CHANGING THE NAME OF THE DEPARTMENT OF INSTITUTIONS AND THE DIRECTOR OF INSTITUTIONS TO THE DEPARTMENT AND DIRECTOR OF CORRECTIONS AND HUMAN SERVICES; DEFINING THE COMPONENTS, PURPOSE, POWERS, AND DUTIES OF THE DEPARTMENT; AMENDING SECTIONS 2-15-104, 2-15-2301, 53-1-201, 53-1-202, AND 53-1-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Name change — instructions to code commissioner.** (1) The names of the department and the director of institutions are changed to the department and the director of corrections and human services.

(2) Wherever the terms "department of institutions" or "department" (of institutions) and "director of institutions" or "director" (of institutions) appear in the Montana Code Annotated, the code commissioner shall change the terms to the "department of corrections and human services" or "department" (of corrections and human services) and "director of corrections and human services" or "director" (of corrections and human services), as appropriate, and conform internal references and grammar to the changes.

Section 2. Section 2-15-104, MCA, is amended to read:

"**2-15-104. Structure of executive branch.** (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:

(a) department of administration;

(b) department of military affairs;

(c) department of revenue;

(d) state board of education;

(e) department of labor and industry;

(f) department of commerce;

(g) department of justice;

(h) department of health and environmental sciences;

(i) department of social and rehabilitation services;

(j) department of ~~institutions~~ *corrections and human services*;

(k) department of highways;

(l) department of public service regulation;

(m) department of agriculture;

(n) department of livestock;

(o) department of state lands;

(p) department of natural resources and conservation;

(q) department of fish, wildlife, and parks;

(r) department of family services.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division shall be headed by an administrator.

(b) The principal unit of a division is a bureau. Each bureau shall be headed by a chief.

(c) The principal unit of a bureau is a section. Each section shall be headed by a supervisor."

Section 3. Section 2-15-2301, MCA, is amended to read:

"**2-15-2301. Department of ~~institutions~~ *corrections and human services* — head.** There is a department of ~~institutions~~ *corrections and human services*. The department head is a director of ~~institutions~~ *corrections and human services* appointed by the governor in accordance with 2-15-111."

Section 4. Section 53-1-201, MCA, is amended to read:

"**53-1-201. Purpose of department.** The department shall utilize at maximum efficiency the resources of state government in a coordinated effort to*:*

(1) develop and maintain comprehensive services and programs in the fields of:

~~(1) restore the physically or mentally disabled;~~

~~(2) rehabilitate the violators of law;~~

~~(3) sustain the vigor and dignity of the aged;~~

~~(4) train children of limited mental capacity to their best potential;~~

~~(5) rededicate the resources of the state to the productive independence of its now dependent citizens; and~~

~~(6) coordinate and apply the principles of modern institutional administration to the institutions of the state.~~

(a) adult corrections;

(b) mental health; and

(c) chemical dependency; and

(2) provide inpatient institutional care for developmentally disabled persons who require that care according to the requirements of Title 53, chapter 20; and

(3) provide nursing home care for honorably discharged veterans as provided by law."

Section 5. Section 53-1-202, MCA, is amended to read:

"53-1-202. **~~Institutions in department~~** ***Department of corrections and human services.*** (1) The following ~~institutions~~ *components* are in the department *of corrections and human services to carry out the purposes of the department*:

(a) ~~Montana state hospital~~ *adult corrections services consisting of the following institutional components to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:*

(i) Montana state prison;

(ii) Swan River forest camp;

(iii) the women's correctional center; and

(iv) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(A) in prerelease centers;

(B) under intensive supervision;

(C) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(D) in other appropriate programs;

(b) ~~Montana veterans' home at Columbia Falls~~ *mental health services consisting of the following institutional components for care and treatment of the mentally ill pursuant to Title 53, chapter 21:*

(i) Montana state hospital;

(ii) Montana center for the aged; and

(iii) a community services component consisting of appropriate services for the care and treatment of the mentally ill pursuant to Title 53, chapter 21, part 2;

(c) ~~Montana veterans' home in eastern Montana;~~ *chemical dependency services consisting of appropriate detoxification, inpatient, intensive outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;*

(d) ~~state prison~~ *institutional and residential components of the developmental disabilities system for those developmentally disabled persons who require that care according to Title 53, chapter 20, consisting of:*

(i) the Montana developmental center;

(ii) Eastmont human services center;

(e) ~~Montana developmental center~~ *veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as provided by law, consisting of:*

(i) Montana veterans' home at Columbia Falls; and

(ii) Montana veterans' home at Glendive.

~~(f) Montana center for the aged;~~

~~(g) Swan River forest camp; and~~

~~(h) Eastmont human services center.~~

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature."

Section 6. Section 53-1-203, MCA, is amended to read:

"53-1-203. **Powers and duties of department.** The department shall:

(1) adopt rules for the admission, custody, transfer, and release of ~~residents of institutions~~ *persons in department programs* except as otherwise provided by law; however, no such rules may amend or alter the statutory powers and duties of the state board of pardons;

(2) subject to the functions of the department of administration, lease or purchase lands for use by institutions and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions;

(3) contract with private nonprofit Montana corporations to establish and maintain community based prerelease centers for purposes of preparing inmates of the Montana state prison who are approaching parole eligibility or discharge for release into the community; the centers shall provide a less restrictive environment than the prison while maintaining adequate security; the centers shall be operated in coordination with other department correctional programs, including the supervised release program provided for in Title 46, chapter 23, part 4. Nothing in this subsection shall affect the department's authority to operate and maintain community based prerelease centers in existence on July 14, 1982.

(4) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(5) propose programs to the legislature to meet the projected long-range needs of institutions, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions; and

(6) encourage the establishment of programs at the local level for the prevention and rehabilitation of ~~physical and mental disability~~ *disabilities as they relate to mental illness and chemical dependency and encourage the establishment of programs at the local and institutional level for the rehabilitation and education of adult felony offenders*."

Section 7. **Effective date.** [This act] is effective July 1, 1991.

Approved March 29, 1991.

CHAPTER NO. 263

[HB 863]

AN ACT TO GENERALLY REVISE THE MONTANA CAPITAL COMPANY ACT BY PROVIDING FOR THE DESIGNATION OF A MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY TO BE ALLOCATED A PORTION OF THE UNUSED TAX CREDITS; LIMITING THE ALLOCATIONS OF TAX CREDITS TO CAPITAL COMPANIES; AMENDING SECTIONS 30-10-105, 90-8-102, 90-8-104, 90-8-201, 90-8-202, 90-8-203, 90-8-204, 90-8-205, 90-8-301, 90-8-302, 90-8-303, 90-8-304, 90-8-305, 90-8-311, 90-8-312, 90-8-313, AND 90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide a guideline for the board of investments to follow in certifying a Montana small business investment capital company. The board shall take the steps necessary to ensure that the company certified as the small business investment capital company will represent and be concerned with the economic development needs of all communities of the state and not just one geographic area of the state.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-105, MCA, is amended to read:

"**30-10-105. Exempt transactions.** Except as in this section expressly provided, 30-10-201 through 30-10-207 ~~shall~~ *do* not apply to ~~any of~~ the following transactions:

(1) ~~any~~ *a* nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) ~~any~~ *a* nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to such securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons ~~therefor~~ *for the order* and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. ~~No~~ *An* order under this subsection may *not* operate retroactively. ~~No~~ *A* person may *not* be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

(3) ~~any~~ *a* nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) ~~any~~ *a* transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) ~~any~~ *a* transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;

(6) ~~any~~ *a* transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) ~~any~~ *an* offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(8) (a) ~~any~~ *a* transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those

designated in subsection (7)) during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) ~~no~~ *a* commission or other remuneration is *not* paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) For the purpose of the exemption provided for in subsection (8)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(9) ~~any~~ *an* offer or sale of a preorganization certificate or subscription if:

(a) ~~no~~ *a* commission or other remuneration is *not* paid or given directly or indirectly for soliciting any prospective subscriber;

(b) the number of subscribers does not exceed 10; and

(c) ~~no~~ *a* payment is *not* made by any subscriber;

(10) ~~any~~ *a* transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) ~~no~~ *a* commission or other remuneration (other than a standby commission) is *not* paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;

(11) ~~any~~ *an* offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop, refusal, denial, suspension, or revocation order is in effect and ~~no~~ *a* public proceeding or examination looking toward such an order is *not* pending under either law;

(12) ~~any~~ *an* offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of such filing;

(13) the issuance of ~~any~~ *a* stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(14) ~~any~~ *a* transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) ~~any~~ *a* transaction in compliance with ~~such~~ rules ~~as~~ *that* the commissioner in his discretion may adopt to serve the purposes of 30-10-102. The commissioner may in his discretion require that 30-10-201 through 30-10-207 apply to any or all transactional exemptions adopted by rule.

(16) ~~any~~ *a* transaction ~~by~~ *in the securities of* a certified Montana capital company *or a certified Montana small business investment capital company* as defined in 90-8-104, provided that ~~such~~ *the* company first files all disclosure documents, along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing.

(17) the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;

(18) *a* transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

(19) a transaction that:

(a) involves the purchase of one or more precious metals; and

(b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by such payment is delivered into the possession of a depository (other than the seller) that:

(i) (A) is a financial institution (meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state);

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that ~~such~~ *the* quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

(20) a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any byproduct of the commodity;

(21) ~~any~~ *an* offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code of 1986."

Section 2. Section 90-8-102, MCA, is amended to read:

"**90-8-102. Declaration of policy.** (1) The legislature finds and declares that:

(a) economic insecurity due to unemployment is a serious menace to the health, safety, and general welfare of not only the affected people but of the people of the entire state;

(b) involuntary unemployment, with its resulting burden of indigency, falls with crushing force upon unemployed workers and ultimately on the state itself in the form of public assistance and unemployment compensation payments; and

(c) unemployment causes a migration of Montana workers and families seeking jobs and establishing homes elsewhere, which deprives the state of its most valuable resource, its people, and reduces the tax base of local governments, impairing their ability to provide basic services.

(2) (a) The legislature further finds that the best method of combating unemployment and protecting Montana against the loss of its people is by promoting, stimulating, developing, rehabilitating, and revitalizing the business prosperity and economic welfare of the state and its citizens.

(b) To accomplish this goal, the legislature seeks to encourage the formation of venture and equity capital in Montana for use in diversifying, strengthening, and stabilizing the Montana economy by increasing Montana employment and business opportunities while protecting the people's constitutional right to a clean and healthful environment.

(3) The legislature further finds that:

(a) private investment of venture and equity capital in the Montana economy will be encouraged and promoted by making tax credits available to taxpayers investing in *a* Montana capital ~~companies~~ *company or in a Montana small business investment capital company*;

(b) demands on state revenues restrict the financial ability of the state to make unlimited tax credits available for investment purposes and require that the state place reasonable limits on the total amount of tax credits to be made available for investment incentive;

(c) establishment of a rational tax credit program which gives priority to investments in capital companies in the order in which they are qualified *or in a Montana small business investment capital company* will encourage prompt private investment in Montana businesses.

(4) The legislature further finds that use of money from the Montana in-state investment fund established by 17-6-306 to purchase debentures issued by a capital company *or a Montana small business investment capital company* will promote the business prosperity and economic welfare of the state and its citizens."

Section 3. Section 90-8-104, MCA, is amended to read:

"**90-8-104. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments provided for in 2-15-1808.

(2) "Capital base" means equity capital raised by a certified Montana capital company *or by a certified Montana small business investment capital company* for which tax credits were claimed under this chapter.

(3) "Certified Montana capital company" *or "certified Montana small business investment capital company"* means:

(a) a development credit corporation created pursuant to Title 32, chapter 4; or

(b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the board.

(4) "Montana business" means a business which is located or principally based within Montana.

(5) "Qualified investment" means:

(a) a debt or equity financing of a Montana business that meets both of the following criteria:

(i) the business is engaged in one or more of the following activities:

(A) manufacturing;

(B) agricultural, fishery, or forestry production and processing;

(C) mineral production and processing, except for conventional oil and gas exploration;

(D) recognized nonfossil forms of energy generation as defined in 15-32-102;

(E) transportation;

(F) research and development of products or processes associated with any of the activities enumerated in (A) through (E) above;

(G) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts;

(H) any activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services outside Montana; and

(I) tourism; and

(ii) the business is a small business as defined in rules adopted by the board; or

(b) a debt or equity financing of a business outside Montana if such investment is likely to produce a qualified investment in Montana, as long as such investment does not exceed 25% of the capital base of the capital company.

(6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202.

(7) "Qualified Montana small business investment capital company" means a certified Montana small business investment capital company that has been designated a qualified small business investment capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202."

Section 4. Section 90-8-201, MCA, is amended to read:

"**90-8-201. Certification of Montana capital companies — *certification of a Montana small business investment capital company.*** (1) ~~From~~ *The board shall certify one Montana small business investment capital company, and from* time to time the board shall certify Montana capital companies. A company seeking to be certified as a Montana capital company ~~must~~ *or as the Montana small business investment capital company shall* make written application to the board on forms provided by the board. The application must contain the information required by 90-8-204 and ~~such~~ other information ~~as~~ *that* the board requires. The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in 90-8-202.

(2) The application must show that the applicant's purpose is to increase the general economic welfare of the state of Montana by:

(a) making investment capital available to businesses in Montana; and

(b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there is a substantial likelihood that such investment will produce a qualified investment in Montana.

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration 503 corporations, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company *or as the qualified Montana small business investment capital company.*

(5) To be eligible for certification under this section as the Montana small business investment capital company, the applicant shall commit to:

(a) utilize the tax credits to accumulate private capital with the intention of being designated a small business investment corporation by the United States small business administration as provided in Title III of the Small Business Act of 1958, as amended, and as implemented under 13 CFR 107;

(b) target its investments as a small business investment capital company toward commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories, the federal small business innovative research program, the federal cooperative research and development agreement program, Montana university system research and development, the Montana board of science and technology development (second stage), small business incubators, community development block grant programs, and projects emerging from economic development programs of Montana certified communities with the objective of providing significant investment opportunities in an area where economic development capital is limited;

(c) consider investment opportunities originating in any Montana county; and

(d) adopt investment guidelines that ensure that not less than 10% of its available capital is invested in counties with populations of 20,000 or less."

Section 5. Section 90-8-202, MCA, is amended to read:

"**90-8-202. Designation of qualified Montana capital companies — *designation of qualified Montana small business investment capital company* — tax credit.** (1) The board shall designate as*:*

(a) qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of $200,000*; or*

(b) the qualified Montana small business investment capital company the certified Montana small business investment capital company once it has been privately capitalized at a minimum level of $500,000.

(2) A certified company seeking designation as a qualified Montana capital company *or as the qualified Montana small business investment capital company* must make written application to the board on forms provided by the board. The application must contain the information required by 90-8-204 and ~~such~~ other information ~~as~~ *that* the board requires.

~~(2)~~*(3)* (a) The total amount of tax credits authorized for a single qualified *capital* company *or the qualified Montana small business investment capital company* may not exceed $1,500,000, *except that the qualified Montana small business investment capital company must receive all remaining tax credits under this section available as of January 1, 1991.* In the event the capitalization of ~~the~~ *a qualified capital* company is later increased, the company may apply for authorization of additional tax credits within the foregoing limitation.

(b) The total credits authorized for all companies may not exceed a total of $1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed $1 million plus any portion of the $1 million available for authorization before June 30, 1985, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1987, and June 30, 1989, may not exceed $3 million plus any portion of the credits available for authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1989, and June 30, 1991, may not exceed $3 million plus any portion of the credits available for authorization before June 30, 1989, that is allocated to qualified companies.

~~(3)~~*(4) (a)* ~~The~~ *Before January 1, 1991,* credits ~~shall~~ *must* be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the board, and the board shall certify to each ~~such~~ company its appropriate allocation.

(b) All tax credits allowed under subsection (3) that are not allocated as of January 1, 1991, must be allocated to the qualified Montana small business investment capital company, and the board shall certify the allocation to the company.

(c) If the legislature provides additional tax credits under this chapter after June 30, 1991, or if tax credits become available by reversion to the board by a capital company or by the qualified Montana small business investment capital company, those additional or reverted tax credits must be allocated by the board to qualified capital companies or to the qualified Montana small business investment capital company in accordance with this chapter and the rules of the board.

~~(4)~~*(5)* Investors in a qualified Montana capital company *or in the qualified Montana small business investment capital company* are entitled to the tax credits provided for in subsection ~~(5)~~ *(6)*. Funds invested in a certified company prior to designation as a qualified Montana capital company *or as the qualified Montana small business investment capital company* may, at the discretion of the investor, be placed in an escrow account in a Montana financial institution pending designation of the company as a qualified Montana capital company *or as the qualified Montana small business investment capital company.*

~~(5)~~*(6)* Subject to the provisions of subsections ~~(2)~~ *(3)* and ~~(8)~~ *(9)*, an individual, small business corporation, partnership, trust, decedent's estate, or corporate taxpayer that makes a capital investment in a qualified Montana capital company *or the qualified Montana small business investment capital company* is entitled to a tax credit equal to 50% of the investment, up to a maximum credit of $150,000 per taxpayer, *except that, as applied to the qualified small business investment capital company, the maximum tax credit is $250,000 per taxpayer and the tax credit limitation relating to a capital investment in the qualified Montana small business investment capital company must be in addition to any other tax credit limitation in this section.* The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30, 31, or 35. The credit for investments by a small business corporation electing to be taxed under 15-31-202 or a partnership may be claimed by the small business corporation shareholders or the partners.

~~(6)~~*(7)* The tax credit allowed under subsection ~~(5)~~ *(6)* is to be credited against the taxpayer's income tax liability or coal severance tax liability for the taxable year in which the investment in a qualified Montana capital company *or the qualified Montana small business investment capital company* is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in the following manner:

(a) If the sum of the amount of credit for the current taxable year plus the amount of credit, if any, carried forward from a previous taxable year exceeds the taxpayer's tax liability for the current taxable year, the excess must be carried back as a credit to the 3 preceding taxable years and, if the full credit remains unused, carried forward as a credit to the 15 succeeding taxable years.

(b) The amount of unused credit must be used to offset the entire tax liability of each of the 18 taxable years, beginning with the earliest and commencing to the next succeeding year until the credit is exhausted.

~~(7)~~*(8)* The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 4 years of July 1, 1987, *or in the qualified Montana small business investment capital company within 4 years of July 1, 1991.*

~~(8)~~*(9) (a)* An individual, small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection ~~(5)~~ *(6)* may not obtain credits in excess of the ~~$150,000 limit~~ *limits* contained in subsection ~~(5)~~ *(6)* by making investments as more than one entity.

(b) A partner or shareholder in a small business corporation may not obtain more than $150,000, *or not more than $250,000 in the case of the qualified Montana small business investment capital company,* in credits as an individual and as the partnership or small business corporation. A

corporate taxpayer that obtains the maximum ~~$150,000 credit~~ *credits allowed under this subsection (9)(b)* may not obtain additional credits through investments by wholly owned subsidiaries or affiliates. *An individual, small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (6) may not claim deduction under the provisions of Title 15, chapter 30 or 31, for donation of stock in the qualified Montana small business investment capital company.*"

Section 6. Section 90-8-203, MCA, is amended to read:

"**90-8-203. No recapture — unqualified investments.** If the amount invested by a taxpayer in a qualified Montana capital company *or in the qualified Montana small business investment capital company* is not used by the company for qualified investments as provided in 90-8-301, the taxpayer is not subject to a recapture provision for any tax credit claimed by him but the company is subject to the penalty provided for in 90-8-301~~(3)~~*(4)*."

Section 7. Section 90-8-204, MCA, is amended to read:

"**90-8-204. Application requirements.** A company applying to become either a certified or qualified Montana capital company *or the certified or qualified Montana small business investment capital company* shall include in its application evidence that it has disclosed or will disclose to all investors the following:

(1) the condition that a tax credit is not available for investment in a company until the company has been designated a qualified Montana capital company *or the qualified Montana small business investment capital company* and the investor has received a certificate approving the credit from the board;

(2) the condition that a tax credit will not be made available until ~~the~~ *a qualified capital* company raises at least $200,000 in capital~~,~~ and has been designated a qualified capital company~~,~~ *or the qualified Montana small business investment capital company raises at least $500,000 in capital before July 1, 1995, and has been designated the qualified Montana small business investment capital company* and the limits on tax credits that may be authorized; and

(3) the fact that the state of Montana is not liable for damages in accordance with 90-8-205."

Section 8. Section 90-8-205, MCA, is amended to read:

"**90-8-205. State liability disclaimed.** The state of Montana may not be held liable for any damages to an investor in a Montana*:*

(1) capital company that fails to become designated as a certified or qualified Montana capital company*; or*

(2) small business investment capital company that fails to become designated as a certified or qualified Montana small business investment capital company."

Section 9. Section 90-8-301, MCA, is amended to read:

"**90-8-301. Qualified investments — penalty — extension permissible.** (1) A qualified Montana capital company receiving investments for which a taxpayer has applied and received a tax credit must use its capital base to make qualified investments according to the following schedule:

(a) at least 30% of its capital base raised through investments for which tax credits were taken within 3 years of the date on which the certified company was designated as a qualified capital company by the board and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 30% of its capital base raised through investments for which tax credits were taken within 3 years of the date on which the board approves the amended application;

(b) at least 50% of its capital base raised through investments for which tax credits were taken within 4 years of the date on which the certified company was designated as a qualified capital company by the board and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 50% of its capital base raised through investments for which tax credits were taken within 4 years of the date on which the board approves the amended application; and

(c) at least 70% of its capital base raised through investments for which tax credits were taken within 5 years of the date on which the certified company was designated as a qualified capital company by the board and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 70% of its capital base raised through investments for which tax credits were taken within 5 years of the date on which the board approves the amended application.

(2) The qualified Montana small business investment capital company receiving investments for which a taxpayer has applied and received a tax credit must use its capital base to make qualified investments according to the following schedule:

(a) of its capital base raised through investments for which tax credits were taken:

(i) 30% within 3 years of the date on which the certified company was designated as the qualified Montana small business investment capital company by the board or within 3 years of its designation as a small business investment corporation by the small business administration, whichever is later;

(ii) 50% within 4 years of the date on which the certified company was designated as the qualified Montana small business investment capital company by the board or within 4 years after its designation as a small business investment corporation by the small business administration, whichever is later; and

(iii) 70% within 5 years of the date on which the certified company was designated as the qualified Montana small business investment capital company by the board or within 5 years after its designation as a small business investment corporation by the small business administration, whichever is later; or

(b) of its capital base, in the case of capital raised through a loan from the small business administration pursuant to 13 CFR 107, as provided under this chapter except as provided in subsection (2)(a).

~~(2)~~*(3)* Following each annual examination, the commissioner of financial institutions shall notify the department of revenue of any companies that are not in compliance with this section.

~~(3)~~*(4)* A qualified Montana capital company that fails to make qualified investments pursuant to subsection (1) *or the qualified Montana small business investment capital company that fails to make qualified investments pursuant to subsection (2)* shall pay to the department of revenue a penalty equal to all of the tax credits allowed to the taxpayers investing in that company during that time period, with interest at 1% a month from the date the tax credits were certified as allocated to the qualified Montana capital company *or to the qualified Montana small business investment capital company.* The department of revenue may abate the penalty if the capital company *or the Montana small business investment capital company* establishes reasonable cause for the failure to make qualified investments pursuant to subsection (1) *or (2)* and if the failure was not due to neglect on the part of the company.

~~(4)~~*(5)* The department of revenue may grant an extension of time in which to make qualified investments pursuant to subsection (1) *or (2)* upon application by a capital company *or the Montana small business investment capital company* showing reasonable cause for an extension.

~~(5)~~*(6)* The department of revenue shall deposit any amount received under this subsection to the credit of the state general fund."

Section 10. Section 90-8-302, MCA, is amended to read:

"**90-8-302. Restriction on investment.** In addition to the requirements of 90-8-301, no more than 50% of the equity raised by a Montana capital company *or by the Montana small business investment capital company* may be invested in any one business, and no more than 25% of the total funds raised for which tax credits were claimed pursuant to the investment credit provisions of this chapter may be invested in any one business."

Section 11. Section 90-8-303, MCA, is amended to read:

"**90-8-303. Conflict of interest.** (1) (a) The members of the board, the commissioner of financial institutions, or a bank examiner may not have a monetary interest in or be a borrower from ~~any~~ *a* Montana capital company *or from the Montana small business investment capital company,* either directly or indirectly.

(b) These restrictions do not prohibit the board, acting as a whole, from purchasing debentures issued by a Montana capital company *or by the Montana small business investment capital company.*

(2) A member of the investment committee of a Montana capital company *or of the Montana small business investment capital company* who has an interest in a venture that comes before the committee for a vote shall disclose ~~such~~ *the* interest and abstain from voting on investment in the venture."

Section 12. Section 90-8-304, MCA, is amended to read:

"**90-8-304. Application of securities law.** In lieu of registration under Title 30, chapter 10, a certified Montana capital company *or the certified Montana small business investment capital company* may file all disclosure documents, along with a consent to service of process, with the state securities commissioner. The commissioner may not charge a fee for ~~such~~ *the* filing."

Section 13. Section 90-8-305, MCA, is amended to read:

"**90-8-305. Sale of debentures.** (1) A qualified Montana capital company *or the qualified Montana small business investment capital company* is authorized to issue and sell debentures to the in-state investment fund established in 17-6-306.

(2) Proceeds received by a qualified Montana capital company *or by the qualified Montana small business investment capital company* from the sale of debentures authorized in subsection (1) must be invested in accordance with the provisions of 90-8-301, except that the time periods for making qualified investments must be calculated from the date the company sells the debentures to the in-state investment fund."

Section 14. Section 90-8-311, MCA, is amended to read:

"**90-8-311. Legislative review and oversight.** The board shall report on an annual basis to the revenue oversight committee of the legislature concerning Montana capital companies *and the Montana small business investment capital company.*"

Section 15. Section 90-8-312, MCA, is amended to read:

"**90-8-312. Investment reporting and recordkeeping.** (1) Each qualified Montana capital company *and each qualified Montana small business investment capital company* shall report to the board on a quarterly basis:

(a) the name of each investor in the qualified Montana capital company *or in the qualified Montana small business investment capital company* who has applied for a tax credit;

(b) the amount of each investor's investment; and

(c) the amount of the tax credit allowed to the investor and the date on which the investment was made.

(2) The board shall provide the information contained in subsection (1) to the department of revenue on a quarterly basis.

(3) The board shall provide each investor in a qualified Montana capital company *and each investor in the qualified Montana small business investment capital company* with a certificate authorizing the tax credit, and the certificate ~~shall~~ *must* be submitted with each tax return requesting a credit under 90-8-202.

(4) Each qualified Montana capital company *and the qualified Montana small business investment capital company* shall report to the board on a quarterly basis all qualified investments that the company has made. The board shall share the information with the department of revenue, in order that the provisions of 90-8-301 may be complied with."

Section 16. Section 90-8-313, MCA, is amended to read:

"**90-8-313. Examination.** (1) At least once a year the bank examiners of the department of commerce shall examine the books and affairs of each Montana capital company *and of the qualified Montana small business investment capital company.* The examination must address the methods of operation and conduct of the business of the Montana capital company *or of the Montana small business investment capital company* to determine if the company is abiding by the purposes of this chapter and that the funds received by the company have been invested within the time limits required for a qualified Montana capital company *or for the qualified Montana small business investment capital company* in 90-8-301.

(2) The department of commerce may examine under oath any of the officers, directors, agents, employees, or investors of a Montana capital company regarding the affairs and business of the company. The department of commerce may issue subpoenas and administer oaths. Refusal to obey such a subpoena may at once be reported to the district court of the district in which the company is located, and the court shall enforce obedience to the subpoena in the manner provided by law.

(3) The cost of the annual review must be paid by each Montana capital company *or by the Montana small business investment capital company* in accordance with reasonable fees assessed by the department."

Section 17. Section 90-8-321, MCA, is amended to read:

"**90-8-321. Decertification.** (1) If the examination conducted pursuant to 90-8-313 discloses that a Montana capital company *or the Montana small business investment capital company* is not in compliance with the provisions of this chapter, the department of commerce may exercise any of the powers with regard to banks granted in Title 32, chapter 1, part 5, and may seize the assets of the company and liquidate it. In the event of liquidation of the assets, any penalty imposed pursuant to 90-8-301 ~~shall~~ *must* be included in the claims to be paid.

(2) If in the discretion of the department of commerce the action allowed under subsection (1) is not required to protect the company's investors, the department may place the company on notice that it will lose its certification as a Montana capital company *or as the Montana small business investment capital company* within a specified period of time if the company does not come into compliance with the provisions of this chapter. The department shall automatically decertify a Montana capital company *or the Montana small business investment capital company* that is assessed a penalty under 90-8-301~~(3)~~*(4)*.

(3) As long as the department acts in good faith, the department and its employees and agents may not be held civilly or criminally liable or liable upon their official bonds for action taken under this section or for any failure to act under it.

(4) A Montana capital company *or the Montana small business investment capital company* may apply to the department for decertification."

Section 18. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 19. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to events occurring after December 31, 1990.

Section 21. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1991.

CHAPTER NO. 264

[HB 902]

AN ACT AUTHORIZING THE SALE OF STATE LAND TO OR THE EXCHANGE OF STATE LAND WITH OTHER PUBLIC ENTITIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Sale to or exchange of property with public entity.** Notwithstanding any other section in this chapter, any lands may be sold to or exchanged for other land or for other consideration with another public entity on terms and in a manner as the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. The sale or exchange of the property may not be finally concluded until 60 days' public notice of the terms of the proposed sale or exchange has been given.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 77, chapter 2, part 3, and the provisions of Title 77, chapter 2, part 3, apply to [section 1].

Approved March 29, 1991.

CHAPTER NO. 265

[HB 920]

AN ACT AMENDING THE PATERNITY STATUTE OF LIMITATIONS TO RETROACTIVELY REVIVE ACTIONS THAT WERE BARRED OR COULD HAVE BEEN BARRED BY A SHORTER LIMITATION PERIOD; AMENDING SECTION 40-6-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-6-108, MCA, is amended to read:

"**40-6-108. Statute of limitations.** (1) An action may be commenced:

(a) at any time for the purpose of declaring the existence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1);

(b) for the purpose of declaring the nonexistence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1), only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but not later than 5 years after the child's birth.

(2) After the presumption has been rebutted, paternity of the child by another man may be determined in the same action if he has been made a party.

(3) An action to determine the existence or nonexistence of the father and child relationship as to a child who has no presumed father under 40-6-105:

(a) may not be brought by the child later than 2 years after the child attains the age of majority;

(b) may be brought by a state agency at any time after the first application is made under Title IV-D of the Social Security Act for services to the child and before the child attains the age of majority. *This subsection is intended to apply retroactively, within the meaning of 1-2-109, to any child for whom a paternity action was barred or could have been barred by a shorter limitation period. However, in previously barred actions that are revived by this subsection, the father shall have no liability to the state agency for support of the child.*

(4) The father's liability for a statutory debt created by the payment of public assistance is limited to the amount of assistance paid during the 2-year period preceding commencement of the action. This subsection does not limit the subsequent accrual of a statutory debt.

(5) Sections 40-6-107 and 40-6-108 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship or otherwise.

(6) After the conclusion of an adoption proceeding under chapter 8, Title 40, no further action to declare the existence or nonexistence of the father and child relationship of the adopted child may be commenced, except as provided in 40-8-112."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1991.

CHAPTER NO. 266

[HB 922]

AN ACT TO CREATE AN ADMINISTRATIVE PROCEDURE FOR PERIODICALLY MODIFYING CHILD SUPPORT ORDERS; AND AMENDING SECTIONS 40-4-204, 40-5-201, 40-5-226, AND 40-6-116, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Registration of support orders.** (1) The department shall establish and maintain a support order registry.

(2) The registry must contain the support orders issued by the department.

(3) In an IV-D case, the department shall, upon the request of the obligor or the obligee, or may register a support order of a district court of this state or a support order of a court or administrative agency of another

state with jurisdiction to enter the order. A certified copy of the order to be registered must accompany the written request for registration.

(4) Upon registration, the support order must be treated in the same manner and have the same effect as a support order issued by the department, and an abstract of the order may be filed under the provisions of 40-5-227. Review of the order under [section 2] is available only when the department is providing child support enforcement services for the order.

Section 2. **Application for review of child support orders.** (1) Upon the application of the department, the obligor, or the obligee, a hearing officer appointed pursuant to [section 3] shall review support orders filed with the support order registry. The purpose of the review is to determine whether the support order should be modified in accordance with the guidelines.

(2) Jurisdiction to conduct the review and to issue a modifying order under [section 3] is authorized when:

(a) the obligor and the obligee reside in this state;

(b) jurisdiction can be obtained as provided under 40-4-210; or

(c) the obligor resides in this state and the department is providing IV-D enforcement services for the order.

(3) Jurisdiction to review a child support order under this section does not confer jurisdiction for any other purpose, such as custody or visitation disputes.

(4) Criteria constituting sufficient grounds for review of a child support order include:

(a) inconsistency with this state's guidelines, unless the inconsistency is considered negligible under department rules; or

(b) availability of health insurance coverage to the obligor's child through the obligor's employment or other group insurance.

(5) The department shall make available procedures and forms that allow the obligor or the obligee to complete the review process without legal counsel.

Section 3. **Administrative review of child support orders — modifying orders.** (1) A review application setting forth facts meeting any of the criteria for review of a child support order established in [section 2] must be scheduled for an administrative hearing, and a hearing officer must be appointed by the department. Unless the hearing officer determines under rules of the department that an in-person hearing is necessary, the hearing must be conducted by telephone conference. The order scheduling the hearing must be served on the obligor and the obligee at least 60 days before the hearing. The order must include the following information as an exception to 2-4-601:

(a) the date and time for the hearing and, if appropriate, the place for the hearing;

(b) a statement of the purpose, objectives, and possible consequences of the review;

(c) a statement of the right of the obligor and the obligee to request the hearing officer to issue subpoenas compelling the appearance of witnesses and the production of documents for the hearing; and

(d) a requirement that the obligor and the obligee provide the hearing officer with telephone numbers at which they and their witnesses may be contacted for the hearing.

(2) The hearing officer may issue an order commanding the obligor or the obligee, or both, to produce financial information. The order must be personally served with the order scheduling the hearing. The hearing officer may also issue subpoenas ordering the department or other parties to produce information in their possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines. Any information so obtained by the hearing officer must be provided to the department and other parties prior to the hearing.

(3) The requested modification of the order must be determined on the evidence submitted to the hearing officer under the following conditions:

(a) If an applicant other than the department fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered a withdrawal of the application.

(b) If a party other than the applicant fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered to mean that the party does not oppose the modification.

(c) If the department is the applicant and if either the obligor or the obligee, or both, fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered an admission that the party or parties do not oppose the modification.

(4) An order entered under the circumstances described in subsection (3)(a), (3)(b), or (3)(c) becomes final within 10 days of issuance unless a party provides the hearing officer an affidavit showing good cause for failure to provide a telephone number or failure to be available for the hearing when telephoned.

(5) A provision of law may not be construed to mean that an obligor or an obligee is a client of the department, and the department is not considered a party to the action.

(6) (a) In addition to the powers and duties provided by other law, the hearing officer shall, to ensure the equitable determination of a support obligation, during a review hearing:

(i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;

(ii) introduce evidence on behalf of the parties;

(iii) apply the guidelines to the facts elicited from the hearing; and

(iv) inquire as to any circumstances that may require variance from the guidelines.

(b) If a party is represented by legal counsel, the hearing officer may allow the counsel to present that party's case.

(7) The hearing officer shall determine a support obligation in accordance with the guidelines and shall issue a modifying order. If the hearing officer determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department, the modifying order may not change the amount of the support obligation. Even though the review may indicate that a modification of the support obligation is appropriate, the department may not modify the support order if the hearing officer determines, after the review hearing, that to do so would not be in the best interests of the child under the rules issued by the department. An increase in child support is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child. The modifying order must prospectively modify the underlying support order from the date of service of the order scheduling the hearing.

(8) The hearing officer shall make a written determination whether health insurance is available to the child of the obligor through the obligor's employment or other group insurance. If the hearing officer determines health insurance is available to the child of the obligor, the hearing officer shall issue a modifying order that requires the obligor to obtain and keep health insurance for the child. If the hearing officer determines that health insurance is not available to the child of the obligor, he shall issue a modifying order containing the notices provided in subsection (9). An order to provide health insurance is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child.

(9) In addition to complying with other requirements of law, the modifying order must include the following notices and warnings:

(a) that the obligor shall keep the department informed of the name and address of his current employer and information on health insurance available to the obligor through the obligor's employment or other group insurance;

(b) that the obligor shall obtain and keep health insurance for the child of the obligor whenever it is available through the obligor's employment or other group insurance; and

(c) that the modifying order is subject to future administrative review and modification by the department upon the request of the department or a party under [sections 1 through 3] when the department is providing services under IV-D.

(10) Orders entered under this section are final agency decisions, subject to judicial review pursuant to the Montana Administrative Procedure Act. All orders entered under this section must notify the parties that the order is subject to judicial review under Title 2, chapter 4, part 7.

(11) The parties to the support order and the department when it is providing services under IV-D may enforce the support order or modify that order independently, as provided in 40-4-208 and 53-2-613(4)(d).

Section 4. Section 40-4-204, MCA, is amended to read:

"**40-4-204. Child support — orders to address health insurance — automatic withholding of child support.** (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the custodial parent;

(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and his educational and medical needs;

(e) the financial resources and needs of the noncustodial parent;

(f) the age of the child;

(g) the cost of day care for the child;

(h) any custody arrangement that is ordered or decided upon; and

(i) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209, unless the court finds by clear and convincing evidence that the

application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of such standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(4) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(5) (a) Except as provided in subsection (5)(b), each district court judgment, decree, or order establishing a child support obligation under this title, whether temporary or final, and each modification of an existing child support order must:

(i) provide that the amount of child support must be withheld from the obligor's income and paid to the department pursuant to procedures established by the department under Title 40, chapter 5, part 4; and

(ii) include the obligor's social security number and the name and address of the obligor's employer and of any other payor of income to the obligor.

(b) Income is not subject to automatic withholding if:

(i) the obligee or obligor demonstrates and the court finds that there is good cause not to require automatic income withholding; or

(ii) the obligee and obligor agree in writing to an alternative arrangement regarding the payment of child support that provides sufficient security to ensure compliance with their agreement. The security is in addition to the child support obligation.

(c) When a judgment, decree, or order for child support is entered or modified and automatic income withholding is ordered, an obligee who is not a recipient of public assistance shall apply for the support enforcement services of the department pursuant to Title IV-D of the Social Security Act for the collection of support through automatic income withholding under Title 40, chapter 5, part 4. The department shall accept the application. Pending an application, the department shall immediately implement automatic income withholding and hold any amounts collected in trust for the obligee until the obligee makes application.

(d) When automatic income withholding is ordered under subsection (5)(a), the clerk of court shall immediately forward a copy of the order to the department.

(e) If an obligor is not subject to income withholding or is exempted from income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(6) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(7) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under [sections 1 through 3] when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order."

Section 5. Section 40-5-201, MCA, is amended to read:

"40-5-201. **Definitions.** As used in this part, the following definitions apply:

(1) "Alleged father" means a man who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a man who is presumed to be a child's father under the provisions of 40-6-105.

(2) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States and for whom:

(a) support rights are assigned under 53-2-613;

(b) a public assistance payment has been made;

(c) the department is providing support enforcement services under 40-5-203; or

(d) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(3) "Department" means the department of social and rehabilitation services.

(4) "Director" means the director of the department of social and rehabilitation services or his authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearing officer" or "hearing examiner" means the hearing officer appointed by the department for the purposes of this chapter.

~~(5)~~*(7)* "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

~~(6)~~*(8)* "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

~~(7)~~*(9)* "Obligor" means a person, including an alleged father, who owes a duty of support.

~~(8)~~*(10)* "Parent" means the natural or adoptive parent of a child.

~~(9)~~*(11)* "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

~~(10)~~*(12)* "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

~~(11)~~*(13)* "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

~~(12)~~*(14)* "Support order" means an order providing a determinable amount for temporary or final periodic payment of funds for the support of a child, that is issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state;

(c) an administrative agency pursuant to proceedings under this part; or

(d) an administrative agency of another state with a hearing function and process similar to those of the department under this part.

~~(13)~~*(15)* "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated thereunder."

Section 6. Section 40-5-226, MCA, is amended to read:

"**40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

(2) At the discretion of the hearing officer, the administrative hearing may be held:

(a) in the county of residence or other county convenient to the obligor or obligee; or

(b) in the county in which the department or any of its offices are located.

(3) If a hearing is requested, it must be scheduled within 20 days.

(4) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with such determination.

(5) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.

(6) In a hearing to determine financial responsibility, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the scale of suggested minimum contributions under 40-5-214. The hearing officer is not limited to the amounts stated in the notice.

(7) Within 20 days of the hearing, the hearing officer shall enter a final ~~decison~~ *decision* and order. The determination of the hearing officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act.

~~(8) If a support order is established under this part, any party may file a verified petition with the department alleging facts constituting a material change of circumstances. Upon the filing of such petition, the department shall issue an order to the nonpetitioning party to appear and show cause why the decision previously entered should not be prospectively modified. The order to appear and show cause, together with a copy of the verified petition, must be served by the petitioner upon all other parties in the manner provided by this part. Upon receipt of proof of service, the department shall schedule a hearing not less than 15 or more than 30 days from the date of service, unless extended for good cause shown. Prospective modification may be ordered but only upon a showing of good cause and material change of circumstances.~~

(8) A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under [sections 1 through 3] when the department is providing services under IV-D for the enforcement of the order.

(9) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearing officer.

(10) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure."

Section 7. Section 40-6-116, MCA, is amended to read:

"**40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, including his medical needs;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others;

(i) the value of services contributed by the custodial parent;

(j) the cost of day care for the child; and

(k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant

to 40-5-209, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of such standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(7) The judgment or order concerning child support and each modification of a judgment or order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(8) (a) Except as provided in subsection (8)(b), each district court judgment or order establishing a child support obligation under this part, whether temporary or final, and each modification of an existing child support order must:

(i) provide that the amount of child support must be withheld from the obligor's income and paid to the department pursuant to procedures established by the department under Title 40, chapter 5, part 4; and

(ii) include the obligor's social security number and the name and address of the obligor's employer and of any other payor of income to the obligor.

(b) Income is not subject to automatic withholding if:

(i) the obligee or obligor demonstrates and the court finds that there is good cause not to require automatic income withholding; or

(ii) the obligee and obligor agree in writing to an alternative arrangement regarding the payment of child support that provides sufficient security to ensure compliance with their agreement. The security is in addition to the child support obligation.

(c) When a judgment or order for child support is entered or modified and automatic income withholding is ordered, an obligee who is not a recipient of public assistance shall apply for the support enforcement services of the department pursuant to Title IV-D of the Social Security Act for the collection of support through automatic income withholding under Title 40, chapter 5, part 4. The department shall accept the application. Pending an application, the department shall immediately implement automatic income withholding and hold any amounts collected in trust for the obligee until the obligee makes application.

(d) When automatic income withholding is ordered under subsection (8)(a), the clerk of court shall immediately forward a copy of the order to the department.

(9) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(10) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under [sections 1 through 3] when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order."

Section 8. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to [sections 1 through 3].

Approved March 29, 1991.

CHAPTER NO. 267

[SB 86]

AN ACT TO CLARIFY THE TAXATION OF OIL AND NATURAL GAS BY DELETING OBSOLETE REFERENCES TO INTERIM PRODUCTION; TO CLARIFY THE ALLOCATION OF NEW PRODUCTION;

AMENDING SECTIONS 15-23-601, 15-23-602, 15-23-603, 15-23-607, 15-23-613, 15-23-621, 15-36-101, 20-9-141, 20-9-331, 20-9-333, AND 20-10-144, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-601, MCA, is amended to read:

"**15-23-601. Definitions.** As used in this part, the following definitions apply:

(1) "Excise tax" means the windfall profit tax on domestic crude oil imposed by Title I of the federal Crude Oil Windfall Profit Tax Act of 1980, as enacted or as amended.

~~(2) "Interim production" means the production of natural gas, petroleum, or other crude or mineral oil from any well that:~~

~~(a) has not produced natural gas, petroleum, or other crude or mineral oil during the 5 years immediately preceding the first month of interim production; and~~

~~(b) began interim production after June 30, 1985, and before April 1, 1987.~~

~~(3)~~*(2)* The term "new production" means the production of natural gas, petroleum, or other crude or mineral oil from any well~~:~~

~~(a)~~ *drilled after June 30, 1985, or* that has not produced natural gas, petroleum, or other crude or mineral oil during the 5 years immediately preceding the first month of qualified new production~~; and~~

~~(b) on which the notification required in 15-36-121(2) was given.~~

~~(4)~~*(3)* The terms "operator" and "producer" mean any person who engages in the business of drilling for, extracting, or producing any natural gas, petroleum, or other crude or mineral oil.

~~(5)~~*(4)* The term "well" includes each single well or group of wells, including dry wells, in one field or production unit and under the control of one operator or producer."

Section 2. Section 15-23-602, MCA, is amended to read:

"**15-23-602. Statement of sales proceeds on ~~interim production and~~ new production.** (1) As provided in subsection (2), each operator or producer of ~~interim production or~~ new production of natural gas, petroleum, or other crude or mineral oil shall make out and deliver to the department of revenue a statement of the gross sales proceeds of ~~interim production or~~ new production of natural gas, petroleum, or other crude or mineral oil from each well owned or worked by the person. The gross sales proceeds must be determined by multiplying the units of production sold from the well times the royalty unit value of that production at the well. The statement must be in the form prescribed by the department and must be verified by the oath of the operator or producer or the manager, superintendent, agent, president, or vice-president of the corporation, association, or partnership. The statement must show the following:

(a) the name and address of the operator, together with a list in duplicate of the names and addresses of any persons owning or claiming any royalty interest in the production from the well or the proceeds derived from the sale of the production, and the amount paid or yielded as royalty to each of those persons during the period covered by the statement;

(b) the description and location of the well;

(c) the number of cubic feet of natural gas, barrels of petroleum or other crude or mineral oil sold from the well during the period covered by the statement; and

(d) the gross sales proceeds in dollars and cents or, in the case of sales between parties not acting at arm's length, the greater of the gross sales proceeds from or the fair market value of the products sold.

(2) Each operator having ~~interim production or~~ new production as defined in 15-23-601 shall, on or before the last day of the months of October, January, April, and July, make out and deliver to the department of revenue a statement of the gross sales proceeds of the ~~interim production or~~ new production from each well owned or worked by the person during the preceding calendar quarter. The statement must be in the form prescribed by the department and verified as provided in subsection (1). The statement must show the information required in subsections (1)(a) through (1)(d)."

Section 3. Section 15-23-603, MCA, is amended to read:

"**15-23-603. Net proceeds — how computed.** (1) As provided in subsection (2), the department of revenue shall calculate and compute from the returns the gross sales proceeds of the product yielded from the well for the year covered by the statement and shall calculate the net proceeds of the well yielded to the producer, which net proceeds are determined by subtracting from the gross sales proceeds of the well all royalty paid in cash by the operator or producer and the gross value of all royalty apportioned in kind by the operator or producer determined by using as the value of a barrel of oil or a cubic foot of gas the average selling price for the calendar year of a barrel of oil or a cubic foot of gas from the well out of which the royalty was paid.

(2) For ~~interim production or~~ new production, net proceeds are the equivalent of the gross sales proceeds, without deduction for excise taxes, of the product yielded from the well for the quarter covered by the statement, except that in computing the total number of barrels of petroleum and other mineral or crude oil or cubic feet of natural gas produced, there must be deducted so much of the product as is used in the operation of the well from which the petroleum or other mineral or crude oil or natural gas is produced for pumping the petroleum or other mineral or crude oil or natural gas from the well to a tank or pipeline.

(3) In the statement of sales proceeds required under 15-23-602 for lease or unitized areas from which ~~interim or~~ new production and other production have been sold, the number of barrels of ~~interim and~~ new production of oil or cubic feet of ~~interim or~~ new production of gas must be segregated from and stated separately from the number of barrels of other production of oil or cubic feet of other production of gas.

(4) In calculating the deduction for money expended for necessary chemical supplies needed and used in a tertiary recovery project approved by the department of revenue, as provided in 15-36-101, the department shall require that the necessary chemical supplies, which include but are not limited to carbon dioxide supplies, be amortized over a 10-year period beginning with the year in which the money was expended."

Section 4. Section 15-23-607, MCA, is amended to read:

"**15-23-607. County assessors to compute taxes.** (1) Immediately after the board of county commissioners has fixed tax levies on the second Monday in August, the county assessor shall, subject to the provisions of 15-23-612, compute the taxes on net proceeds, as provided in subsection (2) of this section, and royalty assessments and shall deliver the book to the county treasurer on or before September 15. The county treasurer shall proceed to give full notice of the assessments to the operator and shall collect the taxes as provided by law.

(2) For ~~interim production or~~ new production, as defined in 15-23-601, the county assessor may not levy or assess any mills against the value of the ~~interim production or~~ new production, but shall instead levy a tax as follows:

(a) for ~~interim production or~~ new production of petroleum or other mineral or crude oil, 7% of net proceeds, as described in 15-23-603(2); or

(b) for ~~interim production or~~ new production of natural gas, 12% of net proceeds, as described in 15-23-603(2).

(3) The amount of tax levied in subsections (2)(a) and (2)(b), divided by the appropriate tax rate and multiplied by 60%, must be treated as taxable value for county bonding purposes.

(4) The taxable value of net proceeds for the purpose of computing guaranteed tax base aid for schools is the amount of tax received by a district in the previous year divided by the number of mills levied by the district in the previous year, multiplied by 1,000. This amount must be added to the district, county, and statewide taxable value when computing guaranteed tax base aid under 20-9-368.

(5) The operator or producer is liable for the payment of the taxes that, except as provided in 15-16-121, are payable by and must be collected from the operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines. However, the operator may at his option withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon

the royalty or royalty interest. After the withholding, any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests."

Section 5. Section 15-23-613, MCA, is amended to read:

"**15-23-613. Disposition of ~~interim production and~~ new production taxes.** The county treasurer shall credit all taxes on ~~interim production and~~ new production, as provided for in 15-23-607, in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as property taxes were distributed in the year preceding the budget year."

Section 6. Section 15-23-621, MCA, is amended to read:

"**15-23-621. Allocation of new production.** (1) If a lease has production that does not qualify for new ~~or interim~~ production and ~~a producing well is completed on the lease after December 31, 1986~~ *has new production,* the allocation of the new production must be based on the average daily production per well. The average daily production per well must be determined by dividing the total production for the quarter by the number of well production days for the quarter.

(2) ~~The~~ *Except as provided in subsection (4), the* number of well production days for the quarter is the sum of the number of completed wells on the first day of the quarter times the number of days in the quarter plus the number of days from the date of completion of any wells during the quarter to the end of the quarter. New production for the quarter must then be calculated by multiplying the average daily production per well times the number of wells ~~completed after December 31, 1986,~~ *producing new production* times the number of production days attributed to those wells for the quarter. The value of the production must be based on the average price received for the production for the quarter.

(3) Average daily production, well production days, and average price must be calculated each quarter.

(4) Subsections (1) through (3) do not apply to a well producing new production from a lease that has production that does not qualify for new production if the actual new production from the well can be determined in a verifiable manner."

Section 7. Section 15-36-101, MCA, is amended to read:

"**15-36-101. Definitions and rate of tax — state severance tax — local government severance tax — assessment of nonworking interest owner — exemption.** (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced shall, except as provided in 15-36-121, each year when engaged in or carrying on the business in this state pay to the department of revenue a state severance tax for the exclusive use and benefit of the state of Montana plus a local government severance tax in lieu of a tax on net proceeds for the exclusive use and benefit of local government. Except as provided in subsection (3), the state severance tax and the local government severance tax are as follows:

(a) except as provided in subsections (1)(b), (1)(c), and (1)(d), a 5% state severance tax on the total gross taxable value of all the petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 8.4% on the gross taxable value of all the petroleum and other mineral or crude oil produced by the person other than ~~interim production and~~ new production, from each lease or unit; but in determining the amount of the state severance tax and local government severance tax, there must be excluded from consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;

(b) a 2.65% state severance tax on the total gross taxable value of all natural gas produced by the person, plus the local government severance tax of 15.25% on the total gross taxable value of all natural gas produced by the person other than ~~interim production or~~ new production, from each lease or unit; but in determining the amount of the state severance tax and the local government severance tax, there must be excluded from consideration all gas produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the gas or petroleum or crude or mineral oil; and there must also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) a 2.5% state severance tax on the total gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 5% on the total gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person other than ~~interim production and~~ new production, from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet the following requirements:

(i) the project must be approved as a tertiary recovery project by the department of revenue. The approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) the property to be affected by the project must be adequately delineated according to the specifications required by the department; and

(iii) the project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the department to be significant in light of all the facts and circumstances, in the amount of crude oil which may potentially be recovered. For purposes of this section, tertiary recovery methods include but are not limited to:

(A) miscible fluid displacement;

(B) steam drive injection;

(C) micellar/emulsion flooding;

(D) in situ combustion;

(E) polymer augmented water flooding;

(F) cyclic steam injection;

(G) alkaline or caustic flooding;

(H) carbon dioxide water flooding;

(I) immiscible carbon dioxide displacement; or

(J) any other method approved by the department as a tertiary recovery method.

(d) a 5% local government severance tax on the total gross taxable value of all petroleum and other mineral or crude oil produced by the person other than ~~interim and~~ new production produced by a stripper well, as defined in 15-36-121.

(2) For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the department of revenue, to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the department must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project.

(3) (a) A local government severance tax is imposed on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas subject to local government severance taxes imposed under this chapter. The local government severance tax on nonworking interest owners is computed at the following rates:

(i) 12.5% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum and other mineral or crude oil;

(ii) 15.25% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted or marketable natural gas.

(b) The amounts paid or apportioned in kind to nonworking interest owners are exempt from the local government severance taxes imposed under 15-36-121(2) and under subsections (1)(a) through (1)(d) of this section.

(4) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil or natural gas well or to work in or about any oil or natural gas well or prospect or explore for or do any work for the purpose of developing any petroleum, other mineral or crude oil, or natural gas to pay the severance tax, nor may work done or the drilling of a well or wells for the purpose of prospecting or exploring for petroleum, other mineral or crude oil, or natural gas or for the purpose of developing them be considered to be the engaging in or carrying on of the business. If, in the doing of any work, in the drilling of any oil or natural gas well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum, other mineral or crude oil, or natural gas in excess of the quantity required by the person for carrying on the operation is produced sufficient in quantity to justify the marketing of the petroleum, other mineral or crude oil, or natural gas, the work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of the business of producing petroleum, other mineral or crude oil, or natural gas within this state within the meaning of this section.

(5) Every person required to pay the state or local government severance tax under this section shall pay the tax in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of the extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the interests that are owned by the federal, state, county, or municipal governments are exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(6) For purposes of this section, the following definitions apply:

(a) "Gross taxable value" means the gross value of the product as determined in 15-36-103 less the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas.

(b) "Nonworking interest owner" means any interest owner who does not share in the development and operation costs of the lease or unit."

Section 8. Section 20-9-141, MCA, is amended to read:

"**20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the amount established by the schedules in 20-9-316 through 20-9-321 by totaling:

(i) the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303; and

(ii) any additional general fund budget amount adopted by the trustees of the district under the provisions of 20-9-353, including any additional levies authorized by the electors of the district.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund cash reappropriated, as established under the provisions of 20-9-104;

(iv) anticipated or reappropriated state impact aid received under the provisions of 20-9-304;

(v) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(vi) anticipated net proceeds taxes for ~~interim production and~~ new production, as defined in 15-23-601;

(vii) anticipated revenue from local government severance taxes as provided in 15-36-112;

(viii) anticipated revenue from coal gross proceeds under 15-23-703;

(ix) anticipated interest to be earned or reappropriated interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

(x) anticipated revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

(xi) any other revenue anticipated by the trustees to be received during the ensuing school fiscal year which may be used to finance the general fund.

(c) Subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from the total requirement determined in subsection (1)(a).

(2) The net general fund levy requirement determined in subsection (1)(c) must be reported to the county commissioners on the second Monday of August by the county superintendent as the general fund levy requirement for the district, and a levy must be made by the county commissioners in accordance with 20-9-142."

Section 9. Section 20-9-331, MCA, is amended to read:

"**20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program.** (1) The county commissioners of each county shall levy an annual basic tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204, for the purposes of local and state foundation program support. The revenue collected from this levy must be apportioned to the support of the foundation programs of the elementary school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined in subsection (1)(a), the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(c) If revenue from the basic levy prescribed by this section when combined with the other revenue from subsection (2) is insufficient to fully fund the percentage determined in 20-9-347(1)(b) and the county is eligible for an apportionment of state equalization aid under the provisions of 20-9-347(1)(c), the county superintendent shall notify the superintendent of public instruction of the deficiency. The superintendent of public instruction shall increase the state equalization aid payments to the districts in the affected county to offset the deficiency. A payment may not be made under this subsection (c) that allows a district to receive foundation program funding in excess of the foundation program amount of the district.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary district foundation programs of the county as prescribed in 20-9-334, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) net proceeds taxes for ~~interim production and~~ new production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; and

(h) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204."

Section 10. Section 20-9-333, MCA, is amended to read:

"**20-9-333. Basic special levy and other revenues for county equalization of high school district foundation program.** (1) The county commissioners of each county shall levy an annual basic special tax for high schools of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204, for the purposes of local and state foundation program support. The revenue collected from this levy must be apportioned to the support of the foundation programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined in subsection (1)(a), the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(c) If revenue from the basic levy prescribed by this section when combined with the other revenue from subsection (2) is insufficient to fully fund the percentage determined in 20-9-347(1)(b) and the county is eligible for an apportionment of state equalization aid under the provisions of 20-9-347(1)(c), the county superintendent shall notify the superintendent of public instruction of the deficiency. The superintendent of public instruction shall increase the state equalization aid payments to the districts in the affected county to offset the deficiency. A payment may not be made under this subsection (c) that allows a district to receive foundation program funding in excess of the foundation program amount of the district.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school district foundation programs of the county as prescribed in 20-9-334, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) net proceeds taxes for ~~interim production and~~ new production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; and

(e) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204."

Section 11. Section 20-10-144, MCA, is amended to read:

"**20-10-144. Computation of revenues and net tax levy requirements for the transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget must be reduced to the limitation amount and used in this determination of the schedule amount.

(2) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, is divided by 3 and the resulting one-third amount is used to determine the available state and county revenue to be budgeted on the following basis:

(a) the resulting one-third amount is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be two-thirds of the schedule amount attributed to the transportation of special education pupils;

(b) the resulting one-third amount, except as provided for joint elementary districts in subsection (2)(e), is the budgeted county transportation reimbursement for elementary districts and must be financed by the basic county tax under the provisions of 20-9-334;

(c) the resulting one-third amount multiplied by 2 is the budgeted county transportation reimbursement amount for high school districts financed under the provisions of subsection (5), except as provided for joint high school districts in subsection (2)(e), and except that the county transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be one-third of the schedule amount attributed to the transportation of special education pupils;

(d) when the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and cash reappropriated must be used to reduce the county financing obligation in subsection (2)(b) or (2)(c) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a); and

(e) the county revenue requirement for a joint district, after the application of any district money under subsection (2)(d), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act; plus

(b) anticipated payments from other districts for providing school bus transportation services for the district; plus

(c) anticipated payments from a parent or guardian for providing school bus transportation services for his child; plus

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4); plus

(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204; plus

(f) gross proceeds taxes from coal under 15-23-703; plus

(g) net proceeds taxes for ~~interim production and~~ new production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; plus

(h) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year which may be used to finance the transportation fund; plus

(i) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the transportation fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the transportation fund. The cash reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount and, for an elementary district, adding the difference to the district obligation to finance one-third of the schedule amount as determined in subsection (2); and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The county levy requirement for the financing of the county transportation reimbursement to high school districts is computed by adding all

requirements for all the high school districts of the county, including the county's obligation for reimbursements in joint high school districts.

(6) The transportation fund levy requirements determined in subsection (4) for each district and in subsection (5) for the county must be reported to the county commissioners on the second Monday of August by the county superintendent as the transportation fund levy requirements for the district and for the county, and the levies must be made by the county commissioners in accordance with 20-9-142."

Section 12. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1991.

CHAPTER NO. 268

[SB 97]

AN ACT ESTABLISHING PROCEDURES FOR THE POSTING OF PRIVATE LAND ALONG PUBLIC ROADS; ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PROVIDE INFORMATION REGARDING POSTING REQUIREMENTS; AND AMENDING SECTION 45-6-201, MCA.

WHEREAS, the Attorney General in 42 A.G. Op. 96 (1988), held that unfenced private property along public roadways may not be closed to public access through the use of orange markings placed on posts located where the road enters the private property; and

WHEREAS, the Legislature desires to address the problem of adequate posting of private land while ensuring proper public access to public roads and the proper inclusion of county road mileage for gas tax purposes.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-201, MCA, is amended to read:

"**45-6-201. Definition of "enter or remain unlawfully".** (1) A person enters or remains unlawfully in or upon any vehicle, occupied structure, or premises when he is not licensed, invited, or otherwise privileged to do so. Privilege to enter or remain upon land is extended either by the explicit permission of the landowner or other authorized person or by the failure of the landowner or other authorized person to post notice denying entry onto private land. ~~Such~~ *The* privilege may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.

(2) To ~~be~~ *provide for* effective *posting of private land through which the public has no right-of-way* ~~under this section~~, the notice provided for in subsection (1) must satisfy the following requirements:

(a) notice must be placed on a post, structure, or natural object by marking it with written notice or with not less than 50 square inches of fluorescent orange paint, except that when metal fenceposts are used, the entire post must be painted; and

(b) the notice described in subsection (2)(a) must be placed at each outer gate and normal point of access to the property, including both sides of a water body crossing the property wherever the water body intersects an outer boundary line.

(3) To provide for effective posting of private land through which or along which the public has an unfenced right-of-way by means of a public road, a landowner shall:

(a) place a conspicuous sign no closer than 30 feet of the centerline of the roadway where it enters the private land, stating words substantially similar to "PRIVATE PROPERTY, NO TRESPASSING OFF ROAD NEXT ___ MILES"; or

(b) place notice, as described in subsection (2)(a), no closer than 30 feet of the centerline of the roadway at regular intervals of not less than one-fourth mile along the roadway where it borders unfenced private land, except that orange markings may not be placed on posts where the public roadway enters the private land.

~~(3)~~*(4)* If property has been posted in substantial compliance with subsection (2) *or (3)*, it is considered closed to public access unless explicit permission to enter is given by the landowner or his authorized agent.

~~(4)~~*(5)* The department of fish, wildlife, and parks shall attempt to educate and inform all persons holding hunting, fishing, or trapping licenses or permits by including on any publication concerning ~~such~~ *the* licenses or permits, in condensed form, the provisions of this section concerning entry on private land. The department shall use public media, as well as its own publications, in attempting to educate and inform other recreational users of the provisions of this section. *In the interests of providing the public with clear information regarding the public nature of certain unfenced rural rights-of-way, the department may develop and distribute posting signs that satisfy the requirements of subsection (3).*

~~(5)~~*(6)* For purposes of this section, "land" means land as defined in 70-15-102.

~~(6)~~*(7)* In no event ~~shall~~ *may* civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section."

Approved March 29, 1991.

CHAPTER NO. 269

[SB 108]

AN ACT REVISING THE PROCEDURES FOR ELECTING IRRIGATION DISTRICT TRUSTEES; ALLOWING NOMINATIONS TO BE MADE FROM THE FLOOR AT THE ANNUAL MEETING; PERMITTING ELECTION BY ACCLAMATION WHEN THERE IS ONLY ONE NOMINEE FOR A POSITION; AND AMENDING SECTION 85-7-1702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-1702, MCA, is amended to read:

"**85-7-1702. Regular election — term of office.** *(1) The regular election for commissioners in each district must be held annually in accordance with 13-1-104 and 13-1-401.*

~~(1)~~*(2)* Candidates for the office of commissioner may be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election and signed by at least five electors of the district. If no nominations are made, *the following procedures must be followed:*

(a) For elections held in accordance with 13-1-401(1), the electors of the district shall write on the ballots the name ~~or names~~ of the *person or* persons for whom they desire to vote.

(b) For elections held in accordance with 13-1-401(2), the electors of the district may either accept nominations from the floor or write on the ballots the name of the person or persons for whom they desire to vote.

~~(2) The regular election for commissioners in each district shall be held annually in accordance with 13-1-104 and 13-1-401.~~

(3) If there is only one nominee for a ballot position, the nominee may be declared elected by acclamation or in accordance with 13-1-304.

~~(3)~~*(4)* Within 40 days following their election, the commissioners shall meet and organize as a board by electing a president from their number and a secretary, who may or may not be a commissioner, and who shall each hold office ~~during~~ *at* the pleasure of the board. The term of office of each commissioner ~~shall begin~~ *begins* on the date of the organizational meeting after the regular election and ~~shall continue~~ *continues* for 3 years and until the election and qualification of his successor.

~~(4)~~*(5)* Commissioners are elected by the electors of the entire district."

Approved March 29, 1991.

CHAPTER NO. 270

[SB 112]

AN ACT ALLOWING THE DEPARTMENT OF COMMERCE TO HIRE AN EXECUTIVE SECRETARY FOR THE BOARD OF REALTY REGULATION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Executive secretary — appointment, duties, and qualifications.** (1) The department of commerce may hire an executive secretary to carry out duties prescribed by the board pursuant to the board's responsibilities and duties established by law.

(2) The person hired to be executive secretary:

(a) shall possess at least a bachelor's degree from an accredited college or university;

(b) may not be an officer or paid employee of a real estate association or group of real estate dealers or brokers;

(c) must be a citizen of the United States of America; and

(d) must be of good moral character.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 51, part 2, and the provisions of Title 37, chapter 51, part 2, apply to [section 1].

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved March 29, 1991.

CHAPTER NO. 271

[SB 152]

AN ACT TO CLARIFY THE EXTENT OF THE TAX EXEMPTION ACCORDED PROPERTY OF NONPROFIT MUSEUMS, ART GALLERIES, ZOOS, AND OBSERVATORIES; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts, except, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public *museums,* art galleries, *zoos,* and ~~public~~ observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) provided the tools are owned by the taxpayer, the first $15,000 or less of market value of tools that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment; and

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105.

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) ~~The terms~~ *For the purposes of subsection (1)(g), the term* "public *museums,* art galleries~~"~~, *zoos,* and ~~"public~~ observatories" ~~include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only~~ *means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:*

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 2. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved March 29, 1991.

CHAPTER NO. 272

[SB 169]

AN ACT REVISING THE LAWS RELATING TO AUTOMOBILE THEFT AND CONSUMER FRAUD; AUTHORIZING INSURERS TO RELEASE CERTAIN INFORMATION RELATING TO MOTOR VEHICLE THEFT OR MOTOR VEHICLE INSURANCE FRAUD TO AUTHORIZED GOVERNMENTAL AGENCIES AND LIENHOLDERS; PROVIDING FOR CONFIDENTIALITY OF INFORMATION AND IMMUNITY FOR EX-

CHANGE OF INFORMATION; PROVIDING A PROCEDURE FOR ASSIGNMENT OF SPECIAL IDENTIFICATION NUMBERS FOR VEHICLES WITH ALTERED, OBLITERATED, OR MISSING SERIAL NUMBERS; INCREASING THE PENALTY FOR UNLAWFULLY ALTERING A MOTOR VEHICLE IDENTIFICATION NUMBER AND FOR TAMPERING WITH AN ODOMETER OR VIOLATING ODOMETER STATEMENT REQUIREMENTS; REQUIRING REVOCATION OF A MOTOR VEHICLE DEALER'S LICENSE UPON CONVICTION OF VIOLATING THE ODOMETER STATEMENT REQUIREMENTS; ELIMINATING PROBATIONARY LICENSES FOR MOTOR VEHICLE DEALERS; AND AMENDING SECTIONS 61-3-106, 61-3-107, 61-3-604, AND 61-3-607, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-106, MCA, is amended to read:

"**61-3-106. Report of stolen and recovered motor vehicles — accessibility — *insurance fraud and theft reporting — immunity.*** (1) It shall be the duty of the sheriff of every county of the state and of the chief of police or commissioner of police of every city to make an immediate entry regarding each vehicle theft or recovery into the state automated stolen vehicle file maintained by the law enforcement network system (LENS). Failure on the part of any officer shall be considered to be misfeasance in office and shall constitute grounds for removal. Upon entry of such information, LENS and the national crime information center must be allowed immediate access to the state automated stolen vehicle file. It shall also be the duty of LENS to file reports of stolen and recovered motor vehicles reported to it from other states.

(2) The state automated stolen vehicle file must be made available to the secretary of state or other proper official in each state of the United States through access to the national crime information center. Before issuing a certificate of ownership, the department shall check the vehicle identification number on the motor vehicle to be registered against the state automated stolen vehicle file.

(3) Upon written request to an insurer by an authorized governmental agency or upon an insurer's own initiative to notify a specific lienholder, an insurer or an agent authorized by an insurer to act on its behalf shall release to the requesting agency or lienholder relevant information in the insurer's possession relating to any specific motor vehicle theft or motor vehicle insurance fraud.

(4) (a) Except as otherwise provided by law, information furnished pursuant to this section is privileged and may not become part of a public record. The evidence or information is not subject to a subpoena duces tecum in a civil or criminal proceeding unless the court determines after reasonable notice to the parties listed in subsection (4)(b) and a hearing that the public interest and any ongoing investigation by the parties listed in subsection (4)(b) will not be jeopardized by compliance with the subpoena duces tecum.

(b) The notice required by subsection (4)(a) must be sent to an insurer, an agent authorized by an insurer to act on its behalf, an authorized governmental agency that has an interest in the information, and a specific lienholder.

(5) An authorized governmental agency provided with information pursuant to this section may release or provide the information to any other authorized governmental agency.

(6) An insurer, an agent authorized by an insurer to act on its behalf, or an employee of an insurer or agent is not subject to civil or criminal liability in any cause of action for releasing or receiving information under this section.

(7) As used in this section, the following definitions apply:

(a) "Authorized governmental agency" means any duly constituted criminal investigative department or agency of the United States; the state department of justice; the state auditor's office; a peace officer of the state or a political subdivision of the state; or a prosecuting attorney of any state, of any political subdivision of any state, or of the United States or any district of the United States.

(b) "Relevant information" includes but is not limited to:

(i) insurance policy information related to any motor vehicle theft or motor vehicle insurance fraud under investigation, including an application for a policy;

(ii) available policy premium payment records;

(iii) the history of previous claims made by the insured; and

(iv) information relating to the investigation of any motor vehicle theft or motor vehicle insurance fraud, including statements of any person, proof of loss and notice of loss, and any information that an insurer knows or reasonably believes reveals or may reveal the identity of a person who it has reason to believe committed a criminal or fraudulent act relating to a motor vehicle theft or motor vehicle insurance claim or has knowledge of an act that has not been reported to an authorized governmental agency.

(c) "Specific lienholder" means a person or firm that holds a security interest in a motor vehicle involved in a specific motor vehicle theft or motor vehicle insurance fraud."

Section 2. Section 61-3-107, MCA, is amended to read:

"**61-3-107. Identification number for trailers *and other vehicles*.** ~~Any~~ *(1) A* trailer, semitrailer, or housetrailer ~~which~~ *that* does not have a manufacturer's or other identifying number thereon ~~shall~~ *must* be assigned an identification number by the department. ~~upon registration of such motor vehicle. The owner or other person lawfully in possession of such motor vehicle shall stamp such number so assigned by the department upon the principal right frame member of said motor vehicle near the front end~~

~~thereof where it may be clearly and readily seen, and said stamping shall be promptly accomplished after notice of the assigned number by the department. The department may withhold registration until satisfactory proof by affidavit of such stamping is filed with it.~~

(2) The department may not issue a certificate of ownership or reissue a certificate of ownership covering a vehicle on which the identification number has been altered, removed, obliterated, defaced, omitted, or is otherwise absent unless the owner or other person lawfully in possession of the vehicle files an application with the department, accompanied by a fee of $5. The application must be on a form provided by the department and must contain information required by the department for the assignment of a special identification number for a vehicle. Upon receipt of the application and if the department is satisfied that the applicant is entitled to the assignment of an identification number, the department shall designate a special identification number for the vehicle. The department shall note the special identification number on the application and on records to be kept by the department. This assigned identification number must be stamped or securely attached in a conspicuous position on the vehicle in the manner and form prescribed by the department.

(3) In a case where the true identity of a vehicle can be established by restoring the original manufacturer's serial number or other distinguishing numbers or identification marks, the department may not assign a special identification number and shall replace the vehicle's identification mark by duplicating the manufacturer's full numeric or alphanumeric identification sequence. The department may replace an identification mark only after conducting an inquiry to determine that ownership of the vehicle bearing a restored identification mark has been lawfully transferred to the applicant. The applicant shall apply for and the department shall replace the identification mark on the vehicle as required under subsection (2).

(4) Upon receipt by the department of a certificate of inspection completed by a peace officer or authorized member of the department verifying that the identification number has been stamped or securely attached in a conspicuous position upon the vehicle, accompanied by an application for a certificate of ownership and the required fee, the department shall use the number as the numeric or alphanumeric identification mark for the vehicle in any certificate of ownership that may be issued."

Section 3. Section 61-3-604, MCA, is amended to read:

"61-3-604. **Penalty for altering identification number.** (1) A person who willfully removes or falsifies an identification number of a motor vehicle or motor vehicle engine is ~~guilty of a misdemeanor~~ *punishable by a fine of not more than $5,000 or imprisonment in the state prison for a period of not more than 10 years, or both.*

(2) Any person or persons, firm, or corporation which sells or offers for sale in this state a vehicle the original vehicle identification number of which has been destroyed, removed, altered, covered, or defaced, with the exception of electrically propelled vehicles *and vehicles bearing a state-as-*

signed identification number in accordance with 61-3-107, is ~~guilty of a misdemeanor and upon conviction thereof shall be punished~~ *punishable* by a fine of not less than $200 or more than $500 and by imprisonment in the county jail for a term of not less than 30 days or more than 180 days. Upon a second or subsequent conviction under this subsection, the punishment shall be imprisonment in the state prison for a term of not less than 1 year or more than 5 years or a fine in an amount not to exceed $50,000, or both ~~such fine and imprisonment.~~"

Section 4. Section 61-3-607, MCA, is amended to read:

"**61-3-607. Penalty for tampering with odometer or violating odometer statement requirements.** (1) It is unlawful for a person to tamper with the odometer of a motor vehicle. It is considered tampering if a person removes, turns back, or changes the reading on the odometer, except when repairing or replacing a defective odometer and setting it anew to show the true mileage, or if a person sells, offers for sale, uses, installs, or causes to be installed any device that causes the odometer to register a mileage reading other than the true mileage for the purpose of deceiving a prospective purchaser. For purposes of this section, the true mileage is that driven by the vehicle as registered by the odometer within the manufacturer's designed tolerance.

(2) A person who purposely or knowingly violates the provisions of 61-3-206 or subsection (1) of this section is ~~guilty of a misdemeanor~~ *punishable by a fine of not more than $5,000 or imprisonment in the state prison for a period of not more than 10 years, or both.* If that person is a motor vehicle dealer, the department shall ~~place the dealer in a 1-year probationary license status upon a first conviction. For a second or subsequent conviction of a violation of 61-3-206 or subsection (1) of this section, the department may suspend or~~ revoke the dealer's license. Action by the department under this subsection must conform to the contested case procedures in Title 2, chapter 4."

Approved March 29, 1991.

CHAPTER NO. 273

[SB 194]

AN ACT IMPOSING A TAX ON CERTAIN GENERATION-SKIPPING TRANSFERS; AND REQUIRING THE PERSON LIABLE FOR THE TAX TO TAKE THE MAXIMUM AMOUNT OF CREDIT ALLOWED BY FEDERAL LAW.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 7] requires the department of revenue to adopt rules for administering and enforcing the generation-skipping transfer tax. It is the intent of the legislature that the department adopt rules necessary for complying with the federal generation-skipping transfer tax and that the department model its rules on the federal regulations implementing the federal tax.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Direct skip" has the meaning given in section 2612(c), Internal Revenue Code.

(3) "Federal generation-skipping transfer tax" means the tax imposed by section 2601, Internal Revenue Code.

(4) "Generation-skipping transfer" means the generation-skipping transfer defined in section 2611, Internal Revenue Code, when the original transferor is a resident of Montana on the date of the original transfer or when the property is real or personal property located in Montana.

(5) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(6) "Original transferor" means any grantor, donor, trustor, or testator who by grant, gift, trust, or will makes a transfer of real or personal property that results in a federal generation-skipping transfer tax.

Section 2. **Imposition of tax.** (1) A tax is imposed on each generation-skipping transfer, other than a direct skip, occurring at the same time and as a result of the death of an individual, in an amount equal to the maximum federal credit allowable under section 2604, Internal Revenue Code.

(2) If any of the property transferred is real property in another state or personal property located in another state that requires the payment of a tax for which credit is received against the federal generation-skipping transfer tax, the tax due under subsection (1) must be reduced by an amount that bears the same ratio to the total state tax credit allowable for federal generation-skipping transfer tax purposes as the value of the property taxable in the other state bears to the value of the gross generation-skipping transfer for federal generation-skipping transfer tax purposes.

Section 3. **Returns — payment.** (1) A person required to file a return reporting a generation-skipping transfer under federal law shall file a duplicate of the federal return with the department and shall file any other information as the department may require. The return must be filed on or before the last day allowed for filing the federal return. A copy of amended or supplemental federal returns must be submitted to the department at the time it is filed with the internal revenue service.

(2) The tax imposed by [section 2] must be paid on or before the deadline for filing the return. The tax must be paid to the department and deposited in the general fund.

Section 4. **Liability for tax — interest on delinquent tax.** The person liable for payment of the federal generation-skipping transfer tax is liable for the tax imposed under [section 2]. If the tax imposed by [section 2] is not paid within the time established in [section 3], the tax is delinquent and draws interest at the rate of 10% a year.

Section 5. **Tax lien.** The tax imposed by [section 2] is a lien on the property subject to the tax for a period of 10 years from the time of the generation-skipping transfer. The payment of the tax and any interest due releases the lien and discharges the liability for payment of the tax. If the lien is not perfected by recording, a transfer for value to a bona fide purchaser divests the property of the lien. If the lien is perfected by recording, the rights of the state under the lien have priority over all subsequent mortgages, purchasers, or judgment creditors. The department may release the lien prior to the payment of the tax if adequate security for payment of the tax is given to the department.

Section 6. **Duty to claim maximum credit.** A person liable for payment of the tax imposed under [section 2] shall claim the maximum federal credit allowable for the portion of the state generation-skipping transfer tax paid with respect to property included in a taxable generation-skipping transfer. A person claiming less than the maximum federal credit allowable is liable for the full amount of the tax imposed under [section 2].

Section 7. **Applicability of other taxes — rulemaking.** The provisions of Title 72, chapter 16, parts 1 through 8, relating to the tax on inheritances and transfers, apply to [sections 1 through 6] unless they are in conflict with [sections 1 through 7]. The department shall adopt rules necessary for the administration and enforcement of [sections 1 through 7].

Section 8. **Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 72, chapter 16, and the provisions of Title 72, chapter 16, apply to [sections 1 through 7].

Approved March 29, 1991.

CHAPTER NO. 274

[SB 217]

AN ACT AUTHORIZING THE DEPARTMENT OF FAMILY SERVICES AND THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO ENTER INTO INTERSTATE ADOPTION ASSISTANCE COMPACTS; AUTHORIZING PROCEDURES FOR INTERSTATE SERVICES

AND PAYMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature finds that there is a need for more effective administration of adoption assistance for families who have moved to or from the State of Montana; and

WHEREAS, the Legislature finds that the Department of Family Services and the Department of Social and Rehabilitation Services should provide procedures for administering interstate adoption assistance and that those Departments should enter into interstate compacts on adoption assistance to provide a framework for more effective administration of adoption assistance for these families.

THEREFORE, the Legislature finds it appropriate to pass legislation providing authority for those procedures, interstate compacts, and related adoption agreements.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 7(3)] grants rulemaking authority to the department of social and rehabilitation services for the purpose of establishing procedures for continuing state medical assistance benefits in addition to federally aided benefits in certain cases. The legislature intends, as a matter of policy, that when the state provides medical assistance benefits in addition to the federal benefits available under an adoption assistance agreement, the benefits must continue when a child relocates to a state that has agreed under a compact to reciprocate by providing additional nonfederal coverage to children moving to Montana. It is intended that the medicaid card may be used as the identification for these services as well as for the true "medicaid" elements of the state program. It is intended that [section 7(3)] provide a means of improving, as far as possible, the chances for handicapped and other "hard-to-place" children to gain family settings for their development. It is intended that in those instances in which the plan for a particular child is adoption (with assistance) by parents who already live in another state or move there, the department of social and rehabilitation services may provide the full measure of its services to these special-needs children. It is intended that out-of-state adoptions be an additional resource for Montana children that would not be available if the department of family services had to rely on finding families for special-needs children on an entirely local basis.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authorization.** The department of family services and the department of social and rehabilitation services are authorized to develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this state with other states for:

(1) the protection of children on behalf of whom adoption assistance is being provided; and

(2) the provision of procedures for interstate children's adoption assistance payments, including medical payments.

Section 2. **Definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Adoption assistance agreement" means an agreement for adoption assistance between adoptive parents and the state child welfare agency of the state that undertakes to provide the adoption assistance, including a subsidy agreement as provided in 53-4-309.

(2) "Adoption assistance state" means the signatory state to an adoption assistance agreement in a particular case.

(3) "Residence state" means the state of which the child is a resident by virtue of the residence of the adoptive parents.

(4) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.

Section 3. **Federal participation.** Consistent with federal law, the department of family services and the department of social and rehabilitation services, in connection with the administration of services provided and compacts entered into under authority of [sections 1 through 8], shall apply for and administer all federal aid for adoption assistance and medical assistance costs in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272), Titles IV (e) and XIX of the Social Security Act, or any other applicable federal laws.

Section 4. **Effect of compacts.** A compact entered into under [sections 1 through 8] has the force and effect of law.

Section 5. **Compacts — required contents.** A compact under [sections 1 through 8] must contain:

(1) a provision making it available for joinder by all states;

(2) a provision or provisions for withdrawal from the compact upon written notice to the parties, but with a period of 1 year between the date of the notice and the effective date of the withdrawal;

(3) a provision requiring that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode;

(4) a provision requiring that each:

(a) instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the state that undertakes to provide the adoption assistance; and

(b) agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance; and

(5) other provisions as may be appropriate to implement the proper administration of the compact.

Section 6. **Compacts — optional contents.** A compact under [sections 1 through 8] may contain:

(1) provisions establishing procedures and entitlement to medical, developmental, or other social services for the adopted child in accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs of the services; and

(2) other provisions as may be appropriate or incidental to the proper administration of the compact.

Section 7. **Medical benefits — rules.** (1) The provisions of this section apply only when the compact entered by this state and the other state under [sections 1 through 8] provides that the adoption assistance state, whether it be this state or the other state, shall continue medical assistance to children in accordance with the adoption assistance agreements made by the adoption assistance state after the children have changed their residence to this state or to the other state. All other children entitled to medical assistance in this state are eligible to receive it in accordance with the applicable laws and procedures.

(2) A child with special needs residing in this state who is the subject of an adoption assistance agreement with another state is entitled to receive medical assistance identification from this state upon the filing in the office of the department of social and rehabilitation services located in the county of the child's residence a copy of the adoption assistance agreement. Medical assistance identification gained pursuant to this section entitles the holder to processing and payment on claims of the holder in the same manner and pursuant to the same conditions and procedures as other recipients of medical assistance.

(3) The department of social and rehabilitation services shall provide coverage and benefits for a child who is in another state who is covered by an adoption assistance agreement entered into in this state for coverage or benefits, if any, provided for under the adoption assistance agreement made in this state but not provided by the residence state. The adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and must be reimbursed for the services. However, there may not be reimbursement for services or benefit amounts covered under any insurance or other third-party medical contract or arrangement held by the child or the adoptive parents. The department of social and rehabilitation services shall adopt rules implementing this

subsection. The additional coverage and benefit amounts provided by this subsection are for services for which there is no federal contribution or for which, if federally aided, contributions are not provided by the residence state. Rules adopted pursuant to this subsection must include procedures to be followed for obtaining prior approval for services covered by this subsection when prior approval is required.

Section 8. **Fraudulent obtaining of public assistance.** The provisions of 53-2-107 on fraudulently obtaining public assistance apply to coverage and benefits that may be obtained under [sections 1 through 8].

Section 9. **Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 53, chapter 4, part 3, and the provisions of Title 53, chapter 4, part 3, apply to [sections 1 through 8].

Section 10. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1991.

CHAPTER NO. 275

[SB 231]

AN ACT TO REVISE THE LIMITATIONS AND RETIREMENT ALLOWANCE REDUCTIONS IMPOSED ON A RETIREE WHO RETURNS TO EMPLOYMENT COVERED BY THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTIONS 19-3-403 AND 19-3-1106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-403, MCA, is amended to read:

"**19-3-403. Exclusions.** The following persons may not become members of the retirement system:

(1) elective officers who have not filed with the board written requests to become members, except that a person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office, and if he affirmatively exercises the option, the contributions of the employer because of his membership shall be the same as they would have been had he not been so excluded;

(2) inmates of state institutions who are allowed compensation for such service as they are able to perform;

(3) persons in state institutions principally for the purpose of training, but who receive compensation;

(4) independent contractors, unless there is a written contract which specifies the creation of an employer-employee relationship for purposes of retirement coverage under The Public Employees' Retirement System Act;

(5) employees serving in employment which does not exceed the equivalent of 120 working days in any fiscal year who have not filed with the board a written request to become members. A member so excluded from membership by this subsection may later become a member by otherwise becoming an employee or by written request after the initial date of exclusion. If he affirmatively exercises the option and pays the employee contribution plus interest, the contributions of the employer, because of his membership, shall be the same as they would have been had he not been so excluded plus accrued interest on all employer contributions from the date the contributions would have been made to the date of payment.

(6) employees in service on July 1, 1945, or prior thereto who filed with the board elections not to become members, except that a person so excluded from membership may become a member and be eligible thereafter to receive the same benefits that he would have received if he had never filed an election not to be a member by meeting the requirements prescribed in 19-3-505 and 19-3-506;

(7) persons directly appointed by the governor who do not file with the board an election in writing to become members;

(8) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision thereof and who are receiving credit in the other system for service, it being the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and purchased pursuant to 19-3-503. A member of the retirement system who, because of his employment by the state, is required to become a member of any other system described in this subsection shall be considered, solely for the purposes of making normal contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement which includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system, and the payments or contributions in lieu of wages may not be considered a part of the employees' compensation for purposes of computing the employer or employee contributions to the retirement system.

(b) For the purpose of this subsection (8), persons receiving pensions, retirement allowances, or other payments from any source on account of employment other than as an employee as defined in this chapter are not considered, because of such receipt, members of any other retirement or pension system.

(9) court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(10) persons who become employees after they have reached their 60th birthday and have no creditable service in this system and who do not file with the board an election to become members;

(11) employees of county hospitals or county rest homes in the sixth- and seventh-class counties, unless they elect to file with the board an election in writing to become members;

(12) persons employed for 6 months or less by the legislature or the legislative council to perform work related to the legislative session who do not file with the board an election in writing to become members;

(13) full-time students employed at and attending the same public elementary school, high school, vocational-technical center, or community college or any unit of the state university system, except that a person so excluded from membership as a student of a public community college or a unit of the state university system who later becomes a member by otherwise becoming an employee may affirmatively exercise the option of qualifying the service excluded by this subsection by applying to the board in writing after becoming a member and become eligible to receive credit for the excluded service under the provisions of 19-3-505;

(14) the chief administrative officer of any city or county where the chief administrative officer has filed an election in writing with the board to be excluded from membership, this election to be filed no later than July 1, 1979, or 30 days after initial employment by a county or city, whichever is later~~;~~.

~~(15) all former members receiving a retirement allowance, other than as a beneficiary, serving in employment if that employment does not exceed 60 working days in any calendar year. These former members must be reinstated into membership on the 61st working day in any calendar year unless they elect to return to membership prior to that day.~~"

Section 2. Section 19-3-1106, MCA, is amended to read:

"**19-3-1106.** *Limited reemployment* — ~~**Reduction**~~ ***reduction*** **of retirement allowance upon** ~~**limited reemployment**~~ ***exceeding limits.*** *(1)* ~~Any~~ *A* person *under 65 years of age* receiving a service retirement allowance, not as a beneficiary, ~~who is not eligible for membership~~ may return to *employment* covered ~~employment~~ *by the retirement system* for a period not to exceed ~~60 working days~~ *600 hours* in any calendar year. The retirement allowance ~~of a retiree so employed will be reduced by $1 for each $3 earned in excess of $5,000~~ for ~~each~~ *any retiree exceeding this 600-hour limitation in any calendar year after retirement will be reduced $1 for each $1 earned after working 600 hours in that* calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 600-hour limitation of

subsection (1) or may earn an amount equal to 50% of his current annual retirement benefits, whichever limitation provides the greater compensation to the retiree, in any calendar year. Upon reaching the applicable limitation, the retiree's benefits must be reduced $1 for each $1 in other income earned in that calendar year.

(3) A retiree returning to employment covered by the retirement system shall report to the board the number of hours he has worked and the gross compensation paid to him in that employment during any month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1991.

CHAPTER NO. 276

[SB 237]

AN ACT TO EXCLUDE CERTAIN OUTSIDE SALESMEN WHO ARE EMPLOYED IN SELLING OFFICE EQUIPMENT FROM COVERAGE UNDER THE STATE OVERTIME COMPENSATION LAWS; AND AMENDING SECTION 39-3-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-406, MCA, is amended to read:

"**39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 ~~shall~~ *do* not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that such exclusion shall not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period wages paid such learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesman paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesman, partsman, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

(f) a salesman primarily engaged in selling trailers, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an outside salesman paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

~~(g)~~*(h)* a salesman paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

~~(h)~~*(i)* an employee employed as a driver or driver's helper making local deliveries who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that such plan has the general purpose and effect of reducing hours worked by such employees to or below the maximum workweek applicable to them under 39-3-405;

~~(i)~~*(j)* an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

~~(j)~~*(k)* an employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee is:

(i) primarily employed during his workweek in agriculture by such farmer; and

(ii) paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

~~(k)~~*(l)* an employee of an establishment commonly recognized as a country elevator, including an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

~~(l)~~*(m)* a driver employed by an employer engaged in the business of operating taxicabs;

~~(m)~~*(n)* an employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in such institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

~~(n)~~*(o)* an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;

~~(o)~~*(p)* an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

~~(p)~~*(q)* an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 ½ times the hourly wage rate for the employee.

~~(q)~~*(r)* an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 8 hours per day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 ½ times the hourly wage rate for the employee.

~~(r)~~*(s)* a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

~~(s)~~*(t)* an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

~~(t)~~*(u)* an employee of a department of public safety working under a work period established pursuant to 7-32-115."

Approved March 29, 1991.

CHAPTER NO. 277

[SB 240]

AN ACT TO GENERALLY REVISE THE LAW REGARDING FISH AND GAME MISDEMEANOR PENALTIES; AMENDING SECTIONS 45-1-205, 87-1-102, 87-2-106, 87-3-102, 87-3-103, 87-3-104, AND 87-3-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-1-205, MCA, is amended to read:

"**45-1-205. General time limitations.** (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 may be commenced within 5 years after the victim reaches the age of 18 if the victim was less than 18 years old at the time the offense occurred.

(2) Except as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination thereof;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) shall be extended in a prosecution for unlawful use of a computer, and prosecution shall be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

~~(5)~~*(6)* An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

~~(6)~~*(7)* A prosecution is commenced either when an indictment is found or an information or complaint is filed."

Section 2. Section 87-1-102, MCA, is amended to read:

"**87-1-102. Penalties.** (1) A person ~~violating~~ *who purposely or knowingly violates* any provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is~~,~~

~~unless a different punishment is expressly provided by law for the violation,~~ guilty of a misdemeanor, *except if a felony is expressly provided by law,* and shall be fined not less than $50 or more than $500, imprisoned in the county jail for not more than 6 months, or both, *unless a different punishment is expressly provided by law for the violation.* In addition, the person, *upon conviction or forfeiture of bond or bail,* shall be subject to forfeiture of his license and privilege to hunt, fish, or trap within this state for a period of not less than 24 months from the date of conviction *or forfeiture.*

(2) (a) A person convicted of unlawfully taking, killing, possessing, transporting, or wasting of a bighorn sheep, moose, wild bison, caribou, mountain goat, or grizzly bear or any part of these animals shall be fined not less than $500 or more than $1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person, *upon conviction or forfeiture of bond or bail,* shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 30 months from the date of conviction *or forfeiture.*

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, mountain lion, or black bear or any part of these animals or wasting a deer, antelope, or elk shall be fined not less than $300 or more than $1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person, *upon conviction or forfeiture of bond or bail,* shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 24 months from the date of conviction *or forfeiture.*

(c) A person convicted of unlawfully attempting to trap, take, shoot, or kill a game animal shall be fined not less than $200 or more than $600, imprisoned in the county jail for not more than 60 days, or both.

(d) A person convicted of unlawfully taking, killing, possessing, transporting, shipping, labeling, packaging, or wasting or unlawfully attempting to take, kill, or possess any game bird, wild turkey, or fish or any part of any such bird or fish or of failure to tag a game animal or game bird as prescribed by law shall be fined not less than $50 or more than $200 or imprisoned in the county jail for not more than 30 days, or both.

(e) A person convicted of purposely or knowingly taking, killing, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined not less than $50 or more than $1,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person, *upon conviction or forfeiture of bond or bail,* shall forfeit any current license and the privilege to hunt, fish, or trap for not less than 24 months from the date of conviction *or forfeiture,* and any pelts possessed unlawfully must be confiscated.

(f) A person convicted of hunting, fishing, or trapping while his license is forfeited or his privilege denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition, that person may be fined not less than $500 or more than $1,000.

(3) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined not less than $500 or more than $1,000 or imprisoned in the county jail for not more than 60 days, or both.

~~(3)~~*(4)* A person convicted or who has forfeited bond or bail under subsection (2) and who has been ordered to pay restitution under the provisions of 87-1-111 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. *A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined not less than $500 or more than $1,000 or imprisoned in the county jail for not more than 60 days, or both.*

~~(4)~~*(5)* Notwithstanding the provision of subsection (1), the penalties provided by this section shall be in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2."

Section 3. **Suspension of privileges for failure to comply with citation or sentence.** (1) A person who fails to comply with the terms of a court citation or fails to fulfill the obligations of any court-imposed sentence for a wildlife violation under this title, resulting in the issuance of a warrant for his arrest, shall surrender any current hunting, fishing, and trapping licenses to the department, and his privileges to hunt, fish, and trap and to hold a valid license to hunt, fish, or trap are suspended until the terms of the court citation or sentence are satisfied.

(2) A person who loses his privileges under this section must be notified by the department in person or by mail. A person who hunts, fishes, traps, purchases licenses, or refuses to surrender any current hunting, fishing, or trapping license in violation of this section is guilty of a misdemeanor and subject to the penalties prescribed in 87-1-102.

Section 4. Section 87-2-106, MCA, is amended to read:

"**87-2-106. Application for license.** (1) A license may be procured from the director, any warden, or any authorized agent of the director. The applicant shall state his name, age, occupation, place of residence, post-office address, the length of time in the state of Montana, whether a citizen of the United States or an alien, and such other facts, data, or descriptions as may be required by the department. Except as provided in subsections (2) through (4), the statements made by the applicant shall be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by mail. Statements on an application for a license to be issued by mail need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(4), the applicant must apply to the director and must submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(4). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for his spouse, parent, child, brother, or sister who is otherwise qualified to obtain such license.

(5) A license is void unless subscribed to by the licensee and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.

(6) It is unlawful to subscribe to any statement, on any application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. Any person violating any provision of this statute is guilty of a misdemeanor.

~~(7) The department may bring an action to prosecute a violation of this section within 3 years of the date of application for licensure.~~"

Section 5. Section 87-3-102, MCA, is amended to read:

"**87-3-102. Waste of fish or game.** *(1) A person who is responsible for the death of a black or brown bear or a mountain lion commits the offense of waste of game if he abandons the head or hide in the field.*

(2) A person who is responsible for the death of a grizzly bear commits the offense of waste of game if he abandons the head or hide or any parts required by department or commission regulation for scientific purposes. All parts of a grizzly bear required by department or commission regulation for scientific purposes must be delivered to an officer or employee of the department for inspection as soon as possible after removal, and the department shall return to the licensee any bone structure and skull within 1 year upon written request. The hide must be returned immediately.

(3) ~~It shall be unlawful and a misdemeanor for any~~ *A* person responsible for the death of any game animal ~~of this state~~, ~~excepting~~ *except* grizzly, black, and brown bear and mountain lion, *commits the offense of waste of game if he:*

(a) ~~to detach or remove~~ *detaches or removes* from the carcass only the head, hide, antlers, tusks, or teeth or any or all of aforesaid parts*;* ~~or~~

(b) ~~to waste~~ *wastes* any part of any game animal, game bird, or game fish suitable for food *by transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption;* or

(c) ~~to abandon~~ *abandons in the field* the carcass of any game animal ~~in the field, except black and brown bear and mountain lion, which need have removed and taken from the carcass only the head or the hide of such bear or mountain lion, and except grizzly bear, which need have removed and taken from the carcass only the head and hide and such other parts as the department may demand for scientific purposes. All parts of grizzly bear demanded by the department for scientific purposes must be delivered to an officer or employee of the department for inspection as soon as possible after removal, and the department shall return to the licensee any bone structure and skull within 1 year upon written request. The hide shall be returned immediately.~~ *or any portion of the carcass suitable for food.*

(4) A person in possession of a game animal or game animal parts, game bird, or game fish suitable for food commits the offense of waste of game if he:

(a) purposely or knowingly transports, stores, or hangs the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposes of or abandons any portion of a game animal, game bird, or game fish that is suitable for food.

(5) A person convicted of waste of game shall be fined not less than $50 or more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 6. Section 87-3-103, MCA, is amended to read:

"**87-3-103. Limit on number of game animals *hunted or* killed.** It shall be unlawful and a misdemeanor for any person to *attempt to kill, take, shoot, or capture or to* kill, *take, hunt, shoot, or capture* more than one game animal of any one species in any one license year unless the killing of more than one game animal of such species has been authorized by regulations of the department."

Section 7. Section 87-3-104, MCA, is amended to read:

"**87-3-104. Unlawful to hunt or fish during closed season.** It ~~shall be~~ *is* unlawful and a misdemeanor for any person during the closed season on any species of game animal, game bird, or fish *to attempt to take, shoot, kill, or capture or* to take, hunt, shoot, kill, or capture any such game animal or such game bird or to fish for or catch any ~~such~~ fish."

Section 8. Section 87-3-111, MCA, is amended to read:

"**87-3-111.** *(Temporary)* **Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties.** (1) It is unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110; ~~or~~

(c) the possession, transportation, sale, or purchase of naturally shed antlers; or

~~(c)~~*(d)* the donation and sale of paddlefish roe as caviar under the provisions of 87-4-601.

(3) Except as provided in subsection (4), any person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(4) Any person engaging in the activities prohibited in subsection (1) in furtherance of a scheme to traffic in the body parts of unlawfully taken species is guilty of a felony and shall be punished by a fine of $10,000 or imprisonment in the state prison for a term of 1 year, or both. *(Terminates June 30, 1993—sec. 5, Ch. 409, L. 1989.)*

87-3-111. *(Effective July 1, 1993)* **Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties.** (1) It is hereby made unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section shall not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof; ~~or~~

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110~~.~~*; or*

(c) the possession, transportation, sale, or purchase of naturally shed antlers.

(3) Except as provided in subsection (4), any person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

(4) Any person engaging in the activities prohibited in subsection (1) in furtherance of a scheme to traffic in the body parts of unlawfully taken

species is guilty of a felony and shall be punished by a fine of $10,000 or imprisonment in the state prison for a term of 1 year, or both."

Section 9. **Fish and game violation as inchoate offense.** Any violation of this title is an offense for purposes of the crimes of attempt, solicitation, and conspiracy set out in Title 45, chapter 4.

Section 10. **Codification instruction.** [Sections 3 and 9] are intended to be codified as an integral part of Title 87, chapter 1, part 1, and the provisions of Title 87, chapter 1, part 1, apply to [sections 3 and 9].

Section 11. **Effective date.** [This act] is effective July 1, 1991.

Approved March 29, 1991.

CHAPTER NO. 278

[SB 248]

AN ACT AMENDING THE LAWS RELATING TO SECURITIES REGULATION; CREATING A NEW LIMITED OFFERING EXEMPTION; REVISING EXEMPTION PROCEDURES; PROVIDING FOR THE REGULATION OF LIMITED OFFERING EXEMPTIONS; AND AMENDING SECTION 30-10-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-105, MCA, is amended to read:

"**30-10-105. Exempt transactions.** Except as in this section expressly provided, 30-10-201 through 30-10-207 shall not apply to any of the following transactions:

(1) any nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) any nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to such securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

(3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;

(6) any transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(8) (a) any transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) any transaction pursuant to an offer made in this state directed by the offeror to not more than 25 persons, other than those designated in subsection (7), during any period of 12 consecutive months if:

(i) the seller reasonably believes that all the buyers are purchasing for investment;

(ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iii) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee that must accompany the application for approval. The commissioner may deny an application.

~~(b)~~*(c)* For the purpose of the ~~exemption~~ *exemptions* provided for in subsection (8)~~(a)~~, an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(9) any offer or sale of a preorganization certificate or subscription if:

(a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

(b) the number of subscribers does not exceed ~~10~~ *25*; and

(c) no payment is made by any subscriber;

(10) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;

(11) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop, refusal, denial, suspension, or revocation order is in effect and no public proceeding or examination looking toward such an order is pending under either law;

(12) any offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of such filing;

(13) the issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(14) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) any transaction in compliance with such rules as the commissioner in his discretion may adopt to serve the purposes of 30-10-102. The commissioner may in his discretion require that 30-10-201 through 30-10-207 apply to any or all transactional exemptions adopted by rule.

(16) any transaction by a certified Montana capital company as defined in 90-8-104, provided that such company first files all disclosure documents, along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing.

(17) the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;

(18) transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

(19) a transaction that:

(a) involves the purchase of one or more precious metals; and

(b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by such payment is delivered into the possession of a depository (other than the seller) that:

(i) (A) is a financial institution (meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state);

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

(20) a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any byproduct of the commodity;

(21) any offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code of 1986."

Approved March 29, 1991.

CHAPTER NO. 279

[SB 254]

AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO CONSIDER AS ELIGIBLE FOR LICENSURE ANY HEALTH CARE FACILITY, OTHER THAN A HOSPITAL, THAT IS ACCREDITED BY THE JOINT COMMISSION ON ACCREDITATION OF HEALTH CARE ORGANIZATIONS; AMENDING SECTION 50-5-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-103, MCA, is amended to read:

"**50-5-103. Rules and standards — accreditation by joint commission.** (1) The department shall promulgate and adopt rules and minimum standards for implementation of parts 1 through 4.

(2) Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 through 4 after adoption.

(4) Any hospital that furnishes written evidence, including the recommendation for future compliance statements to the department of its accreditation granted by the joint commission on accreditation of hospitals, is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department, except that the department may inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when such complaints pertain to licensing requirements. Inspection by the department upon such complaint shall be limited to the specific area or condition of the health care facility to which the complaint pertains.

(5) The department may consider as eligible for licensure during the accreditation period any health care facility, other than a hospital, that furnishes written evidence, including the recommendation for future compliance statements, of its accreditation by the joint commission on accreditation of health care organizations. The department may inspect a health care facility considered eligible for licensure under this section to ensure compliance with state licensure standards."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved March 29, 1991.

CHAPTER NO. 280

[SB 257]

AN ACT CLARIFYING THE PEACE OFFICER STATUS OF CRIMINAL INVESTIGATION AGENTS OF THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 44-2-111, 44-2-113, AND 44-2-115, MCA; AND REPEALING SECTION 44-2-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-2-111, MCA, is amended to read:

"**44-2-111. Definition of "agent".** As used in this part, "agent" means a person appointed *by the attorney general* to conduct criminal investigations and perform related duties within the ~~attorney general's office~~ *department of justice."*

Section 2. Section 44-2-113, MCA, is amended to read:

"**44-2-113. Qualifications of agents.** Each agent ~~shall~~ *must* be a person qualified by experience, training, and high professional competence in criminal investigation. ~~Qualifications shall be equal to those of similarly~~

~~assigned federal bureau of investigation personnel.~~ *Each agent shall meet all the requirements of 7-32-303.*"

Section 3. Section 44-2-115, MCA, is amended to read:

"**44-2-115. Powers and duties of agents.** An agent *appointed by the attorney general pursuant to this part is a peace officer and* ~~shall~~:

(1) ~~assist~~ *shall provide investigative assistance to* city, county, state, and federal law enforcement agencies at their request ~~by providing expert and immediate aid in investigation and solution of felonies committed in the state~~ *in accordance with rules adopted by the department of justice*;

(2) shall have concurrent jurisdiction with local law enforcement agencies to investigate offenses involving dangerous drugs, as provided in Title 45, chapter 9, and violations that constitute organized criminal activity;

(3) shall investigate gambling activities in this state as provided in 23-5-113;

(4) shall investigate any apparent violations of penal statutes disclosed by an audit of a state agency by the legislative auditor;

(5) shall investigate apparent violations of penal statutes referred by the state workers' compensation mutual insurance fund; and

~~(2)~~*(6) shall* assist *whenever possible* any law enforcement school held in the state for law enforcement officers when requested~~;~~

~~(3) act as a peace officer, as defined in the laws of Montana, when engaged in assisting or acting under the direction of city, county, state, and federal law enforcement agencies as provided in this section.~~"

Section 4. **Repealer.** Section 44-2-112, MCA, is repealed.

Approved March 29, 1991.

CHAPTER NO. 281

[SB 260]

AN ACT TO REQUIRE THE PROPRIETOR OR MANAGER OF AN INTRASTATE BUS THAT IS NOT CHARTERED TO PROHIBIT SMOKING IN ALL PARTS OF THE BUS; AMENDING SECTION 50-40-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-40-105, MCA, is amended to read:

"**50-40-105. No smoking signs in certain places.** No smoking signs ~~shall~~ *must* be conspicuously posted in *intrastate buses that are not* *chartered*, elevators, museums, galleries, kitchens, and libraries of any establishment doing business with the general public."

Section 2. **Requirement of intrastate bus that is not chartered.** The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all parts of the bus.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 50, chapter 40, part 1, and the provisions of Title 50, chapter 40, part 1, apply to [section 2].

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved March 29, 1991.

CHAPTER NO. 282

[SB 261]

AN ACT TO GENERALLY REVISE THE LAW RELATING TO CONSOLIDATED GOVERNMENT AND MUNICIPAL WATER SUPPLY SYSTEMS; PROVIDING THAT A CONSOLIDATED LOCAL GOVERNMENT MAY SUPPLY SANITARY SEWER OR STORM SEWER SERVICES OR WATER TO A DISTRICT; AND PROVIDING THAT A CONSOLIDATED LOCAL GOVERNMENT OR A CITY OR TOWN COUNCIL MAY PURCHASE A PRIVATE WATER SUPPLY SYSTEM OR TAKE THE SYSTEM BY EMINENT DOMAIN.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 34], the following definitions apply:

(1) "District" means a district authorized in [section 2] to provide a system.

(2) "Local government" means a consolidated form of local government provided for in Title 7, chapter 3, parts 11 through 13.

(3) "System" means a public water supply, sanitary sewer system, storm sewer system, or any combination of water supply, sanitary sewer, or storm sewer systems.

Section 2. **Authorization to create district.** Whenever the public convenience and necessity may require, in order to construct a water supply, sanitary sewer, or storm sewer system within a local government that would serve the inhabitants of the local government, the governing body may create a district to provide the system.

Section 3. **Resolution of intention to create district.** (1) Before creating a district, the governing body shall pass a resolution of intention to create the district.

(2) The resolution must designate:

(a) the proposed name of the district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands to be included within the district, giving the boundaries of the district;

(d) the general character of the system and its proposed location;

(e) the name of the engineer who is to have charge of the work; and

(f) the estimated cost of the district.

Section 4. **Sufficiency of description in resolution of intention.** In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it is sufficient to briefly describe the work or the district and to refer to the resolution of intention for further particulars.

Section 5. **Notice of resolution of intention upon concurrence — hearing.** (1) The governing body shall give notice of the passage of its resolution of intention to create the district.

(2) The notice must be published for 10 consecutive days in a daily newspaper published nearest to the place where the district is to be created. The governing body shall also cause a copy of the notice to be posted in three public places within the boundaries of the district. A copy of the notice must be mailed to every person, firm, or corporation or the agent of the person, firm, or corporation owning property within the proposed district, at his last-known place of residence, upon the same day the notice is first published or posted.

(3) The notice must describe the general character of the improvement or improvements proposed to be made, state the estimated cost, and designate the time when and the place where the governing body will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district. The notice must refer to the resolution on file in the office of the local government clerk for the description of the boundaries.

Section 6. **Right to protest.** (1) At any time within 30 days after the date of the first publication of the passage of the resolution of intention, any owner of property liable to be assessed for the system may make written protest against the proposed system.

(2) The protest must be in writing and be delivered to the county clerk, who shall endorse on the protest the date of the receipt.

Section 7. **Sufficient protest to bar proceedings.** If protests against the proposed system are received from the owners of 50% or more of the area in the proposed district, further proceedings may not be taken by the governing body.

Section 8. **Hearing on protest.** (1) At the next regular meeting of the governing body after the expiration of the time within which protest may be made, the governing body shall hear and pass upon all protests, and its decision is final and conclusive.

(2) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings, property owned by local government and school districts is considered the same as any other property in the district.

(3) The governing body may adjourn the hearing from time to time.

Section 9. **Resolution creating district — power to order improvements.** (1) Before ordering any of the proposed improvements, the governing body shall pass a resolution creating the district in accordance with the resolution of intention introduced and passed by the governing body.

(2) The governing body has jurisdiction to order improvements immediately upon the occurrence of one of the following:

(a) when no protests have been delivered to the county clerk within 30 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest is found by the governing body to be insufficient; or

(c) when a protest is overruled.

Section 10. **Governing body to administer district.** (1) The members of the governing body are ex officio commissioners of the district formed under the provisions of [sections 1 through 34] and have jurisdiction over the system within the district. The governing body is responsible for the proper functioning and maintenance of the system.

(2) The governing body is responsible for the condition and maintenance of all publicly owned roads, streets, alleys, land, parks, or other thoroughfares within the boundaries of the district affected by the construction or maintenance of the structures under control and jurisdiction of the district.

Section 11. **Change of boundaries — limitations.** (1) The governing body may by resolution make changes in the boundaries of a district as they consider reasonable and proper but may not delete any portion of the proposed area if the deletion will create an island of included or excluded lands.

(2) The governing body may not delete any portion of the proposed area that is contributing or may reasonably be expected to contribute to the pollution of any watercourse or body of water in the proposed area.

(3) For the purpose of subsection (2), it is conclusively presumed that an area that is within 1,500 feet of a proposed or existing sanitary sewer is contributing to the pollution of a watercourse in the proposed area.

Section 12. **Applicable provisions of laws relating to rural improvement districts.** The provisions of 7-12-2101, 7-12-2106, 7-12-2107, 7-12-2110, 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153, 7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), 7-12-2169, and 7-12-2171 through 7-12-2174 pertaining to rural improvement districts apply to [sections 1 through 34] unless in conflict with the provisions of [sections 1 through 34].

Section 13. **Adequate records to be maintained.** The records of the district pertaining to the collection of the operation and maintenance tax levied and the records of the district pertaining to expenditures for construction of the system must be kept and maintained in the office of the treasurer of the local government where the district is located. These records must include but not be limited to a list of individual property that is delinquent in payment, together with the name of the owner or owners of the property.

Section 14. **Assessment of costs.** To defray the cost of installing and maintaining the system under the provisions of [sections 1 through 34], the governing body shall adopt the following method of assessment:

(1) The governing body shall assess the entire cost of the improvements against the entire district.

(2) Each lot or parcel of land assessed in the district is to be assessed with that part of the whole cost that its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

Section 15. **Status of federal property within district.** Whenever any lot, piece, or parcel of land belonging to the United States fronts upon the proposed work or improvement or is to be included within the district the governing body shall in the resolution of intention declare that the lots, pieces, or parcels of land must be omitted from the assessment to be made to cover the cost and expenses of the work or improvement, and the cost of the work or improvement in front of the lots, pieces, or parcels of land must be paid by the local government from its general fund.

Section 16. **Restriction on assessments following change of boundaries.** Nothing in [section 11] permits the assessment of the cost of the system against the lands remaining in the district after a boundary change at a higher rate per square foot than the rate per square foot that would have been assessed if the entire cost of the improvements as estimated in the resolution of intention had been assessed against each lot and parcel of land included within the boundaries of the district as described in the resolution of intention unless a new resolution of intention to recreate the district is adopted and a hearing is held on the new resolution after notice as required for the original resolution of intention.

Section 17. **Resolution to assess and levy tax for making improvements.** (1) To defray the cost of making improvements in the district, the governing body shall by resolution levy and assess a tax upon all property in the district created for the purpose of the system by using as a basis for the assessment the method provided for by [sections 1 through 34].

(2) The resolution must contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment when made and the day when the payment becomes delinquent.

(3) The resolution, signed by the governing body, must be kept on file in the office of the local government clerk.

Section 18. **Term of assessment for costs of construction.** The payment of the assessment to defray the cost of constructing any improvements in the district may be spread over a term of not more than 20 years, with payment to be made in equal installments.

Section 19. **Notice of resolution to assess and levy tax for making improvements — protest.** (1) A notice, signed by the local government clerk and stating that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the clerk and is subject to inspection, must be published at least once in a newspaper published nearest to where the special improvement is to be made.

(2) The notice must state the time and place in which objections to the final adoption of the resolution will be heard by the governing body.

Section 20. **Hearing on protest.** (1) The time for the hearing on protest must be not less than 5 days after the publication of the notice required by 7-13-126.

(2) At the time fixed, the governing body shall meet and hear all objections and for that purpose may adjourn from day to day. The governing body may by resolution modify the assessment in whole or in part. A copy of the resolution, certified by the clerk of the local government, must be delivered to the local government treasurer within 2 days after its passage.

Section 21. **Assessments and other charges as lien.** A special assessment made and levied to defray the cost and expenses of the work for the system, together with any percentages imposed for delinquency and for cost of collection, are a lien upon the property upon which the assessment is made and levied, from and after the date of the passage of the resolution levying the assessment. The lien may only be extinguished by payment of the assessment, with all penalties, costs, and interest.

Section 22. **Charges for services.** (1) The governing body may by ordinance or resolution establish just and equitable rates, charges, and rentals for the services and benefits directly or indirectly afforded by a system operated by, controlled by, and under the jurisdiction of a district formed under [sections 1 through 34].

(2) The rates, charges, and rentals must be as nearly as possible equitable in proportion to the services and benefits rendered and may take into consideration the quantity of water supplied, the amount of sewage produced and its concentration, water pollution qualities in general, and the cost of disposal of sewage and storm waters.

Section 23. **Authorization to use federal funds.** The governing body may apply for and receive from the federal government, on behalf of the district, any money that may be appropriated by congress for aiding in local public works projects. The governing body may borrow from the federal government any funds available for assisting in the planning or financing of local public works projects and repay the loan out of the money received from the tax levy provided for in this part.

Section 24. **Charges for costs when federal funding is sought.** Notwithstanding any other section of [sections 1 through 34] or a limitation imposed in [sections 1 through 34], when the governing body has applied for funds pursuant to [section 23], the governing body may adopt a system of charges and rates to require that each recipient of services pays its proportionate share of the costs of operation, maintenance, and replacement and to require industrial users of services to pay that portion of the cost of construction of the system that is allocable to the industrial user.

Section 25. **Resolution to establish service charges — hearing — limitations and tax levy.** The governing body may, subject to the provisions of Title 69, chapter 7, by resolution and after public hearing:

(1) establish the rates, charges, and rentals in amounts sufficient in each year to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) establish an additional charge for the operation and maintenance of a system and a plant; and

(3) levy and assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements in the district, not in excess of 2 mills on each dollar of taxable valuation, to provide sufficient revenues for the reserve fund in the amounts necessary to meet the financial requirements of the fund as described in [sections 28 through 33].

Section 26. **Hearing and notice on tax levy for operation and maintenance.** (1) Not less than 30 days prior to the date of making the levy for operation and maintenance of the system, the governing body shall hold a public hearing on the resolution.

(2) Notice clearly setting forth the subject matter of the hearing must be given by the governing body by publication as provided in 7-1-2121, and notice must also be posted in three public places within the district.

Section 27. **Preparation and filing of district budget.** (1) Not less than 30 days prior to the date of the public hearing on the resolution, the governing body shall prepare and file in the office of the clerk of the local government in which the district is located and in the office of the governing body a complete, detailed budget for operation and maintenance of the system, showing all income and expenditures for the year prior to the hearing and all estimated income and expenditures for the next ensuing year in which the levy is assessed.

(2) The provisions of law relating to local government budgets and expenditures must be complied with by the district.

Section 28. **Authorization for reserve fund.** The governing body may, in order to secure prompt payment of any district bonds issued in payment of the cost of improvements for the district and the interest on the bonds as it becomes due, create, establish, and maintain by resolution a fund, to be designated as the "reserve fund", for each issue of bonds.

Section 29. **Sources of money for reserve fund.** (1) For the purpose of providing money for the reserve fund, the governing body may in its discretion, from time to time, transfer to the reserve fund from the operation and maintenance fund of the district an amount as may be considered necessary or as may be agreed upon with the holders of the bonds.

(2) Whenever there is money in the bond fund that is not required for payment of a bond of the district or interest on the bond, as much as is necessary to pay the loan referred to in [section 31] must, by order of the governing body, be transferred to the reserve fund.

Section 30. **Transfers to reserve fund considered as loans.** The amount or amounts transferred under [section 29] must be considered as loans from the operation and maintenance fund to the reserve fund.

Section 31. **Loans from reserve fund to bond fund as lien.** (1) Whenever a loan is made to the bond fund from the reserve fund, the reserve fund has a lien for the amount of the loan on:

(a) the land within the district that is delinquent in the payment of its assessments;

(b) unpaid assessments and installments of assessments on the district, whether delinquent or not; and

(c) money coming into the bond fund to the amount of the loan, together with interest on the loan from the time it was made at the rate or percentage payable by the bond or of interest on the bond for which the loan was made.

(2) If after all the bonds of the district have been fully paid and all money remaining in the bond fund has been transferred to the reserve fund, there still remains a debt from the district to the reserve fund, the governing body may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off the loan to the reserve fund.

Section 32. **Limitation on repayment of loan to reserve fund.** Nothing in [sections 28 through 33] permits the repayment of a loan to the reserve fund at any time unless all interest accrued on the bonds has been fully paid and all principal agreed to be paid in accordance with the redemption schedule as may be provided in the resolution or resolutions authorizing the bonds has been paid.

Section 33. **Covenants to use and maintain reserve fund.** (1) In connection with the issuance of district bonds, the governing body may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the reserve fund to the fund maintained for the payment of the bonds in amounts sufficient to make good any deficiency in the bond and interest accounts to the extent that money is available; and

(b) to provide money for the reserve fund pursuant to the provisions of [sections 22 and 25] by establishing and collecting rates, charges, and rentals for services and benefits in amounts sufficient to provide net revenues in excess of the current costs of operation and maintenance of the system and sufficient to maintain a balance in the reserve fund as the governing body may agree to and undertake.

(2) The undertakings and agreements authorized by subsection (1) are binding upon the local government as long as any bonds or any interest on the bonds remains unpaid.

Section 34. **Acquisition of private water supply system.** (1) If a franchise has been granted to or a contract made with any person or corporation and the person or corporation has established or maintained a system of water supply or has valuable water rights or a supply of water desired by the district for supplying the district with water, the governing body granting the franchise, entering the contract, or desiring the water supply shall, by the passage of a resolution, give notice to the person or corporation that it desires to purchase the plant, franchise, or water supply of the person or corporation.

(2) The governing body passing a resolution as provided in subsection (1) may purchase the plant, franchise, or water supply upon terms agreed to by the parties.

(3) In case agreement is not reached in accordance with subsection (2), the governing body may take the plant, franchise, or water supply by eminent domain in accordance with Title 70, chapters 30 and 31.

Section 35. **Codification instruction.** [Sections 1 through 34] are intended to be codified as an integral part of Title 7, chapter 13, and the provisions of Title 7, chapter 13, apply to [sections 1 through 34].

Approved March 29, 1991.

CHAPTER NO. 283

[SB 283]

AN ACT REVISING THE ENFORCEMENT PROVISIONS OF THE METAL MINE RECLAMATION LAW; EXPANDING THE SCOPE OF ENFORCEMENT ACTIONS TO INCLUDE VIOLATIONS OF A LICENSE OR PERMIT; CLARIFYING THAT THE COMMISSIONER OF STATE LANDS MAY SUSPEND THE PERMIT OF AN OPERATION CREATING AN IMMINENT DANGER TO THE HEALTH OR SAFETY OF PERSONS OUTSIDE THE PERMIT AREA; AMENDING SECTIONS 82-4-303, 82-4-361, AND 82-4-362, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-303, MCA, is amended to read:

"**82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Board" means the board of land commissioners or a state employee or state agency as may succeed to its powers and duties under this part.

(3) "Commicsioner" means the commissioner of state lands provided for in 2-15-3202.

~~(3)~~*(4)* "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

~~(4)~~*(5)* "Department" means the department of state lands.

~~(5)~~*(6)* "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

~~(6)~~*(7)* "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

~~(7)~~*(8)* "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

~~(8)~~*(9)* "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

~~(9)~~*(10)* "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

~~(10)~~*(11)* "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

~~(11)~~*(12)* "Placer deposit" means naturally occurring, scattered or unconsolidated valuable minerals in gravel or alluvium lying above bedrock.

~~(12)~~*(13)* "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

~~(13)~~*(14)* "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed. The proposal shall include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

~~(14)~~*(15)* (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2), and that conducts:

(i) an operation resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

~~(15)~~*(16)* "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

~~(16)~~*(17)* "Underground mining" means all methods of mining other than surface mining.

~~(17)~~*(18)* "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

~~(18)~~*(19)* "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 2. Section 82-4-361, MCA, is amended to read:

"**82-4-361. Violation — penalties — waiver.** (1) A person who violates any of the provisions of this part, the rules or orders adopted under this part (except 82-4-339), *the provisions of any license or permit,* or the conditions of a small-miner exemption shall pay a civil penalty of not less than $100 or more than $1,000 for the violations and an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues and may be enjoined from continuing such violations as provided in this section. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

(3) The civil penalties provided for in this section may be waived for a minor violation if it is determined that the violation does not represent potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection."

Section 3. Section 82-4-362, MCA, is amended to read:

"**82-4-362. Suspension of permits — hearing.** (1) If any of the requirements of this part, the rules adopted under this part, or ~~the~~ *a license, permit, or* reclamation plan ~~have~~ *has* not been complied with within the time limits set by the department or board or by this part, the department shall serve a notice of noncompliance on the licensee or permittee or, if necessary, the commissioner shall order the suspension of the permit. *The commissioner may order immediate suspension of a permit whenever he makes a finding that a violation of this part, the rules adopted under this part, or a license or permit, including the reclamation plan, is creating an imminent danger to the health or safety of persons outside the permit area.* The notice or order must be handed to the licensee or permittee in person or served by certified or registered mail addressed to the permanent address shown on the application for a *license or* permit. The notice of noncompliance must specify in what respects the operator has failed to comply with this part, the rules adopted under this part, or the reclamation plan.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department. The licensee or permittee is entitled to a hearing before the department on the revocation of a permit or license or the forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided in subsection (1). The notice must state when those measures may be undertaken and

must give notice of opportunity for a hearing. If a hearing is requested within the 30-day period, the permit or license may not be revoked and the bond may not be forfeited until a final decision is made by the department.

(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the commissioner shall suspend the permit. The commissioner shall reinstate the permit upon compliance."

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved March 29, 1991.

CHAPTER NO. 284

[SB 304]

AN ACT EXTENDING THE VALIDATION OF CONVEYANCES RECORDED AFTER DEFECTIVE EXECUTION; AND AMENDING SECTION 70-21-309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-21-309, MCA, is amended to read:

"**70-21-309. Validation of conveyances recorded after defective execution — notice imparted.** (1) Any instrument affecting real property, provided no action is pending as of October 1, ~~1983~~ *1991*, to set such instrument aside, which was, previous to January 1, ~~1983~~ *1991*, recorded in the office of the county clerk and recorder shall be deemed to impart after that date notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any technical defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof or the absence of any such certificate; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to January 1, ~~1983~~ *1991*.

(2) Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded."

Approved March 29, 1991.

CHAPTER NO. 285

[SB 315]

AN ACT ALLOWING THE EXECUTION OF A JUSTICE'S COURT JUDGMENT OUTSIDE THE COUNTY IN WHICH THE JUDGMENT WAS OBTAINED WITHOUT HAVING TO FILE AN ABSTRACT OF THE JUDGMENT IN DISTRICT COURT; DISAPPROVING RULES 21C AND 23(2), MONTANA JUSTICE AND CITY COURT RULES OF CIVIL PROCEDURE; AMENDING SECTIONS 25-31-913 AND 25-31-914, MCA; REPEALING SECTIONS 25-31-911 AND 25-31-912, MCA; AND PROVIDING AN APPLICABILITY DATE."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-31-913, MCA, is amended to read:

"**25-31-913. Issuance of execution by clerk of ~~district~~ *justice's* court.** From the time of docketing in the clerk's office, execution may be issued thereon by the clerk to the sheriff of any county in the state ~~in the same manner and with like effect as if issued on a judgment of the district court~~."

Section 2. Section 25-31-914, MCA, is amended to read:

"**25-31-914. Lien on real property.** The judgment rendered in a justice's court creates ~~no~~ *a* lien upon any lands of the defendant ~~unless such abstract is filed as aforesaid in~~ *upon the filing of a transcript of the original docket, certified by the clerk of the justice's court, with* the office of the clerk of the district court of the county in which the lands are situated. When so filed and from the time of filing, the judgment becomes a lien upon all real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time or which he may afterwards and before the lien expires acquire. The lien continues for 6 years unless the judgment be previously satisfied."

Section 3. **Disapproval of rules.** Pursuant to Article VII, section 2, of the Montana constitution, Rules 21C and 23(2), Montana Justice and City Court Rules of Civil Procedure, are disapproved.

Section 4. **Repealer.** Sections 25-31-911 and 25-31-912, MCA, are repealed.

Section 5. **Applicability.** [This act] applies to proceedings begun after October 1, 1991.

Approved March 29, 1991.

CHAPTER NO. 286

[SB 335]

AN ACT REVISING EXCAVATION PROCEDURES NEAR UNDERGROUND FACILITIES; REQUIRING THAT ENTITIES AND PERSONS THAT HAVE THE RIGHT TO BURY UNDERGROUND FACILITIES BE MEMBERS OF ONE-CALL NOTIFICATION CENTERS; EXEMPTING PUBLIC AUTHORITIES FROM LIABILITY FOR IMPROPER OR UNAUTHORIZED INSTALLATIONS MADE BY OTHERS; AND AMENDING SECTIONS 69-4-501, 69-4-502, 69-4-503, AND 69-4-504, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-4-501, MCA, is amended to read:

"69-4-501. **Definitions.** The following definitions shall apply to this part:

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Emergency" means:

(a) any condition that constitutes a clear and present danger to life or property; or

(b) a customer outage.

~~(1)~~*(3)* "Excavation" ~~shall mean and include any ditch, trench, cut, hole, or change in grade~~ *means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term includes but is not limited to grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing and driving. Excavation does not include surface road grading maintenance or road or ditch maintenance that does not change the original road or ditch grade or flow line.*

(4) "Identified but unlocatable underground facility" means an underground facility that has been identified but cannot be located with reasonable accuracy.

(5) "Locatable underground facility" means an underground facility that can be field-marked with reasonable accuracy.

(6) "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field location, or absence, of underground facilities, in accordance with the current color code standard of the American public works association. Marking must include identification letters indicating the specific type of underground facility, and the width of the facility if it is greater than 6 inches.

(7) "One-call notification center" means a service through which a person may request a marking of underground facilities.

~~(2)~~*(8)* "Person" ~~shall mean and include~~ *means* an individual, partnership, *firm,* joint venture, ~~or~~ corporation, *association, municipality, governmental unit, department, or agency,* and includes *any trustee, receiver, assignee, or a personal representative thereof* ~~the employer of an individual~~.

(9) "Reasonably accurate" means location within 18 inches of the outside lateral dimensions of both sides of an underground facility.

~~(3)~~*(10)* "Underground facility" ~~shall mean~~ *means* any ~~item of personal property~~ *facility* ~~which shall be~~ buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, *cablevision, fiber optics,* electric energy, oil, gas, or other substances ~~and shall include~~. *The term includes* but *is* not ~~be~~ limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the ~~aforesaid~~ *listed items.*"

Section 2. Section 69-4-502, MCA, is amended to read:

"69-4-502. **Information to be sought before excavation — *notification — exception.*** (1) No person shall make or begin any excavation in any public street, alley, right-of-way dedicated to the public use, or utility easement without first obtaining information concerning the possible location of any underground facility from each and every public utility, municipal corporation, or other person having the right to bury such underground facilities within the public street, alley, right-of-way, or utility easement.

(2) Every public utility, municipal corporation, or other person having the right to bury underground facilities shall file with the county clerk and recorder in each county where the underground facilities are located, the name, address, and telephone number of the person or persons from whom the necessary information may be obtained *unless a one-call notification center is available.*

(3) (a) A public utility, municipal corporation, underground facility owner, or person having the right to bury underground facilities must be a member of a one-call notification center covering the service area in which the entity or person has underground facilities.

(b) Subsection (3)(a) does not apply to an owner or occupant of real property where underground facilities are buried if the facilities are used solely to furnish services or commodities to that property and no part of the facilities are located in a public street, alley, or right-of-way dedicated to the public use."

Section 3. Section 69-4-503, MCA, is amended to read:

"69-4-503. ~~**Procedure to secure information**~~ ***Notification — marking.*** (1) ~~Any person seeking information concerning the location of any underground facility must do so by request in person, in writing, or by telephone~~ *At least 2 but not more than 10 business days before beginning* *any excavation, the excavator shall notify, through a one-call notification center, all owners of underground facilities in the area of the proposed excavation of the scheduled commencement of the excavation. If a one-call notification center service is not available, notice must be provided individually to the owners of underground facilities within the area of the proposed excavation.*

(2) ~~The person from whom such information is sought must record the nature and the date of the request and advise the person seeking the information of the location of any underground facility in writing, if so requested, or by marking the location with stakes or paint or by other clearly identifiable markings. The person providing the information must respond no later than the end of the normal business hours of the second full business day following the date of receipt of the request, Saturdays, Sundays, and holidays excluded~~ *Upon receipt of the notice provided for in this section, the owner of the underground facility shall provide the excavator with reasonably accurate information as to the owner's locatable underground facilities by surface marking the location of the facilities. If there are identified but unlocatable underground facilities, the owner of the facilities shall provide the excavator with the best available information as to their locations. Excavators may not excavate until all known facilities have been marked. Once the facilities are marked by the facility owner, the excavator is responsible for maintaining the markings.*

(3) Upon receipt of notice from the excavator, the facility owner shall respond within 2 business days by marking the facility. An excavator may not begin excavating before the marking is complete or before he is notified that marking is unnecessary.

(4) A facility owner may request the excavator to mark the area to be excavated. If an excavator discovers an unmarked underground facility, the excavator shall stop excavating in the vicinity of the facility and notify the facility owner or the one-call notification center."

Section 4. Section 69-4-504, MCA, is amended to read:

"**69-4-504. Information to be part of architects' and engineers' plans.** (1) Architects and engineers designing projects requiring excavation in or adjacent to any public street, alley, or right-of-way dedicated to public use or utility easement shall obtain information from the owners of underground facilities and then make ~~said~~ *the* information a part of the plan by which the contractors operate. *The owners of the underground facilities shall provide substantially the same information as required by 69-4-503.*

(2) Nothing in this section shall excuse any person from the obligation imposed by 69-4-502(1)."

Section 5. **Public authority — liability.** A public authority, as defined in 18-1-201, that has jurisdiction over a right-of-way is not liable for improper or unauthorized installations made by persons or entities other than the public authority or those acting at its discretion.

Section 6. **Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 69, chapter 4, part 5, and the provisions of Title 69, chapter 4, part 5, apply to [section 5].

Approved March 29, 1991.

CHAPTER NO. 287

[SB 356]

AN ACT TO REGULATE THE PLACEMENT OF MAILBOXES AND NEWSPAPER DELIVERY BOXES ON PUBLIC HIGHWAY RIGHTS-OF-WAY; AND AMENDING SECTION 60-6-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-6-101, MCA, is amended to read:

"**60-6-101. Highway encroachments — immediate removal.** (1) If any highway under the jurisdiction of the highway commission is encroached upon by a fence, building, structure, sign, marker, *mailbox, newspaper delivery box,* or other obstruction, the department of highways may give notice in writing to the person erecting or maintaining such encroachment requiring the same to be removed.

(2) The department shall adopt rules pertaining to the accommodation of mailboxes and newspaper delivery boxes on public highway rights-of-way. The rules must ensure that the location and construction of mailboxes and newspaper delivery boxes conform to the rules and regulations of the U.S. postal service.

~~(2)~~*(3)* If the encroachment obstructs and prevents the use of the highway for vehicles, the department may immediately remove the same without the notice required by 60-6-102."

Approved March 29, 1991.

CHAPTER NO. 288

[SB 364]

AN ACT TO ALLOW VIDEOTAPED TESTIMONY OF A VICTIM TO BE USED FOR THE PROSECUTION OF ANY VIOLENT CRIME IF THE VICTIM IS UNDER 16 YEARS OF AGE; AND AMENDING SECTION 46-15-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-15-401, MCA, is amended to read:

"**46-15-401. When videotaped testimony admissible.** For any prosecution commenced under 45-5-502(3), 45-5-503, 45-5-505, or 45-5-507 and for the prosecution of any offense arising from the same transaction, as defined in 46-11-501, *or for prosecution of any offense against the person provided for in Title 45, chapter 5, involving a victim who is under 16 years of age,* the testimony of the victim, at the request of such victim and with the concurrence of the prosecuting attorney, may be recorded by means of videotape for presentation at trial. The testimony so recorded may be presented at trial and shall be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence."

Section 2. **Coordination instruction.** If Senate Bill No. 51 is passed and approved and if it includes a new section entitled "Videotaped testimony", which appears at page 177, line 10, of the second reading yellow copy, then that section is amended by inserting in the first sentence, after "45-5-507", the words "or for prosecution of any offense against the person provided for in Title 45, chapter 5, involving a victim who is under 16 years of age" and [section 1 of this act], amending 46-15-401, is void.

Approved March 29, 1991.

CHAPTER NO. 289

[SB 423]

AN ACT AUTHORIZING THE SECRETARY OF STATE TO SELL COPIES OF THE CORPORATE INFORMATION LIST; AUTHORIZING THE SECRETARY OF STATE TO ADOPT RULES SPECIFYING THE FEE TO BE CHARGED FOR THE LIST; EXEMPTING THE LIST FROM THE MAILING LIST PROHIBITION OF STATE LAW; AND AMENDING SECTION 2-6-109, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 1] authorizes the secretary of state to adopt rules setting fees to be charged for the sale of the corporate information list. It is the intent of the legislature that the fees should be commensurate with the costs of producing the list. Existing fees may be modified to the extent necessary to conform to this statement of intent and [section 1].

Be it enacted by the Legislature of the State of Montana:

Section 1. **Sale of corporate information list — rulemaking authority.** The secretary of state may offer for sale to private or public entities the corporate information list developed by the secretary of state. The information on the corporate information list must be limited to the information available on the corporate information computer system maintained by the secretary of state. If the list is offered for sale, the secretary of state shall adopt rules under the Montana Administrative Procedure Act specifying the fee to be charged for the list.

Section 2. Section 2-6-109, MCA, is amended to read:

"**2-6-109. Prohibition on distribution or sale of mailing lists — exceptions — penalty.** (1) Except as provided in subsections (3)~~, (4), (5), and (6),~~ *through (7),* in order to protect the privacy of those who deal with state and local government:

(a) no agency may distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) no list of persons prepared by the agency may be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) Except as provided in 30-9-403, this section does not prevent an individual from compiling a mailing list by examination of original documents or applications which are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 and 13-38-103, to lists of the names of employees governed by Title 39, chapter 31, or to lists of persons holding driver's licenses provided for under 61-5-126.

(5) This section shall not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to Title 20, chapter 30, or specifically exempted therefrom as provided in 20-30-102.

(6) This section does not apply to the right of access either by Montana law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

~~(7)~~*(8)* A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

Approved March 29, 1991.

CHAPTER NO. 290

[HB 111]

AN ACT TO CLARIFY THAT AUTHORIZATION FOR PRESCRIPTIVE AUTHORITY OF NURSE SPECIALISTS LIES WITH THE BOARD OF NURSING; AMENDING SECTION 37-8-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-8-202, MCA, is amended to read:

"**37-8-202. Organization — meetings — powers and duties.** (1) The board shall meet annually and shall elect from among the nine members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administer this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools at times it considers necessary. It shall approve programs that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges ~~which~~ *that* may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for prosecutions.

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter. The board may fix reasonable fees for incidental services, within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to ~~assure~~ *ensure* interstate endorsement of licenses.

(5) (a) The board may define the educational requirements and other qualifications applicable to specialty areas of nursing. Specialty areas of nursing are those that require additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or its equivalent. The applicant must be certified by a specialty area certifying body. Specialty areas of nursing include nurse practitioners, nurse-midwives, and nurse-anesthetists.

(b) The board of nursing and the board of medical examiners, acting jointly, shall adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriate for a nurse specialist who applies to the ~~boards~~ *board* for authorization, prescriptive authority must be granted.

(6) The board shall establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the license fee provided for in 37-8-431 commensurate with the cost of the program."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 1, 1991.

CHAPTER NO. 291

[HB 146]

AN ACT AUTHORIZING THE BOARD OF INVESTMENTS TO PAY ADMINISTRATIVE COSTS FROM NONEXPENDABLE TRUST FUNDS; AMENDING SECTION 17-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-201, MCA, is amended to read:

"**17-6-201. Unified investment program — general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the 1972 Montana constitution to be provided for public funds shall be administered by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

(a) discharge his duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so; and

(c) discharge his duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) Retirement funds may be invested in common stocks of any corporation provided that no investment may be made at any time which would cause the book value of such investments in any retirement fund to exceed 50% of the book value of such fund or would cause the stock of one corporation to exceed 2% of the book value of such retirement fund.

(3) (a) Nothing contained in this section prevents the investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies which demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(4) The board has the sole authority to invest state funds. No other agency may invest such state funds. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to such fund and a record of the participation of each treasury fund account therein.

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received therefor;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund shall be deducted from the income therefrom~~, except that such costs of the nonexpendable trust funds shall be paid from income otherwise receivable~~

~~from the pooled investment fund, and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds~~.

(8) (a) The director of the department of administration annually may prepare a statewide cost allocation plan to distribute program costs incurred by state agencies that are funded through the general fund to the programs served by the agencies. Except as provided in subsection (8)(b), the cost to an agency of providing services to a program funded through an account in the state special revenue fund as defined in 17-2-102 must be deducted by the board from the account's investment earnings according to the statewide cost allocation plan. Amounts deducted by the board must be credited to the general fund.

(b) No deduction for program costs as provided in subsection (8)(a) may be made if an account's cash on hand is pooled for investment in the treasury cash account defined in 17-6-202."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 1, 1991.

CHAPTER NO. 292

[HB 161]

AN ACT TO AUTHORIZE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ISSUE CLEAN-UP ORDERS TO APPROPRIATE UNITS OF STATE OR LOCAL GOVERNMENT IN INSTANCES IN WHICH THE STATE OR LOCAL GOVERNMENT HAS APPROVED AN ACTIVITY THAT THE DEPARTMENT HAS REASON TO BELIEVE IS LIKELY TO CAUSE POLLUTION OF STATE WATERS; AND AMENDING SECTION 75-5-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-601, MCA, is amended to read:

"**75-5-601. Clean-up orders.** *(1)* The department shall issue orders to ~~any~~ *a* person to clean up any material ~~which~~ *that* he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and ~~which~~ *that* may pollute them.

(2) If a unit of state or local government, including but not limited to a local board of health, county commission, governing body of a municipality, or state agency, has granted a permit or license to a person to discharge waste or has otherwise authorized an activity that involves the placement of waste and the department has reason to believe that the waste is causing or is likely

to cause pollution of state waters, the department may issue an order to the unit of state or local government to take measures to ensure that the wastes causing or likely to cause the pollution are cleaned up.

(3) The department may include in an order issued to a county commission pursuant to subsection (2) a request that the commission create a sewer district in the geographic area affected by the order for the purpose of establishing a public sewer system in accordance with the petition and election procedures provided by 7-13-2204 and 7-13-2208 through 7-13-2214."

Approved April 1, 1991.

CHAPTER NO. 293

[HB 191]

AN ACT ADOPTING THE UNIFORM CONFLICT OF LAWS — LIMITATIONS ACT; PROVIDING FOR A METHOD OF DETERMINING THE APPLICABLE STATUTE OF LIMITATIONS WHEN OTHER STATE LAWS ARE INVOLVED IN A CIVIL PROCEEDING IN MONTANA; AND AMENDING SECTION 27-2-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 7] may be cited as the "Uniform Conflict of Laws — Limitations Act".

Section 2. **Definitions.** As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

(1) "Claim" means a right of action that may be asserted in a civil action or proceeding and includes a right of action created by statute.

(2) "State" means a state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, or a political subdivision of any of them.

Section 3. **Conflict of laws — limitation periods.** (1) Except as provided by [section 5], if a claim is substantively based:

(a) upon the law of one other state, the limitation period of that state applies; or

(b) upon the law of more than one state, the limitation period of one of those states chosen by [sections 1 through 7] applies.

(2) The limitation period of Montana applies to all other claims.

Section 4. **Rules applicable to computation of limitation period.** If the statute of limitations of another state applies to the assertion of a claim in Montana, the other state's relevant statutes and other rules of law governing tolling and accrual apply in computing the limitation period but its statutes and other rules of law governing conflict of laws do not apply.

Section 5. **Unfairness.** If a court determines that the limitation period of another state applicable under [sections 3 and 4] is substantially different from the limitation period of Montana and has not afforded a fair opportunity to sue upon, or imposes an unfair burden in defending against, the claim, the limitation period of Montana applies.

Section 6. **Existing and future claims.** [Sections 1 through 7] apply to claims:

(1) accruing after October 1, 1991; or

(2) asserted in a civil action or proceeding more than 1 year after October 1, 1991, but do not revive a claim barred before October 1, 1991.

Section 7. **Uniformity of application and construction.** [Sections 1 through 7] must be applied and construed to effectuate the general purpose of making uniform the law with respect to the subject of [sections 1 through 7] among states enacting it.

Section 8. Section 27-2-104, MCA, is amended to read:

"**27-2-104. Application of this state's statutes of limitations — actions against nonresidents.** ~~Where~~ *When* a cause of action ~~which~~ *that* does not involve the title to or possession of real property within the state accrues against a person who is not then a resident of the state, an action ~~cannot be brought thereon in a court of the state against him or his personal representative after the expiration of the time limited by the laws of his residence for bringing a like action except by a resident of the state and in one of the following cases:~~

~~(1) where the cause of action originally accrued in favor of a resident of the state;~~

~~(2) where, before the expiration of the time so limited, the person in whose favor it originally accrued was or became a resident of the state or the cause of action was assigned to and thereafter continuously owned by a resident of the state~~ *is governed by [sections 1 through 7].*"

Section 9. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 27, chapter 2, and the provisions of Title 27, chapter 2, apply to [sections 1 through 7].

Approved April 1, 1991.

CHAPTER NO. 294

[HB 203]

AN ACT TO EXTEND THE DEFINITION OF "REGULATED LENDERS" TO INCLUDE A MUTUAL OR STOCK INSURANCE COMPANY; AND AMENDING SECTIONS 31-1-111 AND 70-32-221, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-111, MCA, is amended to read:

"**31-1-111. Definition of regulated lender.** The term "regulated lenders" as used in 31-1-112 means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, development corporation, ~~or~~ bank holding company, *or a mutual or stock insurance company* organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

(a) an agency of the state of Montana; or

(b) an agency of the federal government;

(2) a subsidiary of an entity described in subsection (1);

(3) a Montana state agency or a federal agency that is authorized to lend money;

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money."

Section 2. Section 70-32-221, MCA, is amended to read:

"**70-32-221. Homestead subject to execution for certain judgments — separate acknowledgment required.** (1) If a borrower borrowing money from a regulated lender, as defined in 31-1-111, ~~a mutual or stock insurance company regulated by any state,~~ or a farm credit system lender encumbers real property that otherwise would qualify as a homestead under Title 70, chapter 32, the ~~financial institution~~ *lender* shall require the borrower to sign a written statement acknowledging that the real property is not exempt from execution as a homestead because under 70-32-202 it is subject to execution or forced sale to satisfy a judgment obtained on a debt secured by a mortgage or other encumbrance on the premises. The written acknowledgment may be in a document separate from, or may be included in, the loan agreement or loan documents and must be printed in capital letters of not less than 10-point boldfaced type and signed separately by the borrower.

(2) The ~~financial institution~~ *lender* shall retain a copy of the acknowledgment provided for in subsection (1) until the mortgage or other encum-

brance is paid or otherwise satisfied or discharged unless the acknowledgment is of record in the office of the clerk and recorder."

Approved April 1, 1991.

CHAPTER NO. 295

[HB 290]

AN ACT ALLOWING DISTRICT COURT CLERKS TO MAINTAIN RECORDS ON A COMPUTER SYSTEM.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Maintenance of records.** The clerk of the district court may maintain the records required by statute on a computer system.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 3, chapter 5, part 5, and the provisions of Title 3, chapter 5, part 5, apply to [section 1].

Approved April 1, 1991.

CHAPTER NO. 296

[HB 311]

AN ACT ALLOWING FINES, PENALTIES, AND FORFEITURES COLLECTED BY JUSTICES' COURTS FOR VIOLATIONS OF DRUG LAWS TO BE PAID INTO THE DRUG FORFEITURE ACCOUNT; CLARIFYING DISTRIBUTION OF MONEY COLLECTED BY DISTRICT COURTS AND JUSTICES' COURTS; AND AMENDING SECTIONS 3-10-601 AND 46-18-235, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-601, MCA, is amended to read:

"**3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each justice of the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county wherein he holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) All fines, penalties, and forfeitures that this code requires to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated,

except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) The county treasurer shall, in the manner provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the state treasurer; and

(b) 50% to the county general fund.

(4) The state treasurer shall distribute money received under subsection (3) as follows:

(a) 23% to the state general fund;

(b) 10% to the fish and game account in the state special revenue fund;

(c) 12.5% to the state highway account in the state special revenue fund;

(d) 36% to the traffic education account in the state special revenue fund;

(e) 0.6% to the department of livestock account in the state special revenue fund;

(f) 16.9% to the crime victims compensation account in the state special revenue fund; and

(g) 1% to the department of family services special revenue account for the battered spouses and domestic violence grant program."

Section 2. Section 46-18-235, MCA, is amended to read:

"**46-18-235. Disposition of money collected as fines and costs.** The money collected by a court~~, except money collected by a justice's court,~~ as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 shall be paid*:*

(1) by a district court to the county general fund of the county in which the court is held, except that:

~~(1)~~*(a)* if the costs assessed include any district court expense listed in 3-5-901, the money collected from assessment of these costs must be paid to the department of commerce for deposit into the state general fund to the extent the expenses were paid by the state;

~~(2)~~*(b)* if the fine was imposed for a violation of Title 45, chapter 9 *or 10*, the court may order the money paid into the drug forfeiture account maintained under 44-12-206 for the law enforcement agency which made the arrest from which the conviction and fine arose; and

~~(3)~~*(c)* if the fine was imposed for a violation of 45-5-206, 50% of the amount collected~~, except for fines collected by a justice court and distributed pursuant to 3-10-601,~~ must be deposited in the state special revenue fund for use of the department of family services in the battered spouses and domestic violence grant program created by 40-2-401~~.~~*; and*

(2) by a justice's court pursuant to 3-10-601."

Approved April 1, 1991.

CHAPTER NO. 297

[HB 588]

AN ACT TO PERMIT A RESIDENT WHO HAS A VALID DRIVER'S LICENSE ISSUED BY ANOTHER STATE TO SURRENDER THE LICENSE IN EXCHANGE FOR A MONTANA DRIVER'S LICENSE OF THE SAME CLASS, TYPE, AND ENDORSEMENT UPON PAYMENT OF THE REQUIRED FEES AND TO EXEMPT A RESIDENT WHO OBTAINS A MONTANA DRIVER'S LICENSE IN THIS MANNER FROM THE ORDINARILY REQUIRED WRITTEN OR ACTUAL DRIVING EXAMINATIONS; AMENDING SECTION 61-5-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-110, MCA, is amended to read:

"**61-5-110. Examination of applicants.** (1) The department shall examine every applicant for a driver's license, commercial vehicle operator's endorsement, or motorcycle endorsement, except as otherwise provided in this section. Such examination shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning, and directing traffic, his knowledge of the traffic laws of this state, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle, quadricycle, or motorcycle. The examination for the commercial vehicle operator's endorsement may include additional items.

(2) Within 90 days of receipt of an application for a commercial vehicle operator's endorsement, the department shall give an examination for endorsement to the applicant in the county where the applicant resides.

(3) Except as otherwise provided by law, a resident who has a valid driver's license issued by another state may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees. A resident who obtains a Montana driver's license in this manner is exempt from the written examination and actual demonstration of the operation of a motor vehicle provided for in subsection (1) but is not exempt from the eyesight test or, in the case of commercial drivers, any examination required by federal regulations."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 1, 1991.

CHAPTER NO. 298

[HB 712]

AN ACT TO MANDATE THAT, WITH THE EXCEPTION OF FOOTWEAR, AN EMPLOYER PURCHASE, FURNISH, AND REQUIRE THE USE OF PROTECTIVE SAFETY CLOTHING OR OTHER HEALTH AND SAFETY ITEMS THAT MAY BE REQUIRED FOR THE PROTECTION OF AN EMPLOYEE IN THE WORKPLACE; TO PROHIBIT A PERSON FROM REMOVING, INTERFERING WITH, OR REFUSING TO USE REQUIRED HEALTH AND SAFETY ITEMS; AND AMENDING SECTIONS 50-71-201 AND 50-71-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-71-201, MCA, is amended to read:

"**50-71-201. Employer to *provide safe workplace and to purchase,* furnish, and require *the use of health and* safety ~~devices~~ *items* ~~and~~ — *safe* practices.** ~~Every~~ *Each* employer shall*:*

(1) furnish a place of employment ~~which~~ *that* is safe for *each of his* employees ~~therein and shall~~*;*

(2) with the exception of footwear, purchase, furnish ~~and use~~, and require the use of ~~such~~ *health and* safety devices, ~~and~~ safeguards ~~and~~, *protective safety clothing, or other health and safety items, including but not limited to air masks, hardhats, and protective gloves, that may be required by state or federal law, the employer, or the terms of an employment contract, unless the terms of a collective bargaining agreement provide otherwise;*

(3) ~~shall~~ adopt and use ~~such~~ practices, means, methods, operations, and processes ~~as~~ *that* are reasonably adequate to render the place of employment safe*;* and ~~shall~~

(4) do ~~every~~ *any* other thing reasonably necessary to protect the life, *health,* and safety of *his* employees."

Section 2. Section 50-71-203, MCA, is amended to read:

"**50-71-203. Removal *of* or refusal to use *health and* safety ~~devices~~ *items* prohibited.** ~~No~~ *A* person ~~shall~~ *may not:*

(1) remove, displace, damage, destroy, carry off, or refuse to use any *health and* safety device ~~or~~, safeguard, *protective clothing, or other health*

and safety item furnished ~~and provided~~ for his use ~~in any employment or place of employment~~ *by his employer;* ~~or~~

(2) interfere ~~in any way~~ with the use ~~thereof~~ *of any required health and safety device, safeguard, protective clothing, or other health and safety item* by any other person*;* ~~or~~

(3) interfere with the use of ~~any~~ *a* method or process adopted for the protection of ~~any~~ *an* employee in ~~such~~ ~~employment or~~ *the* place of employment*; or*

(4) fail to do any other thing reasonably necessary to protect the life, *health,* and safety of ~~such~~ employees."

Approved April 1, 1991.

CHAPTER NO. 299

[HB 771]

AN ACT TO GENERALLY REVISE THE AGRICULTURAL WAREHOUSE, COMMODITY DEALER, AND GRAIN STANDARDS ACT; REVISING USE OF THE $30,000 EXEMPTION; PROVIDING A PENALTY FOR FRAUD; ELIMINATING USE OF A COMBINATION SCALE WEIGHT TICKET AND WAREHOUSE RECEIPT; ESTABLISHING A TIME LIMIT FOR ISSUING A WAREHOUSE RECEIPT; REQUIRING A PRODUCER TO REQUEST A WAREHOUSE RECEIPT; ALLOWING THE POOLING OF AGRICULTURAL COMMODITIES IN STORAGE TO COVER SHORTAGES; ALLOWING THE DEPARTMENT OF AGRICULTURE TO SEEK REMEDY IN THE FIRST JUDICIAL DISTRICT; CHANGING THE AGGREGATE LIABILITY OF SURETY BONDS FROM CUMULATIVE TO NONCUMULATIVE; ELIMINATING THE ABILITY OF THE DEPARTMENT OF AGRICULTURE TO SET BOND AMOUNTS BY RULE; PROVIDING REMEDIES FOR COMMODITY DEALER DEFAULTS; REQUIRING COMMODITY DEALERS TO KEEP RECORDS; PROVIDING FOR CLAIMS ON THE BOND BY AN INJURED PERSON; AND AMENDING SECTIONS 80-4-402, 80-4-429, 80-4-525, 80-4-527, 80-4-538, AND 80-4-604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-4-402, MCA, is amended to read:

"**80-4-402. Definitions.** As used in parts 4 through 7 of this chapter, the following definitions apply:

(1) "Agent" means any person who contracts for or solicits any agricultural commodities from a producer or warehouseman or negotiates the consignment or purchase of any agricultural commodity on behalf of any commodity dealer.

(2) "Agricultural commodity" means any grain, beans, safflower, sunflower seeds, tame mustards, rapeseed, flaxseed, leguminous seed, or other small seed, and other agricultural commodities designated by rule of the department.

(3) "Bond" means the bond required to be filed by part 5 or 6 of this chapter and includes any equivalent established by department rule, as provided in 80-4-504 and 80-4-604.

(4) "Commodity dealer" means any person who engages in a business involving or, as part of his business, participates in buying, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any agricultural commodity in the state of Montana. The term does not include:

(a) a person engaged solely in storing, shipping, or handling agricultural commodities for hire;

(b) a person who buys agricultural commodities from a licensed commodity dealer*;* ~~or~~

(c) a person who does not purchase more than $30,000 worth of agricultural commodities from producers during a licensing year; *however, once a person exceeds the $30,000 exemption, he shall obtain a license and is not eligible for the exemption for the succeeding year;*

~~(c)~~*(d)* a person who is the producer of agricultural commodities that he actually plants, nurtures, and harvests; or

~~(d)~~*(e)* a person whose trading in agricultural commodities is limited to trading in commodity futures on a recognized futures exchange.

(5) "Credit sale contract" means a contract for the sale of an agricultural commodity when the sale price is to be paid at a date after delivery of the agricultural commodity to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, or price-later contracts.

(6) "Department" means the department of agriculture provided for in 2-15-3001.

(7) "Depositor" means any person who deposits an agricultural commodity in a warehouse for storage, processing, handling, or shipment or who is the owner or legal holder of an outstanding warehouse receipt or who is lawfully entitled to possession of the agricultural commodity.

(8) "Director" means the director of the department of agriculture.

(9) "Grain" means all grains for which standards have been established under the United States Grain Standards Act (7 U.S.C. 71 through 87) and all other agricultural commodities, such as mustard, oil seed crops, or other crops which may be designated by rule of the department.

(10) "Grain Standards Act" means the United States Grain Standards Act (7 U.S.C. 71 through 87) ~~as that act reads on July 1, 1983~~.

(11) "Inspector" means any person so designated by the director to assist in the administration of parts 4 through 6 of this chapter. The term includes warehouse auditors or examiners.

(12) "Official grain inspectors" means any official personnel who perform or supervise the performance of official inspection services and certify the results thereof, including the grade of the grain.

(13) "Official grain samplers" or "samplers" means any official personnel who perform or supervise the performance of official sampling services and certify the results thereof.

(14) "Official grain standards" means the standards of quality and condition of grain that establish the grades defined by the Grain Standards Act.

(15) "Official grain weighers" means any official personnel who perform or supervise the performance of class X or class Y weighing services and certify the results thereof, including the weight of the grain.

(16) "Person" means any individual, firm, association, corporation, partnership, or any other form of business enterprise.

(17) "Producer" means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

(18) "Public warehouse" or "warehouse" means any elevator, mill, warehouse, subterminal grain warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural commodities are received for storage, handling, processing, or shipment. The term includes facilities which commingle commodities belonging to different lots of agricultural commodities.

(19) "Receipt" means a warehouse receipt.

(20) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt, given to a depositor by a warehouseman licensed under the provisions of part 5 of this chapter upon initial delivery of the agricultural commodity to the warehouse.

(21) "Station" means a warehouse located more than 3 miles from the central office of the warehouse.

(22) "Subterminal warehouse" means any warehouse at which an intermediate function is performed in which agricultural commodities are customarily received from dealers or producers and where the commodities are accumulated prior to shipment.

(23) "Terminal grain warehouse" means any warehouse authorized by a grain exchange to receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

(24) "Warehouseman" means a person operating or controlling a public warehouse.

(25) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under part 5 of this chapter by a warehouseman, except scale weight tickets."

Section 2. Section 80-4-429, MCA, is amended to read:

"**80-4-429. Penalty.** (1) Except as otherwise provided, any person who violates any provision of parts 4 through 6 of this chapter or rules promulgated thereunder or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director or his duly authorized representative in the performance of his duty under parts 4 through 6 of this chapter is guilty of a misdemeanor and is punishable by imprisonment in a county jail not to exceed 6 months or by a fine of not more than $1,000, or both.

(2) A person who refuses to permit inspection of licensed premises, books, accounts, records, or other documents required by parts 4 through 7 of this chapter or who uses a scale weight ticket or credit sale contract that fails to satisfy the requirements of parts 4 through 7 of this chapter is guilty of a misdemeanor.

(3) A person acting as a commodity dealer or warehouseman who knowingly sells warehouse-receipted agricultural commodities that he is not authorized to sell or who fails to pay for purchased agricultural commodities is guilty of a felony."

Section 3. Section 80-4-525, MCA, is amended to read:

"**80-4-525. Scale weight tickets — form — issuance.** (1) Scale weight tickets must be bound in books of convenient size and must be numbered consecutively. The original scale weight ticket must be delivered to the person from whom the agricultural commodities are received. One carbon copy of each scale weight ticket must remain as a permanent record.

(2) A scale weight ticket must be issued for each load of agricultural commodity received by the warehouseman.

(3) A scale weight ticket may not be issued or held in lieu of a warehouse receipt. The retention of scale weight tickets in lieu of warehouse receipts by the owner of the grain is at the owner's risk.

(4) There must be plainly printed across the face of such scale weight ticket issued by the warehouseman, in bold type, the words "THIS IS NOT A WAREHOUSE RECEIPT. IT MUST BE EXCHANGED FOR A WAREHOUSE RECEIPT IF GRAIN IS HELD IN STORAGE".

~~(5) There must be plainly printed across the face of a combination scale weight ticket and warehouse receipt issued by the warehouseman, in bold type, the words "COMBINATION SCALE WEIGHT TICKET AND WAREHOUSE RECEIPT".~~

~~(6)~~*(5)* All scale weight tickets must be signed by the warehouseman or his agent.

~~(7) When scale weight tickets are exchanged for warehouse receipts, the scale weight tickets must be surrendered to the warehouseman.~~

~~(8)~~*(6)* All scale weight tickets must be converted into cash or warehouse receipts on demand."

Section 4. Section 80-4-527, MCA, is amended to read:

"**80-4-527. Warehouse receipt — issuance.** (1) A warehouse receipt is a receipt issued by a licensed warehouseman on a form containing all the information required by 80-4-526.

(2) No warehouse receipt may be issued except for an agricultural commodity actually delivered to a warehouse for storage.

(3) All warehousemen are required to issue a warehouse receipt for each lot of agricultural commodity received for storage or make payment for the agricultural commodity.

(4) A warehouse receipt that does not in fact represent an agricultural commodity actually delivered into a warehouse for storage and the origin of which cannot be traced to the actual delivery of the grain represented:

(a) is not legal and is of no value;

(b) has no claim on the agricultural commodity stored in a warehouse; and

(c) has no claim on the warehouseman's bond.

(5) All agricultural commodities in a warehouse belong to the holder of outstanding warehouse receipts except those commodities that are in excess of the total of all outstanding storage obligations. An outstanding warehouse receipt is a warehouse receipt that has not been returned and paid in full on the basis of grade, quality, and quantity by the warehouseman issuing it.

(6) If for convenience the holder of two or more warehouse receipts covering like agricultural commodities wishes to combine them, the new receipt so issued must state the fact that it was issued in lieu of existing receipts. An assembly or recapitulation statement must be made whenever receipts are so combined, and the number or other identification of the statement must be referenced on the new combined receipt. The assembly sheet must be kept on file in the warehouse office. Each canceled receipt must have stamped across its face "Canceled by No. __" (showing the number of the new combination receipt).

(7) A warehouseman who is a grower and conducts such an enterprise may receive his own grain and issue warehouse receipts for agricultural commodities, in the same manner and without discrimination, as though the warehouse and growing enterprises were of separate ownership. How-

ever, the warehouseman shall report to the department all warehouse receipts issued to himself as a grower.

(8) When warehouse receipts are prepared on duplicate or triplicate forms, the original copy is the warehouse receipt and must be given *upon request* to the person storing the agricultural commodity covered by such receipt. The other copies shall have plainly printed across the face the words "duplicate", "triplicate", or "nonnegotiable".

(9) Each warehouse receipt issued must show the amount of cash or value of any merchandise the warehouseman has advanced on the agricultural commodity represented by the receipt, but such notation may not be construed as fixing the date of sale of such grain.

(10) All warehouse receipts must be numbered consecutively as issued by each warehouseman.

(11) Warehouse receipts must be issued when storage is charged but no later than 30 days after delivery unless agreed to in writing by both parties."

Section 5. Section 80-4-538, MCA, is amended to read:

"**80-4-538. Warehouse shortage — remedies.** (1) *For purposes of this section, whenever a warehouseman stores agricultural commodities of different kinds, a receipt holder has a claim against all commodities in storage, regardless of their kind, under his receipt.*

(2) Whenever it appears, after an investigation, that a warehouseman does not have in his possession sufficient agricultural commodities to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by him or when a warehouseman refuses to submit his books, papers, or property to lawful inspection, the department may give notice to the warehouseman to comply with the following requirements:

(a) to cover such shortage;

(b) to give an additional bond as requested by the department; or

(c) to submit to such inspection as the department considers necessary.

~~(2)~~*(3)* If the warehouseman fails to comply with the terms of such notice within 24 hours from the date of issuance of the notice or within such further time as the department may allow, the department may petition the district court *of the first judicial district, Lewis and Clark County, or the district court* in the county where the licensee's principal place of business is located, as shown by the license application, for an order:

(a) authorizing the department to seize and take possession of any or all agricultural commodities in the warehouse or warehouses owned, operated, or controlled by the warehouseman and of all books, papers, and property of all kinds used in connection with the conduct or the operation of the warehouse business and any materials that pertain in any way to that business; and

(b) enjoining the warehouseman from interfering with the department in the discharge of its duties as required by this part.

~~(3)~~*(4)* Upon taking possession, the department shall give written notice of its action to the surety on the bond of the warehouseman and may notify the holders of record, as shown by the warehouseman's record, of all warehouse receipts or scale weight tickets issued for agricultural commodities to present their warehouse receipts or other evidence of deposits for inspection or to account for the same. The department may thereupon cause an audit to be made of the affairs of the warehouse, including but not limited to the agricultural commodities of which there is an apparent shortage, to determine the amount of shortage and, if possible, to compute the shortage as to each depositor as shown by the warehouseman's records. The department shall notify the warehouseman and the surety on his bond of the amount of the shortage and notify each affected depositor by sending notices to the depositor's last-known address as shown by the records of the warehouseman.

~~(4)~~*(5)* The department shall retain possession of the agricultural commodities in the warehouse or warehouses and the books, papers, and property of the warehouseman until such time as:

(a) the warehouseman or the surety on the bond has satisfied the claims of all holders of warehouse receipts or other evidence of deposits;

(b) the surety on the bond has satisfied all such claims pro rata, if the shortage exceeds the amount of the bond; or

(c) the department is ordered by the court to surrender possession.

~~(5)~~*(6)* If during or after the audit provided for in this section or at any other time the department has evidence that the warehouseman is insolvent or is unable to satisfy the claims of all holders of warehouse receipts or other evidence of deposits, the department may petition the district court for the appointment of the department to operate or liquidate the business of the warehouse.

~~(6)~~*(7)* At any time within 10 days after the department takes possession of any agricultural commodities or the books, papers, or property of any warehouse, the warehouseman may serve notice on the department to appear in the district court of the county in which the warehouse is located, at a time to be fixed by the court, and show cause why the agricultural commodities, books, papers, and other property should not be restored to his possession.

~~(7)~~*(8)* All necessary expenses incurred by the department in carrying out the provisions of this section may be recovered in a separate civil action brought by the department in district court or recovered at the same time and as part of the seizure action filed under subsection ~~(2)(a)~~ *(3)(a)*.

~~(8)~~*(9)* As a part of the expenses so incurred, the department is authorized to include the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out this section.

~~(9)~~*(10)* The department shall set by rule the time limits for:

(a) notification of its action on the surety bond of a warehouseman;

(b) the holders of warehouse receipts or scale weight tickets to provide to the department such evidence of deposit; and

(c) satisfaction of the claims of all holders of warehouse receipts or other evidence of deposits."

Section 6. Section 80-4-604, MCA, is amended to read:

"**80-4-604. Bonding requirement amounts — cancellation.** (1) An applicant for a license to operate as a commodity dealer shall, before a license may be issued, file with the department a surety bond or its equivalent, as established by department rule, payable to the state. The aggregate ~~annual~~ liability of the surety may not exceed the sum of the bond.

(2) ~~Unless set by department rule, the~~ *The* bond for a commodity dealer may not exceed 2% of the value of the agricultural commodities purchased by the commodity dealer from the producer during the previous 12-month period. The bond for all new applicants is 2% of the estimated value of all agricultural commodities to be purchased during the coming 12-month period. ~~The department may by rule require a greater percentage in each instance.~~ The minimum amount of bond required by any commodity dealer is $20,000, and the maximum is prescribed in 80-4-405.

(3) A surety shall notify the commodity dealer and the department by certified mail at least 60 days prior to the cancellation of the bond. The liability of the surety covers purchases made by the commodity dealer during the time the bond is in force. A commodity dealer's bond filed with the department is continuous until canceled by the surety upon 60 days' notice; however, such cancellation does not terminate any liability of the surety incurred prior to the date of cancellation."

Section 7. **Commodity dealer defaults — remedies.** (1) If the department finds that a commodity dealer has failed to comply with the terms of a written contract or has failed to pay for a commodity purchase under an oral agreement in the manner and within the time provided in 80-4-608, the department may petition the district court of the first judicial district, Lewis and Clark County, for an order authorizing the department to seize and take possession of:

(a) any agricultural commodities in the facilities owned, operated, or controlled by the commodity dealer;

(b) all books, papers, and property used in connection with the operation of the commodity dealer business; and

(c) any material that pertains in any way to that business.

(2) If during or after an audit or at any other time the department has evidence that the commodity dealer is insolvent or is unable to satisfy the claims of all commodity dealer creditors covered by the bond, the depart-

ment may petition the district court of the first judicial district, Lewis and Clark County, for the appointment of the department to operate or liquidate the business of the commodity dealer.

Section 8. **Records.** (1) A commodity dealer shall provide evidence of delivery, such as scale tickets, for all agricultural commodities purchased from a producer.

(2) A commodity dealer shall keep daily position records or their equivalent showing purchases, deliveries, or payments to producers.

Section 9. **Claims on bond by injured person.** A person injured by the breach of an obligation for which the bond is given may file a claim with the department. Claims will be accepted only from producers and for agricultural commodities grown in Montana.

Section 10. **Codification instruction.** [Sections 7, 8, and 9] are intended to be codified as an integral part of Title 80, chapter 4, part 6, and the provisions of Title 80, chapter 4, part 6, apply to [sections 7, 8, and 9].

Section 11. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 1, 1991.

CHAPTER NO. 300

[HB 816]

AN ACT SUBJECTING RECREATIONAL VEHICLES, INCLUDING MOTOR HOMES, TO THE PROVISIONS OF THE AUTOMOBILE LEMON LAW; AND AMENDING SECTIONS 61-1-132 AND 61-4-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-132, MCA, is amended to read:

"**61-1-132. Recreational vehicle.** The term "recreational vehicle" as used in 61-4-101 through 61-4-105, *61-4-501,* and 61-10-141 includes travel trailers as defined in 61-1-131, motor homes as defined in 61-1-130, and other self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use."

Section 2. Section 61-4-501, MCA, is amended to read:

"**61-4-501. Definitions.** For purposes of this part, the following definitions apply:

(1) "Collateral charge" means all governmental charges, including but not limited to sales tax, property tax, license and registration fees, and fees in lieu of tax.

(2) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle that has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or alterations by the purchaser, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the warranty to the benefits of its provisions.

(3) "Incidental damage" means incidental and consequential damage as defined in 30-2-715.

(4) "Manufacturer" has the meaning applied to that word in 61-4-201.

~~(4)~~*(5)* "Motor vehicle" means a vehicle, *including the nonresidential portion of a motor home as defined in 61-1-130,* propelled by its own power, designed primarily to transport persons or property upon the public highways, and sold in this state. The term does not include ~~a motor home as defined in 61-1-130,~~ a truck with 10,000 pounds or more gross vehicle weight rating~~,~~ or a motorcycle as defined in 61-1-105. *Motor vehicle does not include components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for residential purposes.*

~~(5)~~*(6)* "Reasonable allowance for use" is an amount directly attributable to use of the motor vehicle by the consumer and any previous consumers prior to the first written notice of the nonconformity to the manufacturer or its agent and during any subsequent period when the vehicle is not out of service because of nonconformity. The reasonable allowance for use shall be computed by multiplying the total contract price of the vehicle by a fraction having as its denominator 100,000 and having as its numerator the number of miles that the vehicle traveled prior to the manufacturer's acceptance of its return.

~~(6)~~*(7)* "Warranty period" means the period ending 2 years after the date of the original delivery to the consumer of a new motor vehicle or during the first 18,000 miles of operation, whichever is earlier."

Approved April 1, 1991.

CHAPTER NO. 301

[HB 819]

AN ACT PROMOTING STATE-TRIBAL COOPERATION IN ECONOMIC DEVELOPMENT; PROVIDING FOR INDIAN REPRESENTATION ON THE TOURISM ADVISORY COUNCIL; REQUIRING THE DEPARTMENT OF COMMERCE TO WORK WITH TRIBAL GOVERNMENTS IN PROMOTING TOURISM AND ECONOMIC DEVELOPMENT; AND AMENDING SECTIONS 2-15-1816, 90-1-104, AND 90-1-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1816, MCA, is amended to read:

"**2-15-1816. Tourism advisory council.** (1) There is created a tourism advisory council.

(2) The council is composed of not less than 12 members appointed by the governor from Montana's private sector travel industry *and includes at least one member from Indian tribal governments,* with representation from each tourism region initially established by executive order of the governor and as may be modified by the council under subsection (5).

(3) Members of the council shall serve staggered 3-year terms, subject to replacement at the discretion of the governor. The governor shall designate four of the initial members to serve 1-year terms and four of the initial members to serve 2-year terms.

(4) The council shall:

(a) oversee distribution of funds to regional nonprofit tourism corporations for tourism promotion and to nonprofit convention and visitors bureaus in accordance with Title 15, chapter 65, part 1, and this section;

(b) advise the department of commerce relative to tourism promotion;

(c) advise the governor on significant matters relative to Montana's travel industry;

(d) prescribe allowable administrative expenses for which accommodation tax proceeds may be used by regional nonprofit tourism corporations and nonprofit convention and visitors bureaus;

(e) direct the university system regarding Montana travel research; ~~and~~

(f) approve all travel research programs prior to their being undertaken*; and*

(g) encourage regional nonprofit tourism corporations to promote tourist activities on Indian reservations in their regions.

(5) The council may modify the tourism regions established by executive order of the governor.

(6) The department of commerce shall adopt such rules as may be necessary to implement and administer Title 15, chapter 65, part 1, and this section."

Section 2. Section 90-1-104, MCA, is amended to read:

"**90-1-104. Functions of department of commerce — recreational development.** The department of commerce shall:

(1) exercise state responsibility for that part of recreational planning and development which is directly related to private investment in recreational facilities;

(2) assemble and correlate information which may influence the development of recreational enterprises and disseminate it to persons, firms, or corporations interested in constructing or maintaining recreational facilities open to the public; ~~and~~

(3) serve as an ombudsman for the tourism industry and recreationists in all matters concerning the management and regulation of the level of Flathead ~~lake~~ *Lake; and*

(4) coordinate the promotion of Indian tourism activities in the state in cooperation with the seven tribal governments and the coordinator of Indian affairs."

Section 3. Section 90-1-105, MCA, is amended to read:

"**90-1-105. Functions of department of commerce — economic development.** The department of commerce shall:

(1) provide coordinating services to aid state and local groups *and Indian tribal governments* in the promotion of new economic enterprises and conduct publicity and promotional activities in connection with new economic enterprises;

(2) collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial, and industrial enterprises within this state;

(3) serve as the state's official liaison between persons interested in locating new economic enterprises in Montana and state and local groups *and Indian tribal governments* seeking new enterprises;

(4) aid communities *and Indian tribal governments* interested in obtaining new business or expanding existing business;

(5) study and promote means of expanding markets for Montana products;

(6) encourage and coordinate public and private agencies or bodies in publicizing the facilities and attractions of the state;

(7) explore the use of cooperative agreements, as provided in Title 18, chapter 11, part 1, for the promotion and enhancement of economic opportunities on the state's Indian reservations."

Approved April 1, 1991.

CHAPTER NO. 302

[HB 829]

AN ACT TO PROVIDE THAT ELECTORS IN UNITED STATES SERVICE WHO ARE ABSENT FROM THE STATE MAY REGISTER TO VOTE AND VOTE BY ABSENTEE BALLOT UP TO NOON ON THE DAY BEFORE CERTAIN ELECTIONS; AMENDING SECTIONS 13-2-212, 13-2-301, AND 13-13-271, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-2-212, MCA, is amended to read:

"**13-2-212. Registration of electors in the United States service.** (1) ~~Any~~ *An* elector in the United States service who is absent from the state and the county of which he is a resident may register by mailing to the election administrator:

(a) the registration form, filled out and signed; or

(b) the federal post card application, filled out and signed.

(2) The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be prescribed by the secretary of state.

(3) An elector in the United States service who is absent from the state and county of which he is a resident may register to vote by federal post card application and vote by federal write-in absentee ballot for the next primary or general election up to noon on the day before the election."

Section 2. Section 13-2-301, MCA, is amended to read:

"**13-2-301. Close of registration — procedure.** (1) The election administrator shall:

(a) close registrations for 30 days before any election, *except as provided in 13-2-212(3)*; and

(b) publish a notice specifying the day registrations will close on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county at least once a week for 3 weeks before the close of registration.

(2) Information to be included in the notice shall be prescribed by the secretary of state.

(3) An individual who submits a completed registration form to the election administrator before the deadline provided in subsection (1)(a) is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of registration, and thereafter the qualified elector is eligible to vote in the next election."

Section 3. Section 13-13-271, MCA, is amended to read:

"**13-13-271. Federal write-in absentee ballot — qualifications.** (1) An elector qualified by 13-2-211 who fears his regular absentee ballot might not arrive in time to vote and return to the election administrator of the county of his residence and registration may also vote a federal write-in absentee ballot.

(2) The federal write-in absentee ballot is available to military personnel and civilians overseas through the same source that provides federal post card application forms and is only valid for federal elections.

(3) ~~The~~ *Except as provided in 13-2-212(3), the* elector shall apply for a regular absentee ballot as provided in 13-13-212(2) not less than 30 days before the general election."

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 1, 1991.

CHAPTER NO. 303

[HB 840]

AN ACT REGULATING THE IMPORTATION OR SALE OF NOXIOUS WEEDS THAT MAY HARM MONTANA'S HORTICULTURAL, AGRICULTURAL, FORESTRY, LIVESTOCK, WILDLIFE, OR NATIVE PLANT COMMUNITIES; AND AMENDING SECTIONS 7-22-2101, 80-7-701, AND 80-7-702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-22-2101, MCA, is amended to read:

"**7-22-2101. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means a district weed board created under 7-22-2103.

(2) "Commissioners" means the board of county commissioners.

(3) "Department" means the department of agriculture provided for in 2-15-3001.

(4) "District" means a weed management district organized under 7-22-2102.

(5) "Native plant" means a plant endemic to the state of Montana.

(6) "Native plant community" means an assemblage of native plants occurring in a natural habitat.

~~(5)~~*(7)* (a) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state which may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses *or that may harm native plant communities* and ~~which~~ *that* is designated:

(i) as a statewide noxious weed by rule of the department; or

(ii) as a district noxious weed by a board, following public notice of intent and a public hearing.

(b) A weed designated by rule of the department as a statewide noxious weed must be considered noxious in every district of the state.

~~(6)~~*(8)* "Person" means an individual, partnership, corporation, association, or state or local government agency or subdivision owning, occupying, or controlling any land, easement, or right-of-way, including any county, state, or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, borrow pit, or right-of-way for a canal or lateral.

~~(7)~~*(9)* "Supervisor" means the person employed by the board to conduct the district noxious weed management program and supervise other district employees.

~~(8)~~*(10)* "Weed management" or "control" means the planning and implementation of a coordinated program for the containment, suppression, and, where possible, eradication of noxious weeds."

Section 2. Section 80-7-701, MCA, is amended to read:

"**80-7-701. ~~Embargo against introduction of noxious weed seed from other states~~ *Regulation of importation or sale of noxious weeds.*** *(1) As used in this section:*

(a) "native plant" means a plant endemic to the state of Montana; and

(b) "native plant community" means an assemblage of native plants occurring in a natural habitat.

(2) ~~If the department believes that movements~~ *The department may regulate or prohibit the importation or sale* of grain, plants, seed, tubers, nursery stock, ~~hay, straw,~~ fruit, or other materials containing noxious weed seed or plants ~~dangerous or inimical to the horticultural or agricultural industries are about to be introduced into the state, it may advise the governor. The governor shall, by proclamation, declare an embargo against~~

~~the importation or shipment of the grain, plants, tubers, nursery stock, seed, hay, straw, fruit, or other materials into the state, except~~ *harmful to Montana's horticultural, agricultural, forestry, livestock, wildlife, or native plant communities* ~~under restrictions established in this part and provided in the rules adopted by the department.~~"

Section 3. Section 80-7-702, MCA, is amended to read:

"**80-7-702.** ~~**Rules for enforcement of interstate embargo**~~ ***Rulemaking authority.*** The department of agriculture shall adopt all necessary rules ~~in the enforcement of an embargo proclaimed~~ *for the regulation of the importation or sale of materials* as provided in 80-7-701. The department in adopting the rules may provide for the establishment of inspection stations, the appointment of inspectors, the establishment of the inspection fees, the issuance of certificates, the methods of transporting and packaging, *the regulation of nursery stock commerce,* and other rules and procedures necessary to carry out 80-7-701 through 80-7-704."

Approved April 1, 1991.

CHAPTER NO. 304

[HB 938]

AN ACT TO PROVIDE LIABILITY PROTECTION FOR PHYSICIANS SERVING AS OFF-LINE MEDICAL DIRECTORS FOR EMERGENCY MEDICAL SERVICES AND TO PHYSICIANS AND NURSES WHO GIVE MEDICAL INSTRUCTIONS TO MEMBERS OF EMERGENCY MEDICAL SERVICES; DEFINING THE TERM "OFF-LINE MEDICAL DIRECTOR"; AMENDING SECTION 50-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-6-302, MCA, is amended to read:

"**50-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Aircraft" has the same meaning given in 67-1-101. The term includes any fixed-wing airplane or helicopter.

(2) "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients. The term does not include a motor vehicle or aircraft owned by or operated under the direct control of the United States. The term also does not include air transportation services, such as charter or fixed-based operators, regulated by the federal aviation administration, that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(4) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(5) "Emergency medical service" means a prehospital or interhospital emergency medical transportation or treatment service provided by an ambulance or nontransporting medical unit.

(6) "Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider.

(7) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department rule but may not transport patients.

(8) "Off-line medical director" means a physician who is responsible and accountable for the overall medical direction and medical supervision of an emergency medical service and who is responsible for the proper application of patient care techniques and the quality of care provided by the emergency medical services personnel. The term includes only a physician who volunteers his services as an off-line medical director or whose total reimbursement for those services in any 12-month period does not exceed $5,000.

~~(8)~~*(9)* "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless. The term does not include a person who is nonambulatory and who needs transportation assistance solely because that person is confined to a wheelchair as his usual means of mobility.

~~(9)~~*(10)* "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States."

Section 2. **Liability protection.** (1) A physician or registered nurse licensed under the laws of this state who gives instructions for medical care to a member of an emergency medical service without compensation or for compensation not exceeding $5,000 in any 12-month period and whose professional practice is not primarily in an emergency or trauma room or ward is not liable for civil damages for an injury resulting from the instructions, except damages for an injury resulting from the gross negligence of the physician or nurse, if the instructions given by the physician or nurse are:

(a) consistent with the protocols and the medical control plan approved by the department in licensing the emergency medical service; and

(b) consistent with the level of certification or licensure of the emergency medical services personnel instructed by the physician or nurse.

(2) An off-line medical director is not liable for civil damages for an injury resulting from the performance of his duties, except damages for an injury resulting from the gross negligence of the director.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 50, chapter 6, part 3, and the provisions of Title 50, chapter 6, part 3, apply to [section 2].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 1, 1991.

CHAPTER NO. 305

[HB 957]

AN ACT RECOGNIZING THE OFFICIAL NAMES OF THE MONTANA VETERANS' HOMES AS THE MONTANA VETERANS' HOME AND THE EASTERN MONTANA VETERANS' HOME; AND AMENDING SECTIONS 53-1-202 AND 53-1-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-202, MCA, is amended to read:

"**53-1-202. Institutions in department.** (1) The following institutions are in the department:

(a) Montana state hospital;

(b) Montana veterans' home ~~at Columbia Falls~~;

(c) *eastern* Montana veterans' home ~~in eastern Montana~~;

(d) state prison;

(e) Montana developmental center;

(f) Montana center for the aged;

(g) Swan River forest camp; and

(h) Eastmont human services center.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature."

Section 2. Section 53-1-402, MCA, is amended to read:

"**53-1-402. Residents subject to per diem and ancillary charges.** The department shall assess and collect per diem and ancillary charges for the care of residents in the following institutions:

(1) Montana state hospital;

(2) Montana developmental center;

(3) Montana veterans' home ~~at Columbia Falls~~;

(4) *eastern* Montana veterans' home ~~in eastern Montana~~;

(5) Montana center for the aged;

(6) Eastmont human services center."

Approved April 1, 1991.

CHAPTER NO. 306

[SB 66]

AN ACT PROVIDING FOR THE LICENSURE OF NATUROPATHIC PHYSICIANS; ESTABLISHING A BOARD OF NATUROPATHIC PHYSICIANS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR SPECIALTY PRACTICE CERTIFICATION; PROVIDING CRIMINAL PENALTIES AND CIVIL REMEDIES; GRANTING THE BOARD RULEMAKING AUTHORITY; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 7 and 10] grant to the board of naturopathic physicians rulemaking authority to implement the provisions of this bill. It is the intent of the legislature that the board, at a minimum, adopt rules:

(1) specifying the scope of practice of naturopathic medicine;

(2) establishing license application and examination procedures, fees, and criteria for minimal educational and clinical requirements;

(3) developing procedures for the issuance, renewal, suspension, revocation, and reciprocity of licenses and procedures for certificates of specialty practice; and

(4) establishing investigatory procedures for processing complaints.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 8 and 10 through 19] may be cited as the "Naturopathic Health Care Practice Act".

Section 2. **Legislative finding — purpose.** (1) The legislature finds that a significant number of Montanans choose naturopathic medicine for their health care needs and declares that naturopathic medicine is a distinct health care profession that affects the public health, safety, and welfare and contributes to public freedom of choice in health care.

(2) The purpose of [sections 1 through 8 and 10 through 19] is to provide standards for the licensing and regulation of naturopathic physicians in order to protect the public health, safety, and welfare; to ensure that naturopathic health care by qualified naturopathic physicians is available to the people of Montana; and to provide a means of identifying qualified naturopathic physicians.

Section 3. **Definitions.** As used in [sections 1 through 8 and 10 through 19], the following definitions apply:

(1) "Approved naturopathic medical college" means a college and program granting the degree of doctor of naturopathy or naturopathic medicine that:

(a) is accredited by the council on naturopathic medical education or another accrediting agency recognized by the United States department of education;

(b) has the status of candidate for accreditation with the accrediting agency; or

(c) has been approved by the board after an investigation that determines that the college or program meets education standards equivalent to those established by the accrediting agency and complies with the board's rules, which must require as a minimum a 4-year, full-time resident program of academic and clinical study.

(2) "Board" means the board of naturopathic physicians established in [section 9].

(3) "Department" means the department of commerce provided for in 2-15-1801.

(4) "Homeopathic preparations" means substances and drugs prepared according to the official Homeopathic Pharmacopoeia of the United States, which is the standard homeopathic text recognized by the United States food and drug administration.

(5) (a) "Minor surgery" means the use of:

(i) operative, electrical, or other methods for the surgical repair and care incidental to superficial lacerations and abrasions, superficial lesions, and the removal of foreign bodies located in the superficial tissues; and

(ii) antiseptics and local anesthetics in connection with the methods.

(b) Minor surgery does not include general or spinal anesthetics, major surgery, surgery of the body cavities, or specialized surgeries, such as plastic surgery, surgery involving the eyes, or surgery involving tendons, ligaments, nerves, or blood vessels.

(6) "Naturopathic medicine", "naturopathic health care", or "naturopathy" means a system of primary health care practiced by naturopathic physicians for the prevention, diagnosis, and treatment of human health conditions, injury, and disease. Its purpose is to promote or restore health by the support and stimulation of the individual's inherent self-healing processes. This is accomplished through education of the patient by a naturopathic physician and through the use of natural therapies and therapeutic substances.

(7) "Naturopathic childbirth attendance" means the specialty practice of natural childbirth by naturopathic physicians that includes the use of natural therapeutic substances, ophthalmic antibiotics, oxytocin (pitocin), and minor surgery, as set by board rules. The term does not include a forceps delivery, general or spinal anesthesia, or a caesarean section.

(8) "Naturopathic physical applications" means the therapeutic use by naturopathic physicians of the actions or devices of electrical muscle stimulation, galvanic, diathermy, ultrasound, ultraviolet light, constitutional hydrotherapy, and naturopathic manipulative therapy.

(9) "Naturopathic physician" means a person authorized and licensed to practice naturopathic health care under [sections 1 through 8 and 10 through 19].

(10) "Topical drugs" means topical analgesics, anesthetics, antiseptics, scabicides, antifungals, and antibacterials.

Section 4. **Practice of naturopathic health care.** (1) Naturopathic physicians may practice naturopathic medicine as a limited practice of the healing arts as exempted in 37-3-103(1)(n), with the following restrictions. A naturopathic physician may not:

(a) prescribe, dispense, or administer any legend drug as defined in 50-31-301 except for whole gland thyroid, homeopathic preparations, and oxytocin (pitocin), provided that the naturopathic physician may administer but may not prescribe or dispense oxytocin (pitocin);

(b) administer ionizing radioactive substances for therapeutic purposes;

(c) perform surgical procedures except those minor surgery procedures authorized by [sections 1 through 8 and 10 through 19]; or

(d) claim to practice any licensed health care profession or system of treatment other than naturopathic medicine unless holding a separate license in that profession.

(2) Naturopathic physicians may prescribe and administer for preventive and therapeutic purposes the following natural therapeutic substances, drugs, and therapies:

(a) food, food extracts, vitamins, minerals, enzymes, whole gland thyroid, botanical medicines, homeopathic preparations, and oxytocin (pitocin);

(b) topical drugs, health care counseling, nutritional counseling and dietary therapy, naturopathic physical applications, therapeutic devices, and nonprescription drugs; and

(c) barrier devices for contraception, naturopathic childbirth attendance, and minor surgery.

(3) Naturopathic physicians may perform or order for diagnostic purposes a physical or orificial examination, ultrasound, phlebotomy, clinical laboratory test or examination, physiological function test, and any other noninvasive diagnostic procedure commonly used by physicians in general practice and as authorized by [section 10(2)].

(4) Except as provided by this subsection, it is unlawful for a naturopath to engage, directly or indirectly, in the dispensing of any drugs that a naturopath is authorized to prescribe by subsection (2). If the place where a naturopath maintains an office for the practice of naturopathy is more than 10 miles from a place of business that sells and dispenses the drugs a naturopath may prescribe under subsection (2), then, to the extent such drugs are not available within 10 miles of the naturopath's office, the naturopath may sell such drugs that are unavailable.

Section 5. **License required — titles restricted — enjoining unlawful practice.** (1) Except as provided in [section 6], a person may not practice naturopathy without a valid and current license issued by the board as provided in [sections 1 through 8 and 10 through 19].

(2) (a) A naturopathic physician licensed under [sections 1 through 8 and 10 through 19] may use the prefix "Dr." or "doctor" as a title.

(b) Only a naturopathic physician licensed under [sections 1 through 8 and 10 through 19] may use any or all of the following titles or terms:

(i) "doctor of naturopathy", "doctor of naturopathic medicine", "naturopath", "naturopathic physician", and the abbreviation "N.D." when used to imply any of these titles; or

(ii) "naturopathic medicine", "naturopathic health care", "naturopathic", and "naturopathy".

(c) The titles and terms in subsection (2)(b) identify naturopathic physicians and are restricted to describing and identifying licensed practitioners and their practice. A person who uses these titles and terms to represent himself or his practice to the public without being licensed pursuant to [sections 1 through 8 and 10 through 19] is in violation of [sections 1 through 8 and 10 through 19].

(3) A violation of [sections 1 through 8 and 10 through 19] may be enjoined by the district court on petition by the board.

Section 6. **Exemptions.** (1) [Sections 1 through 8 and 10 through 19] recognize that many of the therapies used by naturopathic physicians, such as the use of nutritional supplements, herbs, foods, homeopathic preparations, and such physical forces as heat, cold, water, touch, and light, are not the exclusive privilege of naturopathic physicians, and their use, practice, prescription, or administration by persons not licensed to practice naturopathic medicine is not prohibited by [sections 1 through 8 and 10 through 19].

(2) [Sections 1 through 8 and 10 through 19] do not restrict or apply to the scope of practice of any other professions licensed, certified, or registered under the laws of this state.

Section 7. **Naturopathic childbirth attendance — certification for specialty practice — requirements.** (1) A naturopathic physician may not practice naturopathic childbirth attendance without first obtaining from the board a certificate of specialty practice. The board shall adopt rules setting forth the requirements to be met in order to certify naturopathic physicians for the specialty practice of naturopathic childbirth attendance.

(2) In order to be certified for the specialty practice of naturopathic childbirth attendance, a naturopathic physician shall:

(a) pass either a national standardized supplemental examination in naturopathic childbirth attendance provided by the national naturopathic profession licensing organization or another specialty examination approved by the board;

(b) complete a minimum of 100 hours in any one or in any combination of the following upon approval by the board:

(i) course work in naturopathic childbirth attendance;

(ii) an internship in naturopathic childbirth attendance; or

(iii) a preceptorship in naturopathic childbirth attendance; and

(c) have assisted in a minimum of 50 supervised births, including prenatal and postnatal care, under the direct supervision of a licensed naturopathic, medical, or osteopathic physician with specialty training in obstetrics or natural childbirth attendance. The 50 supervised births required under this subsection (c) must include 25 births that document the naturopathic physician as the primary birth attendant.

Section 8. **Public health duties of naturopathic physicians.** Naturopathic physicians have the same authority and responsibility as other licensed physicians with regard to public health laws, reportable diseases and conditions, communicable disease control and prevention, recording of vital statistics, health and physical examinations, and local boards of health, except that the authority and responsibility is limited to activities consistent with the scope of practice described in [sections 1 through 8 and 10 through 19].

Section 9. **Board of naturopathic physicians.** (1) There is a board of naturopathic physicians.

(2) The board consists of three members appointed by the governor.

(3) The members are:

(a) one member of the public; and

(b) two naturopathic physicians who have been residents of Montana for 3 years prior to being appointed. These members must be licensed under [sections 1 through 8 and 10 through 19], except during the initial transition period of 1 year after [the effective date of sections 9, 10, 11, and 22].

(4) The board is attached to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(5) The board is designated as a quasi-judicial board for purposes of 2-15-124, except that a member of the board need not be an attorney licensed to practice law in this state.

Section 10. **Powers and duties of board.** The board shall:

(1) adopt rules necessary or proper to administer and enforce [sections 1 through 8 and 10 through 19];

(2) adopt rules that specify the scope of practice of naturopathic medicine stated in [section 4], that are consistent with the definition of naturopathic medicine provided in [section 3], and that are consistent with the education provided by approved naturopathic medical colleges;

(3) adopt rules prescribing the time, place, content and passing requirements of the licensure examination, which may be composed of part or all of the national naturopathic physicians licensing examination;

(4) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(5) adopt rules that set fees, commensurate with costs, for application, examination, licensure and other administrative services;

(6) approve naturopathic medical colleges as defined in [section 3];

(7) adopt rules for the investigation of complaints against naturopathic physicians, for hearings on complaints, and to impose disciplinary action against naturopathic physicians found to be in violation of [sections 1 through 8 and 10 through 19];

(8) investigate individuals falsely claiming to be naturopathic physicians and act in cooperation with county attorneys to enforce the provisions of [sections 1 through 8 and 10 through 19];

(9) adopt rules that establish, approve, and routinely review a continuing education curriculum and accreditation for naturopathic physicians that is required for license renewal;

(10) issue certificates of specialty practice;

(11) issue temporary licenses as provided for in [section 13]; and

(12) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery or the legend drugs allowed under [section 4].

Section 11. **Board meetings.** (1) The board shall meet at least once annually.

(2) Special meetings may be called by any two board members or the chairman.

(3) All members must be present in order to conduct board business.

Section 12. **Qualifications for licensure.** A person is qualified to be licensed to practice naturopathic medicine in Montana if he:

(1) is of good moral character as determined by the board;

(2) is a graduate of an approved naturopathic medical college; and

(3) has passed an examination prescribed or endorsed by the board for the licensure of naturopathic physicians.

Section 13. **Application for licensure — examination — temporary license.** (1) A person who desires a license to practice naturopathic medicine in Montana shall apply to the department in the manner and form prescribed by the board. The application must be accompanied by the license fees, the application fees, and the documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by [section 12]. The burden of proof is on the applicant, but the board may make an independent investigation to determine whether the applicant possesses the necessary qualifications and whether the applicant has committed unprofessional conduct that would be basis for licensure denial. At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the board's investigation.

(2) A person who applies for licensure but who has not passed a licensure examination prescribed or endorsed by the board shall apply to the board for authorization to take the prescribed licensure examination. The application for examination must be accompanied by the examination fee. If the board finds that all other qualifications for licensure except that of examination have been met, the board shall authorize the applicant to take the licensure examination.

(3) A person who has actively engaged in the practice of naturopathic medicine in Montana prior to [the effective date of sections 9, 10, 11, and 22] and who is a graduate of an approved naturopathic medical college may continue to practice naturopathic medicine until the board reviews his qualifications if he applies to and receives from the department a temporary license by October 1, 1991. The department shall issue a temporary license to a qualified applicant. The board shall, within 6 months of October 1, 1991, review the qualifications of each temporary licensee and either authorize

the department to issue a license to a person qualified under [section 12 or 14] or extend the temporary license for a term of no more than 1 year to allow the practitioner to pass the prescribed examination. A person who is not a graduate of an approved naturopathic medical college may not be granted a temporary license.

Section 14. **Licensure by endorsement.** (1) The board may authorize the department to issue to an applicant a license by endorsement if the applicant produces evidence satisfactory to the board of:

(a) a valid license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States, the District of Columbia, or a foreign country, whose licensing standards at the time the license or certificate was issued were, in the judgment and according to the rules of the board, acceptable for endorsement for granting a license to practice naturopathic medicine; or

(b) (i) an inactive license or other certificate of examination issued to or for the applicant by a naturopathic examining board under the laws of another state or territory of the United States, the District of Columbia, or a foreign country, whose examination standards at the time the license was granted or the examination was passed were acceptable for endorsement in the judgment and according to the rules of the board;

(ii) the fact that he has not been disciplined or had his inactive license suspended or revoked for malpractice;

(iii) the fact that he has been actively engaged in the practice of naturopathic medicine for at least 1 year in a state or territory of the United States, the District of Columbia, or a foreign country, that does not license naturopathic physicians;

(iv) the fact that he is a graduate of an approved naturopathic medical college; and

(v) his good moral character.

Section 15. **Issuance of license.** If the board determines that an applicant possesses the qualifications required by [section 12], the department shall issue a license to the applicant to practice naturopathic medicine.

Section 16. **Denial, suspension, or revocation of license — grounds.** The board may refuse to issue a license or may suspend or revoke a license issued pursuant to [sections 1 through 8 and 10 through 19] or take disciplinary action against licensees for one or more of the following causes:

(1) conviction, as shown by a certified copy of the record of the court, of a felony or a violation of any state or federal law regulating the possession, distribution, or use of any controlled substance, subject to Title 37, chapter 1, part 2;

(2) being adjudicated incompetent or seriously mentally ill;

(3) sustaining a physical or mental disability that renders further naturopathic practice dangerous to the public;

(4) habitual intemperance with alcohol or habitual addiction to the use of a controlled substance to such an extent as to incapacitate the person from the proper performance of professional duties;

(5) malpractice;

(6) engaging in dishonorable, unethical, or unprofessional conduct, as defined by the rules of the board, that may deceive, defraud, or harm the public;

(7) obtaining or attempting to obtain by fraudulent misrepresentation a license to practice naturopathy;

(8) advertising by means of knowingly false, misleading, or deceptive statements;

(9) advertising, practicing, or attempting to practice under a name other than the person's own;

(10) using any false, fraudulent, or forged statement or document or engaging in any fraudulent, deceitful, dishonest, or immoral practice, as defined by the rules of the board, in connection with the licensing requirements of [sections 1 through 8 and 10 through 19];

(11) violation of a provision of [sections 1 through 8 and 10 through 19] or the rules adopted by the board.

Section 17. **Denial, suspension, or revocation of license — procedure.** (1) Upon receipt of a complaint alleging violation of [sections 1 through 8 and 10 through 19] or the rules of the board, the board shall investigate the complaint and, according to its findings and the board's rules, shall either dismiss the complaint or take appropriate action to enforce [sections 1 through 8 and 10 through 19].

(2) (a) The board shall meet or hold a hearing as necessary at the time and place set pursuant to board rules. The board may continue the hearing from time to time as it determines necessary.

(b) At the hearing, the board must receive evidence upon the subject under consideration and shall accord the person against whom the complaint is filed a full and fair opportunity to be heard in his defense.

(3) After consideration, the board shall adopt a resolution finding that the licensee has either violated or not violated the provisions of [sections 1 through 8 and 10 through 19] or the rules of the board.

(4) If the board finds that a violation has not occurred, the board shall dismiss the complaint. If the board finds that a violation has occurred, it shall:

(a) revoke his license;

(b) suspend his right to practice naturopathy for a period not to exceed 1 year;

(c) suspend its judgment of revocation upon terms and conditions it determines;

(d) place him on probation; or

(e) take other disciplinary action as provided by board rules.

Section 18. **Reinstatement of license after period of suspension — revocation.** (1) Upon the expiration of the term of the suspension, the board may reinstate a license if the suspended licensee furnishes the board with satisfactory evidence that he is then of good moral character and conduct; is restored to good health, if applicable; and has not practiced naturopathy in the state during the term of suspension.

(2) If the board is not satisfied that the licensee is then of good moral character and conduct or restored to good health or if the evidence shows that he has practiced naturopathy in this state during the term of suspension, the board may, after notice and hearing, revoke the license.

Section 19. **Enforcement — penalty.** (1) A county attorney shall prosecute a person charged with violation of any of the provisions of [sections 1 through 8 and 10 through 19].

(2) A person who violates any of the provisions of [sections 1 through 8 and 10 through 19] is guilty of a misdemeanor and, upon conviction, is punishable by a fine not exceeding $500 or by imprisonment in the county jail for a term not to exceed 6 months, or both.

Section 20. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. **Codification instruction.** (1) [Section 9] is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to [section 9].

(2) [Sections 1 through 8 and 10 through 19] are intended to be codified as an integral part of Title 37.

Section 22. **Effective dates.** (1) [Sections 9, 10, 11, and this section] are effective on passage and approval.

(2) [Sections 1 through 8 and 12 through 21] are effective October 1, 1991.

Approved April 1, 1991.

CHAPTER NO. 307

[SB 214]

AN ACT INCREASING THE DOLLAR AMOUNTS SUBJECT TO CIVIL JURISDICTION IN JUSTICES' COURTS, THE SMALL CLAIMS DIVISION OF JUSTICES' COURTS, AND CITY COURTS; AND AMENDING SECTIONS 3-10-301, 3-10-1004, AND 3-11-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-301, MCA, is amended to read:

"**3-10-301. Civil jurisdiction.** (1) Except as provided in subsection (2) and in 3-11-103, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed ~~$3,500~~ *$5,000*, exclusive of court costs;

(b) in actions for damages not exceeding ~~$3,500~~ *$5,000*, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding ~~$3,500~~ *$5,000*, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed ~~$3,500~~ *$5,000*;

(e) in actions for a fine, penalty, or forfeiture not exceeding ~~$3,500~~ *$5,000*, imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed ~~$3,500~~ *$5,000*, though the penalty may exceed that sum;

(g) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed ~~$3,500~~ *$5,000*, exclusive of court costs;

(h) to issue temporary restraining orders as provided in 40-4-121(3).

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money."

Section 2. Section 3-10-1004, MCA, is amended to read:

"**3-10-1004. Jurisdiction — removal from district court.** (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed ~~$2,500~~ *$3,000,* exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed ~~$2,500~~ *$3,000.* The small claims court shall hear any action so removed from the district court."

Section 3. Section 3-11-103, MCA, is amended to read:

"**3-11-103. Exclusive jurisdiction.** Except as provided in 3-11-104, the city court has exclusive jurisdiction of:

(1) proceedings for the violation of an ordinance of the city or town, both civil and criminal;

(2) when the amount of the taxes or assessments sought does not exceed ~~$2,500~~ *$5,000,* actions for the collection of taxes or assessments levied for any of the following purposes, except that no lien on the property taxed or assessed for the nonpayment of the taxes or assessments may be foreclosed in any such action:

(a) city or town purposes;

(b) the erection or improvement of public buildings;

(c) the laying out, opening, or improving of a public street, sidewalk, alley, or bridge;

(d) the acquisition or improvement of any public grounds; and

(e) public improvements made or ordered by the city or town within its limits;

(3) actions for the collection of money due to the city or town or from the city or town to any person when the amount sought, exclusive of interest and costs, does not exceed ~~$2,500~~ *$5,000;*

(4) when the amount claimed, exclusive of costs, does not exceed ~~$2,500~~ *$5,000,* actions for:

(a) the breach of an official bond given by a city or town officer;

(b) the breach of any contract when the city or town is a party or is in any way interested;

(c) damages when the city or town is a party or is in any way interested;

(d) the enforcement of forfeited recognizances given to, for the benefit of, or on behalf of the city or town; and

(e) collection on bonds given upon an appeal taken from the judgment of the court in any action mentioned in subsections (4)(a) through (4)(d);

(5) actions for the recovery of personal property belonging to the city or town when the value of the property, exclusive of the damages for the taking or detention, does not exceed ~~$2,500~~ *$5,000*; and

(6) actions for the collection of a license fee required by an ordinance of the city or town."

Approved April 1, 1991.

CHAPTER NO. 308

[SB 265]

AN ACT CLARIFYING THE RIGHT TO BENEFICIALLY USE, SELL, OR LEASE SALVAGED WATER; DEFINING "SALVAGE"; PROVIDING CRITERIA FOR APPROVAL OF CHANGES IN APPROPRIATION RIGHTS INVOLVING SALVAGED WATER; AND AMENDING SECTIONS 85-2-102 AND 85-2-402, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the department of natural resources and conservation concerning the adoption of rules to allow the appropriation, use, and change of use of salvaged water. The legislature directs the department of natural resources and conservation to adopt rules that promote the conservation and efficient use of water by implementing the provisions of this bill.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Salvaged water.** It is the declared policy of the state in 85-1-101 to encourage the conservation and full use of water. Consistent with this policy, holders of appropriation rights who salvage water, as defined in 85-2-102, may retain the right to the salvaged water for beneficial use. Any use of the right to salvaged water for any purpose or in any place other than that associated with the original appropriation right must be approved by the department as a change in appropriation right in accordance with 85-2-402. Sale of the right to salvaged water must also be in accordance with 85-2-403, and the lease of the right to salvaged water for instream flow purposes must be in accordance with 85-2-436.

Section 2. Section 85-2-102, MCA, is amended to read:

"**85-2-102.** *(Temporary)* **Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Commission" means the fish and game commission provided for in 2-15-3402.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(10) "Ground water" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

(13) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(14) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(14)~~*(15)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(15)~~*(16)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(16)~~*(17)* "Water division" means a drainage basin as defined in 3-7-102.

~~(17)~~*(18)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(18)~~*(19)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(19)~~*(20)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. *(Terminates June 30, 1993—sec. 11, Ch. 658, L. 1989.)*

85-2-102. *(Effective July 1, 1993)* **Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(9) "Ground water" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(10) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(11) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

(12) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(13) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(13)~~*(14)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(14)~~*(15)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(15)~~*(16)* "Water division" means a drainage basin as defined in 3-7-102.

~~(16)~~*(17)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(17)~~*(18)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(18)~~*(19)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 3. Section 85-2-402, MCA, is amended to read:

"85-2-402. *(Temporary)* **Changes in appropriation rights.** (1) An appropriator may not make a change in an appropriation right except as permitted under this section and with the approval of the department or, if applicable, of the legislature.

(2) Except as provided in subsections (3) through (5), the department shall approve a change in appropriation right if the appropriator proves by substantial credible evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) Except for a lease authorization pursuant to 85-2-436 that does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(3) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by substantial credible evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (3) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(5) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (5)(b)(ii) and (5)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(6) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that a change might adversely affect the rights of other persons.

(7) The department or the legislature, if applicable, may approve a change subject to terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(8) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(9) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(10) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(11) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section. *(Terminates June 30, 1993—sec. 11, Ch. 658, L. 1989.)*

85-2-402. *(Effective July 1, 1993)* **Changes in appropriation rights.** (1) An appropriator may not make a change in an appropriation right except as permitted under this section and with the approval of the department or, if applicable, of the legislature.

(2) Except as provided in subsections (3) through (5), the department shall approve a change in appropriation right if the appropriator proves by substantial credible evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(3) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by substantial credible evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (3) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(5) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water

supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (5)(b)(ii) and (5)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(6) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon

any other proposed change if it determines that such a change might adversely affect the rights of other persons.

(7) The department or the legislature, if applicable, may approve a change subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(8) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(9) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(10) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(11) A change in appropriation right contrary to the provisions of this section is invalid. No officer, agent, agency, or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized change in appropriation right. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section."

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [section 1].

Section 5. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 1, 1991.

CHAPTER NO. 309

[SB 291]

AN ACT MAKING IT UNLAWFUL TO ATTEMPT TO TAKE A SIMULATED WILDLIFE DECOY; PROVIDING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Attempting to take simulated wildlife decoy — penalty.** (1) It is unlawful for a person to discharge a firearm or other hunting implement at a simulated wildlife decoy in violation of any state statute or commission rule regulating the hunting or taking of the wildlife being simulated when the decoy is being used by a certified peace officer.

(2) Upon conviction, the penalty for attempting to take a simulated wildlife decoy is the same as prescribed for unlawful taking of the actual wildlife being simulated.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 87, chapter 3, part 1, and the provisions of Title 87, chapter 3, part 1, apply to [section 1].

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved April 1, 1991.

CHAPTER NO. 310

[SB 306]

AN ACT TO ELIMINATE CURRENT RESTRICTIONS REGARDING MEDICAID REIMBURSEMENT FOR THE SERVICES OF LICENSED PROFESSIONAL COUNSELORS; AMENDING SECTION 53-6-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-101, MCA, is amended to read:

"**53-6-101. Montana medicaid program — authorization of services.** (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of social and rehabilitation services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) services provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(i) health services provided under a physician's orders by a public health department; and

(j) hospice care as defined in 42 U.S.C. 1396d(o).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23~~, if funds are specifically appropriated for the inclusion of these services in the Montana medicaid program~~;

(m) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(n) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(5) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(6) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost effective.

(7) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

(8) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(9) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(10) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted thereunder. *(Subsection (2)(j) terminates June 30, 1991—sec. 4, Ch. 633, L. 1989; Subsection (3)(m) terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)* "

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved April 1, 1991.

CHAPTER NO. 311

[SB 319]

AN ACT CLARIFYING THE GROSS VEHICLE WEIGHT FEE EXEMPTIONS FOR TAX-EXEMPT PROPERTY; AND AMENDING SECTION 61-10-214, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-214, MCA, is amended to read:

"**61-10-214. Exemptions.** (1) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from this part.

(2) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are exempt from this part.

(3) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from this part when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only or while being demonstrated in the course of the dealer's business, for a period not to exceed 7 days. Vehicles being demonstrated may not be leased, rented, or operated for compensation by the licensed dealer.

(4) Vehicles exempt from property tax under 15-6-201 (1)(a), (1)(c) through (1)(e), (1)(g), (1)(o), and (1)(q) are exempt from this part. The department of highways may require documentation of tax-exempt status from the department of revenue before granting this exemption."

Approved April 1, 1991.

CHAPTER NO. 312

[SB 408]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO COMMUNITY MENTAL HEALTH SERVICES; AMENDING SECTIONS 53-21-124, 53-21-201, 53-21-202, AND 53-21-212, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-201, MCA, is amended to read:

"**53-21-201. Definitions.** As used in this part, the following definitions apply:

~~(1) "Public mental health facility" means any public service or group of services offering mental health care on an inpatient or outpatient basis to the mentally ill.~~

~~(2)~~*(1)* "Community ~~comprehensive~~ mental health center" means a facility, not necessarily encompassed within one building, ~~offering~~ *that is licensed by the department of health and environmental sciences as a mental health center, as defined in 50-5-101, and that offers comprehensive mental health services that include* at least the following ~~six basic mental health~~ services to the public:

~~(a) 24-hour inpatient care;~~

~~(b) part-time hospitalization;~~

~~(c) outpatient service;~~

~~(d) emergency service;~~

(a) outpatient services, including specialized outpatient services for children, the elderly, individuals who have serious mental illness, and residents of its service area who have been discharged from inpatient treatment at a mental health facility;

(b) 24-hour-a-day emergency care services;

(c) day treatment or other partial hospitalization services or psychosocial rehabilitation services;

(d) screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission; and

(e) consultation and education in mental health~~;~~

~~(f) precare and aftercare~~.

~~(3) "Mental health clinic" means an outpatient facility offering mental health care to the public.~~

~~(4)~~*(2)* "Department" means the department of institutions."

Section 2. Section 53-21-202, MCA, is amended to read:

"**53-21-202. Duties of department.** The department shall:

(1) take cognizance of matters affecting the mental health of the citizens of the state;

(2) initiate ~~preventive mental health activities of the statewide mental health programs, including but not limited to the implementation of~~ mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. Such means shall be utilized to initiate and operate these services in cooperation with local agencies as established under this part.

~~(3) make scientific and medical research investigations relative to the incidence, cause, prevention, treatment, and care of the mentally ill;~~

~~(4)~~*(3)* collect and disseminate information relating to mental health;

~~(5)~~*(4)* prepare and maintain a comprehensive plan for the development of public mental health services in the state;~~. The public mental health services shall include but not be limited to community comprehensive mental health centers, mental health clinics, traveling service units, and consultative and educational services.~~

~~(6) provide by regulations for the examination of persons who apply for examination or who are admitted either as inpatients or outpatients to the Montana state hospital or other public mental health facilities;~~

~~(7)~~*(5)* receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;

~~(8)~~*(6)* establish standards for ~~public~~ mental health ~~facilities~~ *programs that receive funds from the department*; and

~~(9)~~*(7)* evaluate performance of ~~public mental health facilities~~ *programs that receive funds from the department* in compliance with federal and state standards."

Section 3. Section 53-21-212, MCA, is amended to read:

"**53-21-212. Definitions.** As used in 53-21-211 through 53-21-214, ~~unless the context requires otherwise, the following definitions apply:~~

~~(1) "Community mental health center" means a community comprehensive mental health center as defined in 53-21-201.~~

~~(2)~~ *the term* "~~State~~ *state* agency" means:

~~(a)~~*(1)* the department of health and environmental sciences provided for in 2-15-2101;

~~(b)~~*(2)* the department of social and rehabilitation services provided for in 2-15-2201;

~~(c)~~*(3)* the department of institutions provided for in 2-15-2301; and

~~(d)~~*(4)* the mental disabilities board of visitors provided for in 2-15-211."

Section 4. Section 53-21-124, MCA, is amended to read:

"**53-21-124. Detention of respondent pending hearing or trial.** (1) The court may not order detention of respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention. Counsel shall be orally notified immediately. Counsel for the respondent may then request a detention hearing, which shall be held forthwith.

(2) In the event of detention, the respondent shall be detained in the least restrictive setting necessary to assure his presence and assure his safety and the safety of others as provided in 53-21-120. A respondent may be detained in a jail or other correctional facility only if no appropriate mental health facility is immediately available for placement. When the respondent is detained in a jail or other correctional facility, the jail or other facility shall immediately notify the regional ~~central~~ office of the nearest *community* mental health ~~facility~~ *center*, as defined in 53-21-201, that a person detained in the jail or correctional facility is in need of an appropriate placement. Upon notification, the *community* mental health ~~facility~~ *center* shall identify an appropriate placement for the respondent, in accordance with the requirements of 53-21-120. Until a placement is identified, the *community* mental health ~~facility~~ *center* shall report on the status of the placement to the jail or correctional facility within every 12-hour period, including weekends and holidays. When an appropriate placement has been identified, the court must be promptly notified and the respondent must be transferred to that facility as soon as reasonably practical.

(3) If the respondent is detained, he shall have the right to be examined additionally by a professional person of his choice. Unless objection is made by counsel for the respondent, he shall continue to be evaluated and treated by the professional person pending the hearing."

Section 5. **Effective date.** [This act] is effective July 1, 1991.

Approved April 1, 1991.

CHAPTER NO. 313

[SB 422]

AN ACT TO PROVIDE THAT STATE LANDS MAY BE SOLD TO LOCAL GOVERNMENTAL UNITS; AND AMENDING SECTION 77-2-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-306, MCA, is amended to read:

"**77-2-306. Who may purchase.** (1) State lands shall be sold only to citizens of the United States ~~or to~~, persons who have declared their intentions to become citizens ~~or to~~, corporations organized under the laws of this state, *or towns, cities, counties, or consolidated local governments of this state.* No person shall be qualified to purchase state land who has not reached the age of 18 years. As far as possible to determine, the lands shall be sold only to actual settlers or to persons who will improve the same and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value.

(2) State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such state created by such state as an agency or political subdivision thereof. Said lands may be purchased in the quantities set forth in 77-2-307 for use by such state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

(3) State lands located wholly within the exterior boundaries of the tribal government's reservation as recognized by the federal government may be sold to a tribal government as defined in 18-11-102. No sale involving land in excess of the acreage limitations in 77-2-307 may be made under this section without first consulting with the board of county commissioners of the county or counties in which the lands to be sold are located."

Approved April 1, 1991.

CHAPTER NO. 314

[HB 76]

AN ACT TO GENERALLY REVISE THE WINE LAWS; REGULATING BUSINESS RELATIONS BETWEEN TABLE WINE DISTRIBUTORS AND SUPPLIERS; PROHIBITING CERTAIN ACTS BY SUPPLIERS; PROVIDING PROCEDURES FOR TERMINATION OF AGREEMENTS OF DISTRIBUTORSHIP; PROVIDING FOR TABLE WINE DISTRIBUTORS' OBLIGATIONS; ALLOWING DUAL APPOINTMENTS IN A SPECIFIED TERRITORY; PROVIDING REMEDIES FOR DISPUTES; AND AMENDING SECTIONS 16-1-106 AND 16-3-401, MCA.

STATEMENT OF INTENT

Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)], regarding the designation of sales territories for wine distributors by a winery.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agreement of distributorship" means a contract, agreement, commercial relationship, license, or other arrangement for a definite or an indefinite period of time between a supplier and a table wine distributor

that provides for the sale of table wine by the supplier to the table wine distributor.

(2) "Good cause" means failure by a table wine distributor to comply with reasonable business requirements imposed, or sought to be imposed, by a supplier under the terms of an agreement of distributorship if the requirements are imposed on other similarly situated distributors either by the terms of their agreements or in the manner of their enforcement by the supplier.

(3) "Person" means a natural person, corporation, partnership, trust, agency, or other entity and includes individual officers, directors, or other persons in active control of the activities of the entity.

(4) "Supplier" means a winery or an importer of table wines that enters into or is a party to an agreement of distributorship with a table wine distributor.

Section 2. **Suppliers' prohibitions.** A supplier may not:

(1) coerce, induce, or attempt to coerce or induce a table wine distributor to engage in an illegal act or course of conduct;

(2) require a table wine distributor to accept delivery of a product or other item or commodity that was not ordered by the wine distributor.

Section 3. **Table wine distributor provisions.** (1) A supplier or table wine distributor may not fail or refuse to reduce to writing an agreement of distributorship that provides for purchase of the supplier's products from the supplier by the table wine distributor.

(2) An agreement of distributorship must provide that:

(a) a supplier shall notify a table wine distributor in writing at least 60 days prior to termination of an agreement of distributorship unless a termination without notice is permitted as provided in [section 4]. The written notice must state the reasons for termination. Notice of termination is void if within 60 days of the notice the table wine distributor rectifies the deficiency stated as the reason for termination and if the deficiency was not stated as reason for termination in a notice previously voided under the provisions of this subsection.

(b) a supplier may not unreasonably withhold or delay approval of a sale or transfer of the ownership, management, or control of a table wine distributorship; however, a table wine distributor shall give a supplier no less than 60 days' prior written notice of any material change in ownership, management, or control.

(3) Within 60 days after entering into an agreement of distributorship, the supplier shall advise the department of the agreement by filing a copy of the agreement that must include the sales area or areas designated for the table wine distributor.

(4) If a supplier terminates an agreement of distributorship under the provisions of subsection (2)(a), the table wine distributor subject to the termination is entitled to compensation for the laid-in cost of his inventory. In the event of any termination of the agreement by the supplier other than termination for good cause or for any reason set forth in [section 4(3)], the distributor is entitled to compensation for the laid-in cost of his inventory and to liquidated damages based on the sales of the brand or brands involved, as may be provided in the agreement. If the supplier and the distributor are unable to agree on the amount of liquidated damages, the amount of liquidated damages must be determined by an arbitrator appointed under subsection (5) of this section.

(5) If undertaken in good faith by a supplier, a supplier may terminate an agreement of distributorship for a legitimate business reason not within the definition of good cause if an arbitrator appointed by the department finds, after hearing the supplier and the table wine distributor, that the termination is in the best interest of the table wine brand concerned. Arbitration under this section must be conducted under the provisions of Title 27, chapter 5.

Section 4. **Supplier provisions.** (1) An agreement of distributorship must provide that a table wine distributor shall:

(a) maintain the financial and competitive capability to efficiently and effectively distribute a supplier's products;

(b) maintain the quality and integrity of a supplier's products in a manner set forth by the supplier;

(c) exert the table wine distributor's best efforts to sell the supplier's wines;

(d) merchandise the products in retail stores as agreed between the table wine distributor and the supplier; and

(e) give a supplier not less than 60 days' written notice of the table wine distributor's intent to terminate an agreement of distributorship.

(2) As provided in [section 3], a supplier may terminate an agreement of distributorship based on a deficiency or other good cause by giving 60 days' prior written notice to the table wine distributor.

(3) A supplier may terminate an agreement of distributorship immediately and without notice if the reason for the termination is insolvency, assignment for the benefit of creditors, bankruptcy, or revocation or suspension for more than 14 days of a license to operate that is required by the state or the federal government.

Section 5. **Dual appointments — equal support — alternate supplier.** (1) A supplier may appoint one or more table wine distributors to distribute its table wines in a specified territory. If the supplier appoints two or more table wine distributors to sell its table wines in the same or overlapping territories, the supplier shall offer the same prices, delivery, terms, and promotional support to each table wine distributor.

(2) The holder of an all-beverages license under chapter 4, part 2, may, upon presentation of his license or a photocopy of his license, personally obtain from any distributor's warehouse a quantity of table wine that the licensee may agree to buy and that the distributor may agree to sell.

Section 6. **Applicability.** Within 60 days after [the effective date of this act] or within 60 days after the execution of a new agreement by the parties, whichever is later, an agreement of distributorship must be reduced to writing and an exact copy of the agreement must be filed with the department as a public document and must be available to any of the parties to a dispute. Upon filing with the department, the agreement becomes subject to the provisions of [this act].

Section 7. **Injunction.** A person injured by a violation of this part may bring a civil action in a court of competent jurisdiction to enjoin further violations in addition to other remedies provided by law.

Section 8. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Beer importer" means a person other than a brewer who imports malt beverages.

(6) "Brewer" means a person who produces malt beverages.

(7) "Department" means the department of revenue.

(8) "Immediate family" means a spouse, dependent children, or dependent parents.

(9) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(10) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(11) "Liquor" means an alcoholic beverage except beer and table wine.

(12) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom and with or without other wholesome products suitable for human food consumption.

(13) "Package" means a container or receptacle used for holding an alcoholic beverage.

(14) "Posted price" means the retail price of liquor and table wine as fixed and determined by the department and in addition thereto an excise and license tax as provided in this code.

(15) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(16) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(17) "Rules" means rules published by the department pursuant to this code.

(18) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(19) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor and table wine.

(20) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(21) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of such beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(22) "Table wine" means wine as defined below which contains not more than 16% alcohol by volume.

(23) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

~~(23)~~*(24)* "Warehouse" means a building or structure located in Montana owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(24)~~*(25)* "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 9. Section 16-3-401, MCA, is amended to read:

"**16-3-401. ~~Public~~** ***Short title — public*** **policy** ***— purpose.*** *(1) This part may be cited as the "Wine Distribution Act".*

(2) The public policy of the state of Montana is to maintain a system for the importation and sale of table wine by the state through state liquor facilities and provide for, regulate, and control the acquisition, importation, and distribution of table wine by licensed table wine distributors and the state.

(3) This part governs relationships between suppliers and table wine distributors, and because the legislature recognizes the public interest and the interests of suppliers and table wine distributors in the fair, efficient, and competitive distribution of table wine, this part is intended to:

(a) protect the table wine distributor's independence in managing his own business, including the establishment of selling prices; and

(b) encourage table wine distributors to devote their best efforts to the sale and distribution of the table wines they sell and distribute."

Section 10. **Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 16, chapter 3, part 4, and the provisions of Title 16, chapter 3, part 4, apply to [sections 1 through 7].

Approved April 2, 1991.

CHAPTER NO. 315

[HB 333]

AN ACT AMENDING THE LAWS RELATING TO PAROLE ELIGIBILITY; MAKING ALL INMATES ELIGIBLE FOR PAROLE 120 DAYS

PRIOR TO THEIR ELIGIBILITY DATES WHEN THE CORRECTIONAL FACILITY HAS EXCEEDED ITS DESIGNED CAPACITY FOR 30 CONSECUTIVE DAYS; AND AMENDING SECTION 46-23-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-201, MCA, is amended to read:

"**46-23-201. Prisoners eligible for parole.** (1) Subject to the restrictions contained in subsections (2) through (4), the board may release on parole by appropriate order any person confined in the Montana state prison or the women's correction center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A convict serving a time sentence may not be paroled until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105; except that a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 1/2 years.

(3) A convict serving a life sentence may not be paroled until he has served 30 years, less the good time allowance provided for in 53-30-105.

(4) A parole may be ordered only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

(5) ~~If~~ *Whenever* the department of institutions certifies to the board that the population at *either* the ~~Montana state prison exceeds~~ *male or female correctional facility has exceeded* its ~~design~~ *designed* capacity ~~of 744 by 96 inmates or that the population at the women's correction center exceeds its design capacity of 35 inmates and that the prison or the center has exceeded its capacity for a period of more than~~ *for* 30 *consecutive* days, the board shall consider ~~convicts in the institution in which the design capacity has been exceeded~~ *the respective male or female inmates under the jurisdiction of the department* eligible for parole 120 days prior to the eligibility dates provided for in subsections (2) and (3).

(6) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration at Montana state prison, the provisions of subsection (5) do not apply."

Approved April 2, 1991.

CHAPTER NO. 316

[HB 407]

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE X, SECTION 9, OF THE MONTANA CONSTITUTION TO INCREASE THE MEMBERSHIP ON THE BOARD OF REGENTS TO EIGHT MEMBERS AND TO REQUIRE THE APPOINTMENT OF ONE NATIVE AMERICAN MEMBER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article X, section 9, of The Constitution of the State of Montanais amended to read:

"**Section 9. Boards of education.** (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of ~~seven~~ *eight* members, *including one Native American member,* appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board."

Section 2. **Submission to electorate.** This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 1992 by printing on the ballot the full title of this act and the following:

☐ FOR increasing membership on the board of regents to eight members and requiring the appointment of one Native American member.

☐ AGAINST increasing membership on the board of regents to eight members and requiring the appointment of one Native American member.

CHAPTER NO. 317

[HB 421]

AN ACT CLARIFYING THE CERTIFICATION AND TRAINING REQUIREMENTS FOR JUDGES OF COURTS OF LIMITED JURISDICTION; CLARIFYING THE QUALIFICATIONS FOR OFFICE OF JUDGES OF COURTS OF LIMITED JURISDICTION; REQUIRING THAT THE SUPREME COURT BE NOTIFIED OF THE ELECTION OR APPOINTMENT OF A JUDGE OF A COURT OF LIMITED JURISDICTION; AMENDING SECTIONS 3-1-1502, 3-1-1503, 3-6-202, 3-10-202, 3-10-231, AND 13-15-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-1502, MCA, is amended to read:

"**3-1-1502. Training and certification of judges.** Except as provided in 3-1-1503, no judge selected for a term of office ~~commencing on or after January 6, 1986,~~ may assume the functions of his office unless he has filed with the county clerk and recorder in his jurisdiction a certificate of completion of a course of education and training prescribed by the commission."

Section 2. Section 3-1-1503, MCA, is amended to read:

"**3-1-1503. Exception — temporary certificate.** (1) Section 3-1-1502 does not apply to a judge who has received a temporary certificate issued by the commission as provided for in subsection (2).

(2) The commission may issue a temporary certificate enabling a judge to assume the functions of his office pending completion of a course as required by 3-1-1502. The temporary certificate must be in a form and subject to the terms and conditions prescribed by the commission.

(3) The commission may issue a temporary certificate only if:

(a) the judge is appointed or elected ~~for his first term~~ after the course is offered; or

(b) the commission grants an excuse because of a personal illness, a death in the family, or other good cause.

(4) The appointing authority for an appointed judge shall notify the commission of the person appointed, and the person appointed must be certified as provided in 3-1-1502 or this section prior to assuming office."

Section 3. Section 3-6-202, MCA, is amended to read:

"**3-6-202. Qualifications** — ***certification* — *training.*** *(1)* A municipal court judge must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the 1972 Montana constitution, except that a municipal court judge need only be admitted to the practice of law in Montana for at least 2 years prior to the date of appointment or election.

(2) A municipal court judge must be a resident and voter in the city in which he is elected at the time of his election.

(3) A municipal court judge must be certified as provided in 3-1-1502 or 3-1-1503 prior to assuming office.

(4) There must be two mandatory annual training sessions supervised by the supreme court for all elected and appointed municipal court judges. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided for in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be paid to the elected or appointed municipal court judge for attending the sessions by the city in which he holds or will hold court and must be charged against that city.

(5) Each municipal court judge shall attend the training sessions provided for in subsection (4). Failure to attend disqualifies a judge from office and creates a vacancy in the office. However, the supreme court may excuse a municipal court judge from attendance because of illness, a death in the family, or any other good cause."

Section 4. Section 3-10-202, MCA, is amended to read:

"**3-10-202. Oath** — ~~**qualifications**~~ ***proof of certification.*** (1) Each justice of the peace, elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office, take the constitutional oath of office, which must be filed with the county clerk.

(2) Before the county clerk may file the oath, the elected or appointed justice must satisfy the clerk that he is ~~either:~~

~~(a) an attorney at law authorized to practice law in the state of Montana;~~

~~(b) a person who has held the office of justice of the peace within the preceding 5 years; or~~

~~(c) a person who has completed the orientation course of study held under the direction of the supreme court or has been excused by the supreme court~~ *certified as provided in 3-1-1502 or 3-1-1503.* ~~If a person is appointed after the course is offered, he must agree to take the course at the next offering and failure to do so will disqualify him.~~"

Section 5. Section 3-10-231, MCA, is amended to read:

"**3-10-231. Circumstances in which an acting justice called in — by whom.** (1) Whenever a justice of the peace is disqualified from acting in any action because of the application of the supreme court's rules on disqualification and substitution of judges, subdivision 1, 2, or 3, he shall either transfer the action to another justice's court in the same county or call a justice from a neighboring county to preside in his behalf.

(2) Within 30 days of taking office, a justice of the peace shall provide a list of persons who are qualified to hold court in his place during a temporary absence when no other justice or city judge is available. *The persons listed must be of good moral character and have community support, a sense of community standards, and a basic knowledge of court procedure.* The county commissioners shall administer the oath of office to each person on this list ~~within the ensuing 30 days or~~ as soon ~~thereafter~~ as possible *after the person has received a waiver of training from the supreme court.*

(3) Whenever a justice is sick, disabled, or absent, the justice may call in another justice, if there is one readily available, or a city judge or a person from the list provided for in subsection (2) to hold court for the absent judge until his return. If the justice is unable to call in a substitute, the county commissioners shall call in another justice, a city judge, or a person from the list provided for in subsection (2).

(4) During the time when a justice of the peace is on vacation or attending a training session, another justice of the peace of the same county shall be authorized to handle matters that otherwise would be handled by the absent justice. When there is no other justice of the peace in the county, the justice of the peace may designate another person in the same manner as if the justice were sick or absent.

(5) A justice of the peace of any county may hold the court of any other justice of the peace at his request."

Section 6. Section 13-15-405, MCA, is amended to read:

"**13-15-405. Declaration or certification of results.** (1) The board shall declare nominated or elected the individuals having the highest number of votes cast for each county and precinct office, except as provided in 13-10-204.

(2) The board shall proclaim the adoption or rejection of a county ballot issue.

(3) The board shall certify the results of the canvass of votes cast for individuals for political subdivision offices and for and against political

subdivision ballot issues to the governing body of each political subdivision participating in the election.

(4) If there is a tie vote for a county office, an office of a political subdivision wholly within the county, a precinct office, or a ballot issue voted on only in that county or portion of that county, the board shall certify the vote to the election administrator.

(5) The board shall certify the results of the canvass of votes cast for justice of the peace, city judge, and municipal court judge to the supreme court in order to ensure compliance with 3-1-1502 or 3-1-1503."

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved April 2, 1991.

CHAPTER NO. 318

[HB 530]

AN ACT TO PROHIBIT DISABILITY AND LIFE INSURERS FROM EXCLUDING COVERAGE TO OR REFUSING TO CONSIDER AN APPLICATION FOR INSURANCE COVERAGE FROM ANY PERSON ON THE BASIS OF GENETIC CONDITION, DEVELOPMENTAL DELAY, OR DEVELOPMENTAL DISABILITY; TO DEFINE UNLAWFUL DISCRIMINATION IN THE APPLICATION OF INSURANCE RATES OR TERMS OR IN THE ISSUANCE OF AN INSURANCE POLICY; TO DEFINE TERMS; AMENDING SECTION 33-18-206, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-18-206, MCA, is amended to read:

"33-18-206. Unfair discrimination prohibited — life insurance, annuities, and disability insurance. (1) No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon or in any other of the terms and conditions of such contract.

(2) No person shall make or permit any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of disability insurance or in the benefits payable thereunder or in any of the terms or conditions of such contract or in any other manner whatever.

(3) An insurer may not refuse to consider an application for life or disability insurance on the basis of a genetic condition, developmental delay, or developmental disability.

(4) The rejection of an application or the determining of rates, terms, or conditions of a life or disability insurance contract on the basis of genetic condition, developmental delay, or developmental disability constitutes unfair discrimination unless the applicant's medical condition and history and either claims experience or actuarial projections establish that substantial differences in claims are likely to result from the genetic condition, developmental delay, or developmental disability.

(5) As used in this section, the following definitions apply:

(a) "Developmental delay" means a delay of at least 1 1/2 standard deviations from the norm.

(b) "Developmental disability" means the singular of developmental disabilities as defined in 53-20-202.

(c) "Genetic condition" means a specific chromosomal or single-gene genetic condition."

Section 2. **Applicability.** [This act] applies to disability or life insurance policies or contracts applied for, delivered, issued for delivery, or renewed in this state on or after October 1, 1991.

Approved April 2, 1991.

CHAPTER NO. 319

[SB 252]

AN ACT REVISING THE ALLOCATION OF FUNDS THAT MAY BE USED FOR DEVELOPMENT AND MAINTENANCE OF WILDLIFE HABITAT; REQUIRING A COMPREHENSIVE STUDY OF WILDLIFE HABITAT ACQUISITION, IMPROVEMENT, OPERATIONS, MAINTENANCE, AND DEVELOPMENT AND PRESENTATION OF THE STUDY TO THE 1993 LEGISLATURE; EXTENDING THE WILDLIFE HABITAT ACQUISITION PROGRAM UNTIL MARCH 1, 1996; AMENDING SECTION 87-1-242, MCA, AND SECTION 12, CHAPTER 598, LAWS OF 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT RETROACTIVE APPLICABILITY DATE.

WHEREAS, wildlife is a major historical, social, and economic resource of Montana; and

WHEREAS, it is in the best interests of the people, the wildlife, and the State of Montana to have a permanent wildlife habitat and conservation easement acquisition program; and

WHEREAS, sportsmen and others have demonstrated their commitment to wildlife by supporting, through license fees, the acquisition of wildlife habitat; and

WHEREAS, private landowners provide significant habitat for Montana's wildlife resources and have legitimate concerns regarding the operation and maintenance of neighboring lands acquired by the Fish and Game Commission for wildlife habitat; and

WHEREAS, it is in the best interests of the people, the wildlife, and the State of Montana that relations between landowners and sportsmen be cooperative and mutually respectful in nature and that the concerns of both landowners and sportsmen be taken into consideration in the formulation of a wildlife habitat and conservation easement acquisition program; and

WHEREAS, an independent and detailed study is needed to determine the character and application of the state's permanent wildlife habitat and conservation easement acquisition program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-242, MCA, is amended to read:

"87-1-242. *(Temporary)* **Funding for wildlife habitat.** (1) The amount of money specified in this subsection from the sale of each hunting license or permit listed must be used exclusively by the commission to secure, develop, and maintain wildlife habitat, subject to appropriation by the legislature.

(a) Class B-10, nonresident combination, $77;

(b) Nonresident antelope, $20;

(c) Nonresident moose, $20;

(d) Nonresident mountain goat, $20;

(e) Nonresident mountain sheep, $20;

(f) Class D-1, nonresident mountain lion, $20;

(g) Nonresident black bear, $20;

(h) Wild turkey nonresident, $10;

(i) Class AAA, sportsman's, $7;

(j) Class B-11 nonresident deer combination, $200.

(2) Twenty percent of any increase after March 1, 1988, in the fee for the Class B-7 license or any license or permit listed in subsection (1) must be allocated for use as provided in subsection (1).

(3) Eighty percent of the money allocated by this section, together with the interest and income therefrom, must be used to secure wildlife habitat pursuant to 87-1-209.

(4) *(a)* ~~Twenty percent~~ *Until March 1, 1991, 20%* of the money allocated by this section must be credited to the account created by 87-1-601(5) for use in the manner prescribed therein for the development and maintenance of real property used for wildlife habitat.

(b) On and after March 1, 1991, 20% of the money allocated by this section must be used as follows:

(i) up to 50% a year may be used for development and maintenance of real property used for wildlife habitat; and

(ii) the remainder and any money not allocated for development and maintenance under subsection (4)(b)(i) by the end of each odd-numbered fiscal year must be credited to the account created by 87-1-601(5) for use in the manner prescribed therein for the development and maintenance of real property used for wildlife habitat. (Terminates March 1, ~~1994~~ *1996—sec. 12, Ch. 598, L. 1987.)* "

Section 2. **Comprehensive study required — report to 1993 legislature.** (1) The department of fish, wildlife, and parks shall commission an independent comprehensive study of wildlife habitat acquisition, improvement, and development, to be funded in an amount up to $150,000 from money allocated under 87-1-242(3).

(2) The study must analyze the department's current wildlife habitat acquisition, improvement, operations, maintenance, and development program and develop a comprehensive plan for a permanent wildlife habitat acquisition, improvement, operations, maintenance, development, and land management program, including the use of conservation easements, leases, and fee title acquisition. The study must also include a comprehensive and detailed accounting of expenditures authorized by 87-1-242(4). The department shall ensure participation by the public, including landowners and sportsmen, in the development of the comprehensive plan. The study and plan must be completed by December 1, 1992, and presented to the 1993 legislature.

Section 3. Section 12, Chapter 598, Laws of 1987, is amended to read:

"Section 12. **Effective date — termination date.** This act is effective March 1, 1988, and terminates March 1, ~~1994~~ *1996.*"

Section 4. **Effective date — contingent retroactive applicability.** [This act] is effective on passage and approval and, if passed and approved on or after March 1, 1991, applies retroactively, within the meaning of 1-2-109, to funds allocated under 87-1-242(4) on and after March 1, 1991.

Approved April 2, 1991.

CHAPTER NO. 320

[SB 297]

AN ACT ENABLING THE DEPARTMENT OF HIGHWAYS TO PERMIT CERTAIN VEHICLE COMBINATIONS THAT WERE OPERATED BEFORE JULY 1, 1987; AND AMENDING SECTION 61-10-124, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-124, MCA, is amended to read:

"**61-10-124. Special permits — fee — cranes.** (1) As used in this section, "crane" means a self-propelled single-unit vehicle consisting of not more than four axles and used for raising, shifting, and lowering heavy weights by means of a projecting swinging arm.

(2) Except as provided in subsections (3)(b), (3)(d), and (6), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through 61-10-110 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of highways.

(3) (a) Except as provided in subsections (3)(b), (3)(d), ~~and~~ (6), *and (7),* term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; and an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in ~~subsection~~ *subsections* (6) *and (7).* Special permits for vehicle combinations may specify and special permits under ~~subsection~~ *subsections* (6) *and (7)* must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (3)(a). The fee for this permit is $75. This permit covers a period of 1 year and expires on December 31 of each year with no grace period.

(c) With payment of the appropriate gross weight fee required by 61-10-203 and with payment of the fee prescribed in subsection (2), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is $125.

(4) Except as provided in subsection (3)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of highways, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(5) The owner or operator of a crane with a gross vehicle weight of less than 80,000 pounds may purchase a 30-day special permit for overweight if the crane has a current special mobile equipment identification plate and if the department of highways has approved the configuration of the crane through a weight analysis completed within the same calendar year. The permit is not transferable, and the fee for the permit is $200.

(6) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system as defined in 60-1-103 and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) a combination of vehicles powered by a cab-over (tilt cab) type truck-tractor or a truck may not exceed overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck-tractor may not exceed overall length of 110 feet, inclusive of front and rear bumpers and overhang;

(d) no individual cargo unit of the combination may exceed 28 1/2 feet in length and 102 inches in width;

(e) gross weight fees under 61-10-203 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) the combination must have a restricted route permit under 61-10-107(3) and a special overlength permit issued at a fee of $200 for a term permit or $20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is $200.

(7) The department of highways may issue special permits under subsection (6) for vehicle combinations consisting of a truck-trailer-trailer if:

(a) the vehicle combination's overall length inclusive of front and rear bumpers is not more than 95 feet;

(b) a person, firm, or corporation applying for a permit under subsection (7) operated the truck-trailer-trailer combination before July 1, 1987;

(c) truck-trailer-trailer operations are restricted to the specified routes those vehicles operated on before July 1, 1987; and

(d) a person, firm, or corporation applying for a permit provides the department of highways with an affidavit designating the routes the vehicle operated on before July 1, 1987."

Approved April 2, 1991.

CHAPTER NO. 321

[SB 298]

AN ACT CLARIFYING THE ELEMENTS NECESSARY TO DETERMINE RESIDENCY FOR PURPOSES OF HUNTING, FISHING, AND TRAPPING LICENSING; PROVIDING FOR THE DOCUMENTATION OF RESIDENCY; PROVIDING PENALTIES; AMENDING SECTIONS 87-2-102, 87-2-106, 87-2-109, AND 87-2-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-102, MCA, is amended to read:

"**87-2-102. Resident defined.** In determining a resident for the purpose of issuing resident fishing, hunting, and trapping licenses, the following provisions ~~shall~~ apply:

(1) Members of the *regular* armed forces of the United States or members of the armed forces of foreign governments attached to the armed forces of the United States who are assigned to *active* duty in Montana and

their dependents, *as defined in 15-30-113,* who reside in their Montana household with them, after a period of 30 days within Montana, upon presenting assignment orders emanating from the proper unit commander, ~~shall be~~ *are* considered residents for the purpose of this chapter. The 30-day residence requirement is waived in time of war.

(2) ~~Any~~ *A* person who has been a resident of the state of Montana~~, as defined in 1-1-215,~~ for a period of 6 months immediately prior to making application for ~~said~~ *a* license ~~shall be~~ *is* eligible to receive a resident hunting, fishing, or trapping license. *A person is considered a resident if the person meets the following criteria:*

(a) the person lives in Montana or has a fixed intent to return to this state when he leaves it;

(b) the person files Montana state income tax returns if required to file as a resident;

(c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;

(d) the person does not use any resident hunting, fishing, or trapping privileges in another state or country during the time the resident Montana license is valid; and

(e) if the person registers to vote, the person registers only in Montana.

(3) Any enrollee of a job corps camp located within the state of Montana ~~shall~~ *is*, after a period of 30 days within Montana, ~~be~~ considered a resident for the purpose of making application for a fishing license as long as ~~he~~ *the person* remains an enrollee in a Montana camp.

(4) A person ~~meeting~~ *who does not reside in Montana but who meets* all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.

(b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.

(c) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.

(d) The person's state of residency has laws substantially similar to this subsection (4).

(5) An unmarried minor whose parents, legal guardian, or custodial parent is a resident for purposes of this section is also considered a resident for purposes of this section."

Section 2. Section 87-2-106, MCA, is amended to read:

"87-2-106. Application for license — ***penalties for violation — forfeiture of privileges.*** (1) A license may be procured from the director, any warden, or any authorized agent of the director. The applicant shall state ~~his~~ *the applicant's* name, age, occupation, place of residence, post-office address, the *qualifying* length of time *as a resident* in the state of Montana, whether a citizen of the United States or an alien, and ~~such~~ other facts, data, or descriptions as may be required by the department. *An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is unlawful and a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure.* Except as provided in subsections (2) through (4), the statements made by the applicant ~~shall~~ *must* be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by mail. Statements on an application for a license to be issued by mail need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(4), the applicant ~~must~~ *shall* apply to the director and ~~must~~ *shall* submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(4). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for his spouse, parent, child, brother, or sister who is otherwise qualified to obtain ~~such~~ *the* license.

(5) A license is void unless subscribed to by the licensee and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.

(6) It is unlawful to subscribe to any statement, on any application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. ~~Any~~ *A* person violating any provision of this statute is guilty of a misdemeanor.

(7) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to a false statement to obtain a resident license shall be:

(i) fined not less than the greater of $100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than $1,000;

(ii) imprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection (7)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

(8) It is unlawful and a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section.

~~(7)~~*(9)* The department may bring an action to prosecute a violation of this section within 3 years of the date of application for licensure."

Section 3. Section 87-2-109, MCA, is amended to read:

"**87-2-109. Carrying and exhibiting license** ***and identification.*** (1) It is unlawful for ~~any~~ *a* person to whom a license or permit has been issued to fish for or take any fish or pursue, hunt, shoot, kill, or take any game bird or game animal or attempt to trap, trap, or take any fur-bearing animal in this state unless ~~he~~ *the person* has the license, licenses, or permit in ~~his~~ *the person's* possession at the time.

(2) It is unlawful to refuse to exhibit a license or permit *and the identification used in purchasing a license or permit* for inspection to a warden or other officer requesting to see it."

Section 4. Section 87-2-202, MCA, is amended to read:

"**87-2-202. Application — stamp attachment — fee — expiration.** (1) A wildlife conservation license ~~shall~~ *must* be sold upon written application. The application ~~shall~~ *must* contain the applicant's name, age, occupation, place of residence, post-office address, and *the qualifying* length of time *as a resident* in the state of Montana; state whether the applicant is a citizen of the United States or an alien; and be subscribed by the applicant. The applicant shall present a *valid Montana* driver's license, *a Montana driver's examiner's identification card,* or other identification *specified by the department* to substantiate the *required* information *when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.*

(2) Hunting, fishing, or trapping licenses in the form of tags or stamps issued to a holder of a wildlife conservation license must be affixed to or recorded on the wildlife conservation license according to ~~such~~ rules ~~as~~ the department may prescribe.

(3) Resident and nonresident wildlife conservation licenses may be purchased for a fee of $2.

(4) Licenses issued ~~shall be~~ *are* void after the last day of February next succeeding their issuance."

Section 5. **Effective date.** [This act] is effective July 1, 1991.

Approved April 2, 1991.

CHAPTER NO. 322

[SB 322]

AN ACT TO CREATE AN EXEMPTION TO MOTOR CARRIER LAWS FOR PRIVATE, NONPROFIT ORGANIZATIONS PROVIDING TRANSPORTATION OF HANDICAPPED AND ELDERLY PERSONS; AND AMENDING SECTION 69-12-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-102, MCA, is amended to read:

"**69-12-102. Scope of chapter — exemptions.** (1) This chapter does not affect:

(a) motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof) if the motor vehicles are not used in carrying other property or passengers for compensation;

(b) the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities which are sponsored or supervised by school authorities;

(c) the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees, supplies, and materials in construction and production is concerned;

(d) the transportation of property by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas thereof, as determined by the commission;

(e) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles;

(g) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(h) ambulances;

(i) the transportation of pit run or processed sand and gravel, concrete mix, aggregate, plant mix asphalt pavement, aggregate mix, dirt, rock, material from demolished buildings and structures, used paving materials, used concrete, broken concrete, riprap, and other forms and types of materials transported solely for the purpose of excavation or fill;

(j) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also on his way to or from his place of employment;

(k) the transportation of property by motor carrier as part of a continuous movement if such property, prior or subsequent to such part of a continuous movement, has been or will be transported by an air carrier;

(l) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2; or

(ii) municipal bus service pursuant to Title 7, chapter 14, part 44;

(m) armored motor vehicles used exclusively for the transportation of coins, currency, silver bullion, gold bullion, and other precious metals, precious stones, valuable paintings, and other items of unusual value requiring special handling and security; ~~or~~

(n) the transportation of a commodity under an agreement between a motor carrier and an office or agency of the United States government~~.~~*; or*

(o) the transportation of handicapped or elderly persons provided by private, nonprofit organizations. As used in this subsection:

(i) "handicapped" means an individual who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) "elderly" means a person 60 years of age or older; and

(iii) "private, nonprofit organization" means an organization recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(2) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Approved April 2, 1991.

CHAPTER NO. 323

[SB 383]

AN ACT TO REVISE CERTAIN PROVISIONS OF THE WORKERS' COMPENSATION ACT; AMENDING SECTIONS 39-71-116, 39-71-117, 39-71-118, 39-71-414, 39-71-431, 39-71-2311, AND 39-71-2339, MCA; REPEALING SECTION 39-71-2338, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to the investigation, review, and settlement of claims; payment of benefits; setting of reserves; furnishing of services and facilities; and utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (3)(a) through (3)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (3)(a) through (3)(e) of this section, exists).

(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(6) "Days" means calendar days, unless otherwise specified.

(7) "Department" means the department of labor and industry.

(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(10) "Invalid" means one who is physically or mentally incapacitated.

(11) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(12) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(13) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(14) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

(15) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

(16) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(17) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(18) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(19) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(20) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(21) "Temporary service contractor" means any person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

~~(21)~~*(22)* "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

(23) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

~~(22)~~*(24)* "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-117, MCA, is amended to read:

"**39-71-117. Employer defined.** *(1)* "Employer" means:

~~(1)~~*(a)* the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof; and

~~(2)~~*(b)* any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance in Montana both at the inception of employment and during all phases of the work performed for the worker.

(4) Notwithstanding the provisions of subsection (3), a common or contract motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 3. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, and workman defined.** (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers; or

(e) an airman or other person employed as a volunteer under 67-2-105.

(2) (a) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (2)(d). A partner or sole proprietor is not considered an employee within this chapter until such notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter.

(3) An employee, workman, or worker in this state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in section 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(4).

(4) For purposes of this section, an "employee, workman, or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state; or

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer."

Section 4. Section 39-71-414, MCA, is amended to read:

"**39-71-414. Subrogation.** (1) If an action is prosecuted as provided for in 39-71-412 or 39-71-413 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2) (a) If the injured employee intends to institute the third party action, he shall give the insurer reasonable notice of his intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including attorneys' fees.

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorneys' fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to institute the third party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement which is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorneys' fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) ~~If the amount of compensation and other benefits payable under the Workers' Compensation Act have not been fully determined at the time the employee, the employee's heirs or personal representatives, or the insurer have settled in any manner the action as provided for in this section, the department shall determine what proportion of the settlement shall be allocated under subrogation. The department's determination may be ap-~~

~~pealed to the workers' compensation judge~~ *Regardless of whether the amount of compensation and other benefits payable under the Workers' Compensation Act have been fully determined, the insurer and the claimant's heirs or personal representative may stipulate the proportion of the third party settlement to be allocated under subrogation. Upon review and approval by the department, the agreement constitutes a compromise settlement of the issue of subrogation and may not be reopened by the department.*

(6) (a) The insurer is entitled to full subrogation rights under this section, even though the claimant is able to demonstrate damages in excess of the workers' compensation benefits and the third-party recovery combined. The insurer may subrogate against the entire settlement or award of a third party claim brought by the claimant or his personal representative, without regard to the nature of the damages.

(b) If no survival action exists and the parties reach a settlement of a wrongful death claim without apportionment of damages by a court or jury, the insurer may subrogate against the entire settlement amount, without regard to the parties' apportionment of the damages, unless the insurer is a party to the settlement agreement."

Section 5. Section 39-71-431, MCA, is amended to read:

"**39-71-431. Assigned risk plan.** (1) Following the date on which the provisions of 39-71-2311 through 39-71-2320~~,~~ *and* 39-71-2337~~, and 39-71-2338~~ are implemented but no later than December 31, 1990, the commissioner of the department of labor and industry may order the establishment of and administer a plan to equitably apportion among the state fund, plan No. 3, and private insurers, plan No. 2, the coverage required by this chapter for employers who are unable to procure coverage through ordinary methods. In determining whether to order an assigned risk plan to be established, the commissioner shall consider the effect a plan would have on the availability of workers' compensation insurance and the need to provide competitive workers' compensation premium rates for employers in this state. If the commissioner orders the establishment of an assigned risk plan, it may not take effect until at least 6 months following the commissioner's order creating the plan.

(2) All plan No. 2 insurers and the state fund shall subscribe to and participate in the assigned risk plan.

(3) If an insurer refuses to accept its equitable apportionment under the assigned risk plan, the commissioner of insurance may suspend or revoke the insurer's authority to issue workers' compensation insurance policies in this state.

(4) If an assigned risk plan is established and in effect, the state fund, plan No. 3, is not required to insure any employer in this state requesting coverage, and it may refuse coverage for an employer, except for a state agency.

(5) If an assigned risk plan is established and in effect, an employer who is refused the coverage required by this chapter by the state fund, plan

No. 3, and by at least two private insurers, plan No. 2, may be assigned coverage by the commissioner under the assigned risk plan pursuant to the procedure established by the commissioner for the equitable apportionment of coverage."

Section 6. Section 39-71-2311, MCA, is amended to read:

"**39-71-2311. Intent and purpose of plan.** It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a mutual insurance fund. The state fund is required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer unless an assigned risk plan established under 39-71-431 is in effect. The state fund must be neither more nor less than self-supporting. Premium rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, it must implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record. *An employer's payroll reporting and premium history and other relevant factors may also be considered in implementing variable pricing levels.*"

Section 7. Section 39-71-2339, MCA, is amended to read:

"**39-71-2339. Cancellation of coverage — thirty days' notice required.** The state fund may cancel an employer's ~~right to operate under plan No. 3 of the Workers' Compensation Act~~ *coverage under this part* for failure to *report payroll or* pay the premiums due *or for another cause provided in the insurance policy.* ~~When the state fund cancels an employer's coverage, it shall notify the employer of its intent to cancel the employer at least 30 days before the cancellation becomes effective.~~ *Cancellation may take effect only by written notice to the named insured at least 30 days prior to the date of cancellation or, in cases of nonreporting of payroll or nonpayment of a premium, by failure of the employer to submit payroll reports or pay a premium within 30 days after the due date. The state fund shall notify the department of the names and effective dates of all policies cancelled. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. Nothing in this section prevents the state fund from canceling an insurance policy before a replacement policy is issued to the insured.* After the cancellation date, the employer has the same status as an employer who is not enrolled under the Workers'

Compensation Act *unless a replacement or succeeding insurance policy has been issued.*"

Section 8. **Repealer.** Section 39-71-2338, MCA, is repealed.

Section 9. **Effective date.** [This act] is effective July 1, 1991.

Approved April 2, 1991.

CHAPTER NO. 324

[SB 7]

AN ACT REPLACING THE UNIFORM FRAUDULENT CONVEYANCES ACT WITH THE UNIFORM FRAUDULENT TRANSFER ACT; EXTENDING FRAUDULENT CONVEYANCE LAWS TO PERSONAL PROPERTY TRANSFERS; DEFINING TRANSFERS CONSIDERED FRAUDULENT; PROVIDING REMEDIES AND DEFENSES; PROVIDING FOR LIMITATIONS OF CAUSES OF ACTION; AMENDING SECTION 53-5-401, MCA; AND REPEALING SECTIONS 31-2-301, 31-2-302, 31-2-303, 31-2-311, 31-2-312, 31-2-313, 31-2-314, 31-2-315, 31-2-316, 31-2-317, 31-2-321, 31-2-322, 31-2-323, 31-2-324, AND 31-2-325, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 11] may be cited as the "Uniform Fraudulent Transfer Act".

Section 2. **Definitions.** As used in [sections 1 through 11], the following definitions apply:

(1) "Affiliate" means:

(a) a person who directly or indirectly owns, controls, or holds with power to vote 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt if the person has not exercised the power to vote;

(b) a corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt if the person has not exercised the power to vote;

(c) a person whose business is operated by the debtor under a lease or other agreement or a person substantially all of whose assets are controlled by the debtor; or

(d) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

(a) property to the extent it is encumbered by a valid lien;

(b) property to the extent it is generally exempt under nonbankruptcy law; or

(c) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person who has a claim.

(5) "Debt" means liability on a claim.

(6) "Debtor" means a person who is liable on a claim.

(7) "Insider" includes:

(a) if the debtor is an individual:

(i) a relative of the debtor or of a general partner of the debtor;

(ii) a partnership in which the debtor is a general partner;

(iii) a general partner in a partnership described in subsection (7)(a)(ii); or

(iv) a corporation of which the debtor is a director, officer, or person in control;

(b) if the debtor is a corporation:

(i) a director of the debtor;

(ii) an officer of the debtor;

(iii) a person in control of the debtor;

(iv) a partnership in which the debtor is a general partner;

(v) a general partner in a partnership described in subsection (7)(b)(iv); or

(vi) a relative of a general partner, director, officer, or person in control of the debtor;

(c) if the debtor is a partnership:

(i) a general partner in the debtor;

(ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(iii) another partnership in which the debtor is a general partner;

(iv) a general partner in a partnership described in subsection (7)(c)(iii); or

(v) a person in control of the debtor;

(d) an affiliate or an insider of an affiliate as if the affiliate were the debtor; and

(e) a managing agent of the debtor.

(8) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) "Property" means anything that may be the subject of ownership.

(11) "Relative" means:

(a) an individual related by consanguinity within the third degree as determined by the common law;

(b) a spouse or an individual related to a spouse within the third degree as so determined; or

(c) an individual in an adoptive relationship within the third degree.

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Section 3. **Insolvency.** (1) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's property at a fair valuation and the debtor is generally not paying his debts as they become due.

(2) Property under this section does not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under [sections 1 through 11].

Section 4. **Value.** (1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made other than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(2) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

Section 5. **Transfers fraudulent as to present and future creditors.** (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under subsection (1)(a), consideration may be given, among other factors, to whether:

(a) the transfer or obligation was to an insider;

(b) the debtor retained possession or control of the property transferred after the transfer;

(c) the transfer or obligation was disclosed or concealed;

(d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) the transfer was of substantially all the debtor's assets;

(f) the debtor absconded;

(g) the debtor removed or concealed assets;

(h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) the transfer occurred shortly before or shortly after a substantial debt was incurred; or

(k) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Section 6. **Transfers fraudulent as to present creditors.** (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

Section 7. **When transfer made or obligation incurred.** For the purposes of [sections 1 through 11]:

(1) a transfer is made:

(a) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(b) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under [sections 1 through 11] that is superior to the interest of the transferee;

(2) if applicable law permits the transfer to be perfected as provided in subsection (1) and the transfer is not perfected before the commencement of an action for relief under [sections 1 through 11], the transfer is considered made immediately before the commencement of the action;

(3) if applicable law does not permit the transfer to be perfected as provided in subsection (1), the transfer is considered made when it becomes effective between the debtor and the transferee;

(4) a transfer is not made until the debtor has acquired rights in the asset transferred;

(5) an obligation is incurred:

(a) if oral, when it becomes effective between the parties; or

(b) if evidenced in writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

Section 8. **Remedies of creditors.** (1) In an action for relief against a transfer or obligation under [sections 1 through 11], a creditor, subject to the limitations in [section 9], may obtain:

(a) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by Title 27, chapter 18; or

(c) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Section 9. **Defenses, liability, and protection of transferee.** (1) A transfer or obligation is not voidable under [section 5(1)(a)] against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under [section 8(1)(a)], the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(a) the first transferee of the asset or the person for whose benefit the transfer was made; or

(b) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(3) If the judgment under subsection (2) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under [sections 1 through 11], a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) a lien on or a right to retain any interest in the asset transferred;

(b) enforcement of any obligation incurred; or

(c) a reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under [sections 5(1)(b) or 6] if the transfer results from:

(a) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) enforcement of a security interest in compliance with Title 30, chapter 9.

(6) A transfer is not voidable under [section 6(2)]:

(a) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, unless the new value was secured by a valid lien;

(b) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) if made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

Section 10. **Extinguishment of cause of action.** A cause of action with respect to a fraudulent transfer or obligation under [sections 1 through 11] is extinguished unless action is brought under:

(1) [section 5(1)(a)] within 2 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) [section 5(1)(b) or 6(1)] within 2 years after the transfer was made or the obligation was incurred; or

(3) [section 6(2)] within 1 year after the transfer was made or the obligation was incurred.

Section 11. **Supplementary provisions.** Unless displaced by the provisions of [sections 1 through 11], the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

Section 12. **Uniformity of application and construction.** [Sections 1 through 12] must be applied and construed to effectuate the general purpose of making uniform the law with respect to the subject of [sections 1 through 12] among states enacting it.

Section 13. Section 53-5-401, MCA, is amended to read:

"**53-5-401. Old-age assistance recovery.** (1) Upon the death of any recipient of old-age assistance, the department of social and rehabilitation services shall execute and present a claim against the estate of ~~such~~ *the* person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under Chapter 82, Laws of 1937, as amended. ~~No~~ *A* claim ~~shall~~ *may not* be enforced against any real estate of a recipient while it is occupied by the surviving spouse or dependent as a home.

(2) Every transfer of property made by deed, grant, bargain, sale, or gift by any recipient of old-age assistance and recorded subsequent to his having received such assistance ~~shall be~~ *is* presumed to have been made without ~~fair consideration~~ *value*, as the term ~~"fair consideration"~~ *"value"* is defined by ~~31-2-303~~ *[section 4]*, and with the intent to defeat the purposes of this section. These presumptions are disputable and may be controverted by competent evidence.

(3) If the federal law so requires, the federal government ~~shall be~~ *is* entitled to a share of any amounts collected from recipients or their estates in proportion to the amount ~~which~~ *that* it has contributed to the grants recovered, and the amount due the United States ~~shall~~ *must* be promptly paid by the state to the United States government. The remaining portion of the amount collected ~~shall~~ *must* be distributed to the state and county in proportion to the total amount paid by each."

Section 14. **Repealer.** Sections 31-2-301, 31-2-302, 31-2-303, 31-2-311, 31-2-312, 31-2-313, 31-2-314, 31-2-315, 31-2-316, 31-2-317, 31-2-321, 31-2-322, 31-2-323, 31-2-324, and 31-2-325, MCA, are repealed.

Section 15. **Codification instruction.** [Sections 1 through 12] are intended to be codified as an integral part of Title 31, chapter 2, part 3, and the provisions of Title 31, chapter 2, part 3, apply to [sections 1 through 12].

Approved April 4, 1991.

CHAPTER NO. 325

[SB 84]

AN ACT TO PROHIBIT A PERSON EMPLOYED OR ENGAGED BY A SCHOOL DISTRICT FROM INFLICTING CORPORAL PUNISHMENT ON A PUPIL; TO DEFINE CORPORAL PUNISHMENT OF PUPILS; TO CLARIFY SITUATIONS IN WHICH A PERSON WHO IS EMPLOYED OR ENGAGED BY A SCHOOL DISTRICT MAY USE PHYSICAL RESTRAINT ON A PUPIL; TO PROVIDE A FINE FOR UNREASONABLE

OR UNNECESSARY PHYSICAL RESTRAINT; TO PROVIDE AN AFFIRMATIVE DEFENSE; AMENDING SECTION 20-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-302, MCA, is amended to read:

"**20-4-302. ~~Power of teacher or principal over pupils — undue~~ *Discipline and* punishment *of pupils — definition of corporal punishment — penalty — defense.*** (1) ~~Any~~ *A* teacher or principal ~~shall have~~ *has* the authority to hold ~~any~~ *a* pupil to a strict accountability for ~~any~~ disorderly conduct in school, on the way to or from school, or during intermission or recess. ~~Whenever a principal shall deem it necessary to inflict corporal punishment in order to maintain orderly conduct of a pupil, he shall administer such corporal punishment without undue anger and only in the presence of a witness. Before any corporal punishment is administered, the parent or guardian shall be notified of the principal's intention to so punish his child; except that in cases of open and flagrant defiance of the teacher, principal, or of the authority of the school, the teacher or principal may administer corporal punishment without giving such notice.~~

(2) For the purposes of this section, "corporal punishment" means knowingly and purposely inflicting physical pain on a pupil as a disciplinary measure.

(3) A person who is employed or engaged by a school district may not inflict or cause to be inflicted corporal punishment on a pupil.

(4) (a) A person who is employed or engaged by a school district may use physical restraint, defined as the placing of hands on a pupil in a manner that is reasonable and necessary to:

(i) quell a disturbance;

(ii) provide self-protection;

(iii) protect the pupil or others from physical injury;

(iv) obtain possession of a weapon or other dangerous object on the person of the pupil or within control of the pupil;

(v) maintain the orderly conduct of a pupil including but not limited to relocating a pupil in a waiting line, classroom, lunchroom, principal's office, or other on-campus facility; or

(vi) protect property from serious harm.

(b) Physical pain resulting from the use of physical restraint as defined in subsection (4)(a) does not constitute corporal punishment as long as the restraint is reasonable and necessary.

~~(2)~~*(5)* ~~Any~~ *A* teacher in a district ~~not~~ employing *neither* a district superintendent ~~or~~ *nor* a principal ~~of~~ *at* the school where the teacher is assigned ~~shall have~~ *has* the authority to suspend a pupil for good cause ~~and to administer corporal punishment in the presence of a witness, without undue anger~~. ~~Where~~ *When* either a district superintendent or a school principal is employed, only the superintendent or principal ~~shall have~~ *has* the authority to suspend a pupil for good cause. Whenever a teacher suspends a pupil, ~~he~~ *the teacher* shall notify the trustees *and the county superintendent* immediately of ~~such~~ *the* action.

~~(3)~~*(6)* ~~It shall be the duty of any~~ *A* teacher *has the duty* to report the truancy or incorrigibility of ~~any~~ *a* pupil to the district superintendent, *the* principal, ~~or~~ the trustees, *or the county superintendent,* whichever is applicable.

~~(4)~~*(7)* ~~Any teacher or principal who shall maltreat or abuse any pupil by administering any undue or severe punishment shall be deemed~~ *If a person who is employed or engaged by a school district uses corporal punishment or more physical restraint than is reasonable or necessary, the person is* guilty of a misdemeanor and, upon conviction of ~~such~~ *the* misdemeanor by a court of competent jurisdiction, shall be fined not *less than $25 or* more than ~~$100~~ *$500.*

(8) A person named as a defendant in an action brought under this section may assert as an affirmative defense that the use of physical restraint was reasonable or necessary. If that defense is denied by the person bringing the charge, the issue of whether the restraint used was reasonable or necessary must be determined by the trier of fact."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1991.

CHAPTER NO. 326

[SB 87]

AN ACT CLARIFYING THE JURISDICTION OF THE SMALL CLAIMS DIVISION OF DISTRICT COURTS AND ALLOWING INTERPLEADER ACTIONS TO BE FILED IN JUSTICES' COURTS AND IN THE SMALL CLAIMS DIVISION OF JUSTICES' COURTS; AMENDING SECTIONS 25-34-106 AND 25-35-502, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-34-106, MCA, is amended to read:

"**25-34-106. Interpleader actions.** (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the small claims court when any person appears before a judge or clerk of court ~~or justice of the peace~~ and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the clerk of court ~~or justice of the peace~~ at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

In the Small Claims Court of the .... Judicial District in and for the County of ...., State of Montana

....,
Plaintiff
vs.
....,
Defendant
and
....,
Defendant

INTERPLEADER AFFIDAVIT

State of Montana)
) ss
)

................., being duly sworn, deposes and says: That..............., a defendant, resides at ....~~, in the above named county~~. That................, a defendant, resides at ....~~, in the above named county~~. That the plaintiff has custody or possession of money in the amount of $....., held pursuant to the following:

....
....
....
....

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court $....., which represents the amount of money in dispute.

That the plaintiff resides at the address shown ~~in the above caption~~.

....
Affiant

Subscribed and sworn to before me this .... day of ...., 19....

....
~~Justice of the Peace~~
District Judge

....
Clerk

ORDER

The State of Montana to the within named defendants, greeting:

You are hereby directed to appear and answer the within and foregoing claim at my office in .... (name, building, or residence), in ...., County of ...., State of Montana, on the .... day of ...., 19...., at the hour of ......(AM)(PM); and to have with you then and there, all books, papers, and witnesses needed by you to establish your claim to such money.

You are further notified that in case you do not so appear, judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money, as well as the disposition thereof; and, in addition, for costs of the action.

Dated this .... day of ...., 19.....

....
~~Justice of the Peace~~
District Judge

....
Clerk"

Section 2. **Interpleader actions.** (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the justice's court when any person appears before a justice of the peace and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the justice of the peace at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

In the Justice's Court of the State of Montana in and for the County of ...., before ...., Justice of the Peace.

....
Plaintiff
vs.
....,
Defendant
....,
and
....,
Defendant

INTERPLEADER AFFIDAVIT

State of Montana)
) ss
)

................, being duly sworn, deposes and says: That................, a defendant, resides at .... That................, a defendant, resides at .... That the plaintiff has custody or possession of money in the amount of $....., held pursuant to the following:

....
....
....
....

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court $....., which represents the amount of money in dispute.

That the plaintiff resides at the address shown.

....
Affiant

Subscribed and sworn to before me this .... day of ...., 19.... ..... Justice of the Peace ..... Clerk

ORDER

The State of Montana to the within named defendants, greeting:

You are hereby directed to appear and answer the within and foregoing claim at my office in .... (name, building, or residence), in ...., County of ...., State of Montana, on the .... day of ...., 19...., at the hour of ......(AM)(PM); and to have with you then and there, all books, papers, and witnesses needed by you to establish your claim to such money.

You are further notified that in case you do not so appear, judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money, as well as the disposition thereof; and, in addition, for costs of the action.

Dated this .... day of ...., 19.....

....
Justice of the Peace

....
Clerk

Section 3. Section 25-35-502, MCA, is amended to read:

"**25-35-502. Jurisdiction.** *(1)* The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed $2,500, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) The small claims court has jurisdiction over an interpleader under [section 4] in which the amount claimed does not exceed $2,500."

Section 4. **Interpleader actions.** (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the small claims division of the justice's court when any person appears before a justice of the peace and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the justice of the peace at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

In the Small Claims Division of the Justice's Court of .... County, Montana before ...., Justice of the Peace.

....,
Plaintiff
vs. .
....,
Defendant
and
....,
Defendant

INTERPLEADER AFFIDAVIT

State of Montana)
) ss
)

................, being duly sworn, deposes and says: That................, a defendant, resides at .... That................, a defendant, resides at .... That the plaintiff has custody or possession of money in the amount of $....., held pursuant to the following:

....
....
....
....

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court $....., which represents the amount of money in dispute.

That the plaintiff resides at the address shown.

....
Affiant

Subscribed and sworn to before me this .... day of ...., 19.....

....
Justice of the Peace
....
Clerk

ORDER

The State of Montana to the within named defendants, greeting:

You are hereby directed to appear and answer the within and foregoing claim at my office in .... (name, building, or residence), in ...., County of ...., State of Montana, on the .... day of ...., 19...., at the hour of ......(AM)(PM); and to have with you then and there, all books, papers, and witnesses needed by you to establish your claim to such money.

You are further notified that in case you do not so appear, judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money, as well as the disposition thereof; and, in addition, for costs of the action.

Dated this .... day of ...., 19.....

....
Justice of the Peace
....
Clerk

Section 5. **Codification instruction.** (1) [Section 2] is intended to be codified as an integral part of Title 25, chapter 31, part 1, and the provisions of Title 25, chapter 31, part 1, apply to [section 2].

(2) [Section 4] is intended to be codified as an integral part of Title 25, chapter 35, part 5, and the provisions of Title 25, chapter 35, part 5, apply to [section 4].

Section 6. **Applicability.** [Sections 2 and 4] apply to actions arising on or after October 1, 1991.

Approved April 4, 1991.

CHAPTER NO. 327

[SB 132]

AN ACT ALLOWING A MOTOR VEHICLE TO DRAW NOT MORE THAN THREE VEHICLES ATTACHED BY THE TRIPLE SADDLE-MOUNT METHOD UP TO 75 FEET IN OVERALL LENGTH; AND AMENDING SECTION 61-10-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-104, MCA, is amended to read:

"**61-10-104. Length.** (1) A single truck, bus, or any self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of 40 feet.

(2) (a) When used in a truck tractor-semitrailer combination, the semitrailer may not exceed 53 feet in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. When used in a truck tractor-semitrailer-trailer or a truck tractor-semitrailer-semitrailer combination, the semitrailer and trailer or the two semitrailers may not exceed 28 ½ feet each in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. Truck tractor-semitrailer, truck tractor-semitrailer-trailer, and truck tractor-semitrailer-semitrailer combinations are not subject to an overall combination length limit.

(b) A stinger-steered automobile or boat transporter may not exceed 75 feet in length plus a maximum 3 feet of front overhang and 4 feet of rear overhang, except as provided by 61-10-124. "Stinger-steered automobile or boat transporter" means a truck tractor-semitrailer combination that has a fifth wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of vehicles or assembled boats or boat hulls.

(c) All other combinations of vehicles may not have an overall length, inclusive of front and rear bumpers, in excess of 75 feet, except as provided by 61-10-124. If the combination consists of more than two units, the rear units of the combination ~~shall~~ *must* be equipped with breakaway brakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than three motor vehicles attached to it by the triple saddle-mount method (that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway), nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of ~~65~~ *75* feet.

(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturers' rated capacity" may not tow more than one trailer or semitrailer, nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of 65 feet."

Approved April 4, 1991.

CHAPTER NO. 328

[SB 198]

AN ACT AMENDING THE DISCRIMINATION LAWS TO CORRECT AN INCORRECT CITATION TO FEDERAL LAW; AMENDING SECTION 49-2-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, section 49-2-305, MCA, of the Human Rights Act prohibits discrimination in housing; and

WHEREAS, that section exempts "housing for older persons" from the prohibitions against discrimination in housing based upon age and familial status; and

WHEREAS, the definition of "housing for older persons" refers to 42 U.S.C. 3605(b)(2)(C) and (3) of the federal Fair Housing Act; and

WHEREAS, this citation is incorrect and should read 42 U.S.C. 3607(b)(2)(C) and (3), which define "housing for older persons" under federal law.

THEREFORE, it is appropriate for the Legislature to amend section 49-2-305, MCA, to correct this citation error.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-2-305, MCA, is amended to read:

"**49-2-305. Discrimination in housing — exemptions.** (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, creed, religion, color, age, familial status, physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make a written or oral inquiry or record of the sex, race, creed, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent the housing accommodation or property; or

(d) to refuse to negotiate for a sale or to make a housing accommodation or property unavailable because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin.

(2) A private residence designed for single-family occupancy in which sleeping space is rented to guests and in which the landlord also resides is excluded from the provisions of subsection (1).

(3) It is also an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have such a preference, limitation, or discrimination.

(4) The prohibitions of this section against discrimination because of age and familial status do not extend to housing for older persons. "Housing for older persons" means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. ~~3605(b)(2)(C) and (3)~~*3607(b)(2)(C) and (3)* and 24 C.F.R. 100.304, as those sections read on October 1, 1989.

(5) The prohibitions of this section against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his residence.

(6) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person."

Section 2. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to causes of action arising on or after October 1, 1989.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1991.

CHAPTER NO. 329

[SB 239]

AN ACT ESTABLISHING AS FELONIES THE SALE OF UNLAWFULLY TAKEN WILDLIFE AND THE POSSESSION OF UNLAW-

FULLY TAKEN WILDLIFE HAVING A VALUE OF MORE THAN $1,000; REVISING THE RESTITUTION PENALTIES FOR THE ILLEGAL KILLING OR POSSESSION OF CERTAIN WILDLIFE; DEFINING "LAWFULLY TAKEN WILDLIFE" AND "UNLAWFULLY TAKEN WILDLIFE"; AMENDING SECTIONS 87-1-111 AND 87-3-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions of lawfully taken wildlife and unlawfully taken wildlife.** As used in [section 2] and this section, the following definitions apply:

(1) "Lawfully taken wildlife" means wildlife, as defined in 87-5-102, that is taken or possessed by hunting, fishing, or trapping in conformance with this title and the regulations adopted by the commission and the department under authority of this title.

(2) "Unlawfully taken wildlife" means wildlife that is not lawfully taken wildlife.

Section 2. **Sale or possession of unlawfully taken wildlife — penalty.** (1) A person commits the offense of sale of unlawfully taken wildlife if he purposely or knowingly sells, barters, purchases, or exchanges for anything of value or if he offers to sell, barter, purchase, or exchange for anything of value, unlawfully taken wildlife.

(2) A person commits the offense of possession of unlawfully taken wildlife having a value of more than $1,000 if he purposely or knowingly has actual or constructive possession of or transports or causes to be transported unlawfully taken wildlife having a value of more than $1,000. The value of the unlawfully taken wildlife must be determined from the schedule of restitution values set out in 87-1-111.

(3) A person who violates this section is guilty of a felony and upon conviction shall be fined not more than $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, a person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting, fishing, and trapping permits and license privileges for a minimum of 3 years or up to a maximum of a lifetime revocation from the date of conviction.

Section 3. Section 87-3-111, MCA, is amended to read:

"**87-3-111.** *(Temporary)* **Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties.** (1) It is unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110; or

(c) the donation and sale of paddlefish roe as caviar under the provisions of 87-4-601.

(3) ~~Except as provided in subsection (4), any~~ *Any* person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided ~~by law~~ *in 87-1-102.*

~~(4) Any person engaging in the activities prohibited in subsection (1) in furtherance of a scheme to traffic in the body parts of unlawfully taken species is guilty of a felony and shall be punished by a fine of $10,000 or imprisonment in the state prison for a term of 1 year, or both.~~ *(Terminates June 30, 1993—sec. 5, Ch. 409, L. 1989.)*

87-3-111. *(Effective July 1, 1993)* **Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties.** (1) It is ~~hereby made~~ unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section shall not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof; or

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110.

(3) ~~Except as provided in subsection (4), any~~ *Any* person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished as provided ~~by law~~ *in 87-1-102.*

~~(4) Any person engaging in the activities prohibited in subsection (1) in furtherance of a scheme to traffic in the body parts of unlawfully taken species is guilty of a felony and shall be punished by a fine of $10,000 or imprisonment in the state prison for a term of 1 year, or both.~~"

Section 4. Section 87-1-111, MCA, is amended to read:

"**87-1-111.** *(Temporary)* **Restitution for illegal killing or possession of certain wildlife.** (1) In addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal killing or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each such bird, mammal, or fish according to the following schedule:

(a) bighorn sheep, ~~mountain goat, caribou, buffalo,~~ grizzly bear, ~~moose,~~ and endangered species, ~~$1,000~~ *$2,000*;

(b) elk, mountain goat, caribou, bald eagle, and moose, $1,000;

~~(b)~~*(c)* ~~elk,~~ mountain lion, black bear, lynx, ~~and~~ wolverine, *buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, and adult buck antelope as defined by commission regulation,* $500;

~~(c)~~*(d)* deer *not included in subsection (1)(c),* antelope *not included in subsection (1)(c),* fisher, raptor *not included in subsection (1)(c),* swan, bobcat, ~~pallid and~~ white sturgeon, and paddlefish, $300;

~~(d)~~*(e)* grayling and ~~furbearers~~ *fur-bearing animals, as defined in 87-2-101, and* not listed in subsection ~~(1)(a), (1)(b), or~~ (1)(c) *or (1)(d),* $100;

~~(e)~~*(f)* game bird (except swan), $25;

~~(f)~~*(g)* game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-504, is not required for an order of restitution under this section. *(Terminates June 30, 1993—sec. 5, Ch. 409, L. 1989.)*

87-1-111. *(Effective July 1, 1993)* **Restitution for illegal killing or possession of certain wildlife.** (1) In addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal killing or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each such bird, mammal, or fish according to the following schedule:

(a) bighorn sheep, ~~mountain goat, caribou, buffalo,~~ grizzly bear, ~~moose,~~ and endangered species, ~~$1,000~~ *$2,000*;

(b) elk, mountain goat, caribou, bald eagle, and moose, $1,000;

~~(b)~~*(c)* ~~elk,~~ mountain lion, black bear, lynx, ~~and~~ wolverine, *buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, and adult buck antelope as defined by commission regulation,* $500;

~~(c)~~*(d)* deer *not included in subsection (1)(c),* antelope *not included in subsection (1)(c),* fisher, raptor *not included in subsection (1)(c),* swan, bobcat, and ~~pallid and~~ white sturgeon, $300;

~~(d)~~*(e)* paddlefish, grayling, and ~~furbearers~~ *fur-bearing animals, as defined in 87-2-101, and* not listed in subsection ~~(1)(a), (1)(b), or~~ (1)(c) *or (1)(d),* $100;

~~(e)~~*(f)* game bird (except swan), $25;

~~(f)~~*(g)* game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-504, is not required for an order of restitution under this section."

Section 5. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 87, chapter 3, part 1, and the provisions of Title 87, chapter 3, part 1, apply to [sections 1 and 2].

Section 6. **Effective date.** [This act] is effective July 1, 1991.

Approved April 4, 1991.

CHAPTER NO. 330

[SB 293]

AN ACT INCREASING THE JURISDICTION OF MUNICIPAL COURTS; AND AMENDING SECTION 3-6-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-6-103, MCA, is amended to read:

"**3-6-103. Jurisdiction.** *(1)* ~~Said~~ *The municipal* court ~~shall have~~ *has* jurisdiction coordinate and coextensive with the justices' courts of the county ~~wherein said~~ *where the* city is located and ~~shall, in addition thereto, have~~ *has* exclusive original jurisdiction of all *civil and criminal* actions and proceedings~~, both civil and criminal, mentioned and~~ provided for in 3-11-103.

(2) ~~Such municipal~~ *Municipal* courts ~~shall also~~ have concurrent jurisdiction with the district court ~~within their respective counties in forcible entry and unlawful detainer~~ *in actions arising under Title 70, chapters 24 through 27.*

(3) Applications for search warrants and complaints charging the commission of a felony may be filed in municipal court. The municipal court judge has the same jurisdiction and responsibility as a justice of the peace, including holding preliminary hearings. The city attorney may initiate proceedings charging a felony if the offense was committed within the city

limits, but the county attorney shall take charge of the action if an information is filed in district court."

Approved April 4, 1991.

CHAPTER NO. 331

[SB 307]

AN ACT EXPANDING THE MEMBERSHIP OF THE BOARD OF DENTISTRY TO INCLUDE A FIFTH DENTIST; REQUIRING THAT EACH DENTIST APPOINTED TO THE BOARD SERVE THE FIRST YEAR OF ANY 5-YEAR STATUTORY TERM AS A NONVOTING MEMBER; AMENDING SECTION 2-15-1842, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1842, MCA, is amended to read:

"**2-15-1842. Board of dentistry.** (1) There is a board of dentistry.

(2) (a) The board consists of ~~four~~ *five* dentists, *one of whom shall serve as a nonvoting member,* one denturist, one dental hygienist, and two public members, one of whom must be a senior citizen. All members are appointed by the governor with the consent of the senate. Each licensed member shall be licensed to practice as a dentist, denturist, or dental hygienist in this state, shall have actively practiced in this state for at least 5 continuous years immediately before his appointment, except as provided in subsection (2)(b), and shall be actively engaged in practice while serving on the board. Each member shall be a resident of this state.

(b) The provision in subsection (2)(a) requiring a licensed member to have actively practiced in this state for at least 5 continuous years immediately before his appointment does not apply to the first denturist appointed to the board.

(3) Each member shall serve for a term of 5 years. *Each dentist appointed to the board for a statutory 5-year term shall serve the first year of the term as a nonvoting member of the board.* The governor may remove a member only for neglect or cause.

(4) The governor shall fill any vacancy within 30 days.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. **Effective date.** [This act] is effective March 29, 1992.

Approved April 4, 1991.

CHAPTER NO. 332

[SB 320]

AN ACT DESIGNATING THE CAMPUS OF THE UNIVERSITY OF MONTANA AS THE STATE ARBORETUM; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **State arboretum.** The campus of the university of Montana in Missoula, Montana, is the state arboretum.

Section 2. **Effective date.** [This act] is effective on the date that the board of regents certifies acceptance of the designation contained in [section 1] to the governor.

Approved April 4, 1991.

CHAPTER NO. 333

[SB 329]

AN ACT AUTHORIZING THE DEPARTMENT OF HIGHWAYS TO ISSUE SOFT BODY ARMOR TO EMPLOYEES UPON APPOINTMENT AS PEACE OFFICERS; AND AMENDING SECTION 61-12-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-12-204, MCA, is amended to read:

"**61-12-204. Identification badge and uniform —** ***safety equipment.*** *(1)* Employees of the department engaged in the enforcement of this part shall wear and prominently display an identification badge or device with the employee's name and title shown on the identification badge or device. The department may authorize uniform dress for department employees engaged in such enforcement.

(2) The department may issue soft body armor to an employee engaged in the enforcement of this part upon request of the employee after the employee's appointment as a peace officer."

Approved April 4, 1991.

CHAPTER NO. 334

[SB 398]

AN ACT PROVIDING THAT A MINOR CONVICTED OF UNLAWFUL POSSESSION OF AN INTOXICATING SUBSTANCE MAY BE SENTENCED TO PERFORM COURT-ORDERED COMMUNITY SERVICE; AND AMENDING SECTION 45-5-624, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-624, MCA, is amended to read:

"**45-5-624. Unlawful possession of an intoxicating substance — interference with sentence or court order.** (1) (a) A person under the age of 19 years commits the offense of possession of an intoxicating substance if he knowingly consumes or has in his possession an intoxicating substance. The person need not be consuming or in possession of the intoxicating substance at the time of his arrest to violate this subsection.

(b) A person under the age of 21 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except as provided in 16-6-305 and except that he does not commit the offense if he consumes or gains possession of the beverage because it was lawfully supplied to him under 16-6-305 or when in the course of his employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall:

(a) if the person:

(i) is less than 18 years of age, be fined not to exceed $50; or

(ii) is 18 years or older, be fined an amount not to exceed $50 for a first offense, $100 for a second offense, and $200 for a third offense; for a fourth or subsequent offense a person may be fined an amount not to exceed $300 or be imprisoned in the county jail for a term not to exceed 6 months, or both; and

(b) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, all costs of his participation in a community-based substance abuse information course;

(c) have his driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he was driving or otherwise in actual physical control of a motor vehicle when the offense occurred; ~~or~~

(d) be ordered to perform community service; or

~~(d)~~*(e)* be sentenced to any combination of these penalties.

(3) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when he failed to comply must be transferred to the youth court. If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If proceedings for violation of subsection (1) or for failure to comply with a sentence are held in the youth court, the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

(4) A person commits the offense of interference with a sentence or court order if he purposely or knowingly causes his child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both."

Section 2. **Coordination instruction.** If House Bill No. 668 is passed and approved, then the amendment in [this act] must be codified both as 45-5-624(2)(a)(iii) and 45-5-624(2)(b)(iii) and relate both to persons less than 18 years of age and persons 18 years of age or older.

Approved April 4, 1991.

CHAPTER NO. 335

[SB 402]

AN ACT REQUIRING THE MONTANA MEMBERS OF THE PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL TO HOLD AT LEAST ONE PUBLIC HEARING IN A GEOGRAPHIC AREA AFFECTED BY THE PROPOSED ACQUISITION OF MAJOR RESOURCES FROM THAT AREA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Council members to hold public hearings in areas affected by acquisition of major resources.** (1) Whenever the northwest conservation and electric power plan or any amendment to the plan calls for the acquisition of major resources, as defined in 16 U.S.C.A. 839a, from an area of Montana east of the continental divide, the Montana council members shall hold at least one public hearing in the geographic area from which the major resources are proposed to be acquired and that will be affected by the proposed acquisition.

(2) The Montana council members shall request the participation of the other members of the council in conducting the public hearing required under subsection (1).

(3) The Montana council members shall give notice in a newspaper of general circulation in the area affected by the proposed acquisition of major

resources at least 2 weeks before the public hearing required by subsection (1). The public hearing must be held at least 30 days before any final decision is made to incorporate into the plan the acquisition of major resources from the affected area.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 90, chapter 4, part 4, and the provisions of Title 90, chapter 4, part 4, apply to [section 1].

Approved April 4, 1991.

CHAPTER NO. 336

[SB 449]

AN ACT TO CLARIFY THAT WARDENS OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS HAVE AUTHORITY TO ENFORCE STATUTES AND RULES RELATING TO THE REGULATION OF OUTFITTERS AND GUIDES IN THE STATE; AMENDING SECTION 87-1-506, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, under the provisions of section 37-47-306, MCA, fees collected by the Board of Outfitters may be used for investigation of license applicants, administrative costs, and enforcement of statutes and rules related to outfitters and guides; and

WHEREAS, wardens of the Department of Fish, Wildlife, and Parks have authority under section 37-47-345, MCA, to enforce violations of Title 37, chapter 47, MCA, relating to outfitters and guides, and this authority should be clearly provided in Title 87, MCA; and

WHEREAS, the Legislature intends that costs to the Department of Fish, Wildlife, and Parks related to enforcement of Title 37, chapter 47, MCA, by wardens of the Department be funded from the fees that are collected by the Board of Outfitters and transferred to the Department through memorandums of understanding or other agreements.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-506, MCA, is amended to read:

"**87-1-506. Enforcement powers of wardens.** A warden may:

(1) serve a subpoena issued by a court for the trial of a violator of the fish and game laws;

(2) search, without a warrant, any tent not used as a residence, any boat, vehicle, box, locker, basket, creel, crate, game bag, or package or their contents upon probable cause to believe that any fish and game law or

department rule for the protection, conservation, or propagation of game, fish, birds, or fur-bearing animals has been violated;

(3) search, with a search warrant, any dwelling house or other building;

(4) seize game, fish, game birds, and fur-bearing animals and any parts of them taken or possessed in violation of the law or the rules of the department;

(5) seize and hold, subject to law or the orders of the department, devices which have been used to unlawfully take game, fish, birds, or fur-bearing animals;

(6) arrest, in accordance with Title 46, chapter 6, a violator of a fish and game law or rule of the department, violation of which is a misdemeanor;

(7) enforce the disorderly conduct and public nuisance laws (45-8-101 and 45-8-111) as they apply to the operation of motorboats on all waters of the state;

(8) as provided for in 37-47-345, investigate and make arrests for violations of the provisions of Title 37, chapter 47, and of any rules adopted pursuant to that chapter relating to the regulation of outfitters and guides in the state; and

~~(8)~~*(9)* exercise the other powers of peace officers in the enforcement of the fish and game laws, the rules of the department, and judgments obtained for violation of those laws or rules."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1991.

CHAPTER NO. 337

[HB 65]

AN ACT MAKING NOVEMBER AND DECEMBER THE 11TH AND 12TH REGISTRATION PERIODS FOR MOTOR VEHICLES; AND AMENDING SECTION 61-3-314, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-314, MCA, is amended to read:

"**61-3-314. Registration period.** (1) Notwithstanding any other provisions of this title regarding the registration of motor vehicles, ~~commencing January 1, 1976, all vehicles~~ *each vehicle* subject to the provisions of 61-3-313 through 61-3-316 ~~shall~~ *must* be registered for *a* 12-month

~~periods~~ *period* based upon the ~~time they are~~ *date it is* first registered in this state pursuant to 61-3-313 through 61-3-316.

(2) There ~~shall be ten~~ *are 12* registration periods, each of which ~~shall commence~~ *commences* on the first day of a calendar month. The periods are ~~designated as follows~~:

(a) January 1 through January 31	1st period
(b) February 1 through February 28/29	2nd period
(c) March 1 through March 31	3rd period
(d) April 1 through April 30	4th period
(e) May 1 through May 31	5th period
(f) June 1 through June 30	6th period
(g) July 1 through July 31	7th period
(h) August 1 through August 31	8th period
(i) September 1 through September 30	9th period
(j) October 1 through October 31	10th period
(k) November 1 through November 30	*11th period*
(l) December 1 through December 31	*12th period*

~~(3) For purposes of 61-3-313 through 61-3-316, the period November 1 through November 30 shall be considered the 10th period preceding and the period December 1 through December 31 shall be considered the first period of the year following.~~"

Section 2. **Saving clause.** [This act] does not affect the dates of reregistration under 61-3-313 through 61-3-316 of motor vehicles that before January 1, 1992, were subject to reregistration in January, the 1st period, and in October, the 10th period.

Approved April 4, 1991.

CHAPTER NO. 338

[HB 117]

AN ACT ALLOWING A FUNERAL PROCESSION THE RIGHT-OF-WAY THROUGH STREET AND HIGHWAY INTERSECTIONS; REGULATING THE CONDUCT OF A FUNERAL PROCESSION; PROVIDING THAT AN OPERATOR OF A VEHICLE IN A FUNERAL PROCESSION IS NOT NEGLIGENT IF HE FOLLOWS THE REQUIREMENTS OF

THIS ACT; PROVIDING THAT NEGLIGENCE MAY NOT BE IMPUTED TO A FUNERAL DIRECTOR OR MORTICIAN IF NO NEGLIGENCE EXISTS ON THE PART OF THE OPERATOR OF A VEHICLE IN A FUNERAL PROCESSION; AND AMENDING SECTION 61-8-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-201, MCA, is amended to read:

"61-8-201. **Obedience to traffic-control devices — *exception for emergency vehicles and funeral processions.*** (1) The driver of ~~any~~ *a* vehicle shall obey the instructions of ~~any~~ *an* official traffic-control device applicable ~~thereto~~ *to his vehicle and* placed in accordance with the provisions of this chapter unless otherwise directed by a highway patrol officer or police officer, subject to the exceptions granted *in this chapter to* the driver of an authorized emergency vehicle ~~in this chapter~~ *and to the driver of a motor vehicle in a funeral procession.*

(2) ~~No~~ *A* provision of this chapter for which signs are required ~~shall~~ *may not* be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state the signs are required, ~~such~~ *the* section ~~shall be~~ *is* effective even though no signs are erected or in place."

Section 2. **Funeral escort vehicle.** "Funeral escort vehicle" means a motor vehicle properly equipped pursuant to [section 6].

Section 3. **Funeral lead vehicle.** "Funeral lead vehicle" means a motor vehicle, including a funeral hearse, properly equipped pursuant to [section 6] leading and facilitating the movement of a funeral procession.

Section 4. **Funeral procession.** "Funeral procession" means two or more motor vehicles, one of which is carrying the remains of a deceased person, in the daylight hours, including a funeral lead vehicle and a funeral escort vehicle.

Section 5. **Funeral procession right-of-way — funeral lead vehicle and funeral escort vehicle in funeral procession.** (1) Except as provided in subsection (4), pedestrians and operators of motor vehicles shall yield the right-of-way to a motor vehicle that is part of a funeral procession being led by a funeral lead vehicle or a funeral escort vehicle.

(2) After a funeral lead vehicle enters an intersection, the other vehicles in the funeral procession may continue to follow the funeral lead vehicle through the intersection despite any official traffic-control device, right-of-way provisions of this chapter, or local ordinance if the operator exercises reasonable care toward any other vehicle or pedestrian. When the funeral lead vehicle arrives at an intersection, it must comply with the requirements of any official traffic-control device, right-of-way provision of this chapter, and local ordinance.

(3) Except as provided in subsection (4), a driver of a funeral escort vehicle may direct the drivers of other vehicles in a funeral procession to proceed through an intersection or to make turns or other movements despite any official traffic-control device. The driver of a funeral escort vehicle may direct and control the drivers of vehicles not in a funeral procession, including those in or approaching an intersection, to stop, proceed, or make turns or other movements without regard to an official traffic-control device. Persons directing traffic shall comply with the provisions of 61-1-411. However, use of a funeral escort vehicle is not required.

(4) A vehicle in a funeral procession has the right-of-way at intersections regardless of official traffic-control devices provided the driver of that vehicle and the drivers of all vehicles in the funeral procession meet all the requirements of [sections 2 through 8], except that an operator of a vehicle in a funeral procession shall yield the right-of-way to an approaching authorized emergency vehicle giving an audible or visual signal or when directed to do so by a highway patrol officer or police officer. This section does not relieve the driver of a vehicle in a funeral procession from the duty to drive with due regard for the safety of all persons using the highway.

Section 6. **Equipment required for funeral vehicle — restricted light use.** (1) A funeral escort vehicle or a funeral lead vehicle must be equipped with at least one lighted rotating or oscillating lamp exhibiting an amber light or lens visible under normal atmospheric conditions for a distance of 500 feet from the front of the vehicle.

(2) A funeral escort vehicle or a funeral lead vehicle may illuminate a rotating or oscillating amber light only when the vehicle is in use in a funeral procession.

Section 7. **Driving in funeral procession.** (1) A vehicle in a funeral procession shall follow the preceding vehicle in the funeral procession as closely as is practicable and safe.

(2) An ordinance, law, or regulation requiring that motor vehicles be operated to allow sufficient space between them to enable another vehicle to enter and occupy that space without danger does not apply to vehicles in a funeral procession.

(3) The driver of a motor vehicle in a funeral procession may not drive the vehicle at a speed greater than:

(a) 55 miles per hour on a highway where the posted speed limit is 55 miles per hour or more; or

(b) 5 miles per hour below the posted speed limit on other streets or roads.

(4) A vehicle being operated in a funeral procession must have its headlights and taillights illuminated.

(5) The turn signals must be flashing simultaneously as warning lights on a vehicle that:

(a) is the first vehicle in a funeral procession; or

(b) the driver has reason to believe is the last vehicle in a funeral procession.

Section 8. **Vehicles not in funeral procession.** The driver of a vehicle that is not part of a funeral procession may not:

(1) drive between the vehicles forming a funeral procession while they are in motion except when:

(a) authorized to do so by a police officer; or

(b) driving an authorized emergency vehicle emitting an audible or visible signal;

(2) join a funeral procession to secure the right-of-way granted by [section 5];

(3) pass a funeral procession on a multiple-lane highway on the funeral procession's right side unless the funeral procession is in the farthest left lane;

(4) enter an intersection, even if the driver is facing a green traffic-control signal, when a funeral procession being conducted in compliance with [sections 2 through 8] is proceeding through a red traffic-control signal at that intersection as permitted by [section 5] unless the driver can do so without crossing the path of the funeral procession. If the red signal changes to green while the funeral procession is within the intersection, the driver of a vehicle facing a green signal may proceed subject to the right-of-way of a vehicle participating in a funeral procession.

Section 9. **Liability.** The operator of a vehicle in a funeral procession, including a lead vehicle or an escort vehicle, is not negligent if he operates the vehicle in accordance with the requirements of [sections 2 through 8]. When no negligence exists on the part of the operator of a vehicle in a funeral procession, none may be imputed to the funeral director or mortician organizing the procession, to the agent of the funeral director or mortician, or to a member of a local law enforcement agency acting as the agent, with or without compensation, of the funeral director or mortician.

Section 10. **Codification instruction.** (1) [Sections 2 through 4] are intended to be codified as an integral part of Title 61, chapter 1, part 4, and the provisions of Title 61, chapter 1, part 4, apply to [sections 2 through 4].

(2) [Sections 5 through 9] are intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [sections 5 through 9].

Approved April 4, 1991.

CHAPTER NO. 339

[HB 164]

AN ACT TO EXEMPT THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FROM THE REQUIREMENTS FOR DEPOSIT OF CERTAIN MONEY WITH THE STATE TREASURER; AMENDING SECTIONS 17-6-105, 23-1-105, AND 87-1-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-105, MCA, is amended to read:

"**17-6-105. State treasurer as treasurer of state agencies — deposits of money.** (1) The state treasurer is designated the treasurer of every state agency and institution.

(2) All state agencies and institutions shall deposit all money, credits, evidences of indebtedness, and securities either:

(a) in banks, building and loan associations, savings and loan associations, or credit unions located in the city or town in which the agencies and institutions are situated, if there is a qualified bank, building and loan association, savings and loan association, or credit union in the city or town as designated by the state treasurer with the approval of the board of investments; or

(b) with the state treasurer.

(3) ~~Such~~ *Each* bank, building and loan association, savings and loan association, or credit union shall pledge securities sufficient to cover 50% of the deposits at all times.

(4) The deposits ~~shall~~ *must* be made in the name of the state treasurer, ~~shall~~ *must* be subject to withdrawal at his option, and ~~shall~~ *must* draw interest as other state money, in accordance with the provisions of this part.

(5) Nothing in this chapter shall impair or otherwise affect any covenant entered into pursuant to law by any agency or institution respecting the segregation, deposit, and investment of any revenues or funds pledged for the payment and security of bonds or other obligations authorized to be issued by ~~such~~ *the* agency, and all ~~such~~ *the* funds ~~shall~~ *must* be deposited and invested in accordance with ~~such~~ *the* covenants notwithstanding any provision of this chapter.

(6) ~~All~~ *Except as otherwise provided by law, all* money, credits, evidences of indebtedness, and securities received by a state agency or institution ~~shall~~ *must* be deposited either with the state treasurer or in a depository approved by the state treasurer each day when the accumulated amount of coin and currency requiring deposit exceeds $100 or total collections exceed $500. All money, credits, evidences of indebtedness, and securities collected ~~shall~~ *must* be deposited at least weekly.

(7) Notwithstanding any other provision of state law, when it is determined to be in the best financial interest of the state, the department may require any money received or collected by any agency of the state to be immediately deposited to the credit of the state treasurer."

Section 2. Section 23-1-105, MCA, is amended to read:

"**23-1-105. Fees and charges.** (1) The department shall have power to levy and collect reasonable fees or other charges for the use of privileges and conveniences as may be provided and to grant concessions as it considers advisable, except as provided in subsection (2). All money derived from the activities of the department ~~shall~~ *must* be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana as defined in 87-2-102 and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) Money received from the collection of fees and charges is not subject to the deposit requirements of 17-6-105. The department shall deposit money collected under this section within a reasonable time after receipt."

Section 3. Section 87-1-601, MCA, is amended to read:

"**87-1-601. Use of fish and game money.** (1) All money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source ~~shall~~ *must* be turned over to the state treasurer and placed by him in the state special revenue fund to the credit of the department. Any money received from federal sources ~~shall~~ *must* be deposited in the federal special revenue fund to the credit of the department.

(2) That money ~~shall~~ *must* be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. That money ~~shall~~ *must* be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) All money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, relating to violations of state fish and game laws under Title 87 ~~shall~~ *must* be deposited by the state treasurer and credited to the department of fish, wildlife, and parks in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of

prosecution ~~shall~~ *must* be paid to the county where the trial was held in any case where the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition ~~shall~~ *must* be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived ~~therefrom~~ *from the fund,* but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department, and only upon appropriation by the legislature. If the use of money as set forth ~~herein~~ *in this section* would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in ~~such~~ *a* violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt."

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1991.

CHAPTER NO. 340

[HB 174]

AN ACT TO EXEMPT CERTAIN SEASONAL RULES ADOPTED BIENNIALLY BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FROM THE PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 2-4-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-102, MCA, is amended to read:

"**2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.

(2) (a) "Agency" means ~~any~~ *an* agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons, except that the board ~~shall be~~ *is* subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules ~~shall~~ *must* be published in the ~~administrative rules~~ *Administrative Rules* of Montana and *the* Montana ~~administrative register~~ *Administrative Register*;

(ii) the supervision and administration of ~~any~~ *a* penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works.

(b) "Agency" does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the ~~administrative rules~~ *Administrative Rules* of Montana.

(4) "Contested case" means ~~any~~ *a* proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(7) "Party" means ~~any~~ *a* person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing herein ~~shall~~ *may* be construed to prevent an agency from admitting any person as a party for limited purposes.

(8) "Person" means ~~any~~ *an* individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(9) "Register" means the Montana ~~administrative register~~ *Administrative Register.*

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of ~~such~~ *the* rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually *or biennially* relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of ~~such~~ *the* rules and rules adopted annually *or biennially* relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of ~~such~~ *the* rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that ~~such~~ *the* rules ~~shall~~ *must* be filed in accordance with 2-4-306 and ~~shall~~ *must* be published in the ~~administrative rules~~ *Administrative Rules* of Montana.

(11) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. ~~Such~~ *The* interpretation lacks the force of law."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1991.

CHAPTER NO. 341

[HB 263]

AN ACT TO CLARIFY THE PUBLIC SERVICE COMMISSION'S AUTHORITY TO REGULATE THE TRANSPORTATION OF RECYCLABLES; AND AMENDING SECTIONS 69-12-101, 69-12-301, 69-12-302, AND 69-12-406, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the public service commission in adopting rules. It is the intention of the legislature that a Class D motor carrier have the authority to collect and transport source-separated recyclables and that Class C motor carriers have the authority to transport recyclables.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-101, MCA, is amended to read:

"**69-12-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Between fixed termini" or "over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route.

(2) "Certificate" means the certificate of public convenience and necessity issued under this chapter.

(3) "Compensation" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers under 69-12-421.

(4) "Corporation" means a corporation, company, association, or joint-stock association.

(5) "For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(6) "Motor carrier" means a person or corporation, or its lessees, trustees, or receivers appointed by any court, operating motor vehicles upon any public highway in this state for the transportation of persons or property for hire on a commercial basis, either as a common carrier or under private contract, agreement, charter, or undertaking. The term includes any motor carrier serving the public in the business of transportation of ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter.

(7) "Motor vehicle" includes vehicles or machines, motor trucks, tractors, or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state.

(8) "Person" means an individual, firm, or partnership.

(9) "Public highway" means a public street, road, highway, or way in this state.

(10) "Railroad" means the movement of cars on rails, regardless of the motive power used.

(11) "Recyclable" means any material diverted from the solid waste stream that can be reused as raw material for new products and for which markets exist."

Section 2. Section 69-12-302, MCA, is amended to read:

"**69-12-302. Conditions resulting in Class C carrier considered as Class B carrier.** (1) A Class C motor carrier operating with more than six contracts which are in effect at any given time and each of which are effective for a minimum of 180 days is considered to be operating as a Class B motor carrier. Before transportation service may commence, pertinent contract information shall be furnished to the commission for each contract on forms prescribed by the commission. The commission shall retain a duplicate of the information in its files, and a copy of the form, confirmed by the commission, must be kept in the cab of the motor carrier when operating under that contract.

(2) All Class C motor carriers must annually submit to the commission the names and addresses of all persons, corporations, or other legal entities with whom the Class C carrier has executed a contract, charter, agreement, or undertaking for the distribution, delivery, or collection of wares, merchandise, or commodities or for transporting persons.

(3) The provisions of this section shall not apply to solid waste contractors, *transportation of recyclables,* household goods carriers, or house movers, as defined by the department of public service regulation, or any carrier whose authority is limited to the pickup and delivery of property and is confined by certificate to transportation within a distance of 50 miles or less from a particular location. Any carrier whose property authority is incidental to the transportation of persons is not included in the exemption under this subsection."

Section 3. Section 69-12-301, MCA, is amended to read:

"**69-12-301. Classification of motor carriers.** (1) Motor carriers are hereby divided into four classes to be known as:

(a) Class A motor carriers;

(b) Class B motor carriers;

(c) Class C motor carriers;

(d) Class D motor carriers.

(2) Class A motor carriers shall embrace all motor carriers operating between fixed termini or over a regular route and under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

(3) Class B motor carriers shall embrace all motor carriers operating under regular rates or charges based upon either station-to-station rates or upon a mileage rate or scale and not between fixed termini or over a regular route.

(4) Class C motor carriers shall embrace all motor carriers operating motor vehicles for distributing, delivering, or collecting wares, merchandise, or commodities or transporting persons, where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement, or undertaking.

(5) Class D motor carriers embraces all motor carriers operating motor vehicles transporting (including pickup and disposal) ashes, trash, waste, refuse, rubbish, garbage, ~~and~~ organic and inorganic matter, *and recyclables.*"

Section 4. Section 69-12-406, MCA, is amended to read:

"**69-12-406. Restriction on transportation of certain waste.** Except as provided in 69-12-324, no Class A, B, or C carrier will be authorized or permitted to transport ashes, trash, waste, refuse, rubbish, garbage, or organic and inorganic matter within the state. *This restriction does not apply to recyclables.*"

Approved April 4, 1991.

CHAPTER NO. 342

[HB 284]

AN ACT TO PROVIDE THAT CHILD SUPPORT IS TERMINATED BY A CHILD'S EMANCIPATION OR GRADUATION FROM HIGH SCHOOL, WHICHEVER OCCURS LATER, BUT IN NO EVENT LATER THAN THE CHILD'S 19TH BIRTHDAY; AMENDING SECTION 40-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is not required for this bill because it does not grant rulemaking authority. However, a committee may by a two-thirds vote agree to attach a statement of intent to a bill not requiring one. The legislature finds that it would be unconscionable to have child support terminate prior to the graduation of a child from high school if the child is still living at home with the other parent, is still in need of support, and there has been no change in living circumstances prior to high school graduation.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-208, MCA, is amended to read:

"**40-4-208. Modification and termination of provisions for maintenance, support, and property disposition.** (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion for modification.

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable;

(ii) upon written consent of the parties; or

(iii) upon application by the department of social and rehabilitation services, whenever the department of social and rehabilitation services is providing services under Title IV-D of the federal Social Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under 40-5-209. A modification under this subsection may not be made within 12 months after the establishment of the order or the most recent modification.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) ~~Unless otherwise agreed in writing or expressly provided in the decree, provisions~~ *Provisions* for the support of a child are terminated by emancipation of the child *or the child's graduation from high school if the child is enrolled in high school, whichever occurs later,* ~~but not by~~ *but in no event later than the child's 19th birthday, unless the termination date is extended or knowingly waived by written agreement or by an express provision of the decree. Provisions for the support of a child do not terminate upon* the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances."

Section 2. **Applicability.** [Section 1] applies to all decrees containing provisions for child support issued on or after [the effective date of this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1991.

CHAPTER NO. 343

[HB 361]

AN ACT CLARIFYING THE ADJUDICATION PROCESS FOR FEDERAL RESERVED WATER RIGHTS WITH A PRIORITY DATE OF JULY 1, 1973, OR LATER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of [section 2] is to ensure that a federal reserved water right with a priority date of July 1, 1973, or later be subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973.

Section 2. **Federal reserved water rights with priority date of July 1, 1973, or later — process and adjudication.** (1) Under authority granted to the states by 43 U.S.C. 666, a federal reserved water right that has a priority date of July 1, 1973, or later and that is asserted by a federal agency is subject to the claim filing requirements and all other applicable requirements of the state water adjudication system provided for in Title 85, chapter 2, parts 2 and 7.

(2) At the request of a federal agency, the reserved water rights compact commission may negotiate to conclude a compact under Title 85, chapter 2, part 7, for a federal reserved water right with a priority date of July 1, 1973, or later.

(3) Whenever necessary, a water judge may reopen any decree issued pursuant to Title 85, chapter 2, to process the asserted or negotiated reserved water right.

Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions of Title 85, chapter 2, part 2, apply to [sections 1 and 2].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1991.

CHAPTER NO. 344

[HB 423]

AN ACT PROVIDING THAT FEES OR PARTS OF FEES REQUIRED BY LAW TO BE TRANSFERRED TO THE PUBLIC EMPLOYEES' RETIREMENT DIVISION OF THE DEPARTMENT OF ADMINISTRATION FOR DEPOSIT IN THE MONTANA JUDGES' RETIREMENT SYSTEM PENSION TRUST FUND ARE APPROPRIATED TO THE SUPREME COURT FOR DEPOSIT IN THE FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 19-5-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; *19-5-404;* 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on

the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 2. Section 19-5-404, MCA, is amended to read:

"**19-5-404.** *(Temporary)* **Contributions by the state.** The state of Montana shall contribute monthly to the fund a sum equal to 6% of the salary of each member. In addition, the clerk of each district court shall transmit 68% of certain filing fees as required under 25-1-201(2) and that portion of the fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in 25-1-201(4) and (6) to the state, which shall first deposit in the fund an amount equal to 31% of the salaries paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the public employees' retirement division of the department of administration to be credited to the fund. *The money from court fees collected pursuant to this section is statutorily appropriated, as provided in 17-7-502, to the supreme court for deposit in the judges' retirement fund.*

19-5-404. *(Effective July 1, 1991)* **Contributions by the state.** The state of Montana shall contribute monthly to the fund a sum equal to 6% of the salary of each member. In addition, the clerk of each district court shall transmit 68% of certain filing fees as required under 25-1-201(2) and that portion of the fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in 25-1-201(4) and (6) to the state, which shall first deposit in the fund an amount equal to 34.71% of the salaries paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the public employees' retirement division of the department of administration to be credited to the fund. *The money from court fees collected pursuant to this section is statutorily appropriated, as provided in 17-7-502, to the supreme court for deposit in the judges' retirement fund.*"

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1991.

CHAPTER NO. 345

[HB 536]

AN ACT ALLOWING A FIRE SERVICE AREA TO PROVIDE EMERGENCY RESPONSE AND EMERGENCY MEDICAL SERVICES; AND AMENDING SECTIONS 7-33-2401, 7-33-2402, AND 7-33-2404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2401, MCA, is amended to read:

"**7-33-2401. Fire service area — establishment — alteration — dissolution.** (1) Upon receipt of a petition signed by at least 30 owners of real property in the proposed service area, or by a majority of the owners of real property if there are no more than 30 owners of real property in the proposed service area, the board of county commissioners may establish a fire service area within an unincorporated area not part of a rural fire district in the county to provide the services and equipment set forth in 7-33-2402.

(2) To establish a fire service area, the board shall:

(a) pass a resolution of intent to form the area, with public notice as provided in 7-1-2121 and written notice as provided in 7-1-2122;

(b) hold a public hearing no earlier than 30 or later than 90 days after passage of the resolution of intent;

(c) at the public hearing:

(i) accept written protests from property owners of the area of the proposed area; and

(ii) receive general protests and comments relating to the establishment of the fire service area and its boundaries, rates, ~~service~~ *kinds, types, or* levels *of service*, or any other matter relating to the proposed fire service area; and

(d) pass a resolution creating the fire service area. The area is created effective 60 days after passage of the resolution unless by that date more than 50% of the property owners of the proposed fire service area protest its creation.

(3) Based on testimony received in the public hearing, the board in the resolution creating the fire service area may establish different boundaries, establish a different fee schedule than proposed, *change the kinds, types, or levels of service,* or change the manner in which the area will provide services to its residents.

(4) The board of county commissioners may alter the boundaries *or the kinds, types, or levels of service* or dissolve a fire service area, using the same procedures required for the creation of a fire service area. Any existing indebtedness of a fire service area that is dissolved remains the responsibility of the owners of property within the area, and any assets remaining after all indebtedness has been satisfied must be returned to the owners of property within the area."

Section 2. Section 7-33-2402, MCA, is amended to read:

"**7-33-2402. Area services.** A fire service area created pursuant to 7-33-2401 may provide residents of the area with *adequate and standard*:

(1) *(a)* fire *and emergency response* equipment, *personnel, facilities* ~~housing for the equipment~~, and ~~related~~ maintenance, for ~~use by~~ a fire service agency providing service to the area; or

~~(2)~~*(b)* fire protection by contracting for the services of a fire service agency*; and*

(2) emergency medical services and equipment, licensed by the department of health and environmental sciences, and related personnel, facilities, and maintenance."

Section 3. Section 7-33-2404, MCA, is amended to read:

"**7-33-2404. Financing of fire service area — fee on structures.** (1) In the resolution creating the fire service area and by resolution as necessary thereafter, the board of county commissioners shall establish a schedule of rates to be charged owners of structures that are benefited by the ~~fire~~ services offered by the fire service area.

(2) The rates must be applied on a fair and equal basis to all classes of structures benefited by the fire service area.

(3) The board of county commissioners shall collect the funds necessary to operate the fire service area by charging the area rate as a special assessment on the owners of structures and collect the assessments with the general taxes of the county. The assessments are a lien on the property so assessed.

(4) The board of county commissioners or the trustees, if the fire service area is governed by trustees under 7-33-2403, may pledge the income of the fire service area to secure financing necessary to procure ~~fire~~ equipment and buildings to house ~~fire~~ *the* equipment. The outstanding amount of such indebtedness may not exceed 7% of the taxable valuation of the area."

Approved April 4, 1991.

CHAPTER NO. 346

[HB 581]

AN ACT ALLOWING ANY LAW ENFORCEMENT AGENCY IN A JUDICIAL DISTRICT TO USE FINGERPRINT RECORDS AND PHOTOGRAPHS OF YOUTHS FOR CERTAIN PURPOSES; AND AMENDING SECTION 41-5-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-304, MCA, is amended to read:

"**41-5-304. Investigation, fingerprints, and photographs.** (1) All law enforcement investigations relating to a delinquent youth or youth in need of supervision must be conducted in accordance with this chapter and Title 46.

(2) A youth may be fingerprinted or photographed for criminal identification purposes:

(a) if arrested for conduct alleged to be unlawful that would be a felony if committed by an adult;

(b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the peace, or magistrate; or

(c) upon the order of the youth court judge, after a petition alleging delinquency has been filed in which the unlawful act alleged would constitute a felony if the act had been committed by an adult.

(3) Fingerprint records and photographs may be used by ~~the originating~~ *any law enforcement* agency *in the judicial district* for comparison and identification purposes in any other investigation."

Approved April 4, 1991.

CHAPTER NO. 347

[HB 602]

AN ACT PROVIDING THAT, WITH RESPECT TO TAX AND FEE MONEY, THE PROPOSED BUDGET OF AND THE NUMBER OF MILLS TO BE ASSESSED BY ANY BOARD, COMMISSION, OR GOVERNING ENTITY, EXCEPT A BOARD OF TRUSTEES OF A PUBLIC LIBRARY, APPOINTED BY A LOCAL GOVERNMENT ARE SUBJECT TO APPROVAL BY THAT LOCAL GOVERNMENT; PROVIDING AN EXEMPTION FOR TAXES LEVIED FOR BOND PAYMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Budgets of appointed boards and commissions — exemption for bonds.** (1) With respect to tax and fee money, the proposed budget of and the number of mills to be assessed by any board, commission, or other governing entity, except a board of trustees of a public library, appointed by a local government are subject to approval by that local government.

(2) Tax levies pledged to the payment of principal and interest on bonds issued by a commission, board, or governing entity must be approved by the local government.

Section 2. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 6, part 23, and the provisions of Title 7, chapter 6, part 23, apply to [section 1].

(2) [Section 1] is intended to be codified as an integral part of Title 7, chapter 6, part 42, and the provisions of Title 7, chapter 6, part 42, apply to [section 1].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1991.

CHAPTER NO. 348

[HB 606]

AN ACT ESTABLISHING A YOUTH VOTING PROGRAM TO EDUCATE MONTANA'S YOUTH IN THE DEMOCRATIC PROCESS; PROVIDING THAT THE SECRETARY OF STATE AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION DEVELOP AND COORDINATE THE PROGRAM; AND ALLOWING STUDENTS FROM PARTICIPATING SCHOOLS TO CAST MOCK BALLOTS AT DESIGNATED POLLING PLACES DURING ELECTIONS IF THE STUDENTS ARE ACCOMPANIED BY A PARENT OR ELIGIBLE VOTER.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Youth Voting Act".

Section 2. **Purpose and intent.** The intent of the legislature is to establish a nonpartisan youth voting program that will:

(1) provide the youth of Montana with practical experience in the democratic process;

(2) increase the likelihood that Montana's youth will participate in the process as adult voters and encourage the participation of more parents in elections;

(3) not benefit any elected official, candidate for elective office, political party, campaign for or against any ballot issue, or any measure attempting to qualify for placement on a ballot; and

(4) be entirely funded through private donations.

Section 3. **Youth voting program established — program coordination — school participation.** (1) There is a youth voting program for minors to provide young Montanans direct experience in the voting process.

(2) The secretary of state, in consultation with the superintendent of public instruction, shall solicit county election administrators and schools throughout the state to participate in the youth voting program. The

secretary of state and the superintendent of public instruction shall confer with the participating county election administrators and county superintendents of schools and, from among interested schools, shall facilitate the participation of as many schools in the program as available funds and other circumstances allow. A designated school may, at any time, decline to participate by notifying the secretary of state in writing.

Section 4. **Program development.** (1) The secretary of state and the superintendent of public instruction shall compile a program and establish a process whereby:

(a) students are instructed on the electoral process, the importance of voting, and how to mark and cast a ballot;

(b) students are educated about current issues in a manner appropriate for each grade level involved;

(c) students cast facsimile or mock ballots while accompanying their parents to polling places during regular elections; and

(d) ballots cast by students at elections are counted and the results are made available to all participating schools.

(2) The program must be presented to participating schools in a nonpartisan, nonbiased, and informative manner.

Section 5. **Responsibilities of participating schools.** Participating schools shall, in a timely manner, provide to students and their parents or guardians instruction and guidance on how to participate in the program, youth voter registration procedures and deadlines, a list of candidates and issues, and polling and balloting procedures.

Section 6. **Polling place procedures.** (1) The secretary of state and the superintendent of public instruction shall work with county election officials to provide that:

(a) facsimile or mock ballots are distributed to polling places in counties with participating schools;

(b) participating students accompanied by a parent or eligible voter are allowed to cast ballots in the youth election; and

(c) student ballots are counted and the results are announced to the participating schools.

(2) The provisions of this section must be carried out in a manner that will not interfere with the normal voting process or established polling place procedures.

Section 7. **Funding.** (1) Public money may not be used to support or fund the youth voting program established in [sections 1 through 8].

(2) A nonprofit corporation may be formed subject to the provisions of Title 35, chapter 2, to solicit donations from private sources. Money solicited under this subsection must be used only for the youth voting program.

Section 8. **Reports.** (1) Each biennium, the secretary of state shall provide, upon request, a report to the legislature outlining the program's effectiveness in achieving its objectives.

(2) Participating schools and agencies shall provide to the secretary of state information regarding the youth voting program for the secretary of state's report to the legislature.

Approved April 4, 1991.

CHAPTER NO. 349

[HB 625]

AN ACT REVISING HOSPITAL DISTRICT FINANCING; ALLOWING A COUNTY TO INVEST IN HOSPITAL DISTRICT WARRANTS; ALLOWING A HOSPITAL DISTRICT TO BORROW MONEY BY ISSUING NOTES; AND AMENDING SECTIONS 7-6-2701, 7-34-2122, AND 7-34-2131, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2701, MCA, is amended to read:

"**7-6-2701. Investment of certain money in county, municipal, *hospital,* and school warrants.** (1) Except as provided in 7-6-2802, if a county has under its control any money for which there is no immediate demand, in any special fund subject to deposit, which in the judgment of the board of county commissioners it would be advantageous to invest in county, municipal, *hospital district,* or school district registered warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase such warrants of entities located in the same county.

(2) For such purchases, the county commissioners shall:

(a) designate the fund or funds to be so invested;

(b) fix the amount that may be purchased;

(c) establish the rate of interest the county shall receive for the investment; and

(d) designate the warrants which are to be purchased by such funds.

(3) The officer drawing a warrant to be purchased for investment by a county shall cause to be attached to or stamped, written, or printed upon

the warrant a notice to the effect that the county will exercise its preference right to purchase the warrant.

(4) (a) A school district, *hospital district,* or county warrant presented to the county treasurer for purchase by the county must be registered as any other school district, *hospital district,* or county warrant.

(b) A municipal warrant presented to the municipal clerk or treasurer for purchase by the county must be registered, and the holder of the warrant must be informed that the warrant may be presented to the county treasurer for purchase by the county.

(5) The county treasurer shall, when a warrant designated for purchase under the provisions of subsection (2) is presented to him, purchase the same out of the proper fund as designated by the board. When the designated amounts have been invested, the county treasurer shall notify the county clerk and recorder or the applicable officer authorized to draw such warrants.

(6) Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of 7-6-204(1).

(7) No provision of this section may be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2."

Section 2. Section 7-34-2122, MCA, is amended to read:

"**7-34-2122. Powers of district.** A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance, and administration of such hospital facilities as its board of trustees shall deem necessary and expedient. Without limitation on the foregoing general grant of powers, a hospital district, acting by its board of trustees, may:

(1) employ nursing, administrative, and other personnel, legal counsel, engineers, architects, accountants, and other qualified persons, who may be paid for their services by monthly salaries, hourly wages, and pension benefits or by such fees as may be agreed upon;

(2) cause reports, plans, studies, and recommendations to be prepared;

(3) lease, purchase, and contract for the purchase of real and personal property by option, contract for deed, ~~conditional sales contract,~~ or otherwise and acquire real or personal property by gift;

(4) lease or construct, equip, and furnish necessary buildings and grounds and maintain the same;

(5) adopt, by resolution, rules for the operation and administration of any and all hospital facilities under its control and for the admission of persons thereto;

(6) impose by resolution and collect charges for all services and facilities provided and made available by it;

(7) levy taxes as hereinafter prescribed;

(8) borrow money ~~and issue~~ *by the issuance of its* bonds as hereinafter prescribed;

(9) borrow money by the issuance of notes;

~~(9)~~*(10)* procure insurance against liability of the district or its officers and employees, or both, for torts committed within the scope of their official duties, whether governmental or proprietary, and against damage to or destruction of any of its facilities, equipment, or other property;

~~(10)~~*(11)* sell or lease any of its facilities or equipment as may be deemed expedient;

~~(11)~~*(12)* cause audits to be made of its accounts, books, vouchers, and funds by competent public accountants."

Section 3. Section 7-34-2131, MCA, is amended to read:

"**7-34-2131. Hospital district bonds *and notes* authorized.** (1) *(a)* A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.

~~(2)~~*(b)* The amount of bonds issued for such purpose and outstanding at any time may not exceed 22.5% of the taxable value of the property therein as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds.

~~(3)~~*(c)* Such bonds shall be authorized, sold, and issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts by Title 20, chapter 9, part 4.

(2) (a) A hospital district may borrow money by the issuance of notes to provide funds to finance the costs described in subsection (1) and to finance the working capital requirements of the district. The notes must be authorized and in a form and terms prescribed by a resolution adopted by the board of trustees. The notes must mature over a term not to exceed 15 years.

(b) The principal and interest on the notes must be paid from the taxes levied pursuant to 7-34-2133 and 7-34-2134, exclusive of the taxes levied to pay bonds issued in accordance with subsection (1), and all other revenue of the district. The annual amount of principal and interest payable on notes in any fiscal year must be included in the district's budget for that year.

(c) The notes may be secured by a mortgage of or a security interest in all or part of the district's assets and by a pledge of the taxes and revenue of the district, or either of them.

(d) Notes may not be issued unless the projected annual revenue of the district, including the taxes levied pursuant to 7-34-2133 and 7-34-2134 but exclusive of the taxes levied to pay bonds, is at least equal to the sum of the cost of operating and maintaining the hospital district plus the maximum amount of principal and interest due in any future fiscal year on the notes proposed to be issued and all notes outstanding upon the issuance of the proposed notes.

~~(4)~~*(3)* Nothing herein shall be construed to preclude the provisions of Title 50, chapter 6, part 1, allowing the state to apply for and accept federal funds."

Approved April 4, 1991.

CHAPTER NO. 350

[HB 655]

AN ACT TO PERMIT THE INSTALLATION AND USE OF BELOW-GRADE LIQUEFIED PETROLEUM GAS APPLIANCES; AND AMENDING SECTION 50-60-203, MCA.

STATEMENT OF INTENT

Because many areas of Montana lack access to natural gas, it is necessary and desirable that energy alternatives be available. The legislature declares that below-grade liquefied petroleum gas appliances are not inherently hazardous if properly installed and further determines that it is appropriate to allow below-grade liquefied petroleum gas appliances to be installed in single-family dwellings notwithstanding the prohibition on the installation of those appliances by the Uniform Mechanical Code and the Uniform Plumbing Code. It is the intent of the legislature that the department of commerce adopt rules governing installation requirements for below-grade liquefied petroleum gas-burning appliances in single-family dwellings.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-203, MCA, is amended to read:

"**50-60-203. Department to adopt state building code by rule.** (1) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation of energy. The department may amend or repeal such rules.

(2) The department may adopt by reference nationally recognized building codes in whole or in part, but this does not prevent the department from adopting rules more stringent than those contained in such codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum gas-burning appliances in single-family dwellings."

Approved April 4, 1991.

CHAPTER NO. 351

[HB 697]

AN ACT ALLOWING A JUDGE OF A COURT OF LIMITED JURISDICTION TO SUMMON JURORS BY MAIL; AND AMENDING SECTIONS 3-15-701 AND 3-15-702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-15-701, MCA, is amended to read:

"**3-15-701. When and by whom jurors summoned.** When jurors are required in any ~~justice's or city court or any other~~ court of limited jurisdiction, they*:*

(1) must, upon the order of the ~~justice or of the~~ judge thereof, be summoned by the sheriff, constable, marshal, or policeman of the jurisdiction*; or*

(2) may be summoned by the judge of the court of limited jurisdiction or by the clerk of that court."

Section 2. Section 3-15-702, MCA, is amended to read:

"**3-15-702. How to be summoned.** Such jurors must be summoned from the persons competent to serve as jurors, residents of the county, city, or town in which such court has jurisdiction, by notifying them orally *or by mail* that they are summoned and of the time and place at which their attendance is required."

Approved April 4, 1991.

CHAPTER NO. 352

[HB 745]

AN ACT ESTABLISHING A PARTIAL BASIN CLOSURE IN THE BEAVERHEAD RIVER BASIN AND THE RED ROCK RIVER BASIN; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** Unless the context requires otherwise, in [sections 1 and 2], the following definitions apply:

(1) "Application" means an application for a beneficial water use permit, using form number 600.

(2) "Beaverhead River basin" means the Beaverhead River drainage area located in hydrologic basin 41B in Beaverhead and Madison Counties, Montana. The Beaverhead River basin designated as the closure area is all that drainage and head waters originating at the Clark Canyon dam, approximately 12 miles south-southwest of Dillon, Montana, and terminating at the confluence of the Big Hole River and the Beaverhead River, which then forms the Jefferson River near Twin Bridges, Montana.

(3) "Infiltration gallery" means a collection system that consists of one or more perforated pipes, culverts, or screens, placed horizontally beneath the streambed or vertically adjacent to the streambed, by which water is appropriated.

(4) "Red Rock River basin" means the Red Rock River drainage area located in hydrologic basin 41A in Beaverhead and Madison Counties, Montana. The Red Rock River basin designated as the closure area is all that drainage and head waters originating at the border of Montana and Idaho approximately 10 miles east of the Red Rock Lakes wildlife refuge and terminating at the Clark Canyon dam, approximately 12 miles south-southwest of Dillon, Montana.

Section 2. **Basin closure — exception.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department shall reject applications for permits to appropriate ground water by any means, including infiltration galleries, within the Beaverhead River and Red Rock River basins during the period from [the effective date of this act] through June 30, 1996.

(2) The provisions of subsection (1) do not apply to the appropriation of ground water by means of a well or developed spring with a maximum appropriation of ground water of less than 100 gallons per minute or to the appropriation of ground water for domestic use, stock use, municipal use, industrial use, or for temporary emergency appropriations.

Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [sections 1 and 2].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Section 5. **Applicability date.** [This act] applies to all applications received by the department after [the effective date of this act].

Section 6. **Termination date.** [This act] terminates June 30, 1996.

Approved April 4, 1991.

CHAPTER NO. 353

[HB 791]

AN ACT ALLOWING A COUNTY SHERIFF OR HIS DESIGNEE TO EXERCISE SUPERVISION WITHIN REASONABLE LIMITS OVER SEARCH AND RESCUE PERSONNEL; AND AMENDING SECTION 7-32-235, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-235, MCA, is amended to read:

"**7-32-235. Search and rescue units authorized — under control of county sheriff — optional funding.** (1) A county may establish or recognize one or more search and rescue units within the county.

(2) Except in time of martial rule as provided in 10-1-106, search and rescue units and their officers are under the operational control and supervision of the county sheriff*, or his designee,* having jurisdiction *and whose span of control would be considered within reasonable limits.*

(3) A county may, after approval by a majority of the people voting on the question at an election held throughout the county, levy an annual tax of not more than 1 mill on each dollar of taxable value of all taxable property within the county to support one or more search and rescue units established or recognized under subsection (1)."

Approved April 4, 1991.

CHAPTER NO. 354

[HB 798]

AN ACT AMENDING THE CRIME VICTIMS COMPENSATION ACT OF MONTANA TO ALLOW THE USE OF FUNDS TO ESTABLISH A GENERAL VICTIMS' ASSISTANCE COORDINATING AND PLANNING PROGRAM; AND AMENDING SECTIONS 53-9-102, 53-9-104, AND 53-9-109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-9-102, MCA, is amended to read:

"**53-9-102. Legislative purpose and intent.** It is the intent of the legislature of this state to provide a method of compensating ~~and assisting~~ those persons within the state who are innocent victims of criminal acts and who suffer bodily injury or death. To this end, it is the legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons *and to coordinate victims' assistance programs.*"

Section 2. Section 53-9-104, MCA, is amended to read:

"**53-9-104. Powers and duties of division.** (1) The division shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, book, photograph, movie, television production, play, or article relating to such crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, if the individual is convicted of the crime, to be held for such period of time as the division may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to pay the costs and attorney fees of court-appointed counsel for the charged person. Each victim and dependent of a deceased victim is entitled to his actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the county as reimbursement for any public defender or any attorney appointed for the charged person must be deposited in the account established in 53-9-109.

(2) The division may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the division to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant, provided that the division has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge; ~~and~~

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part*; and*

(f) establish a victims' assistance coordinating and planning program."

Section 3. Section 53-9-109, MCA, is amended to read:

"**53-9-109. Crime victims compensation account.** There is a crime victims compensation *and assistance* account in the state special revenue fund. There shall be paid into this account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result of citations or tickets issued by the highway patrol. The money in the account is to be used solely for the purposes of this part~~,~~ and *for victims' assistance program coordination and planning provided by the division.* ~~no~~ *No* ~~cash~~ *fund* balance in the account at the end of a fiscal ~~biennium~~ *year* may be deposited in the general fund."

Approved April 4, 1991.

CHAPTER NO. 355

[HB 813]

AN ACT CREATING A COUNTY RECORDS PRESERVATION FUND; INCREASING THE FEE FOR RECORDING A DOCUMENT BY MECHANICAL MEANS; AMENDING SECTION 7-4-2632, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2632, MCA, is amended to read:

"**7-4-2632. Fee when recording done by mechanical means.** Where recording is done by photographic or similar process, the county clerk and recorder shall charge ~~$5~~ *$6* for each page or fraction of a page of the instrument for recording."

Section 2. **Records preservation fund authorized.** (1) The board of county commissioners shall establish a records preservation fund for the purpose of preserving the records maintained by the county clerk and recorder. The county clerk and recorder is responsible for expenditures from the fund and shall use the money for records preservation.

(2) The county clerk and recorder shall deposit $1 of the fee received under 7-4-2632 into the records preservation fund.

(3) The governing body of the county may transfer to the general fund any money in the records preservation fund that is not needed for records preservation.

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved April 4, 1991.

CHAPTER NO. 356

[HB 817]

AN ACT ALLOWING A LIBRARY CREATED UNDER TITLE 7 TO RECEIVE STATE AID; REVISING THE DEFINITION OF A "STATE MULTILIBRARY CARD"; AMENDING SECTIONS 22-1-301 AND 22-1-326, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-1-301, MCA, is amended to read:

"**22-1-301. Definitions.** Unless otherwise provided, the following definitions apply in this part:

(1) "City" means city or town.

(2) "Commission" means the state library commission.

(3) "Public library" means a library created under 22-1-303 through 22-1-317 that provides library services to the public by means of central facilities, branch facilities, or bookmobiles.

(4) "State multilibrary card" means a card that is issued to a Montana resident by a public library created *under Title 7 or* under 22-1-303 and that may be used for library services in every public library in the state."

Section 2. Section 22-1-326, MCA, is amended to read:

"**22-1-326. State aid to public libraries.** *(1) As used in 22-1-326 through 22-1-331, "public library" means a library created under Title 7 or under 22-1-301 through 22-1-317.*

~~(1)~~*(2)* As provided in 22-1-325 through 22-1-329, the commission shall administer state aid to public libraries. The purposes of state aid are to:

(a) broaden access to existing information by strengthening public libraries;

(b) augment and extend services provided by public libraries; and

(c) permit new types of library services based on local need.

~~(2)~~*(3)* Money appropriated for the purposes of this section may not be used to supplant general operating funds of recipient public libraries. The commission may withhold a distribution to a library that receives less support from a mill levy or local government appropriation than its average for the preceding 3 fiscal years if such a decrease may reasonably be linked to money received or expected to be received under 22-1-325 through 22-1-329."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1991.

CHAPTER NO. 357

[SB 136]

AN ACT PROVIDING FOR THE ESTABLISHMENT OF LOCAL WATER QUALITY DISTRICTS; AUTHORIZING ESTABLISHMENT OF FEES; AUTHORIZING GOVERNING BODIES OF COUNTIES, CITIES, AND TOWNS THAT PARTICIPATE IN A LOCAL WATER QUALITY DISTRICT TO ADOPT LOCAL LAWS RELATED TO WATER QUALITY PROTECTION; AUTHORIZING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO APPROVE LOCAL WATER QUALITY PROGRAMS; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO MONITOR IMPLEMENTATION OF LOCAL WATER QUALITY PROGRAMS; AND AMENDING SECTION 75-5-106, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the board of health and environmental sciences concerning rulemaking and approval of local water quality programs. The board shall adopt rules concerning the format of local water quality programs, including the level of information necessary for a local water quality district to show that its proposed program will be consistent with Title 75, chapter 5, and that its program will be effective in protecting, preserving, and improving the quality of surface water and ground water. The board may define by rule the types of best management practices that may be imposed upon each of the types of facilities and sources of pollution that may be regulated by local ordinances as authorized under [section 24(4)]. It is the intent of the legislature that administrative responsibilities be clearly allocated and, when necessary, clearly divided between the department of health and environmental sciences and a local water quality district, insofar as possible, to ensure that permitholders, permit applicants, and citizens are not subject to conflicting or duplicative requirements. Through its approval of local water quality programs, the board of health and environmental sciences shall ensure that the department of health and environmental sciences' ability to continue to administer federally delegated water quality protection programs is not impaired. The board may also adopt rules to specify the procedures the department of health and environmental sciences shall follow pursuant to 75-5-106 to authorize a local water quality district to enforce provisions of Title 75, chapter 5. It is the intent of the legislature that the boundaries of local water quality districts should correspond to the area or areas in which water quality problems have been documented.

Except as expressly provided in this bill, nothing in this bill may be considered to limit or restrict the authority of local governments to adopt rules and regulations authorized by other laws of the state.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Findings and purpose.** (1) Pollution and degradation of surface water and ground water pose both immediate and long-term threats to the health, safety, and welfare of citizens of this state.

(2) Because of the expense and difficulty of ground water rehabilitation and cleanup and the need to protect drinking water supplies, policies and programs to prevent ground water contamination must be implemented.

(3) The purpose of [sections 1 through 23] is to provide for the creation of local water quality districts to protect, preserve, and improve the quality of surface water and ground water.

Section 2. **Definitions.** As used in [sections 1 through 23], unless the context indicates otherwise, the following definitions apply:

(1) "Board of health and environmental sciences" as used in [sections 1 through 23] means the board of health and environmental sciences as provided in 2-15-2104.

(2) "Board of directors" means the board of directors provided for in [section 12] or a joint board of directors provided for in [section 21].

(3) "Commissioners" means the board of county commissioners or the governing body of a city-county consolidated government.

(4) "Family residential unit" means a single-family dwelling.

(5) "Fee-assessed units" means all real property with improvements, including taxable and tax-exempt property as shown on the property assessment records maintained by the county, and mobile homes as defined in 15-24-201.

(6) "Local water quality district" means an area established with definite boundaries for the purpose of protecting, preserving, and improving the quality of surface water and ground water in the district as authorized by [sections 1 through 23].

Section 3. **Authorization to initiate creation of a local water quality district.** (1) The commissioners may initiate the creation of a local water quality district for the purpose of protecting, preserving, and improving the quality of surface water and ground water, as provided by [sections 1 through 23], by holding a public meeting, passing a resolution of intention, providing an opportunity for owners of fee-assessed units to protest, and conducting a public hearing to hear and decide upon protests, as provided in [sections 5 through 8].

(2) A city or town may be included in the district if approved by the governing body of the city or town.

Section 4. **Public meeting — resolution of intention to create local water quality district.** (1) The commissioners shall hold at least one public meeting concerning the creation of a local water quality district prior to the passage of a resolution of intention to create the district.

(2) The resolution of intention must designate:

(a) the proposed name of the district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands included in the district, including identification of the district boundaries that must correspond to the area in which the need for the district exists pursuant to subsection (2)(b);

(d) a general description of the proposed water quality program;

(e) the initial estimated cost of the water quality program; and

(f) the initial proposed fees to be charged.

Section 5. **Participation of cities and towns.** (1) Upon passage of a resolution of intention, the commissioners shall transmit a copy of the resolution to the governing body of any incorporated city or town within the proposed local water quality district for consideration by the governing body.

(2) If the governing body of the city or town by resolution concurs in the resolution of intention, a copy of the resolution of concurrence must be transmitted to the commissioners.

(3) If the governing body of the incorporated city or town does not concur in the resolution of intention, the commissioners may not include the city or town in the district but may continue to develop a district that excludes the city or town.

Section 6. **Notice of resolutions of intention and concurrence.** (1) The commissioners shall give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, and publish a notice that:

(a) describes the local water quality program that would be implemented in the local water quality district;

(b) specifies the initial proposed fees to be charged;

(c) designates the time and place where the commissioners will hear and decide upon protests made against the operation of the proposed district; and

(d) states that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office.

(2) The notice must be published as provided in 7-1-2121 and must also be posted in three public places within the boundaries of the proposed district.

(3) The commissioners shall mail to all owners of proposed fee-assessed units, as listed in the county assessor's office, a postcard that identifies the location where the resolution of intention, resolution of concurrence, and protest forms may be obtained.

Section 7. **Right to protest — procedure.** (1) At any time within 30 days after the date of the first publication of the notice provided for in [section 6(1)], a person owning a fee-assessed unit located within the proposed local water quality district may make written protest against the proposed district and the fees proposed to be charged.

(2) The protest must be in writing and must be delivered to the county clerk, who shall endorse on it the date the protest is received.

(3) Owners may file one protest per fee-assessed unit.

Section 8. **Hearing on protest.** (1) At the next regular meeting of the commissioners after the expiration of the time period provided for in [section 7], the commissioners shall hear and decide upon all protests.

(2) The commissioners may adjourn the hearing as necessary.

Section 9. **Sufficient protest to require referendum.** If the owners of more than 20% of the fee-assessed units in the proposed district protest the creation of the proposed district and the fees proposed to be charged, the commissioners are barred from further proceedings on the matter unless the commissioners submit a referendum to create the district to the registered voters who reside within the proposed district and the registered voters approve the creation of the district and establish the fees by approving the referendum.

Section 10. **Referendum.** (1) The commissioners may adopt a resolution causing a referendum to be submitted to the registered voters who reside within a proposed local water quality district to authorize the creation of the district and establish fees.

(2) The referendum must state:

(a) the type and maximum rate of the initial proposed fees that would be imposed, consistent with the requirements of [section 18];

(b) the maximum dollar amount for a family residential unit;

(c) the type of activities proposed to be financed, including a general description of the local water quality program; and

(d) a general description of the areas included in the proposed district.

Section 11. **Insufficient protest to bar proceedings — resolution creating district — power to implement local water quality program.** (1) The commissioners may create a local water quality district, establish fees, and appoint a board of directors if the commissioners find that insufficient protests have been made in accordance with [section 9] or if the registered voters who reside in the proposed district have approved a referendum as provided in [section 10].

(2) To create a local water quality district, the commissioners shall pass a resolution in accordance with the resolution of intention introduced and passed by the commissioners or with the terms of the referendum.

(3) The commissioners and board of directors may implement a local water quality program after the program is approved by the board of health and environmental sciences pursuant to [section 24].

Section 12. **Board of directors.** (1) Except as provided in subsections (3)(b) and (5), the commissioners shall appoint a board of directors for the local water quality district.

(2) The board of directors consists of not less than five members, including one county commissioner or member of the governing body of a city-county consolidated government, one member from the governing body of each incorporated city or town that is included in the district, one member of the county or city-county board of health, and if the district includes a substantial amount of land that is within a conservation district or districts, one conservation district supervisor.

(3) The remaining members of the board of directors are selected from interested persons, as follows:

(a) from persons whose residences or businesses are distributed equally throughout the district if a county is the only unit of local government participating in the district; or

(b) through mutual agreement by all governing bodies if a county and one or more incorporated cities and towns are participating in the district.

(4) Terms of members of the board of directors are staggered and, after the initial terms, are for 3 years.

(5) In counties that have a full-time city-county health department, the city-county board of health, created as authorized by 50-2-106, may be designated as the board of directors for the local water quality district. If the city-county board of health is designated as the board of directors and if the local water quality district includes a substantial amount of land that is within a conservation district or districts, the board of directors must also include one member who is a conservation district supervisor.

Section 13. **Powers and duties of board of directors.** The board of directors of a local water quality district, with the approval of the commissioners, may:

(1) develop a local water quality program, to be submitted to the board of health and environmental sciences, for the protection, preservation, and improvement of the quality of surface water and ground water in the district. In developing the program, the board of directors shall consult with the board or boards of supervisors of conservation districts, established as provided in 76-15-201, whose geographical area of jurisdiction is included within the boundaries of the local water quality district.

(2) implement a local water quality program;

(3) administer the budget of the local water quality district;

(4) employ personnel;

(5) purchase, rent, or lease equipment and material necessary to develop and implement an effective program;

(6) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local governments, in order to develop and implement an effective program;

(7) receive gifts, grants, or donations for the purpose of advancing the program and acquire by gift, deed, or purchase, land necessary to implement the local water quality program;

(8) administer local ordinances that are adopted by the commissioners and governing bodies of the participating cities and towns and that pertain to the protection, preservation, and improvement of the quality of surface water and ground water;

(9) apply for and receive from the federal government or the state government, on behalf of the local water quality district, money to aid the local water quality program;

(10) borrow money for assistance in planning or refinancing a local water quality district and repay loans with the money received from the established fees; and

(11) construct facilities that cost not more than $5,000 and maintain facilities necessary to accomplish the purposes of the district, including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment.

Section 14. **Powers and duties of commissioners.** In addition to the other powers and duties of the commissioners authorized by [sections 1 through 23], the commissioners may:

(1) adopt local ordinances in accordance with the requirements of [section 24];

(2) establish fees;

(3) review and approve the annual budget of the local water quality district; and

(4) approve the construction of facilities that cost more than $5,000 but not more than $100,000 a year and that are necessary to accomplish the purposes of [sections 1 through 23], including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment.

Section 15. **Implementation of program.** The board of directors may implement a local water quality program in parts of a local water quality district before the program is implemented in the district as a whole. If a program is initially implemented in only a portion of a district, the fees may be levied only against that part of the district where the program is being implemented. As the program is expanded throughout the district, each additional part of the district that is covered by the program shall pay the fee.

Section 16. **Changes in district boundaries.** The board of directors may by resolution make changes in the boundaries of a local water quality district that the board determines are reasonable and proper, following the same procedures of notice and hearing provided in [sections 6 through 8] except that the notice provisions of [section 6(3)] apply only to the owners of proposed fee-assessed units in new areas that are proposed to be included in the district. If 20% of the owners of fee-assessed units in the new areas protest the inclusion in the district and the fees proposed to be charged, the board of directors is barred from further proceedings on the matter unless the registered voters who reside in the areas proposed for inclusion agree to be included in the district and accept the proposed fees by approving a referendum in accordance with the provisions of [section 10].

Section 17. **Role of county attorney — contracts for legal services.** The board of directors may, by agreement with the commissioners, contract with the county attorney or an attorney licensed to practice law in the state of Montana to perform legal services for the local water quality district.

Section 18. **Fees — determination of rates — increases — exemption for agricultural water use.** (1) The commissioners shall determine fee rates according to a classification system that is based upon the volume of water withdrawn and the volume and type of waste produced at each fee-assessed unit in the local water quality district.

(2) Fees for commercial and industrial units must be based on a comparison with a typical family residential unit as to volume of water withdrawn and volume and type of waste produced. Commercial and industrial units may be assessed fees that are not greater than 50 times the fees assessed on a family residential unit.

(3) The commissioners may increase fees up to 10% a year by passing a resolution to establish the new fee rate. The commissioners may not approve a proposed fee increase of more than 10% a year unless notice of the proposed increase is given as provided in [section 6(1) and (2)] and opportunity for protest is provided as set forth in [sections 7 and 8]. If more than 20% of the owners of fee assessed units in the district protest, the fee increase may not be approved except through the referendum procedure provided for in [section 10].

(4) Water withdrawals for irrigation and livestock use and related water discharges may not be assessed fees.

Section 19. **Procedure to collect fees.** The month the local water quality district is created pursuant to [section 11], the department of revenue or its agents shall ensure that the amount of the fees is placed on the county tax assessments for each fee-assessed unit. Unpaid fees are a lien on the fee-assessed unit and may be enforced as a lien for nonpayment of property taxes.

Section 20. **Disposition and administration of proceeds.** (1) All fees and other money received by a local water quality district must be placed in a separate fund maintained by the county treasurer and must be used solely for the purpose for which the local water quality district was created.

(2) The commissioners shall draw warrants upon the fund on claims approved by the board of directors.

Section 21. **Creation of joint local water quality districts.** (1) Joint local water quality districts are districts that encompass two or more counties or parts of counties.

(2) A joint local water quality district may be created if the commissioners of each affected county:

(a) create the district, following the procedures prescribed under [sections 3 through 11]; and

(b) appoint a joint board of directors that consists of at least five members and that is consistent with the requirement of [section 22(2)(b)], if applicable.

Section 22. **Composition of board of directors of joint district — terms.** (1) The board of directors for a joint district consists of one commissioner from each county involved, one member from each incorporated city or town included in the district, one member from each county or city-county board of health, and if the joint district includes a substantial amount of land that is within a conservation district or districts, one conservation district supervisor.

(2) The remaining members of the joint board of directors are selected from interested citizens, as follows:

(a) persons whose residences or businesses are distributed equally throughout the district if counties are the only units of government participating in the joint district; or

(b) through mutual agreement of all commissioners and governing bodies of cities and towns participating in the district.

(3) Terms of appointed members are staggered and, after the initial terms, are for 3 years.

Section 23. **Administration of funds in joint districts.** Fees and other money collected by a joint local water quality district may be administered by one county treasurer upon mutual agreement by the commissioners of the counties participating in a joint local water quality district.

Section 24. **Local water quality districts — board approval — local water quality programs.** (1) A county that establishes a local water quality district according to the procedures specified in [sections 1 through 23] shall, in consultation with the department, undertake planning and information-gathering activities necessary to develop a proposed local water quality program.

(2) A county may implement a local water quality program in a local water quality district if the program is approved by the board after a hearing conducted under 75-5-202.

(3) In approving a local water quality program, the board shall determine that the program is consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective in protecting, preserving, and improving the quality of surface water and ground water, considering the administrative organization, staff, and financial and other resources available to implement the program.

(4) Subject to the board's approval, the commissioners and the governing bodies of cities and towns that participate in a local water quality district may adopt local ordinances to regulate the following specific facilities and sources of pollution:

(a) onsite waste water disposal facilities;

(b) storm water runoff from paved surfaces;

(c) service connections between buildings and publicly owned sewer mains;

(d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous substances that are referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 through F005, as amended; and

(e) internal combustion engine lubricants.

(5) For the facilities and sources of pollution included in subsection (4) and consistent with the provisions of subsection (6), the local ordinances may:

(a) be compatible with or more stringent or more extensive than the requirements imposed by 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect water quality, establish waste discharge permit requirements, and establish best management practices for substances that have the potential to pollute state waters;

(b) provide for administrative procedures, administrative orders and actions, and civil enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules adopted under those sections; and

(c) provide for civil penalties not to exceed $1,000 per violation, provided that each day of violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed $500 per day of violation or imprisonment for not more than 30 days, or both.

(6) The local ordinances authorized by this section may not:

(a) duplicate the department's requirements and procedures relating to permitting of waste discharge sources and enforcement of water quality standards;

(b) regulate any facility or source of pollution to the extent that the facility or source is:

(i) required to obtain a permit or other approval from the department or federal government or is the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75, chapter 5, part 4;

Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal environmental, safety, or health statutes and regulations;

(ii) exempted from obtaining a permit or other approval from the department because the facility or source is required to obtain a permit or other approval from another state agency or is the subject of an enforcement action by another state agency; or

(iii) subject to the provisions of Title 80, chapter 8 or chapter 15.

(7) If the boundaries of a district are changed after the board has approved the local water quality program for the district, the board of directors of the local water quality district shall submit a program amendment to the board and obtain the board's approval of the program amendment before implementing the local water quality program in areas that have been added to the district.

(8) The department shall monitor the implementation of local water quality programs to ensure that the programs are adequate to protect, preserve, and improve the quality of the surface water and ground water and are being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5. If the department finds that a local water quality program is not adequate to protect, preserve, and improve the quality of the surface water and ground water or is not being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5, the department shall report to the board.

(9) If the board determines that a local water quality program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that the program is being administered in a manner inconsistent with Title 75, chapter 5, the board shall give notice and conduct a hearing on the matter.

(10) If after the hearing the board determines that the program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that it is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the board shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(11) If an ordinance adopted under this section conflicts with a requirement imposed by the department's water quality program, the department's requirement supersedes the local ordinance.

(12) If the board finds that, because of the complexity or magnitude of a particular water pollution source, the control of the source is beyond the reasonable capability of a local water quality district or may be more efficiently and economically performed at the state level, the board may direct the department to assume and retain control over the source. A charge may not be assessed against the local water quality district for that source. Findings made under this subsection may be based on the nature

of the source involved or on the source's relationship to the size of the community in which it is located.

Section 25. Section 75-5-106, MCA, is amended to read:

"**75-5-106. Interagency cooperation —** ***enforcement authorization.*** *(1)* The council, board, and department may require the use of records of all state agencies and may seek the assistance of such agencies. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, board, and department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of [sections 1 through 23] to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or causing to be placed wastes in a location where they are likely to cause pollution of state waters. The board may adopt rules regarding the granting of enforcement authority to local water quality districts."

Section 26. **Codification instruction.** (1) [Sections 1 through 23] are intended to be codified as an integral part of Title 7, and the provisions of Title 7 apply to [sections 1 through 23].

(2) [Section 24] is intended to be codified as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [section 24].

Approved April 6, 1991.

CHAPTER NO. 358

[SB 142]

AN ACT REQUIRING THAT A PERSON WHO IS ISSUED A SPECIAL ELK PERMIT TO HUNT ANTLERLESS ELK DURING THE REGULAR HUNTING SEASON IS LIMITED TO THE HUNTING AND TAKING OF ONLY AN ANTLERLESS ELK IN THE HUNTING DISTRICT WHERE THE PERMIT IS VALID; AMENDING SECTION 87-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is provided for this bill because the legislature is aware that increasing elk populations are of concern to private landowners who are impacted by increased numbers of elk on their property. This legislation is not intended to replace the Class A-7 antlerless elk license but is intended to provide flexibility to solve problems that might arise for both landowners and sportsmen regarding surplus antlerless elk. The legislature encourages the fish and game commission and the department of fish, wildlife, and parks to utilize the Class A-7 antlerless elk license whenever practical.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-704, MCA, is amended to read:

"**87-2-704. Regulation of special elk permits.** (1) The department may:

(a) provide for the refund of resident elk tag license fees to persons applying for special elk permits in hunting districts where there is no general elk hunting and set time limits and describe area restrictions; *and*

(b) designate special elk permit areas where priority will be given to applicants who have not held special elk permits for a period of years to be determined by the department.

(2) The department shall provide that a person who is issued a special elk permit to hunt antlerless elk during the regular hunting season is:

(a) limited to the hunting and taking of only an antlerless elk in the hunting district or portion of a hunting district where the permit is valid; and

(b) entitled to the general elk hunting privileges for a holder of a Class A-5 license in all other hunting districts.

~~(2)~~*(3)* The department may adopt rules necessary to implement this section."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 6, 1991.

CHAPTER NO. 359

[SB 156]

AN ACT TO GENERALLY REVISE AND CLARIFY THE STATE AND LOCAL REFERENDUM AND INITIATIVE PETITION PROCESSES; AMENDING SECTIONS 7-1-4130, 7-5-132, 7-5-134, 13-27-104, 13-27-202, 13-27-301, 13-27-312, AND 13-27-403, MCA; AND REPEALING SECTION 7-3-4334, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-4130, MCA, is amended to read:

"**7-1-4130. Petition.** ~~(1)~~ Whenever a petition is authorized, unless the section authorizing the petition establishes different criteria, ~~it shall be valid if it is signed by 15% of the electors of the municipality and meets the following requirements:~~

~~(a) contains a statement of the purpose for which it is circulated, sufficient to meet the specific criteria set out in the section authorizing the petition;~~

~~(b) each signature is followed by the printed name of the signer, the address of the signer's place of residence, and the date of the signing; and~~

~~(c) the petition contains the date it was first circulated and a statement that all signatures must be collected within 90 days of that date.~~

~~(2) Unless otherwise provided, all petitions shall be filed with the county election administrator, who shall determine the sufficiency of the signatures. No petition filed after the deadline for filing the petition, if any, shall be considered.~~

~~(3) Within 10 working days of the date the petition was filed, the county election administrator shall determine the adequacy of the petition.~~

~~(4) Inadequate petitions shall be returned but may be amended or supplementary signatures may be obtained, and the petition may be refiled prior to the deadline for filing the petition.~~

~~(5) Within 10 days of its second filing, the county election administrator shall again determine the adequacy of the petition. If it is still determined inadequate, it shall be rejected without prejudice to the filing of a new petition to the same effect.~~

~~(6) If a petition is determined adequate, the county election administrator shall:~~

~~(a) certify its adequacy and submit it to the governing body without delay;~~

~~(b) submit a copy of the petition to the attorney of the municipality.~~

~~(7) A person may in writing withdraw his signature from a previously filed petition at any time prior to final action of the governing body.~~

~~(8) (a) The attorney for the municipality shall prepare and transmit to the governing body without delay a concise statement not exceeding 100 words. This statement shall express a true and impartial explanation of the purpose of the proposed ballot issue in plain, easily understood language. The statement may not intentionally be an argument and may not intentionally be written so as to create prejudice for or against the measure.~~

~~(b) At the same time the statement of purpose is prepared, the attorney shall prepare statements of the implications of a vote for or against a ballot issue. The statements of implication may be no more than 25 words each and shall be in simple, impartial language clearly explaining the meaning of a vote for and a vote against the issue.~~

~~(c) Prior to an election or an official action involving a petition issue, the governing body shall publish copies of the statement of purpose and statement of implications to the procedure established in 7-1-4128.~~

~~(9) The secretary of state shall prepare and provide each municipality with:~~

~~(a) a standard petition form;~~

~~(b) sample petition forms for initiatives, referendums, and recall elections; and~~

~~(c) sample petition forms for creation of districts.~~

~~(10) Each municipality shall make available to the public on request sample petition forms~~ *the petition is subject to 7-5-131 through 7-5-137.*"

Section 2. Section 7-5-132, MCA, is amended to read:

"**7-5-132. Procedure to exercise right of initiative or referendum.** (1) The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition. If ~~submitted~~ *an approved petition containing sufficient signatures is filed* prior to the ordinance's effective date, a petition requesting a referendum on the ordinance shall delay the ordinance's effective date until the ordinance is ratified by the electors. A petition requesting a referendum on an emergency ordinance filed within 30 days of its effective date shall suspend the ordinance until ratified by the electors.

(2) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

(3) A petition or resolution for initiative or referendum shall:

(a) embrace only a single comprehensive subject;

(b) set out fully the ordinance sought by petitioners or, in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment or, in the case of referendum, set out the ordinance sought to be repealed;

(c) be in the form prescribed in Title 13, chapter 27, except as specifically provided in this part; ~~and~~

(d) contain the signatures of 15% of the registered electors of the local government*; and*

(e) contain transition provisions if the measure changes terms of office or forms of government."

Section 3. Section 7-5-134, MCA, is amended to read:

"**7-5-134. Signatures — submission for approval — statement of purpose and implication.** (1) In order to determine the number of signatures needed on a petition to meet the percentage requirements of this part, the number of electors shall be the number of individuals registered to vote at the preceding general election for the local government.

(2) Before a petition may be circulated for signatures, a sample petition must be submitted in the form in which it will be circulated to the county election administrator for approval as to form. ~~The election administrator shall review the sample petition to ensure compliance with 7-5-131 and 7-5-132.~~

(3) The county election administrator shall refer a copy of the sample petition sheet to the attorney for the local government unit ~~for preparation of the ballot statement~~. The local government attorney shall *review the sample petition for form and compliance with 7-5-131 and 7-5-132 and* prepare a concise ballot statement not exceeding 100 words. ~~This~~ *The ballot* statement must be an accurate and impartial explanation of the purpose of the proposed ballot issue in plain, easily understood language. The statement may not be an argument and may not be written so as to create prejudice for or against the issue. The statement prepared pursuant to this subsection, unless altered by court order, must be used as the petition title and the ballot statement if the issue is placed on the ballot.

(4) At the time the statement of purpose is prepared, the attorney shall prepare a statement of the implication of a vote for and a statement of the implication of a vote against the ballot issue. Each statement of implication may be no more than 25 words and must be in simple, impartial language that clearly explains the meaning of a vote for or a vote against the issue. Each statement of implication prepared pursuant to this section, unless altered by a court order, is to be used on the petition and the ballot if the issue is placed on the ballot. The statements of implication must be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:

☐ FOR weekly commission meetings.

☐ AGAINST weekly commission meetings.

(5) If the petition is rejected as to form, the election administrator must send written notice *and a statement of the reasons for rejection* to the person who submitted the sample petition within ~~10~~ *21* days after submission of the sample.

(6) If the petition is approved as to form, the election administrator shall send written notice to the person who submitted the sample petition within 21 days after submission of the sample. This notice must include the ballot statement and the statements of implication prepared by the local government attorney.

(7) All petition signatures must be collected and filed within 90 days of the date of the notice that the petition has been approved as to form."

Section 4. Section 13-27-104, MCA, is amended to read:

"**13-27-104. Time for filing.** Unless a specific time for filing is provided in the constitution, all petitions filed with the secretary of state, certified as provided by law, must be received before 5 p.m. of the ~~second~~ *third* Friday of the fourth month prior to the election at which they are to be voted upon by the people."

Section 5. Section 13-27-202, MCA, is amended to read:

"**13-27-202. Recommendations — approval of form required.** (1) Before submission of a sample sheet to the secretary of state pursuant to subsection (3), the following requirements must be fulfilled:

(a) The text of the proposed measure must be submitted to the legislative council for review.

(b) The council staff shall review the text for clarity, consistency, and any other factors the council staff considers when drafting proposed legislation.

(c) Within 14 days after submission of the text, the council staff shall make to the person submitting the text written recommendations for changes in the text or a statement that no changes are recommended.

(d) The person submitting the text shall consider any such recommendations and respond in writing to the council, accepting, rejecting, or modifying each of the recommended changes. If no changes are recommended, no response is required.

(2) The legislative council shall furnish a copy of the correspondence provided for in subsection (1) to the secretary of state, who shall make a copy thereof available to any person upon request.

(3) Before a petition may be circulated for signatures, a sample sheet containing the text of the proposed measure must be submitted to the secretary of state in the form in which it will be circulated. The sample petition may not be submitted to the secretary of state more than 1 year prior to the final date for filing the signed petition with the secretary of state. The secretary of state shall refer a copy of the petition sheet to the attorney general for his approval. The secretary of state and attorney general must each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any. *The secretary of state or the attorney general may not reject the petition solely because the text contains material not submitted to the legislative council, unless the material not submitted to the legislative council is a substantive change not suggested by the legislative council.*

(4) The secretary of state shall review the comments and statements of the attorney general received pursuant to 13-27-312 and make a final decision as to the approval or rejection of the form of the petition. The

secretary of state shall send written notice to the person who submitted the petition sheet of the approval *or rejection* within 28 days after submission of the petition sheet. ~~The secretary of state shall send written~~ *If the petition is rejected, the* notice ~~if the petition has been rejected, together with~~ *must include* reasons for rejection~~, within 14 days after submission of the petition sheet~~.

(5) A petition with technical defects in form may be approved with the condition that those defects will be corrected before the petition is circulated for signatures.

(6) The secretary of state shall upon request provide the person submitting the petition with a sample petition form, including the text of the proposed measure, the statement of purpose, and the statements of implications, all as approved by the secretary of state and the attorney general. The petition may be circulated in the form of the sample prepared by the secretary of state."

Section 6. Section 13-27-301, MCA, is amended to read:

"**13-27-301. Submission of petition sheets — withdrawal of signatures.** (1) Signed sheets or sections of petitions shall be submitted to the official responsible for registration of electors in the county in which the signatures were obtained no sooner than 9 months and no later than ~~2~~ *4* weeks before the final date for filing the petition with the secretary of state.

(2) Signatures may be withdrawn from a petition for constitutional amendment, constitutional convention, initiative, or referendum up to the time of final submission of petition sheets as provided in subsection (1). The secretary of state shall prescribe the form to be used by an elector desiring to have his signature withdrawn from a petition."

Section 7. Section 13-27-312, MCA, is amended to read:

"**13-27-312. Review of petition by attorney general — preparation of statements — fiscal note.** (1) Upon receipt of a petition from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the petition as to form and, if the proposed ballot issue has an effect on the revenues, expenditures, or the fiscal liability of the state, shall order a fiscal note incorporating an estimate of such effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected by the petition, is responsible for preparing the fiscal note and shall return it within 6 days unless the attorney general, for good cause shown, extends the time for completing the fiscal note.

(2) If the petition form is approved, the attorney general shall endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general ~~may, if he deems it necessary, appoint a five-member committee to recommend the statement of purpose and the statement of the implications of the measure. The committee shall consist of two persons recommended by the person filing the petition, two persons known to oppose the measure, and one representative of the attorney general's office, who is~~

~~the chairman. The committee shall, within 14 days of appointment, meet and recommend by a vote of a majority of the committee~~ *shall prepare*:

(a) a statement, not to exceed 100 words, explaining the purpose of the measure; and

(b) statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the measure.

~~(2) The attorney general may accept, reject, or modify the statements recommended by the committee. If the committee is unable to recommend one or both statements, the attorney general shall prepare the statements.~~

(3) The attorney general shall prepare a fiscal statement of no more than 50 words if a fiscal note was prepared for the proposed ballot issue, such statement to be used on the petition and ballot if the measure is placed on the ballot.

(4) The statement of purpose and the statements of implication must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the measure.

(5) The statement of purpose ~~prepared pursuant to subsection (1) or (2)~~, unless altered by a court under 13-27-316, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

(6) The statements of implication shall be placed beside the diagram provided for marking of the ballot in a manner similar to *but not limited to* the following example:

☐ FOR extending the right to vote to persons 18 years of age

☐ AGAINST extending the right to vote to persons 18 years of age

(7) If the petition is rejected as to form, the attorney general shall forward his comments to the secretary of state within ~~10~~ *21* days after receipt of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward the statement of purpose, the statements of implication, and the fiscal statement, if applicable, to the secretary of state within 21 days after receipt of the petition by the attorney general."

Section 8. Section 13-27-403, MCA, is amended to read:

"**13-27-403. Appointment to committee.** (1) ~~Appointments~~ *Except as provided in subsection (2), appointments* to committees advocating approval or rejection of an act referred to the people, ~~or~~ a constitutional amendment proposed by the legislature, *or a ballot measure referred to the people by referendum petition or proposed by any type of initiative petition* shall be made no later than 6 months before the election at which the ballot issue will be voted on by the people.

(2) Appointments to committees advocating approval or rejection of a ballot measure referred to the people by referendum petition or proposed by any type of initiative petition *that is approved less than 7 months before the election at which the ballot issue will be voted on by the people* shall be made no later than 30 days after the measure is approved for circulation by the secretary of state. All persons responsible for appointing members to the committee shall submit to the secretary of state the names and addresses of the appointees no later than the date set by this subsection. Such submission must include the written acceptance of appointment from each appointee required by section 13-27-402(6).

(3) All appointees to a committee pursuant to subsection (1) must be notified by the secretary of state by certified mail, with return receipt requested, no later than 5 days after the deadline set for appointment of committee members, of the deadlines for submission of the committee's arguments.

(4) All appointees to a committee pursuant to subsection (2) must be notified by the secretary of state by certified mail, with return receipt requested, no later than 35 days after the petition has been approved for circulation, of the deadlines for submission of the committee's arguments.

(5) Committees appointed under subsections (2)(b), (4), and (5) of 13-27-402 must be vacated and have no further obligation if the ballot measure for which they were appointed fails to receive sufficient signatures to place it on the ballot. The secretary of state shall notify the committee members of the failure of a ballot measure to receive sufficient signatures no later than 3 days after the filing deadline set in 13-27-104."

Section 9. **Repealer.** Section 7-3-4334, MCA, is repealed.

Approved April 6, 1991.

CHAPTER NO. 360

[SB 165]

AN ACT TO INCREASE THE MAXIMUM ALLOWABLE FIRE PROTECTION ASSESSMENT FOR FOREST LAND IN A FIRE PROTECTION DISTRICT; AMENDING SECTION 76-13-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-201, MCA, is amended to read:

"76-13-201. Duty of owner to protect against fire. (1) An owner of forest land classified as such by the department shall protect against the starting or existence and suppress the spread of fire on that land. This protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection adopted by the board.

(2) If the owner does not provide for the protection and suppression, the department may provide it at a cost to the landowner of not more than ~~17~~ *$30 for each landowner in the protection district and of not more than an additional 20* cents per acre per year ~~except that the department shall make a minimum assessment of up to $14 per owner per year~~ *for each acre in excess of 20 acres owned by each landowner* in each protection district, as necessary to yield the amount of money provided for in 76-13-207. The owner of the land shall pay to the county treasurer of the county in which the land is situated the charge for the same approved by the department in accordance with this part and part 1.

(3) No other charges may be assessed those landowners participating except in cases of proven negligence on the part of the landowner or his agent."

Section 2. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to calendar years beginning after December 31, 1989.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 6, 1991.

CHAPTER NO. 361

[SB 173]

AN ACT REVISING THE CAMPAIGN FINANCE LAWS; EXCEPTING CERTAIN SPECIAL DISTRICTS FROM CAMPAIGN FINANCE REQUIREMENTS; REQUIRING A SEPARATE CAMPAIGN ACCOUNT FOR MONEY DISPENSED FROM THE PUBLIC CAMPAIGN FUND; REQUIRING RECORDS TO BE FILED WITH THE COMMISSIONER OF POLITICAL PRACTICES; AMENDING SECTIONS 13-37-206, 13-37-304, AND 13-37-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-206, MCA, is amended to read:

"**13-37-206. Exception for certain school districts *and certain special districts*.** *(1)* The provisions of this part, except 13-37-217, do not apply to candidates for the office of trustee of a school district, their political committees, and political committees organized to support or oppose a school district issue when the school district is:

~~(1)~~*(a)* a first-class district located in a county having a population of less than 15,000;

~~(2)~~*(b)* a second- or third-class district; or

~~(3)~~*(c)* a county high school district having a student enrollment of less than 2,000.

(2) The provisions of this part, except 13-37-217, do not apply to candidates for certain special district offices, their political committees, and political committees organized to support or oppose a special district issue when the special district is a conservation district, a fire district, a hospital district, an irrigation district, a sewer district, a transportation district, or a water district."

Section 2. Section 13-37-304, MCA, is amended to read:

"**13-37-304. Public campaign fund.** (1) There is a public campaign fund within the state special revenue fund provided for in 17-2-102.

(2) All money designated under 13-37-303 ~~shall~~ *must* be deposited in the fund. ~~Such~~ *The* money in the fund is statutorily appropriated, as provided in 17-7-502, for the purposes of subsections (3) and (4).

(3) (a) Five months before the general election in the election year, money in the fund ~~shall~~ *must* be paid over in equal amounts to all eligible candidates for the designated political office according to the percentages in (3)(b). ~~The money shall be spent only for the legitimate campaign expenses of the candidates.~~

(b) The money ~~shall~~ *must* be distributed in the following percentages:

(i) campaign for office of governor-lieutenant governor, 50%;

(ii) campaigns for offices of chief justice and justice of the supreme court, 50% equally allocated to each eligible ~~campaign fund~~ *candidate.*

(4) Three months before the general election in a general election year, the remainder of any money in the fund ~~shall~~ *must* be ~~remitted to the treasurer of each candidate~~ *paid to all eligible candidates* in the same proportion as provided in subsection (3)(b).

(5) Money distributed from the fund must be deposited in a campaign account separate from a personal account and from any other campaign account and must be spent only for legitimate campaign expenses of the candidates."

Section 3. Section 13-37-305, MCA, is amended to read:

"**13-37-305. Records to be kept — availability.** (1) The treasurer of each ~~political party~~ *candidate* shall maintain a complete record of all disbursements of funds received ~~by him~~ under 13-37-304 and used for the candidate's campaign expenses plus receipts or other evidence of each expense.

(2) The record ~~shall~~ *must* be available for inspection by anyone at any reasonable time. A copy ~~shall~~ *must* be ~~deposited in the office of the secretary of state~~ *filed with the commissioner* by December 31 of each general election year."

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 6, 1991.

CHAPTER NO. 362

[SB 188]

AN ACT ADDING ACUPUNCTURISTS TO THE GROUP OF HEALTH CARE PROVIDERS FOR WHICH FREEDOM OF CHOICE IN SELECTION MUST BE PROVIDED TO INSURED PERSONS UNDER DISABILITY INSURANCE POLICIES; ADDING SERVICES OF A LICENSED ACUPUNCTURIST TO THE LIST OF HEALTH SERVICES FOR WHICH A HEALTH SERVICE CORPORATION MAY BE ORGANIZED; AMENDING SECTIONS 33-22-111 AND 33-30-101, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-111, MCA, is amended to read:

"**33-22-111. Policies to provide for freedom of choice of practitioners — professional practice not enlarged.** (1) All policies of disability insurance, including individual, group, and blanket policies, and all policies insuring the payment of compensation under the Workers' Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, physician assistant-certified, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, licensed professional counselor, *acupuncturist,* or nurse specialist as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist.

(2) Nothing in this section shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1); nor shall this section be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals."

Section 2. Section 33-30-101, MCA, is amended to read:

"**33-30-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Health service corporation" means a nonprofit corporation organized or operating for the purposes of establishing and operating a nonprofit plan or plans under which prepaid hospital care, medical-surgical care, and other health care and services, or reimbursement therefor, may be furnished to a member or beneficiary.

(2) "Health services" means the health care and services provided by hospitals or other health care institutions, organizations, associations, or groups and by doctors of medicine, osteopathy, dentistry, chiropractic, optometry, and podiatry; nursing services; *licensed acupuncturist services;* licensed social worker, licensed professional counselor, or psychologist; medical appliances, equipment, and supplies; drugs, medicines, ambulance services, and other therapeutic services and supplies.

(3) "Membership contract" means any agreement, contract, or certificate by which a health service corporation describes the health services or benefits provided to its members or beneficiaries."

Section 3. **Applicability.** [This act] applies to disability insurance policies issued or renewed and to health service corporations organized or operating in this state on or after October 1, 1991.

Approved April 5, 1991.

CHAPTER NO. 363

[SB 225]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE ADMINISTRATION OF THE OIL AND GAS CONSERVATION LAWS BY THE BOARD OF OIL AND GAS CONSERVATION; CLARIFYING THE AUTHORITY OF THE BOARD TO CONDUCT REHEARINGS ON RULES OR ORDERS ISSUED BY THE BOARD; REVISING THE CIVIL PENALTY TO AT LEAST $75 AND NOT MORE THAN $10,000 A DAY FOR A VIOLATION OF A RULE OR ORDER OF THE BOARD OR OF A PROVISION OF TITLE 82, CHAPTER 11, MCA; AMENDING SECTIONS 82-11-143 AND 82-11-149, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-143, MCA, is amended to read:

"**82-11-143. Rehearing.** A person adversely affected by a rule or order of the board may within 20 days after its effective date apply to the board in writing for a rehearing. The application for rehearing ~~shall~~ *must* be acted upon ~~within 10 days~~ *at the board's next regularly scheduled meeting* after ~~its~~ filing *of the application*, and if granted, the rehearing ~~shall~~ *must* be held without undue delay."

Section 2. Section 82-11-149, MCA, is amended to read:

"**82-11-149. Civil penalties.** (1) A person is guilty of a misdemeanor and is subject to a civil penalty of at least ~~$5,000~~ *$75 and not more than $10,000 a day for each violation* if that person violates any rule or order of the board or a provision of this chapter. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The board, or the attorney general upon request of the board, shall institute and maintain any enforcement proceedings in the name of the state."

Section 3. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 6, 1991.

CHAPTER NO. 364

[SB 243]

AN ACT MAKING THE CHIEF WATER JUDGE A MEMBER OF THE JUDGES' RETIREMENT SYSTEM; PROVIDING FUNDING; AMENDING SECTION 19-5-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-5-301, MCA, is amended to read:

"**19-5-301. Membership.** (1) A judge or justice who was a member of the PERS prior to December 31, 1984, may elect to remain under that system by notifying the public employees' retirement board in writing of the election on or before October 1, 1985.

(2) Every other judge of a district court, ~~or~~ justice of the supreme court, *and the chief water judge provided for in 3-7-221* must be a member of the Montana judges' retirement system."

Section 2. **Funding.** The state of Montana shall contribute monthly from the water development account in the state special revenue fund to the judges' retirement fund an amount equal to 34.71% of the salary paid to the chief water court judge.

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved April 6, 1991.

CHAPTER NO. 365

[SB 264]

AN ACT DIRECTING THE LEGISLATIVE AUDITOR TO DETERMINE THE VALUE OF PAST SERVICE LIABILITY OF TEACHERS' RETIREMENT SYSTEM MEMBERS OF THE MONTANA UNIVERSITY SYSTEM; AMENDING SECTION 19-21-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-21-111, MCA, is amended to read:

"**19-21-111. Actuarial investigation to determine** ~~**unfunded**~~ ***past service*** **liability** ***compared to contributions required.*** (1) ~~On June 30, 1990, the teachers' retirement board shall make an actuarial investigation of the teachers' retirement system to determine the past service unfunded liability of active, inactive, and retired members of the Montana university system. The valuation must determine the effect on the amortization of the unfunded liability of the teachers' retirement system caused by persons electing to participate in the optional retirement program.~~ *The legislative auditor shall, using independent actuarial assistance as necessary and in cooperation with the teachers' retirement board and the board of regents, determine the dollar value of past service liability of active, inactive, and retired teachers' retirement system members of the Montana university system as compared to contributions required of the Montana university system on behalf of teachers' retirement system members pursuant to 19-4-605.* The ~~board~~ *legislative auditor* shall report ~~its~~ *his* findings to the ~~52nd~~ *53rd* legislature. *The office of the commissioner of higher education shall pay for the determination, required by this section, of past service liability of teachers' retirement system members compared to contributions required of the Montana university system.*

(2) If the valuation determines that the percentage contribution established in 19-21-203(2)(b) has an adverse effect on the amortization of the unfunded liability, then the board of regents shall pay an additional sum over a period of 40 years to rectify the adverse effect.

(3) Changes in the teachers' retirement system occurring after July 1, 1987, that create additional unfunded liabilities may not be considered in the valuation, and the board of regents may not be required to pay any additional sum on that account except to the extent that those changes benefit members of the teachers' retirement system who are employees of the Montana university system.

(4) If the valuation determines that the board of regents is paying an amount in excess of that needed to amortize the unfunded liability, the teachers' retirement board shall credit the board of regents for the excess payments. The board of regents shall credit the active participants in the optional retirement program with the excess payments."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 6, 1991.

CHAPTER NO. 366

[HB 382]

AN ACT TO GENERALLY REVISE THE DAM SAFETY ACT; CLARIFYING THE DEFINITIONS OF DAM AND RESERVOIR; EXEMPTING NONFEDERAL DAMS AND RESERVOIRS ON FEDERAL LANDS THAT ARE SUBJECT TO DAM SAFETY REVIEW BY A FEDERAL AGENCY FROM STATE DAM SAFETY REVIEW; AMENDING SECTIONS 85-15-106 AND 85-15-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-15-106, MCA, is amended to read:

"**85-15-106. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Alterations" or "repairs" means alterations or repairs that may directly affect the safety of a dam or reservoir.

(2) "Appurtenant works" means all works incident or attached to a dam or reservoir, including but not limited to:

(a) a spillway, either in the dam or separate from it;

(b) the reservoir and its rim;

(c) a low-level outlet; and

(d) a water conduit such as a tunnel, pipeline, or penstock, either through the dam or its abutments.

(3) "Construction" or "construct" includes construction, alteration, repair, enlargement, or removal of a dam or reservoir.

(4) "Dam" means any artificial barrier, including appurtenant works, used to impound or divert water with an impounding capacity of 50 acre-feet or greater *measured at maximum normal operating pool.*

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Emergency" means any threat to life caused by the condition of a dam or reservoir or by present or imminent floods that threaten the structural integrity of any dam or reservoir.

(7) "Engineer" means a registered professional engineer licensed to practice in the state of Montana under Title 37, chapter 67, part 3.

(8) "Enlargement" means any change in or addition to an existing dam or reservoir that raises or may raise the water storage elevation or increases the impoundment capacity of the reservoir.

(9) "High-hazard dam" means any dam or reservoir the failure of which would be likely to cause loss of life.

(10) "Inspection" means a visual or mechanical check, a measurement, a boring, or any other method necessary for determination of the adequacy of construction techniques, conformity of work with approved plans and specifications, or the safety and operating performance of a dam or reservoir.

(11) "Owner" means any person who owns, controls, operates, maintains, manages, or proposes to construct a dam or reservoir.

(12) "Person" means an individual, association, partnership, corporation, business trust, state agency, political subdivision, utility, municipal or quasi-municipal corporation, or any other entity or any authorized agent, lessee, or trustee of any of the foregoing.

(13) "Removal" means removing, taking down, or changing the location of any dam or reservoir.

(14) "Reservoir" means any valley, basin, coulee, ravine, or other land area that contains 50 acre-feet or more of impounded water *measured at maximum normal operating pool."*

Section 2. Section 85-15-107, MCA, is amended to read:

"**85-15-107. Exemptions.** The provisions of 85-15-105, 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply to dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is subject to the permit. The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply to federal dams and reservoirs, *to nonfederal dams and reservoirs located on federal lands if they are subject to a dam safety review by a federal agency,* or to dams and reservoirs licensed and subject to inspection by the federal energy regulatory commission. The provisions of 85-15-105, 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply to dams that are required to obtain a certificate of environmental compatibility and public need pursuant to 75-20-201 for the period during which the dam is subject to the certificate. In addition, the provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply until July 1, 1990, to high-hazard dams that have been inspected by the U.S. army corps of engineers pursuant to P.L. 92-367 and for which resultant dam safety reports have been submitted to the owner."

Section 3. **Retroactive applicability.** [Section 2] applies retroactively, within the meaning of 1-2-109, to all nonfederal dams and reservoirs located on federal lands if a federal agency provides a dam safety review for the nonfederal dams or reservoirs.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 6, 1991.

CHAPTER NO. 367

[HB 495]

AN ACT ESTABLISHING A POLICY FOR ADDRESSING IMPROVEMENTS IN STATE PARKS AND FISHING ACCESS SITES; AND REQUIRING THE FISH AND GAME COMMISSION TO ADOPT RULES TO IMPLEMENT THE POLICY.

WHEREAS, it is in the best interests of the State of Montana that the state parks and fishing access site systems have an improvement and development policy that reflects the concerns of a majority of the users of Montana's state parks and fishing access sites.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 1] requires the fish and game commission to adopt rules establishing a policy for certain development of state parks and fishing access sites. It is intended that the policy address, at a minimum:

(1) the desires of park and fishing access site users and the public;

(2) the capacity of the park or fishing access site for development;

(3) environmental impacts associated with development;

(4) the long-range ability of the state to maintain the improvements;

(5) the protection of natural, cultural, and historical park and fishing access site features; and

(6) potential impacts on tourism.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Improvement or development of state park or fishing access site — required public involvement — rules.** (1) The fish and game commission shall adopt rules establishing a policy whereby any proposed improvement or development of a state park or fishing access site that significantly changes park or fishing access site features or use patterns is subject to notice of proposed modifications, both statewide and locally, and to opportunity for a public meeting and public comment on the advisability and acceptability of the proposal.

(2) The department shall prepare a public report regarding any project that is subject to the provisions of subsection (1). The report must include conclusions relating to the following aspects of the proposal:

(a) the desires of the public as expressed to the department;

(b) the capacity of the park or fishing access site for development;

(c) environmental impacts associated with the improvement or development;

(d) the long-range maintenance of the improvements;

(e) the protection of natural, cultural, and historical park or fishing access site features;

(f) potential impacts on tourism; and

(g) site-specific modifications as they relate to the park or fishing access site system as a whole.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 23, chapter 1, part 1, and the provisions of Title 23, chapter 1, part 1, apply to [section 1].

Approved April 6, 1991.

CHAPTER NO. 368

[HB 552]

AN ACT TO GENERALLY REVISE MONTANA BUSINESS CORPORATION LAW; AMENDING SECTIONS 15-31-103, 20-5-303, 20-5-313, 33-3-103, 33-3-601, 33-3-602, 33-3-603, 33-17-204, 33-17-211, 33-31-201, 35-1-515, 35-1-604, 35-2-202, 35-5-201, 35-6-104, 35-6-201, 35-9-103, 35-9-201, 35-9-205, 35-9-302, 35-9-303, 35-9-305, 35-9-402, 35-9-404, 35-9-501, 35-9-504, 35-12-1204, 35-15-201, 35-16-202, 35-17-202, 35-18-203, 35-20-103, 69-14-501, 80-12-203, MCA; REPEALING SECTIONS 35-1-102 THROUGH 35-1-108, 35-1-110, 35-1-111, 35-1-201 THROUGH 35-1-214, 35-1-301 THROUGH 35-1-307, 35-1-401 THROUGH 35-1-411, 35-1-413 THROUGH 35-1-415, 35-1-501 THROUGH 35-1-514, 35-1-601 THROUGH 35-1-603, 35-1-605 THROUGH 35-1-607, 35-1-609 THROUGH 35-1-612, 35-1-617, 35-1-711, 35-1-801, 35-1-803 THROUGH 35-1-810, 35-1-812, 35-1-901 THROUGH 35-1-912, 35-1-921 THROUGH 35-1-927, 35-1-929, 35-1-930, 35-1-1001 THROUGH 35-1-1013, 35-1-1015 THROUGH 35-1-1020, 35-1-1025, 35-1-1101 THROUGH 35-1-1103, 35-1-1201 THROUGH 35-1-1205, AND 35-1-1301 THROUGH 35-1-1306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because the secretary of state is authorized to adopt rules prescribing forms and establishing fees. The fees should be established to be commensurate with the cost of the services provided. Existing forms should be modified to the extent necessary to conform to this bill whenever possible. New forms should be as easy to use as possible.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 181], the following definitions apply:

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes that a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means written so that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics, boldface, or contrasting color or typing in capitals or underlining is conspicuous.

(4) "Corporation" or "domestic corporation" means a corporation for profit that is not a foreign corporation and that is incorporated under or subject to the provisions of [sections 1 through 181].

(5) "Deliver" includes mail.

(6) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or an incurrence of indebtedness, by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or other form.

(7) "Effective date of notice" means the date determined as provided in [section 2].

(8) "Employee" includes an officer but not a director. A director may accept duties that make that director an employee.

(9) "Entity" includes:

(a) a corporation and a foreign corporation;

(b) a not-for-profit corporation;

(c) a profit and a not-for-profit unincorporated association;

(d) a business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and

(e) a state, the United States, or a foreign government.

(10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(11) "Governmental subdivision" includes an authority, county, district, and city or town.

(12) "Includes" denotes a partial definition.

(13) "Individual" includes the estate of an incompetent or deceased individual.

(14) "Means" denotes an exhaustive definition.

(15) "Notice" means notice as provided in [section 2].

(16) "Person" includes an individual and an entity.

(17) "Principal office" means the office, whether in-state or out-of-state, that is designated in the annual report as the office where the principal executive offices of a domestic or foreign corporation are located.

(18) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(19) "Record date" means the date established under [sections 33 through 48] or [sections 49 through 74] on which a corporation determines the identity of its shareholders and their shareholdings for purposes of [sections 1 through 181]. The determination must be made as of the close of business on the record date unless another time for determination is specified when the record date is fixed.

(20) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under [section 94] for custody of the minutes of the meetings of the board of directors, for custody of the minutes of the shareholders' meetings, and for authenticating records of the corporation.

(21) "Share" means the unit into which the proprietary interests in a corporation are divided.

(22) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(23) "State", when referring to a part of the United States, includes a state, commonwealth, territory, or insular possession of the United States and the agencies and governmental subdivisions of the entities listed.

(24) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(25) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

(26) "Voting group" means shares of one or more classes or series that under the articles of incorporation of [sections 1 through 181] are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or [sections 1 through 181] to vote generally on the matter are for that purpose a single voting group.

Section 2. **Notice.** (1) Notice under [sections 1 through 181] must be in writing unless oral notice is reasonable under the circumstances.

(2) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where it is published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholders, if in a comprehensible form, is effective when mailed if it is mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state, may be addressed to:

(a) its registered agent at its registered office; or

(b) the corporation or its secretary at its principal office as shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsections (3) and (4), written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) when received;

(b) 5 days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid with correct postage; or

(c) on the date shown on the return receipt, if sent by certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if it is communicated in a comprehensible manner.

(7) If [sections 1 through 181] prescribe notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements that are consistent with this section or other provisions of [sections 1 through 181], those requirements govern.

Section 3. **Reservation of power to amend or repeal.** The legislature has power to amend or repeal all or part of [sections 1 through 181] at any time, and all domestic and foreign corporations subject to [sections 1 through 181] are governed by the amendment or repeal.

Section 4. **Filing requirements.** All of the following requirements must be met before a document is entitled to be filed under this section by the secretary of state:

(1) A document that is required or permitted by [sections 1 through 181] to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by [sections 1 through 181]. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. A corporate name need not be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations need not be in English if it is accompanied by a reasonably authenticated English translation.

(5) The document must be executed:

(a) by the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The person executing the document shall sign it and state beneath or opposite the person's signature the person's name and the capacity in

which the person signs. The document may but need not contain the corporate seal, an attestation by the secretary or an assistant secretary, and an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for the document under [section 6].

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) one copy, except as provided in [sections 30 and 168];

(b) the correct filing fee; and

(c) any franchise tax, license fee, or penalty required by [sections 1 through 181], rules promulgated under [sections 1 through 181], or other law.

Section 5. **Facsimile filing — requirements — liability.** (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under [sections 1 through 181] and the signatures on the facsimile copy in the same manner as an original for purposes of [sections 1 through 181] provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A facsimile copy is entitled to be filed under this section if it is:

(a) produced by a method of transmission of images in which the image is scanned at the transmitter; and

(b) legible and the same size as the original.

(3) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(4) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(5) A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false document.

Section 6. **Forms.** (1) The secretary of state may by rule prescribe and furnish on request forms or computer formats for:

(a) an application for a certificate of existence;

(b) a foreign corporation's application for a certificate of authority to transact business in this state;

(c) a foreign corporation's application for a certificate of withdrawal;

(d) the annual report; and

(e) other documents required or permitted to be filed by [sections 1 through 181].

(2) If the secretary of state so requires, use of any of the forms or formats listed in subsection (1) is mandatory.

Section 7. **Fees for filing, copying, and services.** (1) The secretary of state shall establish by rule fees for filing documents and issuing certificates as required by [sections 1 through 181].

(2) The secretary of state shall establish by rule fees for copying documents, priority handling, transmitting or filing facsimile copies, and providing computer-generated information.

(3) The fees prescribed under this section must be reasonably related to the costs of processing the documents and preparing and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section.

Section 8. **License fee.** (1) In addition to the filing fee authorized by [section 7], the secretary of state shall charge and collect from each domestic corporation a license fee based upon the number of shares that it will have authority to issue or the increase in the number of shares that it will have authority to issue, at the time of:

(a) filing its articles of incorporation;

(b) filing articles of amendment increasing the number of authorized shares; and

(c) filing articles of merger or consolidation increasing the number of authorized shares that the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number of shares that the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state have authority to issue.

(2) The license fee for domestic corporations is as follows:

(a) 0 to 50,000 shares	$ 50
(b) 50,000 to 100,000 shares	100
(c) 100,000 to 250,000 shares	250
(d) 250,000 to 500,000 shares	400
(e) 500,000 to 1,000,000 shares	600
(f) over 1,000,000 shares	1,000

(3) In addition to the filing fee authorized by [section 7], the secretary of state shall charge and collect from each foreign corporation a license fee of $100 at the time of filing an application for a certificate of authority to transact business.

Section 9. **Effective time and date of document.** (1) Except as provided in subsection (2) and [section 10], a document accepted for filing is effective:

(a) at the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document; or

(b) at the time specified in the document as its effective time on the date it is filed.

(2) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than 90 days after the date it is filed.

Section 10. **Correcting filed document.** (1) A domestic or foreign corporation may correct a document filed by the secretary of state if the document contains an incorrect statement or was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document is corrected by:

(a) preparing articles of correction that:

(i) describe the document including its filing date, or have attached a copy of the document;

(ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(iii) correct the incorrect statement or defective execution; and

(b) delivering the articles to the secretary of state for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Section 11. **Filing duty of secretary of state.** (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of [section 4] and [section 5], if applicable, the secretary of state shall file it.

(2) The secretary of state shall file a document by stamping or otherwise endorsing "Filed", together with the secretary of state's name, official title, and the date and time of receipt, on the original, the document copy,

and the receipt for the filing fee. Except as provided in [section 30] and 35-1-1014, after filing a document, the secretary of state shall deliver the document copy to the domestic or foreign corporation or its representative, along with the filing fee receipt or acknowledgment of receipt if no fee is required.

(3) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within 10 days after the document was delivered, together with a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

(a) affect the validity or invalidity of the document in whole or part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Section 12. **Appeal from secretary of state's refusal to file document.** (1) If the secretary of state refuses to file a document delivered to the secretary of state's office for filing, the domestic or foreign corporation may appeal the refusal to the district court for the first judicial district. The appeal is begun by petitioning the court to compel the filing of the document and by attaching to the petition the document and the secretary of state's explanation of his refusal to file.

(2) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

Section 13. **Evidentiary effect of copy of filed document.** A certificate attached to a copy of the document filed by the secretary of state, bearing the secretary of state's signature, which may be in facsimile, and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

Section 14. **Certificate of existence or authorization.** (1) Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(2) A certificate of existence or authorization must set forth:

(a) the domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) (i) that the domestic corporation is incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) that the foreign corporation is authorized to transact business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid, if:

(i) payment is reflected in the records of the secretary of state and the department of revenue; and

(ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;

(d) that its most recent annual report required by [section 179] has been delivered to the secretary of state;

(e) that articles of dissolution have not been filed; and

(f) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

Section 15. **Secretary of state — powers — rulemaking.** (1) The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by [sections 1 through 181].

(2) The secretary of state may adopt rules to perform the duties required of the secretary of state under [sections 1 through 181], including establishing necessary fees.

Section 16. **Incorporators.** One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

Section 17. **Articles of incorporation.** (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of [section 25];

(b) the number of shares the corporation is authorized to issue;

(c) (i) the street address of the corporation's initial registered office and, if different, the mailing address; and

(ii) the name of its initial registered agent at that office; and

(d) the name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) the names and addresses of the individuals who are to serve as the initial directors;

(b) provisions consistent with law regarding:

(i) the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(iv) a par value for authorized shares or classes of shares; and

(v) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(c) any provision that under [sections 1 through 181] is required or permitted to be set forth in the bylaws; and

(d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any actions taken or any failure to take any action, as a director, except liability for:

(i) the amount of a financial benefit received by a director to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or the shareholders;

(iii) a violation of [section 93]; or

(iv) an intentional violation of criminal law.

(3) The articles of incorporation are not required to set forth any of the corporate powers enumerated in [sections 1 through 181].

Section 18. **Incorporation.** (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators have satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Section 19. **Organization of corporation.** (1) After incorporation:

(a) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(b) if initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by [sections 1 through 181] to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in the state or out of the state.

Section 20. **Bylaws.** (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is consistent with law or the articles of incorporation.

Section 21. **Emergency bylaws.** (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency as defined in subsection (4). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) procedures for calling a meeting of the board of directors;

(b) quorum requirements for the meeting; and

(c) designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain in effect during the emergency. The emergency bylaws are not in effect after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) binds the corporation; and

(b) may not be used to impose liability on a corporate director, officer, employee, or agent.

(4) For purposes of this section, an emergency exists if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Section 22. **Purposes.** (1) Each corporation incorporated under [sections 1 through 181] has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation organized under another statute of this state may incorporate under [sections 1 through 181] only if the incorporation is permitted by and subject to all limitations of the other statute.

(3) Subject to the limitation in subsection (2), corporations may be organized under [sections 1 through 181] for any lawful purpose or purposes except for the purpose of banking or insurance.

Section 23. **General powers.** Unless its articles of incorporation provide otherwise, each corporation has perpetual duration and succession in its corporate name and, unless otherwise prohibited by law, has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, the power:

(1) to sue and be sued, complain, and defend in its corporate name;

(2) to have a corporate seal, which may be altered at will, and to use it or a facsimile of the seal by impressing or affixing it or in any other manner reproducing it;

(3) to make and amend bylaws, consistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(4) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;

(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) to purchase, receive, subscribe for, or otherwise acquire any other entity; to own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of any other entity; and to deal in and with shares or other interests in, or obligations of any other entity;

(7) to make contracts and guarantees; to incur liabilities; to borrow money; to issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation; and to secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) to conduct its business, locate offices, and exercise the powers granted by [sections 1 through 181] in the state or out of the state;

(11) to elect directors and appoint officers, employees, and agents of the corporation; to define their duties; to fix their compensation; and to lend them money and credit;

(12) to pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) to make donations for the public welfare or for charitable, religious, scientific, or educational purposes and, in time of war, to make donations in aid of war activities;

(14) to transact any lawful business that will aid governmental policy; and

(15) to make payments or donations or to do any other act that is consistent with law and that furthers the business and affairs of the corporation.

Section 24. **Ultra vires.** (1) Except as provided in subsection (2), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) in a proceeding by a shareholder against the corporation to enjoin the act; or

(b) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation.

(3) In a shareholder's proceeding under subsection (2)(a) to enjoin an unauthorized corporate act, the court may:

(a) enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding; and

(b) award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

Section 25. **Corporate name.** (1) A corporate name:

(a) must contain the word "corporation", "incorporated", "company", or "limited"; the abbreviation "corp.", "inc.", "co.", or "ltd."; or words or abbreviations of similar meaning in another language; and

(b) may not contain language that states or implies that the corporation is organized for a purpose or purposes other than those permitted by [section 22] and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of another corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under [sections 26 or 27];

(c) the fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only distinguishable for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in the state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) [Sections 1 through 181] do not control the use of fictitious names.

Section 26. **Reserved name.** (1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

Section 27. **Registered name of foreign corporation.** (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by [section 165], if the name is distinguishable in the records of the secretary of state from the corporate names that are not available under [section 25(2)(c)].

(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by [section 165], by delivering to the secretary of state, for filing, an application:

(a) setting forth its corporate name, or its corporate name with any addition required by [section 165], the state or country, the date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(b) accompanied by a certificate of existence, or a similar document, from the state or country of incorporation.

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later authorized to transact business in this state. The registration terminates when the foreign corporation is incorporated as a domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

Section 28. **Registered office — registered agent.** Each corporation shall continuously maintain in this state:

(1) a registered office that may but need not be the same as any of its places of business; and

(2) a registered agent, who must be one of the following:

(a) an individual who resides in this state and whose business office is identical to the registered office;

(b) a domestic corporation or not-for-profit domestic corporation whose business office is identical to the registered office; or

(c) a foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical to the registered office.

Section 29. **Change of registered office or registered agent.** (1) A corporation may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

(a) the name of the corporation;

(b) the street address of its current registered office and, if different, the mailing address;

(c) if the current registered office is to be changed, the street address of the new registered office and, if different, the mailing address;

(d) the name of its current registered agent;

(e) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(f) that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of its business office, that agent may change the street address of the registered office of any corporation for which it is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement that complies with the requirements of subsection (1) and recites that the corporation has been notified of the change.

Section 30. **Resignation of registered agent.** (1) A registered agent may resign as registered agent by signing and delivering to the secretary of state, for filing, the signed original and two copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall mail one copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, 31 days after the date on which the statement was filed.

Section 31. **Service of process on corporation.** (1) Service of process on a corporation must be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

(2) The following are to be considered trustees for the corporation and its shareholders, for the purpose of service or demand, on a corporation dissolved pursuant to [sections 1 through 181] or Title 35, chapter 6:

(a) in the case of a voluntary dissolution, any one of those persons designated as trustees for service of process pursuant to a filing made with the secretary of state or, if no filing is made, any one of the directors or officers of the corporation listed in the annual report most recently filed with the secretary of state; or

(b) in the case of an involuntary dissolution or expiration of a corporation's term, any one of those persons designated as receiver or trustee by a court of competent jurisdiction or any one of the directors or officers of the corporation listed in the annual report most recently filed with the secretary of state.

Section 32. **Demand on or notice to corporation.** (1) This section applies when the law requires or permits a demand on or notice to a corporation. However, the law does not require that the demand or notice be served in accordance with the Montana Rules of Civil Procedure.

(2) A corporation's registered agent is the corporation's agent for demand or notice required or permitted by law.

(3) If a corporation has no registered agent or the agent cannot with reasonable diligence be served, the demand may be made or the corporation may be notified by certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. The demand or notice is perfected under this subsection at the earliest of:

(a) the date the corporation receives the mail;

(b) the date shown on the return receipt, if signed on behalf of the corporation; or

(c) 5 days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

Section 33. **Authorized shares.** (1) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class. Prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical to those of other shares of the same class, except to the extent otherwise permitted by [section 34].

(2) (a) The articles of incorporation must authorize:

(i) one or more classes of shares that together have unlimited voting rights; and

(ii) one or more classes of shares which may be the same class or classes as those with voting rights.

(b) The classes of shares listed in subsections (2)(a)(i) and (2)(a)(ii), taken together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares that:

(a) have special, conditional, or limited voting rights or no right to vote, except to the extent prohibited by [sections 1 through 181];

(b) are redeemable or convertible as specified in the articles of incorporation:

(i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;

(ii) for cash, indebtedness, securities, or other property; and

(iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; and

(d) have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) is not exhaustive.

(5) When authorized by its articles of incorporation to do so, a corporation may issue bonds, debentures, or other obligations convertible into shares of any class in the amounts and on terms and conditions that may be provided by resolutions of the board of directors.

Section 34. **Terms of class or series determined by board of directors.** (1) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights, within the limits set forth in [section 33], of any class of shares before the issuance of any shares of that class or of one or more series within a class before the issuance of any shares of that series.

(2) Each series of a class must be given a distinguishing designation.

(3) All shares of a series must have preferences, limitations, and relative rights identical to those of other shares of the same series and, except to the extent otherwise provided in the description of the series, to those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the secretary of state, for filing, articles of amendment that are effective without shareholder action and that set forth:

(a) the name of the corporation;

(b) the text of the amendment determining the terms of the class or series of shares;

(c) the date the amendment was adopted; and

(d) a statement that the amendment was duly adopted by the board of directors.

Section 35. **Issued and outstanding shares.** (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Subject to [section 47], shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to [section 48] and to the limitations of subsection (3) of this section.

(3) Whenever shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

Section 36. **Fractional shares.** (1) A corporation may:

(a) issue fractions of a share or pay in money the value of fractions of a share;

(b) arrange for disposition of fractional shares by the shareholders; and

(c) issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by [section 42].

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including the condition:

(a) that the scrip will become void if not exchanged for full shares before a specified date; and

(b) that the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

Section 37. **Subscription for shares before incorporation.** (1) A subscription for shares entered into before incorporation is irrevocable for 6 months unless the subscription agreement provides a longer or shorter period or unless all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform, so far as practicable, as to all shares of the same class or series unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed in the same manner as it would collect any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days after the corporation sends written demand for payment to the subscriber.

(5) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation and is subject to the provisions of [section 38].

Section 38. **Issuance of shares.** (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. The determination by the board of directors is conclusive with regard to the adequacy of consideration for the issuance of shares relating to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued for the consideration are fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or the corporation may also make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against their purchase price until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are

not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

Section 39. **Liability of shareholders.** (1) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued as provided in [section 38] or specified in the subscription agreement as provided in [section 37].

(2) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that a shareholder may become personally liable by reason of that shareholder's own acts or conduct.

Section 40. **Share dividends.** (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(a) the articles of incorporation authorize the issuance;

(b) a majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(c) there are no outstanding shares of the class or series to be issued.

(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

Section 41. **Share options.** A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

Section 42. **Form and content of certificates.** (1) Shares may but need not be represented by certificates. Unless [sections 1 through 181] or another statute expressly provide otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(2) At a minimum, each share certificate must state on its face:

(a) the name of the issuing corporation and that it is organized under the law of this state;

(b) the name of the person to whom issued; and

(c) the number and class of shares and the designation of the series, if any, that the certificate represents.

(3) (a) If the issuing corporation is authorized to issue different classes of shares or different series within a class the following must be summarized on the front or back of each certificate:

(i) the designations, relative rights, preferences, and limitations applicable to each class;

(ii) the variations in rights, preferences, and limitations determined for each series; and

(iii) the authority of the board of directors to determine variations for future series.

(b) Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate must be signed, either manually or in facsimile, by two officers designated in the bylaws or by the board of directors and may bear the corporate seal or its facsimile.

(5) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate remains valid.

Section 43. **Shares without certificates.** (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by [section 42] and, if applicable, subsection (1) of this section.

Section 44. **Restriction on transfer or registration of transfer of shares and other securities.** (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or have voted in favor of the restriction.

(2) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the informa-

tion statement required by [section 43]. Unless noted, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction on the transfer or registration of transfer of shares is authorized:

(a) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) to preserve exemptions under federal or state securities law;

(c) to preserve an election under the Internal Revenue Code; or

(d) for any other reasonable purpose.

(4) A restriction on the transfer or registration of transfer of shares may:

(a) obligate the shareholder first to offer the corporation or other person, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) obligate the corporation or other person, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(d) prohibit the transfer of the restricted shares to designated persons or classes of persons if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Section 45. **Expense of issue.** A corporation may pay the expenses of selling or underwriting its shares and of organizing or reorganizing the corporation from the consideration received for shares.

Section 46. **Shareholders' preemptive rights.** (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent provided in the articles of incorporation.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or similar words, means that all of the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them and to acquire proportional amounts of the corporation's issued shares acquired by the corporation pursuant to [section 47] upon the decision of the board of directors to convey them.

(b) A shareholder may waive his preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) Shareholders of a corporation have no preemptive right to acquire proportional amounts of shares with respect to:

(i) shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(iii) shares authorized in articles of incorporation that are issued within 6 months from the effective date of incorporation; or

(iv) shares sold otherwise than for money.

(d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of 1 year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of 1 year is subject to the shareholders' preemptive rights.

(g) Shares acquired by the corporation pursuant to [section 47] have no preemptive rights as long as they are owned by the corporation.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Section 47. **Corporation's acquisition of its own shares.** (1) Except as provided in subsection (2), a corporation may acquire its own shares, and those shares constitute authorized but unissued shares.

(2) If provided by the corporation's articles of incorporation or bylaws, shares acquired pursuant to subsection (1) constitute authorized and issued shares. A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares acquired under this subsection, in which case the shares constitute authorized but unissued shares.

(3) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective on amendment of the articles of incorporation.

(4) Articles of amendment may be adopted by the board of directors without shareholder action, must be delivered to the secretary of state, for filing, and must set forth:

(a) the name of the corporation;

(b) the reduction in the number of authorized shares, itemized by class and series; and

(c) the total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

Section 48. **Distributions to shareholders.** (1) A board of directors may authorize and the corporation may make distributions to its shareholders, subject to restriction by the articles of incorporation and the limitation in subsection (3).

(2) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than a distribution involving a repurchase or reacquisition of shares, it is the date the board of directors authorizes the distribution.

(3) A distribution may not be made if, after giving it effect:

(a) the corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) The effect of a distribution under subsection (1) is measured:

(a) in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(i) the date money or other property is transferred or debt incurred by the corporation; or

(ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; or

(c) in all other cases, as of:

(i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(ii) the date the payment is made if it occurs more than 120 days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

Section 49. **Annual meeting.** (1) A corporation shall hold an annual meeting of shareholders at a time stated in or fixed in accordance with the bylaws.

(2) Annual shareholders' meetings may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual meetings must be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(4) If the corporation has 50 or fewer shareholders and if permitted by the bylaws, shareholders may participate in an annual meeting of the shareholders through a conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation in this manner constitutes presence in person at a meeting.

Section 50. **Special meeting.** (1) A corporation shall hold a special meeting of shareholders:

(a) on the call of its board of directors or the person authorized to do so by the articles of incorporation or bylaws; or

(b) if the holders of at least 10% of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting that describe the purpose for which it is to be held.

(2) If the record date is not fixed or the manner of fixing the record date is not specified under [sections 51 or 55], the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(3) Special shareholders' meetings may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a

place is not stated or fixed in accordance with the bylaws, special meetings must be held at the corporation's principal office.

(4) Only business within the purpose described in the meeting notice required by [section 53] may be conducted at a special shareholders' meeting.

(5) If the corporation has 50 or fewer shareholders and if permitted by the bylaws, shareholders may participate in a special meeting of the shareholders by means of a conference telephone or similar communication equipment through which all persons participating in the meeting can hear each other at the same time. Participation in this manner constitutes presence in person at a meeting.

Section 51. **Court-ordered meeting.** (1) The district court of the county where a corporation's principal office or, if its principal office is not located in this state, in the county where its registered office is located may summarily order a meeting to be held:

(a) on application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(b) on application of a shareholder who signed a demand for a special meeting valid under [section 50], if:

(i) notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

Section 52. **Action without meeting.** (1) Action required or permitted by [sections 1 through 181] to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise determined under [section 51 or 55], the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (1).

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document.

(4) If [sections 1 through 181] require that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the proposed action at least 10 days before the action is taken. The notice must contain or be accompanied by the same material that, under [sections 1 through 181], would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

Section 53. **Notice of meeting.** (1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting not less than 10 or more than 60 days before the meeting date. Unless [sections 1 through 181] or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless [sections 1 through 181] or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose for which the meeting is called.

(3) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under [sections 51 or 55], the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under [section 55], notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

Section 54. **Waiver of notice.** (1) A shareholder may waive any notice required by [sections 1 through 181], the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A shareholder's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice unless the shareholder objects to considering the matter when it is presented.

Section 55. **Record date.** (1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(2) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

Section 56. **Shareholders' list for meeting.** (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must:

(a) be arranged by voting group, and within each voting group by class or series of shares; and

(b) show the address of and number of shares held by each shareholder.

(2) The shareholders' list must be available for inspection by any shareholder, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder or a shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of [section 174(3)], to copy the list, during regular business hours and at that shareholder's expense, during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder or the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect the shareholders' list before or at the meeting or to copy the list as permitted by subsection (2), on application of the

shareholder, the district court of the county where a corporation's principal office or, if the principal office is not located in this state, its registered office is located, may summarily order the inspection or copying at the corporation's expense and may provide recovery to a shareholder for costs, including reasonable attorney fees, in bringing the action.

(5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

Section 57. **Voting entitlement of shares.** (1) Except as provided in subsections (2) and (3) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(3) Subsection (2) does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(4) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the shareholders the redemption price on surrender of the shares.

(5) Shares acquired by the corporation pursuant to [section 47] are not entitled to vote as long as they are owned by the corporation.

Section 58. **Proxies.** (1) A shareholder may vote its shares in person or by proxy.

(2) A shareholder may appoint a proxy to vote or otherwise act for that shareholder by signing an appointment form, either personally or by attorney-in-fact.

(3) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

(4) Except as provided in subsection (6), an appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(a) a pledgee;

(b) a person who purchased or agreed to purchase the shares;

(c) a creditor of the corporation who extended it credit under terms requiring the appointment;

(d) an employee of the corporation whose employment contract requires the appointment; or

(e) a party to a voting agreement created under [section 66].

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(6) An appointment made irrevocable under subsection (4) is revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to [section 59] and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

(9) A shareholder may not sell his vote or issue a proxy to vote to any person for any sum of money or anything of value except as authorized in this section and [section 65].

Section 59. **Shares held by nominees.** (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth:

(a) the type of nominee to which it applies;

(b) the rights or privileges that the corporation recognizes in a beneficial owner;

(c) the manner in which the procedure is selected by the nominee;

(d) the information that must be provided when the procedure is selected;

(e) the period for which selection of the procedure is effective; and

(f) other aspects of the rights and duties created.

Section 60. **Corporation's acceptance of votes.** (1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(a) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(d) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(e) two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(3) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accept or reject a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

Section 61. **Quorum and voting requirements for voting groups.** (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or [sections 1 through 181] provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting, it is considered present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(3) If a quorum exists, action on a matter other than the election of directors by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or [sections 1 through 181] require a greater number of affirmative votes.

(4) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (2) or (3) is governed by [section 63].

(5) The election of directors is governed by [section 64].

Section 62. **Action by single and multiple voting groups.** (1) If the articles of incorporation or [sections 1 through 181] provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in [section 60].

(2) If the articles of incorporation or [sections 1 through 181] provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in [section 61]. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

Section 63. **Greater quorum or voting requirements.** (1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders or for voting groups of shareholders than is provided for by [sections 1 through 181].

(2) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

Section 64. **Voting for directors — cumulative voting.** (1) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(2) Except as limited by subsection (3), at each election for directors each shareholder entitled to vote at the election has the right:

(a) to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote; or

(b) to cumulate the shareholder's votes:

(i) by giving one candidate as many votes as the number of directors to be elected multiplied by the number of shareholders' shares; or

(ii) by distributing the votes on the same principle among any number of the candidates.

(3) The right of all shareholders to cumulate their shares provided by subsection (2) may be denied by a statement to that effect included in the articles of incorporation, but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation are filed; or

(b) the statement is included in an amendment to the articles of incorporation unless the number of votes sufficient to elect one director, if voted upon a cumulative basis, was voted against the amendment.

Section 65. **Voting trusts.** (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and by transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than 10 years after its effective date unless extended under subsection (3).

(3) All or some of the parties to a voting trust may extend it for additional terms of not more than 10 years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for 10 years from the date the first shareholder signs the extension agreement. The voting trustee shall deliver copies of the extension agreement and the list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

(4) The counterpart of the voting trust agreement and the copy of the record deposited with the corporation is subject to the same right of examination by a shareholder of a corporation, in person or by agent or attorney, as are the books and records of the corporation, and the counterpart and the copy of the record are subject to examination by any holder of

record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose.

Section 66. **Voting agreements.** (1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of [section 65].

(2) A voting agreement created under this section is specifically enforceable.

Section 67. **Definitions.** As used in [section 67 through 74], the following definitions apply:

(1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in [section 74], in the right of a foreign corporation.

(2) "Shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

Section 68. **Standing.** A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

Section 69. **Demand.** A shareholder may not commence a derivative proceeding until:

(1) a written demand has been made upon the corporation to take suitable action; and

(2) 90 days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

Section 70. **Stay of proceedings.** If the corporation begins an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for the period the court considers appropriate.

Section 71. **Dismissal.** (1) A derivative proceeding must be dismissed by the court on motion by the corporation if one of the groups specified in subsections (2) or (6) has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (6), the determination in subsection (1) must be made by:

(a) a majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

(b) a majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not the independent directors constituted a quorum.

(3) None of the following may by itself cause a director to be considered not independent for purposes of this section:

(a) the nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) the naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(c) the approval by the director of the act being challenged in the derivative proceeding or demand if the act did not result in personal benefit to the director.

(4) If a derivative proceeding is begun after a determination has been made rejecting a demand by a shareholder, the complaint must allege with particularity facts establishing either that a majority of the board of directors did not consist of independent directors at the time the determination was made or that the requirements of subsection (1) have not been met.

(5) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation has the burden of proving that the requirements of subsection (1) have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

(6) Upon motion by the corporation, the court may appoint a panel of one or more independent persons to make a determination of whether the maintenance of the derivative proceeding is in the best interests of the corporation. If this is done, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

Section 72. **Discontinuance or settlement — notice.** A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

Section 73. **Payment of expenses.** On termination of the derivative proceeding, the court may:

(1) order the corporation to pay the plaintiff's reasonable expenses, including attorney fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) order the plaintiff to pay a defendant's reasonable expenses, including attorney fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) order a party to pay an opposing party's reasonable expenses, including attorney fees, incurred because of the filing of a pleading, motion, or other paper, if it finds that:

(a) the pleading, motion, or other paper was not well-grounded in fact, after reasonable inquiry; or

(b) the filing was not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and was interposed for an improper purpose, such as to harass, to cause unnecessary delay, or to cause a needless increase in the cost of litigation.

Section 74. **Applicability to foreign corporations.** In a derivative proceeding in the right of a foreign corporation, the matters covered by [sections 67 through 74] are governed by the laws of the jurisdiction of incorporation of the foreign corporation except for [sections 70, 72, and 73].

Section 75. **Requirement for and duties of board of directors.** (1) Each corporation must have a board of directors.

(2) Subject to any limitation set forth in the articles of incorporation, all corporate powers must be exercised by or under the authority of the board of directors, and the business and affairs of the corporation must be managed under the direction of its board of directors.

Section 76. **Qualifications of directors.** The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless required by the articles of incorporation or bylaws.

Section 77. **Number and election of directors.** (1) A board of directors consists of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by 30% or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than 30% the number of directors last approved by the shareholders.

(3) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum limits, by the shareholders or the board of direc-

tors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

(4) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under [section 80].

Section 78. **Election of directors by certain classes of shareholders.** If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. Each class or classes of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

Section 79. **Terms of directors generally.** (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under [section 80].

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) A director elected or appointed to fill a vacancy is elected or appointed for the unexpired term of his predecessor in office.

(5) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or until there is a decrease in the number of directors.

Section 80. **Staggered terms for directors.** If there are nine or more directors, the articles of incorporation or bylaws may provide for staggering their terms by dividing the total number of directors into two or three groups, with each group containing as near as possible to one-half or one-third of the total. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of 2 years or 3 years, as the case may be, to succeed those whose terms expire.

Section 81. **Resignation of directors.** (1) A director may resign at any time by delivering written notice to the board of directors, its chairman, or to the corporation.

(2) A resignation is effective when the notice is delivered unless the notice specified a later effective date.

Section 82. **Removal of directors.** (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove the director.

(3) Any director or the entire board of directors may be removed only by a vote of the holders of two-thirds of the shares entitled to vote at an election of directors unless otherwise provided by the articles of incorporation or bylaws. If the shareholders have the right to cumulate their votes when electing directors and if less than the entire board is to be removed, a director may not be removed if the votes cast against the director's removal would be sufficient to elect him if cumulatively voted at an election of the entire board of directors or, if there are classes of directors, at an election of the class of directors of which the director is a part. If the corporation has fewer than 100 shareholders, the entire board of directors may be removed only by a vote of a majority of the shares then entitled to vote.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

Section 83. **Removal of directors by judicial proceeding.** (1) The district court of the county where a corporation's principal office or, if the office is not located in this state, the county where its registered office is located may remove a director of the corporation from office in a proceeding begun either by the corporation or by its shareholders holding at least 10% of the outstanding shares of any class if the court finds that:

(a) the director engaged in fraudulent or dishonest conduct or in gross abuse of authority or discretion, with respect to the corporation; and

(b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders begin a proceeding under subsection (1), they shall make the corporation a party defendant.

Section 84. **Vacancy on board.** (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) the shareholders may fill the vacancy;

(b) the board of directors may fill the vacancy; or

(c) if the members of the board of directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under [section 81] or otherwise, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

Section 85. **Compensation of directors.** Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Section 86. **Meetings.** (1) The board of directors may hold regular or special meetings in the state or out of the state.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

(3) If requested by a director, minutes of any regular or special meeting must be prepared and be distributed to each director.

Section 87. **Action without meeting.** (1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by [sections 1 through 181] to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, be signed by each director, and be included in the minutes or filed with the corporate records reflecting the action taken.

(2) Action taken under this section is effective when the last director signs the consent unless the consent specifies a different effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document.

Section 88. **Notice of meeting.** (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least 2 days' notice of the date, time, and place of the meeting. The notice is not required to describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

Section 89. **Waiver of notice.** (1) A director may waive a notice required by [sections 1 through 181], the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (2), the waiver must be in writing, be signed by the director entitled to the notice, and be filed with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director, at the beginning of the meeting or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not vote for or assent to action taken at the meeting.

Section 90. **Quorum — voting.** (1) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of:

(a) a majority of the fixed number of directors if the corporation has a fixed board size; or

(b) a majority of the number of directors prescribed or, if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is considered to have assented to the action taken unless:

(a) the director objects at the beginning of the meeting or promptly upon the director's arrival to holding the meeting or transacting business at the meeting and delivers written notice of the director's objection to the presiding officer before its adjournment or to the corporation immediately after adjournment of the meeting;

(b) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) the director delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

(5) The right of dissent or abstention is not available to a director who votes in favor of the action taken.

Section 91. **Committees.** (1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee may have two or more members who serve at the pleasure of the board of directors.

(2) The creation of a committee and appointment of members to it must be approved by the greater of a majority of all the directors in office when the action is taken or the number of directors required by the articles of incorporation or bylaws to take action under [section 90].

(3) [Sections 86 through 90], which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under [section 75]. However, a committee may not:

(a) authorize distributions;

(b) approve or propose to shareholders action that [sections 1 through 181] requires to be approved by shareholders;

(c) fill vacancies on the board of directors or on any of its committees;

(d) amend articles of incorporation;

(e) adopt, amend, or repeal bylaws;

(f) approve a plan of merger not requiring shareholder approval;

(g) authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or

(h) authorize or approve the issuance of or sale or contract for sale of shares or determine the designation and relative rights, preferences, and limitations of a class or series of shares. However, the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(5) The creation of, delegation of authority to, or action by a committee does not by itself constitute compliance by a director with the standards of conduct described in [section 92].

Section 92. **General standards for directors.** (1) A director shall discharge his duties as a director, including the director's duties as a member of a committee:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons with regard to matters the director reasonably believes are within the person's professional or expert competence; or

(c) a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable for any action taken as a director or for any failure to take any action if he performed the duties of the director's office in compliance with this section.

Section 93. **Liability for unlawful distributions.** (1) Unless the director complies with the applicable standards of conduct described in [section 92], a director who votes for or assents to a distribution made in violation of [sections 1 through 181] or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating [sections 1 through 181] or the articles of incorporation.

(2) A director held liable for an unlawful distribution under subsection (1) is entitled to contribution:

(a) from every other director who voted for or assented to the distribution and who did not comply with the applicable standards of conduct described in [section 92]; and

(b) from each shareholder for the amount the shareholder accepted if the shareholder knows the distribution was made in violation of [sections 1 through 181] or the articles of incorporation.

Section 94. **Required officers.** (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one office in a corporation.

Section 95. **Duties of officers.** Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

Section 96. **Standards of conduct for officers.** (1) An officer with discretionary authority shall discharge his duties under that authority:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation.

(2) In discharging his duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(b) attorneys, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) An officer is not liable for any action taken as an officer or for any failure to take any action if the officer performed the duties of his office in compliance with this section.

Section 97. **Resignation and removal of officers.** (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(2) The board of directors may remove any officer with or without cause, and if authorized by the bylaws or by the board of directors, an officer may remove an officer or assistant officer appointed by that officer under [section 94] with or without cause.

Section 98. **Contract rights of officers.** (1) The appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Section 99. **Definitions.** As used in [sections 99 through 107], the following definitions apply:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) (a) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation include duties or services by him to the plan or to participants in or beneficiaries of the plan.

(b) Director includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include attorney fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, or fine, including an excise tax assessed with respect to an employee benefit plan, or to pay reasonable expenses incurred with respect to a proceeding.

(5) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; or

(ii) when used with respect to an individual other than a director, as contemplated in [section 105], the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

(b) Official capacity does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

Section 100. **Authority to indemnify.** (1) Except as provided in subsection (4), an individual made a party to a proceeding because he is or was a director may be indemnified against liability incurred in the proceeding if:

(a) he conducted himself in good faith;

(b) he reasonably believed:

(i) in the case of conduct in his official capacity with the corporation, that his conduct was in the corporation's best interests; and

(ii) in all other cases, that his conduct was at least not opposed to the corporation's best interests; and

(c) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(b)(ii).

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, a determination that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

Section 101. **Mandatory indemnification.** Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he is or was a director of the corporation, against reasonable expenses incurred by the director in connection with the proceeding.

Section 102. **Advance for expenses.** (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) the director furnishes the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in [section 100];

(b) the director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct described in [section 100]; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under [sections 99 through 107].

(2) The undertaking required by subsection (1)(b) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section must be made in the manner specified in [section 104].

Section 103. **Court-ordered indemnification.** Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification if it determines that the director:

(1) is entitled to mandatory indemnification under [section 101], in which case the court shall also order the corporation to pay the director's reasonable expenses incurred in obtaining court-ordered indemnification; or

(2) is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in [section 100] or was adjudged liable as described in [section 100(4)]. If the director was adjudged liable as described in [section 100(4)], the director's indemnification is limited to reasonable expenses incurred.

Section 104. **Determination and authorization of indemnification.** (1) A corporation may not indemnify a director under [section 100] unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in [section 100].

(2) The determination must be made:

(a) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) if a quorum cannot be obtained under subsection (2)(a), by majority vote of a committee designated by the board of directors, in which designated directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding;

(c) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subsection (2)(a) or (2)(b); or

(ii) if a quorum of the board of directors cannot be obtained under subsection (2)(a) and a committee cannot be designated under subsection (2)(b), selected by majority vote of the full board of directors in which selected directors who are parties may participate; or

(d) by the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses must be made by those entitled under subsection (2)(c) to select counsel.

Section 105. **Indemnification of officers, employees, and agents.** Unless a corporation's articles of incorporation provide otherwise:

(1) an officer of the corporation who is not a director is entitled to mandatory indemnification under [section 101] and is entitled to apply for court-ordered indemnification under [section 103] to the same extent as a director;

(2) the corporation may indemnify and advance expenses under [sections 99 through 107] to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) a corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

Section 106. **Insurance.** A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him against the same liability under [section 100] or [section 101].

Section 107. **Application.** (1) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, its bylaws, a resolution of its shareholders or board of directors, a contract, or other instrument is valid only if and to the extent the provision is consistent with [sections 99 through 107]. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles of incorporation.

(2) [Sections 99 through 107] do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

Section 108. **Definitions.** As used in [sections 108 through 111], the following definitions apply:

(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest if:

(a) regardless of whether the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that he or a related person is a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and the transaction is of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or

(b) the transaction is brought, or is of a character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and the transaction is of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction:

(i) an entity, other than the corporation, of which the director is a director, general partner, agent, or employee;

(ii) a person who controls one or more of the entities specified in subsection (1)(b)(i) or an entity that is controlled by, or is under common control with, one or more of the entities specified in subsection (1)(b)(i); or

(iii) an individual who is a general partner, principal, or employer of the director.

(2) "Director's conflicting interest transaction", with respect to a corporation, means a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest in which transaction a director of the corporation has a conflicting interest.

(3) "Related person" means:

(a) the spouse or a parent or sibling of a spouse of the director;

(b) a child, grandchild, sibling, parent or spouse of any child, grandchild, sibling, or parent of the director;

(c) an individual having the same residence as the director;

(d) a trust or estate of which an individual specified in this subsection (3) is a substantial beneficiary; or

(e) a trust, estate, incompetent person, conservatee, or minor for whom the director is a fiduciary.

(4) "Required disclosure" means disclosure by a director, who has a conflicting interest, of:

(a) the existence and nature of his conflicting interest; and

(b) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation or its subsidiary or the entity in which it has a controlling interest becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

Section 109. **Judicial action.** (1) A transaction effected or proposed to be effected by a corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest that is not a director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation because a director of the corporation or any person with whom the director has a personal, economic, or other association has an interest in the transaction.

(2) A director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation because the director or any person with whom the director has a personal, economic, or other association has an interest in the transaction if:

(a) directors' action respecting the transaction was at any time taken in compliance with [section 110];

(b) shareholders' action respecting the transaction was at any time taken in compliance with [section 111]; or

(c) the transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

Section 110. **Directors' action.** (1) Directors' action respecting a transaction is effective for purposes of [section 109(2)(a)] if the transaction received the affirmative vote of a majority, but no fewer than two, of those qualified directors on the board of directors or on an empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection (2). Action by a committee is effective only if all its members are qualified directors and its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

(2) If a director has a conflicting interest respecting a transaction but neither the director nor a related person of the director specified in [section 108(3)] is a party to the transaction and if the director has a duty under law or professional canon or a duty of confidentiality to another person respecting information relating to the transaction such that the director may not make the disclosure described in [section 108(4)(b)], disclosure is sufficient for purposes of subsection (1) if the director:

(a) discloses to the directors voting on the transaction the existence and nature of the conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction; and

(b) plays no part, directly or indirectly, in their deliberations or vote.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors or on the committee constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.

(4) For purposes of this section, "qualified director" means, with respect to a director's conflicting interest transaction, any director who does not have either a conflicting interest respecting the transaction or a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

Section 111. **Shareholders' action.** (1) Shareholders' action respecting a transaction is effective for purposes of [section 109 (2)(b)] if a majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after:

(a) notice to shareholders describing the director's conflicting interest transaction;

(b) provision of the information referred to in subsection (3); and

(c) required disclosure to the shareholders who voted on the transaction, to the extent the information was not known by them.

(2) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (3) and (4), shareholders' action that otherwise complies with this section is not affected by the presence of shareholders, or the voting, of shares that are not qualified shares.

(3) For purposes of compliance with subsection (1), a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other office or agent of the corporation authorized to tabulate votes of the number of all shares and the identity of persons holding or controlling the vote of all shares that the director knows are beneficially owned by or the voting of which is controlled by the director or by a related person of the director, or both.

(4) If a shareholders' vote does not comply with subsection (1) solely because of a failure of a director to comply with subsection (3) and if the director establishes that his failure did not determine and was not intended by him to influence the outcome of the vote, the court may, with or without further proceedings respecting [section 109(2)(c)], take action respecting the transaction and the director and give effect, if any, to the shareholders' vote as it considers appropriate in the circumstances.

(5) For purposes of this section, "qualified shares" means any shares entitled to be voted with respect to the director's conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned by or the voting of which is controlled by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

Section 112. **Authority to amend.** (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

Section 113. **Amendment by board of directors.** Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to delete the names and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state;

(4) to change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;

(5) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd." for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name; or

(6) to make any other change expressly permitted by [sections 1 through 181] to be made without shareholders' action.

Section 114. **Amendment by board of directors and shareholders.** (1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) the board of directors shall recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(b) the shareholders entitled to vote on the amendment shall approve the amendment as provided in subsection (5).

(3) The board of directors may condition its submission of the proposed amendment on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with [section 53]. The notice of meeting must also state that the purpose or one of the purposes of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy or summary of the amendment.

(5) Unless [sections 1 through 181], the articles of incorporation, or the board of directors acting pursuant to subsection (3) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(a) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(b) the votes required by [sections 61 and 62] by every other voting group entitled to vote on the amendment.

Section 115. **Voting on amendments by voting groups.** (1) The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by [sections 1 through 181], on a proposed amendment if the amendment would:

(a) increase or decrease the aggregate number of authorized shares of the class;

(b) cause an exchange or reclassification of all or part of the shares of the class into shares of another class;

(c) cause an exchange or reclassification of or create the right of exchange of all or part of the shares of another class into shares of the class;

(d) change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(e) change the shares of all or part of the class into a different number of shares of the same class;

(f) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(g) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to dissolution or to distributions that are prior, superior, or substantially equal to the shares of the class;

(h) limit or deny an existing preemptive right of all or part of the share of the class; or

(i) cancel or otherwise affect rights to distributions or dividends that have accumulated but have not yet been declared on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1), the shares of that series are entitled to be voted as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles two or more series of shares to be voted as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shareholders of all the series affected must vote together as a single voting group on the proposed amendment.

(4) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

Section 116. **Amendment before issuance of shares.** If a corporation has not yet issued shares, its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation.

Section 117. **Articles of amendment.** A corporation amending its articles of incorporation shall deliver to the secretary of state, for filing, articles of amendment setting forth:

(1) the name of the corporation;

(2) the text of each amendment adopted;

(3) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) the date of each amendment's adoption;

(5) if an amendment was adopted by the incorporators or board of directors without shareholders' action, a statement to that effect and that shareholders' action was not required; and

(6) if an amendment was approved by the shareholders:

(a) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting; and

(b) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group that was sufficient for approval by that voting group.

Section 118. **Restated articles of incorporation.** (1) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholders' action.

(2) The restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment requiring shareholders' approval, it must be adopted as provided in [section 114].

(3) If the board of directors submits a restatement for shareholders' action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with [section 53]. The notice must also state that the purpose or one of the purposes of the meeting is to consider the proposed restatement and must contain or be accompanied by a copy of the restatement that identifies any

amendment or other change the restatement would make in the articles of incorporation.

(4) A corporation restating its articles of incorporation shall deliver to the secretary of state, for filing, articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or

(b) if the restatement contains an amendment to the articles requiring shareholders' approval, the information required by [section 117].

(5) Adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(6) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (4).

Section 119. **Amendment pursuant to reorganization.** (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders if necessary to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation, after amendment, contain only provisions required or permitted by [section 17].

(2) The individual or individuals designated by the court shall deliver to the secretary of state, for filing, articles of amendment setting forth:

(a) the name of the corporation;

(b) the text of each amendment approved by the court;

(c) the date of the court's order or decree approving the articles of amendment;

(d) the title of the reorganization proceeding in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the proceeding under federal statute.

(3) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except to the extent provided in the reorganization plan.

(4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Section 120. **Effect of amendment.** An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

Section 121. **Amendment by board of directors or shareholders.** (1) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) the articles of incorporation or [sections 1 through 181] reserve this power exclusively to the shareholders in whole or part; or

(b) the shareholders in amending, adding, or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

Section 122. **Bylaw increasing quorum or voting requirement for shareholders.** (1) If expressly authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders or voting groups of shareholders than is required by [sections 1 through 181]. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(2) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (1) may not be adopted, amended, or repealed by the board of directors.

Section 123. **Bylaw increasing quorum or voting requirement for directors.** (1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(a) if originally adopted by the shareholders, only by the shareholders; or

(b) if originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that the bylaw may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors under subsection (1)(b) to adopt or amend a bylaw that changes the quorum or voting requirement for the

board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Section 124. **Merger.** (1) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by [section 126], approve a plan of merger.

(2) The plan of merger must set forth:

(a) the name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(b) the terms and conditions of the merger; and

(c) the manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or any other corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) amendments to the articles of incorporation of the surviving corporation; and

(b) other provisions relating to the merger.

Section 125. **Share exchange.** (1) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by [section 126], approve the exchange.

(2) The plan of exchange must set forth:

(a) the name of the corporation from which shares will be acquired and the name of the acquiring corporation;

(b) the terms and conditions of the exchange; and

(c) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation or any other corporation or for cash or other property in whole or part.

(3) The plan of exchange may set forth any other provision relating to the exchange.

(4) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

Section 126. **Action on plan.** (1) Except as provided in subsection (7), after adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger and the board of directors of the corporation whose shares will be acquired in the share exchange shall submit the plan of merger, except as provided in subsection (7), or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) the board of directors shall recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) the shareholders entitled to vote shall approve the plan.

(3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with [section 53]. The notice must also state that the purpose or one of the purposes of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy or summary of the plan.

(5) Unless [sections 1 through 181], the articles of incorporation, or the board of directors, acting pursuant to subsection (3), require a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by an affirmative vote of two-thirds, or a majority vote if authorized by subsection (10), of the votes entitled to be cast on the plan by that voting group.

(6) Separate voting by voting groups is required:

(a) on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under [section 115]; and

(b) on a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) the articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in [section 113], from its articles before the merger;

(b) each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) the number of voting shares outstanding immediately after the merger plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(d) the number of participating shares outstanding immediately after the merger plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of participating shares outstanding immediately before the merger.

(8) As used in subsection (7):

(a) "Participating shares" means shares that entitle their shareholders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their shareholders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is authorized and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action in accordance with the procedure set forth in the plan of merger or share exchange or, if no procedure is set forth, in the manner determined by the board of directors.

(10) A majority of all votes entitled to be cast by each voting group is sufficient to constitute approval by the corporation if a statement to that effect is included in the articles of incorporation but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation were filed; or

(b) the statement is included in an amendment to the articles of incorporation approved by an affirmative vote of two-thirds of the votes entitled to be cast on the amendment pursuant to [section 114].

Section 127. **Merger of subsidiary.** (1) A parent corporation owning at least 80% of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent corporation or subsidiary.

(2) The board of directors of the parent corporation shall adopt a plan of merger that sets forth:

(a) the names of the parent corporation and subsidiary; and

(b) the manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent corporation or any other corporation or into cash or other property in whole or part.

(3) The parent corporation shall mail a copy of the summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(4) The parent corporation may not deliver articles of merger to the secretary of state for filing until at least 30 days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(5) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation except for amendments enumerated in [section 113].

Section 128. **Articles of merger or share exchange.** (1) After a plan of merger or share exchange is approved by the shareholders or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the secretary of state, for filing, articles of merger or share exchange setting forth:

(a) the plan of merger or share exchange; and

(b) if shareholder approval was not required, a statement to that effect; or

(c) if approval of the shareholders of one or more corporations party to the merger or share exchange was required:

(i) the designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(ii) either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

(2) Unless a delayed effective date is specified, a merger or share exchange takes effect when the articles of merger or share exchange are filed.

Section 129. **Effect of merger or share exchange.** (1) When a merger takes effect:

(a) every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(b) the title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

(c) the surviving corporation has all liabilities of each corporation party to the merger;

(d) a proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(e) the articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(f) the shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted and the former shareholders are entitled only to the rights provided in the articles of merger or to their rights under [section 133 through 146].

(2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan and the former shareholders are entitled only to the exchange rights provided in the articles of share exchange or to their rights under [sections 133 through 146].

Section 130. **Merger or share exchange with foreign corporation.** (1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(a) in a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger; or

(b) in a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(c) the foreign corporation complies with [section 128] and if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) each domestic corporation complies with the applicable provisions of [sections 124 through 127] and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with the provisions of [section 128].

(2) When the merger or share exchange takes effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is considered:

(a) to have appointed the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(b) to have agreed that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under [sections 133 through 146].

(3) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

Section 131. **Sale of assets in regular course of business — mortgage of assets.** (1) A corporation may, on the terms and conditions and for the consideration determined by the board of directors:

(a) sell, lease, exchange, or otherwise dispose of all or substantially all of its property in the usual and regular course of business;

(b) mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or

(c) transfer any or all of its property to another corporation all the shares of which are owned by the corporation.

(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) is not required.

Section 132. **Sale of assets other than in regular course of business.** (1) A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property, which may include good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction under this section to be authorized:

(a) the board of directors shall recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) the shareholders entitled to vote shall approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with [section 53]. The notice must also state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all the property of the corporation and must contain or be accompanied by a description of the transaction.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (3), require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by an affirmative vote of two-thirds, or a majority if authorized by subsection (8), of the votes entitled to be cast on the transaction.

(6) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholders' action.

(7) A transaction that constitutes a distribution is governed by [section 48] and not by this section.

(8) A majority of votes cast by the shareholders is sufficient to constitute approval by the corporation if a statement to that effect is included in the articles of incorporation but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation were filed; or

(b) the statement is included in an amendment to the articles of incorporation approved by an affirmative vote of two-thirds of the votes entitled to be cast on the amendment pursuant to [section 114].

Section 133. **Definitions.** As used in [sections 133 through 146], the following definitions apply:

(1) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(2) "Corporation" includes the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

(3) "Dissenter" means a shareholder who is entitled to dissent from corporate action under [section 134] and who exercises that right when and in the manner required by [sections 136 through 144].

(4) "Fair value", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(5) "Interest" means interest from the effective date of the corporate action until the date of payment at the average rate currently paid by the corporation on its principal bank loans or, if the corporation has no loans, at a rate that is fair and equitable under all the circumstances.

(6) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial shareholder to the extent of the rights granted by a nominee certificate on file with a corporation.

(7) "Shareholder" means the record shareholder or the beneficial shareholder.

Section 134. **Right to dissent.** (1) A shareholder is entitled to dissent from and obtain payment of the fair value of his shares in the event of any of the following corporate actions:

(a) consummation of a plan of merger to which the corporation is a party if:

(i) shareholder approval is required for the merger by [section 126] or the articles of incorporation and the shareholder is entitled to vote on the merger; or

(ii) the corporation is a subsidiary that is merged with its parent corporation under [section 127];

(b) consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the plan;

(c) consummation of a sale or exchange of all or substantially all of the property of the corporation other than in the usual and regular course of business if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within 1 year after the date of sale;

(d) an amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

(i) alters or abolishes a preferential right of the shares;

(ii) creates, alters, or abolishes a right in respect of redemption, including a provision with respect to a sinking fund for the redemption or repurchase of the shares;

(iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(iv) excludes or limits the right of the shares to be voted on any matter or to accumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(v) reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under [section 36]; or

(e) any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and to obtain payment for their shares.

(2) A shareholder entitled to dissent and to obtain payment for his shares under [sections 133 through 146] may not challenge the corporate action creating the shareholder's entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

Section 135. **Dissent by nominees and beneficial owners.** (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his name only if he dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf he asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which he dissents and his other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on his behalf only if:

(a) he submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) he does so with respect to all shares of which he is the beneficial shareholder or over which he has power to direct the vote.

Section 136. **Notice of dissenters' rights.** (1) If a proposed corporate action creating dissenters' rights under [section 134] is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under [sections 133 through 146] and must be accompanied by a copy of [sections 133 through 146].

(2) If a corporate action creating dissenters' rights under [section 134] is taken without a vote of shareholders, the corporation shall give written notification to all shareholders entitled to assert dissenters' rights that the action was taken and shall send them the dissenters' notice described in [section 138].

Section 137. **Notice of intent to demand payment.** (1) If proposed corporate action creating dissenters' rights under [section 134] is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:

(a) shall deliver to the corporation before the vote is taken written notice of his intent to demand payment for his shares if the proposed action is effectuated; and

(b) may not vote his shares in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1)(a) is not entitled to payment for his shares under [sections 133 through 146].

Section 138. **Dissenters' notice.** (1) If proposed corporate action creating dissenters' rights under [section 134] is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of [section 137].

(2) The dissenters' notice must be sent no later than 10 days after the corporate action was taken and must:

(a) state where the payment demand must be sent and where and when certificates for certified shares must be deposited;

(b) inform shareholders of uncertificated shares to what extent transfer of the shares will be restricted after the payment is received;

(c) supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and that requires the person asserting dissenters' rights to certify whether or not he acquired beneficial ownership of the shares before that date;

(d) set a date by which the corporation must receive the payment demand, which may not be fewer than 30 nor more than 60 days after the date the required notice under subsection (1) is delivered; and

(e) be accompanied by a copy of [sections 133 through 146].

Section 139. **Duty to demand payment.** (1) A shareholder sent a dissenters' notice described in [section 138] shall demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to [section 138(2)(c)], and deposit his certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits his certificates under subsection (1) retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

(3) A shareholder who does not demand payment or deposit his certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for his shares under [sections 133 through 146].

Section 140. **Share restrictions.** (1) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions are released under [section 142].

(2) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

Section 141. **Payment.** (1) Except as provided in [section 143], as soon as the proposed corporate action is taken or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with [section 139] the amount the corporation estimates to be the fair value of the dissenter's shares plus accrued interest.

(2) The payment must be accompanied by:

(a) the corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(b) a statement of the corporation's estimate of the fair value of the shares;

(c) an explanation of how the interest was calculated;

(d) a statement of the dissenter's right to demand payment under [section 144]; and

(e) a copy of [sections 133 through 146].

Section 142. **Failure to take action.** (1) If the corporation does not take the proposed action within 60 days after the date set for demanding payment and depositing certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(2) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it shall send a new dissenters' notice under [section 138] and repeat the payment demand procedure.

Section 143. **After-acquired shares.** (1) A corporation may elect to withhold payment required by [section 141] from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1), after taking the proposed corporate action, the corporation shall estimate the fair value of the shares plus accrued interest and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of his demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under [section 144].

Section 144. **Procedure if shareholder dissatisfied with payment or offer.** (1) A dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and the amount of interest due and may demand payment of the dissenter's estimate, less any payment under [section 141], or reject the corporation's offer under [section 143] and demand payment of the fair value of the dissenter's shares and the interest due if:

(a) the dissenter believes that the amount paid under [section 141] or offered under [section 143] is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated;

(b) the corporation fails to make payment under [section 141] within 60 days after the date set for demanding payment; or

(c) the corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless he notifies the corporation of his demand in writing under subsection (1) within 30 days after the corporation made or offered payment for his shares.

Section 145. **Court action.** (1) If a demand for payment under [section 144] remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and shall petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the district court of the county where a corporation's principal office or, if its principal office is not located in this state, where its registered office is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(3) The corporation shall make all dissenters whose demands remain unsettled, whether or not residents of this state, parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by certified mail or by publication as provided by law.

(4) The jurisdiction of the district court in which the proceeding is commenced under subsection (2) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(5) Each dissenter made a party to the proceeding is entitled to judgment:

(a) for the amount, if any, by which the court finds the fair value of the dissenter's shares plus interest exceeds the amount paid by the corporation; or

(b) for the fair value plus accrued interest of his after-acquired shares for which the corporation elected to withhold payment under [section 143].

Section 146. **Court costs and attorney fees.** (1) The court in an appraisal proceeding commenced under [section 145] shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under [section 144].

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of [sections 136 through 144]; or

(b) against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by [sections 133 through 146].

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and that the fees for those services should not be assessed against the corporation, the court may award the counsel reasonable attorney fees to be paid out of the amounts awarded the dissenters who were benefited.

Section 147. **Dissolution by incorporators or initial directors.** A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state, for filing, articles of dissolution that set forth:

(1) the name of the corporation;

(2) the date of its incorporation;

(3) either that none of the corporation's shares have been issued or that the corporation has not commenced business;

(4) that no debt of the corporation remains unpaid;

(5) if issues were shared, that the net assets of the corporation remaining after winding up of the corporation's business and affairs have been distributed to the shareholders; and

(6) that a majority of the incorporators or initial directors authorized the dissolution.

Section 148. **Dissolution by board of directors and shareholders.** (1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) the board of directors shall recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) the shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection (5).

(3) The board of directors may condition its submission of the proposal for dissolution on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with [section 53]. The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (3), requires a greater vote or a vote by voting groups to be adopted, the proposal to dissolve must be approved by an affirmative vote of two-thirds, or a majority if authorized by subsection (6), of all the votes entitled to be cast on that proposal.

(6) A majority of votes cast by the shareholders is sufficient to constitute approval by the corporation if a statement to that effect is included in the articles of incorporation but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation were filed; or

(b) the statement is included in an amendment to the articles of incorporation approved by an affirmative vote of two-thirds of the votes entitled to be cast on the amendment pursuant to [section 114].

Section 149. **Articles of dissolution.** (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state, for filing, articles of dissolution setting forth:

(a) the name of the corporation;

(b) the date dissolution was authorized;

(c) if dissolution was approved by the shareholders:

(i) the number of votes entitled to be cast on the proposal to dissolve; and

(ii) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval; and

(d) if voting by voting groups is required, the information required by subsection (1)(c) must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

Section 150. **Revocation of dissolution.** (1) A corporation may revoke its dissolution within 120 days of the effective date of the articles of dissolution.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholders' action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state, for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted on action by the board of directors alone pursuant to that authorization; and

(f) if shareholder action was required to revoke the dissolution, the information required by [section 149(1)(c) or (1)(d)].

(4) Unless a delayed effective date is specified, revocation of dissolution is effective when the articles of revocation of dissolution are filed.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution, and the corporation resumes carrying on its business as if dissolution had never occurred.

Section 151. **Effect of dissolution.** (1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) collecting its assets;

(b) disposing of its properties that will not be distributed in kind to its shareholders;

(c) discharging or making provision for discharging its liabilities;

(d) distributing its remaining property among its shareholders according to their interests; and

(e) doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

(a) transfer title to the corporation's property;

(b) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) subject its directors or officers to standards of conduct different from those prescribed in [sections 75 through 111];

(d) change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers, or both; or change provisions for amending its bylaws;

(e) prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(g) terminate the authority of the registered agent of the corporation.

Section 152. **Known claims against dissolved corporation.** (1) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be less than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) if a claimant who was given written notice under subsection (1) does not deliver the claim to the dissolved corporation by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of the dissolution.

Section 153. **Unknown claims against dissolved corporation.** (1) Subject to [section 175], the dissolution of a corporation, including by the expiration of its term, does not take away or impair any remedy available to or against the corporation or its officers, directors, or shareholders for any claim or right, whether or not the claim or right existed or accrued prior to dissolution. A proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers have power to take corporate or other action as appropriate to protect the remedy, right, or claim.

(2) A claim may be enforced under this section or [section 152]:

(a) against the dissolved corporation, to the extent of the undistributed assets; or

(b) if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to him.

(3) Subsections (1) and (2) apply to foreign corporations and their shareholders transacting business in this state for any claims otherwise arising or accruing under Montana law.

Section 154. **Grounds for judicial dissolution.** The district court may dissolve a corporation:

(1) in a proceeding by the attorney general if it is established that:

(a) the corporation obtained its articles of incorporation through fraud; or

(b) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) in a proceeding by a shareholder if it is established that:

(a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(b) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(d) the corporate assets are being misapplied or wasted;

(3) in a proceeding by a creditor if it is established that:

(a) the creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the corporation is insolvent; or

(b) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

Section 155. **Discretion of court to grant relief other than dissolution.** (1) In any action filed by a shareholder or director to dissolve the corporation on the grounds enumerated in [section 154], the court may make any order to grant the relief other than dissolution as, in its discretion, it considers appropriate, including, without limitation, an order:

(a) canceling or altering any provision contained in the articles of incorporation, in any amendment of the articles of incorporation, or in the bylaws of the corporation;

(b) canceling, altering, or enjoining any resolution or other act of the corporation;

(c) directing or prohibiting any act of the corporation or of shareholders, directors, officers, or other persons party to the action; or

(d) providing for the purchase at fair value of shares of any shareholder, either by the corporation or by other shareholders.

(2) Relief under subsection (1) may be granted as an alternative to a decree of dissolution or may be granted whenever, under the circumstances of the case, relief but not dissolution would be appropriate.

Section 156. **Procedure for judicial dissolution.** (1) Venue for a proceeding by the attorney general or any other party named in [section 154] to dissolve a corporation lies in the county where a corporation's principal office or, if its principal office is not located in this state, where its registered office is or was last located.

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

Section 157. **Receivership or custodianship.** (1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) the receiver may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court and may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state; and

(b) the custodian may exercise all of the powers of the corporation through or in place of its board of directors or officers to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation and its shareholders and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

Section 158. **Decree of dissolution.** (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in [section 154] exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with [section 151] and the notification of claimants in accordance with [sections 152 and 153].

Section 159. **Deposit with state treasurer.** Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them must be reduced to cash and deposited with the state treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay him or his representative that amount.

Section 160. **Authority to transact business required.** (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) maintaining, defending, or settling any proceeding;

(b) holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) owning real or personal property that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition does not produce income, or is not used in the performance of a corporate function;

(j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or

(k) transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

Section 161. **Consequences of transacting business without authority.** (1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation or its successor or assignee until it determines whether the foreign corporation or its successor or assignee requires a certificate of authority. If it determines that a certificate is required, the court may further stay the

proceeding until the foreign corporation or its successor obtains the certificate.

(4) A foreign corporation is liable for a civil penalty of $5 for each day but not to exceed a total of $1,000 for each year that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

(5) Notwithstanding the provisions of subsections (1) and (2), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

Section 162. **Application for certificate of authority.** (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of [section 165];

(b) the name of the state or country under whose law it is incorporated;

(c) its date of incorporation and period of duration;

(d) the street address of its principal office;

(e) the address of its registered office in this state and the name of its registered agent at that office;

(f) the names and usual business addresses of its current directors and officers; and

(g) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated.

Section 163. **Amended certificate of authority.** (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(a) its corporate name;

(b) the period of its duration; or

(c) the state or country of its incorporation.

(2) The requirements of [section 162] for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

Section 164. **Effect of certificate of authority.** (1) A certificate of authority authorizes the foreign corporation to which it is issued the right to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in [sections 1 through 181].

(2) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as a domestic corporation of similar character and except as otherwise provided by [sections 1 through 181] is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of similar character.

(3) [Sections 1 through 181] do not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Section 165. **Corporate name of foreign corporation.** (1) If the corporate name of a foreign corporation does not satisfy the requirements of [section 25], to obtain or maintain a certificate of authority to transact business in this state the foreign corporation shall:

(a) add the word "corporation", "incorporated", "company", or "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd." to its corporate name for use in this state; or

(b) use a fictitious name to transact business in this state if its real name is unavailable and deliver to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name of a foreign corporation, including a fictitious name, must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under [section 26 or 27];

(c) the fictitious name of another foreign corporation authorized to transact business in this state;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable

in the secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name of another domestic or foreign corporation, including the fictitious name, that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of [section 25], it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of [section 25] and obtains an amended certificate of authority under [section 163].

Section 166. **Registered office and registered agent of foreign corporation.** Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(1) a registered office that may be the same as any of its places of business; and

(2) a registered agent who may be:

(a) an individual who resides in this state and whose business office is identical with the registered office;

(b) a domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(c) a foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

Section 167. **Change of registered office or registered agent of foreign corporation.** (1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

(a) the foreign corporation's name;

(b) the street address of its current registered office;

(c) if the current registered office is to be changed, the street address of its new registered office;

(d) the name of its current registered agent;

(e) if the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(f) the fact that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any foreign corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement of change that complies with the requirements of subsection (1) and that states that the corporation has been notified of the change.

Section 168. **Resignation of registered agent of foreign corporation.** (1) The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the secretary of state for filing the original and two copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if the office has not been discontinued. The secretary of state shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, 31 days after the date on which the statement was filed.

Section 169. **Withdrawal of foreign corporation.** (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (3);

(e) a commitment to notify the secretary of state in the future of any change in its mailing address;

(f) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana; and

(g) additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation as prescribed by [sections 160 through 172].

(3) After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (2).

Section 170. **Grounds for revocation.** The secretary of state may commence a proceeding under [section 171] to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the foreign corporation does not deliver its annual report to the secretary of state within 90 days after it is due;

(2) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by [sections 1 through 181] or other law;

(3) the foreign corporation is without a registered agent or registered office in this state for 90 days or more;

(4) the foreign corporation does not inform the secretary of state under [section 167 or 168] that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance;

(5) an incorporator, director, officer, or agent of the foreign corporation signed a document the person knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing; or

(6) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

Section 171. **Procedure for and effect of revocation.** (1) If the secretary of state determines that one or more grounds exist under [section 170] for revocation of a certificate of authority, the secretary of state shall serve the foreign corporation with written notice of his determination pursuant to 35-1-1014.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after service of the notice is perfected under 35-1-1014, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation pursuant to 35-1-1014.

(3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state as the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if no report or communication is on file, in its application for a certificate of authority.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

Section 172. **Appeal from revocation.** (1) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court within 30 days after service of the certificate of revocation is perfected pursuant to 35-1-1014. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

Section 173. **Corporate records.** (1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office or a location from which the records may be recovered within 2 business days:

(a) its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) its bylaws or restated bylaws and all amendments to them currently in effect;

(c) resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences, and limitations if shares issued pursuant to those resolutions are outstanding;

(d) the minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past 3 years;

(e) the financial statements available to shareholders for the past 3 years under [section 177];

(f) a list of the names and business addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under [section 179].

Section 174. **Inspection of records by shareholders.** (1) Subject to [section 175(3)], a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in [section 173(5)] if the shareholder gives the corporation written notice of the demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) and gives the corporation written notice of the demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

(a) excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under [section 174(1)];

(b) accounting records of the corporation; and

(c) the record of shareholders.

(3) A shareholder may inspect and copy the records identified in subsection (2) only if:

(a) the demand is made in good faith and for a proper purpose;

(b) the shareholder describes with reasonable particularity the purpose and the records the shareholder desires to inspect;

(c) the records are directly connected with his purpose; and

(d) the shareholder has been a shareholder of record for at least 6 months preceding the demand or the shareholder is a holder of record of at least 5% of all the outstanding shares of the corporation.

(4) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(5) This section does not affect:

(a) the right of a shareholder to inspect records under [section 56] or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independently of [sections 1 through 181], to compel the production of corporate records for examination.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

Section 175. **Scope of inspection right.** (1) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder the agent or attorney represents.

(2) The right to copy records under [section 174] includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of documents provided to the shareholders. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a shareholder's demand to inspect the record of shareholders under [section 174(2)(c)] by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

Section 176. **Court-ordered inspection.** (1) If a corporation does not allow a shareholder who complies with [section 174(1)] to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office or, if there is no principal office in this state, where its registered office is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with [section 174(2) and (3)] may apply to the district court in the county where the corporation's principal office or, if there is no principal office in this state, where its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

Section 177. **Financial statement for shareholders.** Upon the written request of any shareholder of a corporation, the corporation shall mail to the shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

Section 178. **Other reports to shareholders.** (1) If a corporation indemnifies or advances expenses to a director under [section 95, 96, 97, or 98] in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(2) If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued and the consideration received by the corporation with or before the notice of the next shareholders' meeting.

Section 179. **Annual report for secretary of state.** (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the corporation and the state or country under whose law it is incorporated;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) the names and business addresses of its directors and principal officers;

(e) a brief description of the nature of its business;

(f) the total number of authorized shares, itemized by class and series, if any, within each class; and

(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(2) Each foreign corporation shall also include a statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within Montana and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the year ending December 31 preceding the date provided in this section for the filing of the report and the gross amount of business transacted by the corporation at or from places of business in Montana. If on December 31 preceding the time provided in this section for the filing of the report the corporation had not been authorized to transact business in Montana for 1 year, the statement with respect to business transacted must be furnished for the period between the date of its authorization to transact business in Montana and December 31. If all the property of the corporation is located in Montana and all of its business is transacted at or from places of business in Montana, the information required by this subsection need not be reported.

(3) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(4) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(5) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed.

Section 180. **Number of shareholders.** (1) For purposes of Title 35, chapter 9, the following, identified as a shareholder in a corporation's current record of shareholders, constitutes one shareholder:

(a) three or fewer co-owners;

(b) a corporation, partnership, trust, estate, or other entity; or

(c) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(2) For purposes of Title 35, chapter 9, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

Section 181. **Contest of registration of name.** (1) A person doing business in this state may contest the subsequent registration of a name under this section with the office of the secretary of state by filing an acknowledged notice of contest with the secretary of state and sending a copy of the notice of contest to the person who subsequently registered the contested name. The notice to the secretary of state must be accompanied by a $100 deposit, which the secretary of state shall award to the prevailing party in the contest.

(2) Upon receipt of a notice of contest, the secretary of state shall ask each party to the contest to submit within 30 days an affidavit setting forth the facts, opinions, and arguments for or against the retention of the contested name in the records of the secretary of state. The secretary of state shall review the affidavits and shall make a decision or order a hearing to be held within 30 days. If a hearing is ordered, the parties shall meet with the secretary of state before the hearing and attempt to settle the contest. If a settlement is not reached, the secretary of state shall hold a hearing. At the hearing the secretary of state may consider evidence presented by the parties relating to the factual or legal issues raised by the contest. A record of the hearing is not required. The hearing is not a contested case hearing. Where consistent with this section, the informal procedures of the Montana Administrative Procedure Act apply.

(3) The secretary of state may order that the contested name be changed on the records of the secretary of state if it is likely that the use of the names will cause confusion, mistake, or deception among the public when applied to the goods or services provided by the businesses. In determining whether confusion, mistake, or deception is likely, the secretary of state shall consider:

(a) the strength or unique nature of the names;

(b) the similarity of sound, appearance, or meaning of the names;

(c) the intent of the parties;

(d) the type of businesses engaged in or to be engaged in by the parties;

(e) the geographic market areas served by each party and the manner of distribution and marketing used in those areas;

(f) the nature and quality of goods or services provided by the parties;

(g) the level of sophistication of potential purchasers of goods or services offered by the parties;

(h) whether the party contesting the subsequent registration of a name failed to make a timely objection or acquiesced to the use of the name so that it would be inequitable to prohibit its registration; and

(i) whether the names in question are in fair use, have been abandoned, or are parodies of other names.

(4) The secretary of state shall make a decision for one of the parties within 10 days of the hearing and may order that the contested name be changed in the records of the secretary of state and the relevant documents be amended by the secretary of state in a manner that results in a new name that is not the same as or deceptively similar to another name registered with the office of the secretary of state.

(5) A party may appeal the decision of the secretary of state to the district court within 20 days. The district court shall consider the factual and legal issues without reference to the decision of the secretary of state.

Section 182. Section 35-1-604, MCA, is amended to read:

"**35-1-604. Stock assessments — delinquency sale.** ~~The stock of any corporation for profit organized under the laws of this state shall not be assessable for any purpose except as expressly provided by statute and except that water~~ *Water* companies, water users associations, irrigation companies, canal companies, ditch companies, and reservoir companies whose articles of incorporation provide for the assessment of shares may levy assessments at the times and in the amounts as may be prescribed by ~~its~~ *their* articles of incorporation or if not so prescribed, then as follows:

(1) No one assessment must exceed 10% of the amount of the capital stock named in the articles of incorporation, except that if the whole capital stock of a corporation has not been paid up and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock or, if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

(2) No assessment ~~must~~ *may* be levied while any portion of a previous one remains unpaid, unless:

(a) the power of the corporation has been exercised in accordance with the provisions of this section for the purpose of collecting such previous assessment;

(b) the collection of the previous assessment has been enjoined; or

(c) the assessment falls within the provisions of 35-1-109.

(3) Every order levying an assessment must specify the amount thereof, when, to whom, and where payable. It must fix a day subsequent to the full term of publication of the assessment notice on which the unpaid assessment shall be delinquent, not less than 30 or more than 60 days from the time of making the order levying the assessment, and a day for the sale of delinquent stock, not less than 15 or more than 60 days from the day the stock is declared delinquent.

(4) Upon the making of the order, the secretary shall cause to be published a notice thereof in the following form:

(Name of corporation in full. Location of the principal place of business.) Notice is hereby given that at a meeting of the directors held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which the assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction and, unless payment is made before, will be sold on the (day appointed) to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

(5) The notice must be personally served upon each stockholder or, in lieu of personal service, must be sent within 10 days after the assessment through the mail addressed to each stockholder at his place of residence, if known, and, if not known, at the place where the principal office of the corporation is situated and be published once a week for 4 successive weeks in some newspaper of general circulation and devoted to the publication of general news at the place designated in the articles of incorporation as the principal place of business and also in some newspaper published in the county in which the works of the corporation are situated, if a paper ~~be~~ *is* published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there ~~be~~ *is* no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county if there ~~be~~ *is* one and, if there ~~be~~ *is* none, then in a newspaper published in an adjoining county.

(6) If any portion of the assessment mentioned in the notice remains unpaid on the days specified therein for declaring the stock delinquent, the secretary, unless otherwise ordered by the board of directors, shall cause to be published in the same papers in which the notice ~~hereinbefore~~ provided for ~~shall have been~~ *in subsection (5) was* published, a notice substantially in the following form:

(Name in full. Location of principal place of business.) Notice. There is delinquent upon the following subscribed stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of respective shareholders as follows: (Names, number of certificate, number of shares, amounts.) And in accordance with law (and an order of the board of directors, made on the (date), if such order shall have been made), so many shares of each parcel of stock as may be necessary will be sold at the (particular place) on the (date) at (the hour) of such day to pay delinquent assessments thereon, together with costs of advertising and expenses of sale.

(Name of secretary, with location of office.)

(7) The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

(8) The notice when published in a daily paper must be published for 10 days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each for 2 weeks previous to the day of sale. The first publication of all delinquent sales must be at least 15 days prior to the day of sale.

(9) By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale but must sell no more of such stock than is necessary to pay the assessment due and costs of sale.

(10) On the day, at the place, and at the time appointed in the notice of sale, the secretary must unless otherwise ordered by the board of directors sell or cause to be sold at public auction to the highest bidder for cash so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale. If payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment.

(11) The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation on payment of the assessment and costs.

(12) If at the sale of stock no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation through the president, secretary, or any director thereof at the amount of the assessments, costs, and charges due, and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable nor must any dividends

be declared thereon, but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

(13) The dates fixed in any notice of assessment or notice of delinquent sale published according to the provisions hereof may be extended from time to time for not more than 30 days by order of the directors entered on the records of the corporation, but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

(14) No assessment is invalidated by a failure to make publication of the notices provided for or by the nonperformance of any act required in order to enforce the payment of the same, but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void and publication must begin anew.

(15) No action must be sustained to recover stock sold for delinquent assessments upon the ground of irregularity or defect of the notice of sale or defect or irregularity in the sale unless the party seeking to maintain such action first pays or tenders to the corporation or the party holding the stock sold the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid, and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within 6 months after such sale was made.

(16) The publication of notice required by this section must be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published, and the affidavit of the secretary or auctioneer is prima facie evidence of the facts therein stated. Certificates signed by the secretary and under the seal of the corporation are prima facie evidence of the contents thereof.

(17) On the day specified for declaring the stock delinquent or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments or any part or portion thereof and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred or any part or portion thereof."

Section 183. Section 35-6-104, MCA, is amended to read:

"**35-6-104. Involuntary dissolution — procedure.** (1) On or before ~~April 1, August 1, and~~ September 1 of each year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by ~~causing such list to be posted in the state capitol for a period of at least 90 days and~~:

(a) ~~by~~ mailing a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) ~~by~~ publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the ~~posting and~~ mailing or publication of notice:

(a) the secretary of state will dissolve ~~such~~ defaulting corporations;

(b) ~~such~~ *defaulting* corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) ~~such~~ *defaulting* corporations will forfeit their rights to carry on business within the state.

(4) After 90 days following ~~posting and~~ mailing or publication of each notice, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2) ~~of this section~~.

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation ~~shall~~ *must* be held in trust by the directors of ~~such~~ *the* corporation and ~~35-1-921~~ *[sections 154 through 159]* or 35-2-711, whichever is appropriate, is applicable to liquidate ~~such~~ *the* property and assets if necessary."

Section 184. Section 35-9-305, MCA, is amended to read:

"**35-9-305. Holding more than one office — execution of documents in more than one capacity.** ~~(1) An individual may hold more than one or all the offices of a statutory close corporation if the corporation's articles of incorporation contain a statement to that effect.~~

~~(2)~~ An individual who holds more than one office in a statutory close corporation may execute, ~~or~~ acknowledge, *or verify* in more than one capacity any document required to be executed, ~~or~~ acknowledged, *or verified* by the holders of two or more offices."

Section 185. Section 15-31-103, MCA, is amended to read:

"**15-31-103. Research and development firms exempt from taxation — application.** (1) A research and development firm organized to engage in business in the state of Montana for the first time is not subject to any of the taxes imposed by this chapter on net income earned from research and development activities during its first 5 taxable years of activity in Montana. For purposes of 15-31-401 and this section, "taxable year" means a research and development firm's taxable year for federal income tax purposes.

(2) (a) To be considered a research and development firm, the chief executive officer of the firm or his agent shall file with the department of revenue an application for treatment as a research and development firm.

(b) The application must be made on a form to be provided by the department. The form must include, at a minimum:

(i) the name and address of each officer of the research and development firm;

(ii) the name of the research and development firm as required for the purpose of incorporation in ~~35-1-202~~ *[section 17]*;

(iii) the address of its initial registered office required for the purpose of incorporation as required in ~~35-1-202~~ *[section 17]*;

(iv) the date the articles of incorporation were filed with the secretary of state as required in ~~35-1-203~~ *[section 16]*; and

(v) other information the department requires to effectively administer the provisions of this section.

(c) The application must be filed with the department before the end of the first calendar quarter during which the research and development firm engages in business in Montana.

(3) On receipt of the information required in subsection (2)(b), provided that it was filed in the time allowed under subsection (2)(c), the department shall designate the applicant as a research and development firm for the purposes of this section.

(4) Failure by an applicant to provide information required by the department under subsection (2)(b) or, except as provided in subsection (5), failure to file within the time allowed under subsection (2)(c) automatically disqualifies the applicant from being designated and treated as a research and development firm for the purposes of this section.

(5) The director of the department may grant an extension of time for an applicant to file an application for treatment as a research and development firm, provided the extension is given in writing and the extension does not extend beyond 30 days from the date the application was required to be filed under subsection (2)(c).

(6) For the purpose of calculating or otherwise determining the period for which a deduction, exclusion, exemption, or credit may be taken under the provisions of this chapter, the department shall disregard a research and development firm's first 5 taxable years of activity in Montana and administer the deduction, exclusion, exemption, or credit as if the corporation did not exist during those taxable years. This treatment of a research and development firm extends to net operating loss carryback and net operating loss carryforward provisions allowed under this chapter."

Section 186. Section 20-5-303, MCA, is amended to read:

"**20-5-303. Individual tuition for elementary pupil.** (1) No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any elementary school of a district other than his resident district when the parent has agreed to pay the tuition acceptable to the trustees of the district where the school is located. The trustees of the district where the school is located may allow the attendance of a child under the provisions of this section at their discretion. When the attendance is approved, the trustees shall charge tuition at the same rate prescribed by 20-5-305, reduced by any amount which is waived by the trustees. However, under this section, tuition as determined in 20-5-305 shall be reduced by the amount the parent of the child paid in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(2) (a) For the purposes of this section, "parent" includes an individual shareholder of a domestic corporation as defined in ~~35-1-102~~ *[section 1]* whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(b) The tax amount to be credited to reduce any tuition charge to a parent under this subsection is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation for the benefit and support of the district in which the child will attend school.

(c) The percentage of total shares as determined in subsection (2)(b)(i) is the percentage of taxes paid as determined in subsection (2)(b)(ii) that is to be credited to reduce the tuition charge."

Section 187. Section 20-5-313, MCA, is amended to read:

"**20-5-313. Individual tuition for high school pupil.** (1) Any child eligible to attend high school may attend school in the high school district in which he resides without payment of tuition.

(2) No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any high school outside of his district of residence when the parent agrees to pay the tuition acceptable to the trustees of the high school district operating such high school. When the attendance is approved, the parent shall pay tuition at the rate fixed by the trustees. However, under this section, tuition as determined in 20-5-312 shall be reduced by the amount the parent of the child paid in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(3) (a) For the purposes of this section, "parent" includes an individual shareholder of a domestic corporation as defined in ~~35-1-102~~ *[section 1]* whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(b) The tax amount to be credited to reduce any tuition charge to a parent under this subsection is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation for the benefit and support of the district in which the child will attend school.

(c) The percentage of total shares as determined in subsection (3)(b)(i) is the percentage of taxes paid as determined in subsection (3)(b)(ii) that is to be credited to reduce the tuition charge."

Section 188. Section 33-3-103, MCA, is amended to read:

"**33-3-103. Applicability of general corporation statutes.** (1) The applicable laws of this state as to domestic corporations formed for profit shall apply as to domestic stock insurers and domestic mutual insurers except where in conflict with the express provisions of this code and the reasonable implications of such provisions.

(2) Except as provided in part 6 of this chapter, ~~35-1-901 through 35-1-912~~ *[sections 147 through 151]* apply to the voluntary dissolution of a domestic insurer."

Section 189. Section 33-3-601, MCA, is amended to read:

"**33-3-601. Voluntary dissolution of domestic insurers — plan of dissolution.** At least 60 days before an insurer submits a proposed voluntary dissolution to shareholders or policyholders under ~~35-1-902 or 35-1-903~~ *[section 148]* or voluntarily dissolves under ~~35-1-901~~ *[section 147]*, the insurer must file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under ~~35-1-903 through 35-1-912~~ *[sections 147 through 151]*, except that ~~35-1-906(3)~~ *[section 154(4)]* does not apply. The papers required by ~~35-1-901 through 35-1-912~~ *[sections 147 through 151]* to be filed with the secretary of state must instead be filed with the commissioner. The duties required by ~~35-1-912~~ *[section 4]* to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under chapter 2, part 13, of this title."

Section 190. Section 33-3-602, MCA, is amended to read:

"**33-3-602. Conversion to involuntary liquidation.** An insurer may at any time during liquidation under ~~35-1-901, 35-1-902, or 35-1-903~~ *[sections 147 and 148]* apply to the commissioner to have the liquidation continued under his supervision; thereupon, the commissioner shall apply to the court for liquidation under 33-2-1341."

Section 191. Section 33-3-603, MCA, is amended to read:

"**33-3-603. Revocation of voluntary dissolution.** If an insurer revokes the voluntary dissolution proceedings under ~~35-1-907 or 35-1-908~~ *[section 150]*, the insurer shall file a copy of the revocation of voluntary dissolution proceedings with the commissioner."

Section 192. Section 33-31-201, MCA, is amended to read:

"**33-31-201. Establishment of health maintenance organizations.** (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first obtains from the secretary of state a certificate of authority to transact business in this state as a foreign corporation under ~~35-1-1001~~ *[section 162]*.

(2) Each health maintenance organization operating in this state as of October 1, 1987, shall submit an application for a certificate of authority under subsection (3) within 30 days after the effective date of rules adopted by the commissioner and the department of health as provided in 33-31-103. Each such applicant may continue to operate in this state until the commissioner acts upon the application. If an application is denied under 33-31-202, the applicant must be treated as a health maintenance organization whose certificate of authority has been revoked.

(3) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

(a) be verified by an officer or authorized representative of the applicant;

(b) be in a form prescribed by the commissioner;

(c) contain:

(i) the applicant's name;

(ii) the location of the applicant's home office or principal office in the United States (if a foreign person);

(iii) the date of organization or incorporation;

(iv) the form of organization (including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors);

(v) the state or country of domicile; and

(vi) any additional information the commissioner may reasonably require; and

(d) set forth the following information or be accompanied by the following documents, as applicable:

(i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto, certified by the public officer with whom the originals were filed in the state or country of domicile;

(ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody thereof;

(iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation; and the partners or members in the case of a partnership or association;

(iv) a copy of any contract made or to be made between:

(A) any provider and the applicant; or

(B) any person listed in subsection (3)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

(v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

(A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;

(B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter.

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, his successors in office, and his authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;

(ix) a statement reasonably describing the geographic service area or areas to be served, by county, including:

(A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

(x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

(xi) a description of the complaint procedures to be used as required under 33-31-303;

(xii) a description of the procedures and programs to be implemented to meet the quality of health care requirements in 33-31-202;

(xiii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;

(xiv) a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the commissioner in accordance with the filing provisions of 33-31-301(2); however, nothing in this subsection deprives the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract;

(xv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

(xvi) a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

(xvii) evidence that it can meet the requirement of 33-31-216(10); and

(xviii) any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.

(4) Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection (3) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may make reasonable rules exempting from the filing requirements of this subsection those items he considers unnecessary.

(5) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications thereto. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

(6) Each health maintenance organization shall maintain, at its administrative office, and make available to the commissioner upon request executed copies of all provider contracts.

(7) The commissioner may make reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner."

Section 193. Section 35-2-202, MCA, is amended to read:

"**35-2-202. Articles of incorporation — control over bylaws.** (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized;

(d) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;

(e) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

(f) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;

(g) the name and address of each incorporator.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-202(2)(a)(v)~~ *[section 17(2)(d)]*.

(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(4) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling."

Section 194. Section 35-5-201, MCA, is amended to read:

"**35-5-201. Creating instrument — filing — consent of foreign business trust to laws and service of process.** (1) Any business trust desiring to transact business in this state shall file with the secretary of state:

(a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was created and all amendments thereto or a true copy thereof certified to be such by a trustee of the trust before an official authorized to administer oaths or by a public official of another state, territory, or country in whose office an executed copy thereof is on file. The true copy shall be verified within 60 days before it is filed with the secretary of state.

(b) a verified list of the names, residences, and post-office addresses of its trustees;

(c) an affidavit setting forth its assumed business name, if any.

(2) A foreign business trust shall file a verified application in the office of the secretary of state as provided in the case of foreign corporations under ~~35-1-1008~~ *[section 162]* and shall file a copy of its articles, declaration of trust, or trust agreement by which it was created, certified by the secretary of state, in the office of the county clerk of the county where its principal office or place of business in this state will be located. The foreign business trust shall also file, at the same time and in the same office, a certificate certifying that it has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that service of process may be made upon some person, a citizen of this state whose principal place of business is designated in such certificate. Service of process, when made upon such agent, is valid service on the business trust."

Section 195. Section 35-6-104, MCA, is amended to read:

"**35-6-104. Involuntary dissolution — procedure.** (1) On or before April 1, August 1, and September 1 of each year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by causing such list to be posted in the state capitol for a period of at least 90 days and:

(a) by mailing a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) by publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the posting and mailing or publication of notice:

(a) the secretary of state will dissolve such defaulting corporations;

(b) such corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) such corporations will forfeit their rights to carry on business within the state.

(4) After 90 days following posting and mailing or publication of each notice, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and

complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2) of this section.

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation shall be held in trust by the directors of such corporation and ~~35-1-921~~ *[sections 154 through 159]* or 35-2-711, whichever is appropriate, is applicable to liquidate such property and assets if necessary."

Section 196. Section 35-6-201, MCA, is amended to read:

"**35-6-201. Reinstatement of dissolved corporation.** (1) The secretary of state may:

(a) reinstate any corporation which has been dissolved under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state one original and one copy of the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to ~~35-1-921~~ *[sections 154 through 159]* or 35-2-711;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution."

Section 197. Section 35-9-103, MCA, is amended to read:

"**35-9-103. Definition and election of statutory close corporation status.** (1) A statutory close corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation.

(2) A corporation having 25 or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the statement required by subsection (1). The amendment must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert dissenters' rights under ~~35-1-810 and 35-1-812~~ *[sections 133 through 146]*."

Section 198. Section 35-9-201, MCA, is amended to read:

"**35-9-201. Notice of statutory close corporation status on issued shares.** (1) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(2) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (1).

(3) The notice required by this section satisfies all requirements of this chapter and of ~~35-1-617~~ *[section 44]* that notice of share transfer restrictions be given.

(4) A person claiming an interest in shares of a statutory close corporation that has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation that has not complied with the notice requirement of this section is bound by any documents of which he or a person through whom he claims has knowledge or notice.

(5) A corporation shall provide to any shareholder upon his written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incor-

poration, bylaws, or shareholders' or voting trust agreements filed with the corporation."

Section 199. Section 35-9-205, MCA, is amended to read:

"**35-9-205. Compulsory purchase of shares after death of shareholder.** (1) This section and 35-9-206 through 35-9-208 apply to a statutory close corporation only if so provided in its articles of incorporation. If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all but not less than all of the decedent's shares or to be dissolved.

(2) The provisions of 35-9-206 through 35-9-208 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(3) An amendment to the articles of incorporation to provide for application of 35-9-206 through 35-9-208 or to modify or delete the provisions of these sections must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or if none, by all of the incorporators.

(4) A shareholder who votes against an amendment to modify or delete the provisions of 35-9-206 through 35-9-208 is entitled to dissenters' rights under ~~35-1-810 and 35-1-812~~ *[sections 133 through 146]* if the amendment upon adoption terminates or substantially alters his existing rights under these sections to have his shares purchased.

(5) A shareholder may waive his and his estate's rights under 35-9-206 through 35-9-208 by a signed writing.

(6) Sections 35-9-206 through 35-9-208 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy he has independently of 35-9-206 through 35-9-208."

Section 200. Section 35-9-302, MCA, is amended to read:

"**35-9-302. Elimination of board of directors.** (1) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(2) An amendment to articles of incorporation eliminating a board of directors must be approved by:

(a) all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments;

(b) if no shares have been issued, by all the subscribers for shares, if any; or

(c) if there are no subscribers, by all the incorporators.

(3) While a corporation is operating without a board of directors as authorized by subsection (1):

(a) all corporate powers must be exercised by or under the authority of and the business and affairs of the corporation managed under the direction of the shareholders;

(b) unless the articles of incorporation provide otherwise:

(i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

(c) a shareholder is not liable for his act or omission, even though a director would be, unless the shareholder was entitled to vote on the action;

(d) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(e) the shareholders may by resolution appoint one or more shareholders to sign documents as designated directors.

(4) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under ~~35-1-401 or 35-1-515~~ *[section 75]*."

Section 201. Section 35-9-303, MCA, is amended to read:

"**35-9-303. Bylaws.** (1) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by 35-9-301.

(2) If a corporation does not have bylaws when its statutory close corporation status terminates under 35-9-402, the corporation shall immediately adopt bylaws under ~~35-1-214~~ *[section 20]*."

Section 202. Section 35-9-402, MCA, is amended to read:

"**35-9-402. Termination of statutory close corporation status.** (1) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under 35-9-302, the amendment must ~~either comply with 35-1-401 or 35-1-515 or~~ delete the statement dispensing with the board of directors from its articles of incorporation.

(2) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(3) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert dissenters' rights under 35-1-810 and 35-1-812."

Section 203. Section 35-9-404, MCA, is amended to read:

"**35-9-404. Shareholder option to dissolve corporation.** (1) The articles of incorporation of a statutory close corporation may authorize one or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority shall give written notice of the intent to dissolve to all the other shareholders. Thirty-one days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under ~~35-1-911 and 35-1-912~~ *[sections 147 through 151]*.

(2) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change, or delete the authority to dissolve described in subsection (1) must be approved by the holders of all the outstanding shares, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if there are no subscribers, by all the incorporators."

Section 204. Section 35-9-501, MCA, is amended to read:

"**35-9-501. Court action to protect shareholders.** (1) Subject to satisfying the conditions of subsections (3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief described in 35-9-502 through 35-9-504 if:

(a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in his capacity as shareholder, director, or officer of the corporation;

(b) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(c) there exists one or more grounds for judicial dissolution of the corporation under ~~35-1-921~~ *[section 154]*.

(2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, its registered office. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, he may not commence a proceeding under this section with respect to the matters until he has exhausted the nonjudicial remedy.

(4) If a shareholder has dissenters' rights under this chapter or ~~35-1-810 and 35-1-812~~ *[sections 133 through 146]* with respect to proposed corporate actions, he must commence a proceeding under this section before he is required to give notice of his intent to demand payment under ~~35-1-810 or 35-1-812~~ *[sections 133 through 146]* or the proceeding is barred.

(5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under this section and the remedies available under 35-9-502 through 35-9-504 are in addition to any other right or remedy he may have."

Section 205. Section 35-9-504, MCA, is amended to read:

"**35-9-504. Extraordinary relief — dissolution.** (1) The court may dissolve the corporation if it finds:

(a) one or more grounds for judicial dissolution under ~~35-1-921~~ *[section 154]*; or

(b) all other relief ordered by the court under 35-9-502 or 35-9-503 has failed to resolve the matters in dispute.

(2) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits."

Section 206. Section 35-12-1204, MCA, is amended to read:

"**35-12-1204. Distribution of assets.** Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) to creditors, including partners who are creditors (to the extent otherwise permitted by law), in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners pursuant to 35-12-1001 or ~~35-1-1004~~ *35-12-1004*~~.~~*;*

(2) except as otherwise provided in the partnership agreement, to partners and ex-partners in satisfaction of liabilities for distributions pursuant to 35-12-1001 or 35-12-1004; and

(3) except as otherwise provided in the partnership agreement, to partners first for the return of their contributions and second, respecting their partnership interests, in the proportions in which the partners share in distributions."

Section 207. Section 35-15-201, MCA, is amended to read:

"**35-15-201. Incorporation.** (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands setting forth:

(a) the name of the proposed corporation;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry which they intend to prosecute.

(2) In addition to provisions required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-202(2)(a)(v)~~ *[section 17]*.

(3) The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of $20."

Section 208. Section 35-16-202, MCA, is amended to read:

"**35-16-202. Petition for incorporation — contents and filing — bond.** (1) Such persons must prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, such petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is formed;

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which shall not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. Such directors or trustees shall at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for such incorporation or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district and the character of the same and their production, also a consent of the owners to submit the lands to the provisions hereof;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same in either value, acreage, or production.

(2) In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-202(2)(a)(v)~~ *[section 17]*.

(3) Such petition shall be accompanied by a map giving location of the lands sought to be included in such corporation or district, nothing herein to be construed as requiring such lands to be contiguous.

(4) A bond in the sum of $1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation or district, shall be filed with the petition."

Section 209. Section 35-17-202, MCA, is amended to read:

"**35-17-202. Articles of incorporation — contents — filing — articles or copies as prima facie evidence.** (1) Each association formed under this chapter must prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees, which shall not be less than 5 or more than 13, and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed. The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-202(2)(a)(v)~~ *[section 17]*.

(3) The articles must be subscribed by the incorporators and shall be filed in accordance with the provisions of the general corporation law of this state, and when so filed the articles of incorporation or certified copies thereof shall be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of such association."

Section 210. Section 33-17-211, MCA, is amended to read:

"**33-17-211. General qualifications — application for license.** (1) An individual applying for a license shall apply on a form specified by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state;

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which he applies to be licensed and is reasonably familiar with the provisions of this code which govern his operations as an insurance producer; and

(h) if applying for a license as to life or disability insurance:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state.

(2) A person acting as an insurance producer shall obtain a license. A person shall apply for a license on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer responsible for compliance by the person with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued *a certificate of existence under [section 14] or* a certificate of incorporation under ~~35-1-203 or~~ 35-2-203.

(3) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement. The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in its name alone. The fee for the license is the same as that required by 33-2-708 for the license of an insurance producer. The commissioner may, after a hearing with notice to the association, revoke the license if he finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(4) An insurance producer using an assumed business name shall register the name with the commissioner before using it."

Section 211. Section 35-18-203, MCA, is amended to read:

"35-18-203. **Articles of incorporation.** (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed by each of the incorporators, and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who shall constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-202(2)(a)(v)~~ *[section 17]*.

(3) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.

(4) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter."

Section 212. Section 35-20-103, MCA, is amended to read:

"**35-20-103. Document of incorporation — contents — filing.** (1) The chairman and secretary of such meeting shall within 5 days after the holding of the same make a written certificate, which shall state:

(a) the names of the associates who attended such meeting;

(b) the corporate name of the association determined upon by a majority of the persons who met;

(c) the number of persons fixed upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year fixed upon for the annual election of trustees and the manner of their election.

(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-202(2)(a)(v)~~ *[section 17(2)(d)]*.

(3) Such certificate shall be signed by the chairman and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause such certificate so acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge."

Section 213. Section 69-14-501, MCA, is amended to read:

"**69-14-501. Organization of railroad corporation.** (1) The persons named in the articles of incorporation or a majority of them shall be authorized to order books to be opened for receiving subscriptions to the capital stock of the railroad corporation, at such times and at such places as they may deem expedient, after having given at least 30 days' notice in a newspaper of general circulation in this state of the time and place of opening books.

(2) As soon as 5% of the capital stock is subscribed, they may give like notice for the stockholders to meet at such time and place within the state as they may designate for the purpose of electing five or more directors who shall continue in office until the time fixed for the annual election, which time shall be within 6 months from the date when such directors were elected, and until their successors are elected and qualified. At the time and place appointed, directors shall be elected in the manner provided in ~~35-1-506~~ *[sections 77 through 80]*. The candidates for director receiving the highest number of votes shall be declared elected. The persons named in such articles or such of them as may be present shall be inspectors of such election and shall certify what persons are elected directors and specify the time and place for holding their first meeting."

Section 214. Section 80-12-203, MCA, is amended to read:

"**80-12-203. Qualifications of applicants.** (1) To be eligible for a loan approved by the authority for issuance of a bond, an applicant must:

(a) declare his intention to maintain his residence in Montana during the length of the loan;

(b) have been approved by a financial institution; and

(c) have a net worth not to exceed $250,000.

(2) Applications for loans to be approved by the authority for issuance of bonds may be submitted by individuals, partnerships, associations, or joint ventures. All persons involved in the application must meet the requirements of subsection (1). Corporations, as defined in ~~35-1-102~~ *[section 1]*, may not apply."

Section 215. Section 35-1-515, MCA, is amended to read:

"**35-1-515. Control of directors by shareholders.** (1) A provision in the articles of incorporation otherwise prohibited by law because it improperly restricts the board of directors in its management of the business of the corporation or improperly transfers to one or more shareholders or to one or more persons or corporations to be selected by him or them all or any part of such management otherwise within the authority of the board under this chapter shall nevertheless be valid:

(a) if all the incorporators or holders of record of all outstanding shares, whether or not having voting power, have authorized such provision in the articles of incorporation or an amendment thereof; and

(b) if, subsequent to the adoption of such provision, shares are transferred or issued only to persons who had knowledge or notice thereof or consented in writing to such provision.

(2) A provision authorized by subsection (1) is valid only if no shares of the corporation are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association.

(3) Except as provided in subsection (4), an amendment to strike out a provision authorized by subsection (1) shall be authorized at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon or by the holders of such greater proportion of shares as may be required by the articles of incorporation for that purpose.

(4) Alternatively, if a provision authorized by subsection (1) has ceased to be valid under this section, the board may authorize articles of amendment under ~~35-1-209~~ *[section 114]*, eliminating the provision. Such articles shall set forth the event by reason of which the provision ceased to be valid.

(5) The effect of any provision authorized by subsection (1) is to relieve the directors and impose upon the shareholders authorizing the provision or consenting thereto the liability for managerial acts or omissions that is imposed on directors by this chapter to the extent that and so long as the discretion or powers of the board in its management of corporate affairs is controlled by any such provision.

(6) If the articles of incorporation of any corporation contain a provision authorized by subsection (1), the existence of the provision must be noted conspicuously on the face or back of every certificate for shares issued by such corporation."

Section 216. **Repealer.** Sections 35-1-102 through 35-1-108, 35-1-110, 35-1-111, 35-1-201 through 35-1-214, 35-1-301 through 35-1-307, 35-1-401 through 35-1-411, 35-1-413 through 35-1-415, 35-1-501 through 35-1-515, 35-1-601 through 35-1-607, 35-1-609 through 35-1-612, 35-1-617, 35-1-711, 35-1-801, 35-1-803 through 35-1-810, 35-1-812, 35-1-901 through 35-1-912, 35-1-921 through 35-1-927, 35-1-929, 35-1-930, 35-1-1001 through 35-1-1013, 35-1-1015 through 35-1-1020, 35-1-1025, 35-1-1101 through 35-1-1103, 35-1-1201 through 35-1-1205, and 35-1-1301 through 35-1-1306, MCA, are repealed.

Section 217. **Application to existing domestic corporations.** [Sections 1 through 181] apply to all domestic corporations in existence on January 1, 1992, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

Section 218. **Application to qualified foreign corporations.** A foreign corporation authorized to transact business in this state on January 1, 1992, is subject to [sections 1 through 181] but is not required to obtain a new certificate of authority to transact business under [sections 1 through 181].

Section 219. **Saving provisions.** (1) Except as provided in subsection (2), the repeal of a statute by [sections 1 through 181] does not affect:

(a) the operation of the statute or any action taken under it before its repeal;

(b) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(c) any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;

(d) any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of a statute repealed by [sections 1 through 181] is reduced by [sections 1 through 181], the penalty of punishment if not already imposed shall be imposed in accordance with [sections 1 through 181].

Section 220. **Severability.** If any provision of [sections 1 through 181] or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of [sections 1 through 181] that can be given effect without the invalid provision or application, and to this end the provisions of [sections 1 through 181] are severable.

Section 221. **Codification instruction.** (1) [Sections 1 through 181] are intended to be codified as an integral part of Title 35, and the provisions of Title 35 apply to [sections 1 through 181].

(2) Sections 35-1-101, 35-1-109, 35-1-412, 35-1-928, and 35-1-1014 are intended to be renumbered and codified as an integral part of [sections 1 through 181].

Section 222. **Effective date.** [This act] is effective January 1, 1992.

Approved April 6, 1991.

CHAPTER NO. 369

[HB 573]

AN ACT TO CLARIFY THE MOTOR VEHICLE CODE DEFINITION OF "CONVICTION"; AND AMENDING SECTION 61-5-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-213, MCA, is amended to read:

"**61-5-213. Conviction defined.** For the purposes of parts 1 through 3 of this chapter and 61-11-101 and 61-11-102 the term "conviction" shall mean a final conviction, *except that the department shall record a deferred imposition of sentence as a conviction if the underlying offense is a felony.* Also, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction."

Approved April 6, 1991.

CHAPTER NO. 370

[HB 586]

AN ACT ALLOCATING HYDROELECTRIC POWER GENERATION REVENUES DERIVED FROM STATE WATER CONSERVATION PROJECTS TO REPAIR AND REHABILITATE STATE WATER CONSERVATION PROJECTS; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO TRANSFER FUNDS FROM THE STATE WATER PROJECT HYDROELECTRIC POWER GENERATION SPECIAL REVENUE ACCOUNT AND THE BROADWATER REPLACEMENT AND RENEWAL ACCOUNT FOR PAYMENT OF DEBT SERVICE ON WATER PROJECT BONDS; AMENDING SECTIONS 17-7-502 AND 85-1-510, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **State water project hydroelectric power generation special revenue account created — revenues allocated.** (1) There is a state water project hydroelectric power generation special revenue account within the state special revenue fund established in 17-2-102.

(2) Except as provided in the applicable bond resolution, all revenues derived from hydroelectric power generation at state water conservation projects under Title 85, chapter 1, must be paid into this account as received.

(3) The revenues received under this section must be used to repair and rehabilitate state-owned water projects and works and to pay the cost of financing those activities.

(4) The funds deposited in the state water project hydroelectric power generation special revenue account under this section but not appropriated during the biennium and money appropriated from the account but not expended during the biennium for which it is appropriated must remain in the account for future appropriation under this section and may not be appropriated from the account except as authorized under this section.

(5) There is a statutory appropriation pursuant to 17-7-502 to allow the department to transfer available funds from the state water project hydroelectric power generation special revenue account when needed to pay debt

service on state water project bonds, including but not limited to broadwater power project bonds.

(6) There is a statutory appropriation pursuant to 17-7-502 for the department to transfer available funds from the broadwater replacement and renewal account when needed to pay debt service on the broadwater power project bonds.

Section 2. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; ~~and~~ section 13, House Bill No. 861, Laws of 1985*; and [section 1]*.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)*"

Section 3. Section 85-1-510, MCA, is amended to read:

"**85-1-510. Sale of power *and allocation of revenues*.** *(1)* If the operator of a small-scale hydroelectric generation facility under this chapter and a public utility or an electric cooperative are unable to mutually agree to a contract for the sale of electricity or a price for the electricity purchased by the utility or electric cooperative, the public service commission shall require the utility or electric cooperative to purchase the power under rates and terms established as provided in 85-1-511 through 85-1-513.

(2) The revenues derived from hydroelectric power generation under this part must be deposited in the state water project hydroelectric power generation special revenue account created under [section 1]. The funds in the account must be used to repair and rehabilitate state-owned water projects and works and to pay the cost of financing those activities."

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 1, part 2, and the provisions of Title 85, chapter 1, part 2, apply to [section 1].

Section 5. **Effective date.** [This act] is effective July 1, 1991.

Approved April 6, 1991.

CHAPTER NO. 371

[HB 615]

AN ACT PROVIDING FOR ISSUANCE OF A 3-DAY NONRESIDENT SHOOTING PRESERVE BIRD HUNTING STAMP FOR USE ONLY ON A SHOOTING PRESERVE; REVISING THE RESTRICTION ON SHOOTING PRESERVE SEASONS; REVISING SHOOTING PRESERVE HARVEST PROVISIONS; AND AMENDING SECTIONS 87-4-504, 87-4-521, AND 87-4-527, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-504, MCA, is amended to read:

"**87-4-504. Bird license *or stamp* required.** All persons hunting on shooting preserves must have a valid resident or nonresident upland game bird license *or a 3-day nonresident shooting preserve bird hunting stamp issued under [section 4]."*

Section 2. Section 87-4-521, MCA, is amended to read:

"**87-4-521. Duration of season.** ~~In order to give a reasonable opportunity for a fair return on a sizeable investment, the~~ *The* season established for shooting preserves ~~shall be no less than 120 consecutive days, as designated by the department, during~~ *is* the ~~4-month~~ *7-month* period beginning September 1 and ending ~~December~~ *March* 31."

Section 3. Section 87-4-527, MCA, is amended to read:

"87-4-527. **Wild game on preserve.** Any wild game found on shooting preserves may be harvested in accordance with applicable *license,* game, and hunting laws pertaining to open seasons, bag and possession limits, and ~~so forth~~ *rules,* as are established regularly by the department and the U.S. fish and wildlife service."

Section 4. **Three-day nonresident captive-reared bird hunting stamp.** A person who is 12 years of age or older and not a resident, as defined in 87-2-102, may, upon payment of a fee of $20, receive a 3-day nonresident shooting preserve bird hunting stamp that authorizes the holder to pursue, hunt, shoot, and kill game specified under 87-4-522 on a shooting preserve licensed under 87-4-501 for 3 consecutive calendar days as indicated on the license.

Section 5. **Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 87, chapter 2, part 4, and the provisions of Title 87, chapter 2, part 4, apply to [section 4].

Approved April 6, 1991.

CHAPTER NO. 372

[HB 724]

AN ACT PROHIBITING THE USE OF UNPROCESSED TIMBER FROM STATE LANDS AS A SUBSTITUTE FOR UNPROCESSED TIMBER EXPORTED FROM THE UNITED STATES; AND DIRECTING THE AMENDMENT OF RULE 26.6.411, ADMINISTRATIVE RULES OF MONTANA.

WHEREAS, the forest products industry accounts for 46% of the economic base of Montana's seven western counties; and

WHEREAS, the jobs of American mill workers are lost when raw logs are exported overseas; and

WHEREAS, the United States Congress enacted the Forest Resources Conservation and Shortage Relief Act of 1990 to prohibit the export of unprocessed timber originating from federally owned and state-owned lands; and

WHEREAS, the Department of State Lands has promulgated rules prohibiting the export of unprocessed timber originating from state-owned lands in Montana; and

WHEREAS, existing law creates a loophole that allows private landowners in Montana to export unprocessed timber from their own lands and then substitute timber purchased from state lands for the exported supply; and

WHEREAS, the decrease in timber available for export from the states of Oregon and Washington may increase the pressure to export unprocessed timber from private lands in Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. The Department of State Lands shall amend Rule 26.6.411, Administrative Rules of Montana, to read:

"26.6.411 AGREEMENT NOT TO EXPORT STATE LOGS (1) This rule carries out the purposes of section 491 of the Forest Resources Conservation and Shortage Relief Act of 1990 (referred to hereinafter as the Act) which became effective on September 10, 1990 and the definitions stated in that Act are hereby incorporated by reference. The text of the Act may be found on pages H5920 through H5924 of the Congressional Record for July 30, 1990. [proper citation to be added when available] This rule replaces and supercedes any prohibitions imposed by subsection 491(d)(3)(B) of the Act.

(2) Any person purchasing timber from the state of Montana must first have entered into an agreement with the department (referred to hereinafter as a nonexport agreement) containing the following commitments on behalf of the purchaser:

(a) Unprocessed timber, as defined in the Act, originating from lands owned by the state of Montana shall not:

(i) be exported from the United States; ~~or~~

(ii) be sold, traded, exchanged, or otherwise given to any person unless that person agrees not to export such unprocessed timber from the United States and agrees to require such a prohibition in any subsequent resale or other transaction involving such unprocessed timber~~.~~*; or*

(iii) be used in substitution for exported unprocessed timber originating from private lands in Montana;

(b) in the event purchaser violates any of the provisions of the nonexport agreement, the department, after notice and opportunity for a hearing, may:

(i) terminate any timber sale contracts or timber sale permits with that purchaser; and/or

(ii) bar purchaser from entering into any future contracts for the purchase of timber with the state of Montana for a period of up to five (5) years.

(c) For purposes of such nonexport agreement, the *following definitions apply:* ~~term "export"~~

(i) "Export" ~~shall mean~~ *means* either direct or indirect export to a foreign country and occurs on the date that a person enters into a contract or other binding transaction for the export of unprocessed timber or, if that date cannot be established, when unprocessed timber is found in an export

yard or pond, bundled or otherwise prepared for shipment, or aboard an ocean-going vessel. An export yard or pond is an area where sorting and/or bundling of logs for shipment outside the United States is accomplished. Timber is exported indirectly when export occurs as a result of a sale to another person or as a result of any subsequent transaction.

(ii) "Substitution" means the purchase of unprocessed timber originating from state forests as provided in 77-5-101, MCA, to be used as replacement for unprocessed timber from private lands in Montana that is exported by the purchaser. Substitution occurs when a person purchasing timber from the state of Montana has exported unprocessed timber from private lands in the state during the period of one (1) year prior to the purchase date.

(d) The nonexport agreement may be terminated by the purchaser upon the termination of any and all contracts or permits for the purchase of unprocessed timber originating from lands owned by the state of Montana. The nonexport agreement may be terminated by the department upon thirty (30) days notice.

(3) The provisions of such nonexport agreement shall not apply to any contract or permit for the purchase of unprocessed timber from state lands entered into before the effective date of such nonexport agreement.

(4) The prohibitions of such nonexport agreement shall not apply to specific quantities of grades and species of unprocessed timber originating from state lands which the United States secretary of commerce determines by rule to be surplus to the needs of timber manufacturing facilities in the United States as provided in the Act.

(5) The provisions of such nonexport agreement shall be suspended or modified as provided in any order of the president of the United States pursuant to subsections 491 (e), (f), or (i) of the Act."

Approved April 6, 1991.

CHAPTER NO. 373

[HB 726]

AN ACT TO GENERALLY REVISE AND CLARIFY THE UNEMPLOYMENT INSURANCE LAWS; TO DEFINE "TAXES"; TO CLARIFY THE TERM "WAGES"; TO REVISE THE EXCLUSIONS FROM THE DEFINITION OF EMPLOYMENT RELATING TO AGRICULTURAL LABOR AND DOMESTIC SERVICES; TO ALLOCATE WAGES TO PERIODS OF TIME FOR THE PURPOSE OF DETERMINING ELIGIBILITY AND BENEFITS; TO CLARIFY THE AUTHORITY OF THE DEPARTMENT OF LABOR AND INDUSTRY TO AUDIT EMPLOYER RECORDS; TO CLARIFY EMPLOYER LIABILITY FOR TAXES, PENALTIES, AND INTEREST; TO CLARIFY PAYMENT OF BENEFITS TO ALIENS; TO

REVISE APPROVED TRAINING UNDER FEDERAL PROGRAMS THAT IS ALLOWED WHILE A PERSON IS RECEIVING BENEFITS; TO REVISE THE CHARGING AND CLASSIFICATION OF EMPLOYERS; TO PLACE A JUDGMENT LIEN ON THE PERSONAL PROPERTY OF EMPLOYERS WHO OWE UNPAID TAXES, PENALTIES, AND INTEREST; TO PROVIDE FOR A PENALTY FOR MAKING FALSE STATEMENTS IN ORDER TO OBTAIN OR INCREASE BENEFITS; TO REVISE REQUALIFYING WAGES THAT MUST BE EARNED AS A CONDITION OF RECEIVING BENEFITS IN A SECOND BENEFIT YEAR; TO REVISE DISQUALIFICATION FOR BENEFITS FOR LEAVING WORK WITHOUT GOOD CAUSE; TO REPEAL DISQUALIFICATION FOR BENEFITS BECAUSE OF SELF-EMPLOYMENT; AMENDING SECTIONS 39-51-201, 39-51-202, 39-51-203, 39-51-204, 39-51-206, 39-51-602, 39-51-603, 39-51-1101, 39-51-1104, 39-51-1105, 39-51-1110, 39-51-1121, 39-51-1125, 39-51-1212, 39-51-1213, 39-51-1214, 39-51-1217, 39-51-1218, 39-51-1301, 39-51-1302, 39-51-1303, 39-51-1304, 39-51-1305, 39-51-1306, 39-51-2107, 39-51-2110, 39-51-2302, 39-51-2602, 39-51-3201, AND 39-51-3202, MCA; REPEALING SECTION 39-51-2308, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-201, MCA, is amended to read:

"**39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim

pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or had in its employ one or more individuals performing services for it within this state, except as provided under ~~subsections (8) and (9) of 39-51-203~~ *39-51-204(1)(a) and (1)(b)*. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter shall be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(14) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(15) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(16) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(17) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

~~(17)~~*(18)* "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

~~(18)~~*(19)* (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer, if the payment was made under a plan established for the employees in general or for a specific class or classes of employees, to or on behalf of the employee for:

(A) retirement;

(B) sickness or accident disability~~, but in the case of payments made by an employer directly to an employee, only those payments made~~ under a workers' compensation law ~~are excluded from "wages"~~;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

~~(19)~~*(20)* "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

~~(20)~~*(21)* An individual's "weekly benefit amount" means the amount of benefits the individual would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-202, MCA, is amended to read:

"**39-51-202. Employer defined.** "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year equals or exceeds the sum of $1,000;

(2) any agricultural employing unit that pays $20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year;

(3) any domestic employing unit that pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year;

~~(2)~~*(4)* any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

~~(3)~~*(5)* any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

~~(4)~~*(6)* any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

~~(5)~~*(7)* any employing unit which, having become an employer under subsection (1), (2), (3), *(4)*, *(5)*, or ~~(4)~~ *(6)* has not, under 39-51-1101, ceased to be an employer subject to this chapter; or

~~(6)~~*(8)* for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter."

Section 3. Section 39-51-203, MCA, is amended to read:

"**39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the

employing unit for whom such services are performed that the entire service of such individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is considered to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that the individual is an independent contractor.

(5) The term "employment" includes service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed by all individuals, including without limitations those individuals who work for the state of Montana, its universities, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" includes service performed by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, in the employ of an American employer, other than service which is considered employment under the provisions of subsection (2) of this section or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

~~(8) Agricultural labor exempted under 39-51-204 is considered employment whenever the employing unit pays $20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer, including but not limited to an employing unit providing outfitter and guide services, is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:~~

~~(a) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and~~

~~(b) keeps separate books and records to account for the employment of persons in agricultural labor.~~

~~(9) Domestic service exempted under 39-51-204(1)(b) is considered employment whenever the employing unit pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year. If an employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:~~

~~(a) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and~~

~~(b) keeps separate books and records to account for the employment of persons in domestic service.~~"

Section 4. Section 39-51-204, MCA, is amended to read:

"**39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

(a) agricultural labor, except as provided in ~~39-51-203(8);~~ *39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:*

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor;

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in ~~39-51-203(9);~~ *39-51-202(3). If an employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:*

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(ii) keeps separate books and records to account for the employment of persons in domestic service;

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and who has acknowledged in writing that he is not covered by unemployment insurance and workers' compensation and who contracts with a cosmetological establishment as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract shall show the cosmetologist or barber is free from all control and direction of the owner in the contract and in fact; receives payment for services from his or her individual clientele; leases, rents, or furnishes all of his or her own equipment, skills, or knowledge; and whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetological establishment or barbershop shall not be construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(n) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution."

Section 5. Section 39-51-206, MCA, is amended to read:

"**39-51-206. Agricultural labor — who treated as employer of member of a crew furnished by a crew leader.** (1) For the purposes of 39-51-203, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

(a) such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801, et seq.); or

(b) (i) substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

(ii) such individual is not an employee of such other person ~~within the meaning of 39-51-202(1), 39-51-203(8), or 39-51-203(9)~~ *for whom services in agricultural labor are performed.*

(2) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (1):

(a) such other person and not the crew leader shall be treated as the employer of such individual; and

(b) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(3) The term "crew leader" means an individual who:

(a) furnishes individuals to perform service in agricultural labor for any other person;

(b) pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them; and

(c) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person."

Section 6. Section 39-51-602, MCA, is amended to read:

"**39-51-602. Method to be used by department in keeping wage records.** Wage records kept by the department for the purposes of this chapter ~~shall~~ *must* be kept on the basis of wages paid~~.~~*, except that for the purposes of determining benefit eligibility and the amount and duration of benefits payable, wages, including lump-sum payments of accrued wages, must be assigned to periods of time as determined in accordance with rules adopted by the department.*"

Section 7. Section 39-51-603, MCA, is amended to read:

"**39-51-603. Employing unit to keep records and make reports.** (1) Each employing unit shall keep true and accurate work records containing such information as the department may prescribe. Those records shall be open to inspection *and audit* and shall be subject to being copied by the department or its authorized representative at any reasonable time and as often as may be necessary.

(2) The department and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which the department considers necessary to the effective administration of this chapter.

(3) Information thus obtained or obtained from any individual under this chapter shall, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and shall not be published or be open to public inspection, except to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before the board or appeal tribunal shall be supplied with information from the records to the extent necessary for the proper presentation of his claim.

(4) Any employee or member of the department who violates any provision of this section shall be fined not less than $20 or more than $200 or imprisoned for not longer than 90 days or both."

Section 8. Section 39-51-1101, MCA, is amended to read:

"**39-51-1101. Commencement and termination of coverage under chapter.** (1) Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year, except that this subsection shall not apply to an employing unit electing coverage as provided for in 39-51-1102.

(2) Except as otherwise provided in 39-51-1102, an employing unit shall cease to be an employer subject to this chapter only as of January 1 of any calendar year only if it files with the department prior to the last day of February of such year a written application for termination of coverage and the department finds that the total wages payable for employment by said employer in the preceding calendar year did not *equal or* exceed ~~$1,000~~ *the amount of wages required under 39-51-202 to be considered an employer subject to this chapter.* For the purpose of this subsection, the two or more employing units mentioned in ~~subsection (2) or (3) of~~ 39-51-202*(4) or (5)* shall be treated as a single employing unit."

Section 9. Section 39-51-1104, MCA, is amended to read:

"**39-51-1104. Duty and liability of contractor and subcontractor, respectively, in regard to ~~contributions~~ *taxes, penalties, and interest* owed by subcontractor.** (1) Any contractor who is or becomes an employer under the provisions of this chapter who contracts with any subcontractor who also is or becomes an employer under the provisions of this chapter shall withhold sufficient money on the contract to guarantee that all ~~contributions~~ *taxes,* penalties, and interest are paid upon completion of the contract.

(2) It shall be the duty of any subcontractor who is or becomes an employer under the provisions of this chapter to furnish the contractor with a certification issued by the department, prior to final payment for the particular job, stating that said subcontractor is current and in full compliance with the provisions of this chapter.

(3) Failure to comply with the provisions of this section shall render the contractor directly liable for all ~~contributions~~ *taxes*, penalties, and interest due from the subcontractor on the particular job, and the administrator has all of the remedies of collection against the contractor under the provisions of this chapter as though the services in question were performed directly for the contractor."

Section 10. Section 39-51-1105, MCA, is amended to read:

"**39-51-1105. Liability of corporate officers for ~~contributions~~ *taxes, penalties, and interest* owed by corporation.** When a corporation subject to Montana corporate law has failed to file the annual corporation report with the Montana secretary of state as required by law the department shall hold the president, vice-president, secretary, and treasurer jointly and severally liable for any ~~contributions~~ *taxes, penalties, and interest* due for the period in which the corporation is delinquent in filing the annual corporation report. If the required annual corporation report is made and filed after the time specified, such officers may not, on account of prior failure to make report, be held liable for the ~~contributions~~ *taxes, penalties, and interest* thereafter accruing."

Section 11. Section 39-51-1110, MCA, is amended to read:

"**39-51-1110. Refunds to employers.** (1) If not later than 3 years after the date on which any ~~contributions~~ *taxes* or interest thereon became due or not later than 1 year from the date on which payment was made, whichever is later, an employer who has paid such ~~contributions~~ *taxes* or interest thereon shall make application for an adjustment thereof in connection with subsequent ~~contribution~~ *tax* payments or for a refund thereof because such adjustment cannot be made and the department shall determine that such ~~contributions~~ *taxes* or interest or any portion thereof was erroneously collected, the department shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent ~~contribution~~ *tax* payments by him or, if such adjustment cannot be made, the department shall refund said amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the department's own initiative.

(2) If the department shall determine that an employer has paid ~~contributions~~ *taxes* to this state under this chapter when such ~~contributions~~ *taxes* should have been paid to another state under a similar act of such other state, transfer of such ~~contributions~~ *taxes* to such other state shall be made upon discovery or, upon proof of payment that such other state has been fully paid, then refund to such employer shall be made at any time upon application without limitation of time.

(3) In the event that this chapter is not certified by the secretary of labor under section 1603 of the Internal Revenue Code, as amended, 1939, for any year, then and in that event refunds shall be made of all ~~contributions~~ *taxes* required under this chapter from employers for that year."

Section 12. Section 39-51-1301, MCA is amended to read:

"**39-51-1301.** *(Effective July 1, 1991)* **Penalty and interest on past-due ~~contributions~~ *taxes*.** (1) ~~Contributions~~ *Taxes* unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, that are paid by the end of the month following the due date shall be subject to a penalty assessment of $10 or 10% of the ~~contribution~~ *tax* due, whichever is greater. If the ~~contributions~~ *taxes* are not paid by the end of the month following the due date, the employer shall be subject to a penalty assessment of $15 or 15% of the ~~contributions~~ *taxes* due, whichever is greater. All past-due ~~contributions~~ *taxes* shall bear interest at the rate of 18% a year, to be prorated on a daily basis.

(2) A penalty of $40 shall be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay ~~contributions~~ *taxes* on time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.

(3) Interest and penalties collected pursuant to this section shall be paid into the unemployment insurance trust fund.

(4) When failure to pay ~~contributions~~ *taxes* on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due ~~contributions~~ *taxes* must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

Section 13. Section 39-51-1302, MCA, is amended to read:

"**39-51-1302. Summary or jeopardy assessment of unpaid ~~contributions~~ *taxes*.** (1) If any employer fails to file a report or return as required under this chapter or the regulations of the department adopted thereunder within the time specified *or if the employer's records are inaccurate or are incomplete when an employer has already filed a quarterly wage report for the period in question,* the department may make a summary or jeopardy assessment of the amount due by making up such report and determining the amount of ~~contributions~~ *taxes* due and owing to the fund upon the basis of such information as the department may be able to obtain, and thereupon the same shall be collected the same as other reports and ~~contributions~~ *taxes* due, with penalty and interest as provided in this chapter.

(2) Upon making such summary or jeopardy assessment, the department shall immediately notify the employer in writing by personal service

or by certified ~~or registered~~ mail in the usual course at the last known principal place of business operated by the employer. Such assessment shall be final unless the employer shall protest such assessment in writing within 15 days after service of the notice or, within the same period of time, the employer shall file a correct, signed, and sworn report and statement as provided by the chapter and the regulations of the department.

(3) Upon written protest being filed as above set forth, a day certain for the hearing thereof shall be fixed by the department and notice thereof mailed to the employer. At such hearing, the facts ascertained by the department shall be conclusive and the department may upon the basis of such facts ascertained assess the amount due, modify, set aside, or revise the prior assessment and require the employer to pay the amount due with penalty and interest as provided for in this chapter. A copy of the decision of the department and the assessment of the amount due shall be mailed to the employer at his last known principal place of business and thereupon become final."

Section 14. Section 39-51-1303, MCA, is amended to read:

"39-51-1303. Collection of unpaid ~~contributions~~ *taxes* by civil action. (1) If, after due notice, any employer defaults in any payment of ~~contributions~~ *taxes, penalties,* or interest thereon, the department may at its discretion initiate a civil action in the name of the Montana department of labor and industry to collect the amount due, and the employer adjudged in default shall pay the costs of such action.

(2) An action for the collection of ~~contributions~~ *taxes* due must be brought within 5 years after the due date of such ~~contributions~~ *taxes* or it is barred.

(3) The department may pursue its remedy under either this section or 39-51-1304, or both."

Section 15. Section 39-51-1304, MCA, is amended to read:

"39-51-1304. Lien for payment of unpaid ~~contributions and assessments~~ *taxes* — levy and execution. (1) Unpaid ~~contributions and assessments under 39-51-404(4)~~ *taxes,* including penalties and interest assessed thereon, have the effect of a judgment against the employer, arising at the time such payments are due. The department may issue a certificate setting forth the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real *and personal* property of the employer. ~~From the time the judgment is filed with the secretary of state or a registrar of personal property specifically describing the personal property, it becomes a lien upon personal property of the employer.~~ After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment pursuant to Title 25, chapter 13, except that the department may enforce the judgment at any time within 10 years of the creation of the lien.

(2) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all ~~contributions, assessments~~ *taxes*, penalties, and interest due from the grantor have been paid.

(3) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed against the employer under this section or 39-51-1303, or both, to collect the delinquent ~~contributions, assessments~~ *taxes*, penalties, and interest.

(4) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable."

Section 16. Section 39-51-1305, is amended to read:

"**39-51-1305. Priority of payment of ~~contributions~~ *taxes* due under legal dissolutions or distributions.** In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, ~~contributions~~ *taxes* then or thereafter due shall be paid in full prior to all other claims, except taxes and claims for wages of not more than $250 to each claimant earned within 6 months of the commencement of the proceeding."

Section 17. Section 39-51-1306, MCA, is amended to read:

"**39-51-1306. Reciprocity with other states for collection of unpaid ~~contributions~~ *taxes*.** (1) The courts of this state shall recognize and enforce liabilities for unemployment ~~contributions~~ *taxes and any other special assessments* imposed by other states which extend a like comity to this state.

(2) The department is hereby empowered to sue in the courts of any other jurisdiction which extends such comity to collect unemployment ~~contributions~~ *taxes, penalties,* and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state to collect for such ~~contributions~~ *taxes and any other special assessments* and interest and penalties, if any, due such state. In any such case the administrator may through his attorney or attorneys institute and conduct such suit for such other state.

(3) Venue of such proceedings shall be the same as for actions to collect delinquent ~~contributions~~ *taxes*, penalties, and interest due under this chapter.

(4) A certificate by the secretary of any such state under the great seal of such state attesting the authority of such official or officials to collect unemployment insurance ~~contributions~~ *taxes and other special assessments*, penalties, and interest shall be conclusive evidence of such authority."

Section 18. Section 39-51-2110, MCA, is amended to read:

"**39-51-2110. Payment of benefits to aliens.** (1) ~~Effective January 1, 1978, benefits~~ *Benefits* shall not be ~~paid~~ *payable* on the basis of services performed by an alien unless ~~such~~ *the* alien is an individual who ~~has been~~ *was* lawfully admitted for permanent residence *at the time the services were performed, was lawfully present for the purposes of performing the services,* or ~~otherwise is~~ *was* permanently residing in the United States under color of law~~,~~ *at the time the services were performed,* including an alien who ~~is~~ *was* lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence."

Section 19. Section 39-51-2602, MCA, is amended to read:

"**39-51-2602. Approved ~~trade readjustment~~ training *under federal programs.*** (1) Notwithstanding any other provisions of this chapter, no otherwise eligible individual may be denied benefits for any week:

(a) because ~~he is~~ *of participation* in training approved under Section 236(a)(1) of the federal Trade Act of 1974~~;~~ *or under Title III of the federal Job Training Partnership Act;*

(b) ~~in which he is~~ *because of participation* in ~~such~~ approved training *described in subsection (1)(a)* by reason of leaving work to enter ~~such~~ *the* training if the work left is not suitable employment; or

(c) because of the application to any such week in training of provisions in this chapter or any federal unemployment insurance law administered by this agency, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this section, "suitable employment" means work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade

Act of 1974 *and the federal Job Training Partnership Act,* and for which the wages are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal Trade Act of 1974 *and the federal Job Training Partnership Act.*"

Section 20. Section 39-51-1121, MCA, is amended to read:

"**39-51-1121. Definitions.** As used in this part and part 12, the following definitions apply:

(1) "Computation date" means the reporting period ending September 30 preceding the calendar year for which a covered employer's contribution rate is effective.

(2) "Cutoff date" means ~~December 31~~ *October 31* immediately following the computation date. The department may extend the cutoff date in meritorious cases.

(3) "Deficit employer" means an employer who is subject under this chapter and who has established a record of accumulated benefits charged to the employer's account in excess of the employer's accumulated contributions paid as of the cutoff date.

~~(4) "Department" means the department of labor and industry.~~

~~(5)~~*(4)* "Eligible employer" means an employer who has been subject under this chapter for the 3 fiscal years immediately preceding the computation date and who has:

~~(a) filed all contribution reports prescribed by the department;~~

~~(b) paid all contributions and all assessments under 39-51-404(4) and penalties and interest thereon;~~

~~(c)~~*(a)* established a record of accumulated contributions in excess of benefits charged to the employer's account; and

~~(d)~~*(b)* paid wages in at least 1 of the 8 calendar quarters preceding the computation date.

~~(6)~~*(5)* "Fiscal year" means the four consecutive calendar quarters ending on September 30.

~~(7)~~*(6)* "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(7) "New employer" means an employer who:

(a) has not been subject to the provisions of this chapter for the 3 fiscal years immediately preceding the computation date; and

(b) has established a record of accumulated contributions in excess of benefits charged to the employer's account.

(8) "Taxable wage base" means the amount of wages subject to contributions and to assessments under 39-51-404(4) for each calendar year. Payment of contributions and of assessments under 39-51-404(4) may apply only to wages paid up to and including the amount specified in 39-51-1108.

~~(9) "Unrated employer" means an employer who is subject under this chapter and who does not meet all the criteria of an eligible or a deficit employer.~~"

Section 21. Section 39-51-1125, MCA, is amended to read:

"**39-51-1125. Computation of payments in lieu of contributions.** (1) After June 30, 1987, qualified employers electing to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus the state's share of extended benefits paid to individuals based on wages paid by the employing unit. After December 31, 1978, governmental entities shall pay the full amount of extended benefits.

(2) If benefits paid an individual are based on wages paid by both the employer and one or more other employers, the amount payable by any one employer to the fund bears the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all the individual's base period employers.

(3) If the base period wages of an individual include wages from more than one such employer, the amount to be paid into the fund with respect to the benefits paid to the individual shall be prorated among the liable employers in proportion to the wages paid to the individual by each such employer during the base period.

(4) The amount of payment required from employers shall be ascertained by the department monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency shall be assessed such employers as specified in 39-51-1301.

(5) A payment may not be required under this section with respect to benefits paid to an individual if the qualified employer continues to provide employment to the individual with no reduction in hours or wages."

Section 22. Section 39-51-1212, MCA, is amended to read:

"**39-51-1212. Experience rating for governmental entities.** (1) Governmental entities newly covered under this chapter after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977, shall make payments at the median rate.

(2) The rates of governmental entities who have accumulated experience rating credits shall be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods which are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates so fixed using the median that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(3) New governmental entities electing to pay contributions shall be assigned the median rate for the year in which they become subject.

(4) At no time may the minimum rate be less than 0.1% or the maximum rate be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(5) In the event benefit charges exceed contributions paid in the last 2 completed fiscal years, governmental entities' rates will be adjusted by increasing all rates to the next higher schedule.

(6) The computed rate is effective July 1 of each year.

(7) Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's base period. The benefit charged must be based on the percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period.

(8) A payment may not be required under this section with respect to benefits paid to an individual if the governmental employer continues to provide employment to the individual with no reduction in hours or wages."

Section 23. Section 39-51-1213, MCA, is amended to read:

"**39-51-1213. Classification of employers for experience rating purposes.** (1) The department shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year shall be determined on the basis of the employer's record as of October 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below:

(a) Each employer is given an "experience factor" which is contributions paid since October 1, 1981, minus benefits charged on each employer's account since October 1, 1981, divided by the employer's average annual taxable payroll rounded to the next lower dollar amount for the 3 fiscal years immediately preceding the computation date. The computation of the "experience factor" shall be to six decimal places.

(b) Schedules shall be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There shall be listed on such schedules for each employer in addition to the experience factor:

(i) the amount of the employer's taxable payroll for the fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding that employer on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 shall be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite that employer's rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of that employer's taxable payroll are so required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of that employer's taxable payroll is so required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers are included in and assigned the contribution rate specified for such class, notwithstanding the provisions of 39-51-1214.

(5) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules which the employer would have occupied had that employer's taxable payroll amount or experience factor as changed been used in determining that employer's position in the first instance, but such change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years.

(6) ~~Deficit employers~~ *An employer* who ~~have~~ *has* not filed all required payroll reports or paid all ~~contributions~~ *taxes, penalties, and interest* due by the cutoff date must be assigned the maximum contribution rate in effect for the taxable year *for his classification as an eligible, deficit, or new employer.*"

Section 24. Section 39-51-1214, MCA, is amended to read:

"**39-51-1214. Benefit payments chargeable to employer experience rating accounts.** (1) Except for cost reimbursement, benefits paid shall be charged to the account of each of the claimant's base period employers. The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant's base period.

(2) No charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

(a) if paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer or who had been discharged for misconduct in connection with such services;

(b) if paid in accordance with the extended benefit program triggered by either national or state indicators; ~~or~~

(c) if the base period employer continues to provide employment with no reduction in hours or wages~~.~~*; or*

(d) if benefits are paid to claimants who are in training approved under 39-51-2307."

Section 25. Section 39-51-1217, MCA, is amended to read:

"**39-51-1217. Schedule of rates assigned based on trust fund reserve.** (1) The rate schedule for each calendar year is assigned based upon the ratio of the trust fund balance as of ~~December 31~~ *October 31* prior to the rate year to total wages in covered employment for the 12-month period *ending June 30* prior to the computation date.

(2) The ratio at the top of each tax schedule in the tax table shown in 39-51-1218 represents the minimum fund level required for a specific tax schedule to be in effect.

(3) Employer rates are assigned in accord with the rates provided in each schedule for eligible~~, unrated,~~ and deficit employers, based upon their experience as defined in this section.

(4) For the calendar year 1990 and each year thereafter, any employer classified as ~~unrated~~ *a new employer* must be assigned a rate equal to the average rate of contributions paid by employers in the same major industrial classification for the calendar year preceding the computation date, plus an adjustment for the difference between the average tax rate assigned for the previous calendar year and the average rate in effect for the current calendar year. At no time may ~~an unrated~~ *a new* employer be assigned a rate lower than 1%. The computation of the average rate of contributions in a major industrial classification must exclude those employer accounts that are not eligible for the computation of an experience rating solely by reason of insufficient experience. The department shall develop the major industrial classifications for the state and shall annually determine the contribution rate for each classification."

Section 26. Section 39-51-1218, MCA, is amended to read:

“39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES — Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0260)	(.0245)	(.0225)	(.0200)
Average Tax Rate	1.4	1.6	1.8	2.0
Rate Class	**Contribution Rates For Eligible Employers**			
1	0.0%	0.1%	0.3%	0.5%
2	0.1	0.3	0.5	0.7
3	0.3	0.5	0.7	0.9
4	0.5	0.7	0.9	1.1
5	0.7	0.9	1.1	1.3
6	0.9	1.1	1.3	1.5
7	1.1	1.3	1.5	1.7
8	1.3	1.5	1.7	1.9
9	1.5	1.7	1.9	2.1
10	1.7	1.9	2.1	2.3
	~~Contribution Rates For Unrated Employers~~			
	~~2.0%~~	~~2.2%~~	~~2.4%~~	~~2.6%~~
Rate Class	**Contribution Rates For Deficit Employers**			
1	3.2%	3.4%	3.6%	3.8%
2	3.4	3.6	3.8	4.0
3	3.6	3.8	4.0	4.2
4	3.8	4.0	4.2	4.4
5	4.0	4.2	4.4	4.6
6	4.2	4.4	4.6	4.8
7	4.4	4.6	4.8	5.0
8	4.6	4.8	5.0	5.2
9	4.8	5.0	5.2	5.4
10	6.4	6.4	6.4	6.4

SCHEDULES OF CONTRIBUTION RATES — Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
(.0170)	(.0135)	(.0095)	(.0075)	(.0050)	(.....)
2.2	2.4	2.6	2.8	3.0	3.2
Contribution Rates For Eligible Employers					
0.7%	0.9%	1.1%	1.3%	1.5%	1.7%
0.9	1.1	1.3	1.5	1.7	1.9
1.1	1.3	1.5	1.7	1.9	2.1
1.3	1.5	1.7	1.9	2.1	2.3
1.5	1.7	1.9	2.1	2.3	2.5
1.7	1.9	2.1	2.3	2.5	2.7

1.9	2.1	2.3	2.5	2.7	2.9
2.1	2.3	2.5	2.7	2.9	3.1
2.3	2.5	2.7	2.9	3.1	3.3
2.5	2.7	2.9	3.1	3.3	3.5

~~Contribution Rates For Unrated Employers~~

~~2.8%~~	~~3.0%~~	~~3.2%~~	~~3.4%~~	~~3.6%~~	~~3.8%~~

Contribution Rates For Deficit Employers

4.0%	4.2%	4.4%	4.6%	4.8%	5.0%
4.2	4.4	4.6	4.8	5.0	5.2
4.4	4.6	4.8	5.0	5.2	5.4
4.6	4.8	5.0	5.2	5.4	5.6
4.8	5.0	5.2	5.4	5.6	5.8
5.0	5.2	5.4	5.6	5.8	6.0
5.2	5.4	5.6	5.8	6.0	6.2
5.4	5.6	5.8	6.0	6.2	6.4
5.6	5.8	6.0	6.2	6.4	6.4
6.4	6.4	6.4	6.4	6.4	6.4"

Section 27. Section 39-51-3201, MCA, is amended to read:

"**39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy.** *(1)* A person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or territory or the federal government, either for himself or for any other person, is:

~~(1)~~*(a)* disqualified for benefits thereafter for a period of not more than 52 weeks, beginning with the first compensable week following the date of such determination by the department, the length of time of the disqualification as herein described to be determined by the department in accordance with the severity of each case; and

~~(2)~~*(b)* required to repay to the department, either directly or as authorized by the department, by offset of future benefits to which he may be entitled, or by a combination of both such methods, a sum equal to the amount wrongfully received by him, plus ~~interest at the rate of 18% a year computed from the time the false statement or representation or the failure to disclose a material fact occurred, except that future benefits may not be used to offset the interest due.~~ *the department may assess a penalty not to exceed 100% of the fraudulently obtained benefits, except that future benefits may not be used to offset the penalty due.* However, he is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the department's determination that he made false statements, willful nondisclosure, or misrepresentation.

(2) All money accruing from the penalty under subsection (1)(b) must be deposited in the federal special revenue account. Money deposited in that

account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year."

Section 28. Section 39-51-3202, MCA, is amended to read:

"**39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — criminal penalty.** (1) A person who, in order to obtain or increase for personal gain or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 45-7-203, and the department may cause criminal proceedings to be initiated against the person.

(2) A person will be required to repay to the department an amount as determined by 39-51-3201~~(2)~~*(1)(b)*.

(3) For purposes of this section, restitution awarded under this section must include a sum equal to the amount wrongfully received, plus ~~18% interest a year,~~ *the department may assess a penalty not to exceed 100% of the amount wrongfully received.* ~~notwithstanding the provisions of 25-9-205.~~ *All money accruing from the penalty must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.*"

Section 29. Section 39-51-2107, MCA, is amended to read:

"**39-51-2107. Services for remuneration to be performed during benefit year as condition for receiving benefits in second benefit year — amount required.** An individual who received benefits during a benefit year must perform services for remuneration ~~after the beginning of that year~~ *following the initial separation from employment in the previous benefit year* as a condition for receiving benefits in a second benefit year. ~~The service may be in either covered or noncovered employment.~~ *The service must constitute employment as defined in 39-51-203 and 39-51-204.* However, the individual must have earned the lesser of three-thirteenths of his high quarter of his second benefit year or 6 times his weekly benefit amount of that same year."

Section 30. Section 39-51-2302, MCA, is amended to read:

"**39-51-2302. Disqualification for leaving work without good cause.** (1) An individual shall be disqualified for benefits if he has left work without good cause attributable to his employment.

(2) He may not be disqualified if the department finds that he left his employment because of personal illness or injury not associated with misconduct ~~or left his employment~~ upon the advice of a licensed and practicing physician and, after recovering from his illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular or comparable suitable work was not available, if so found by the department, provided he is otherwise eligible.

(3) To requalify for benefits, an individual must perform services other than self-employment for which remuneration is received equal to or in excess of six times his weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless he has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of his enrollment."

Section 31. **Repealer.** Section 39-51-2308, MCA, is repealed.

Section 32. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 33. **Effective date.** [This act] is effective July 1, 1991.

Approved April 6, 1991.

CHAPTER NO. 374

[HB 732]

AN ACT REQUIRING SECURED LOADS ON VEHICLES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Securing of load — requirement.** A person operating a loaded vehicle on a public highway for the purpose of transporting solid waste as defined in 75-10-203, except a commercial motor vehicle or a vehicle transporting unprocessed agricultural products, shall attach, cover, or otherwise secure the load sufficiently to prevent littering or creating an obstruction dangerous to the public traveling on the highway.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [section 1].

Approved April 6, 1991.

CHAPTER NO. 375

[HB 742]

AN ACT REVISING THE LAW REGARDING BOAT DEALERS; REQUIRING A DEALER TO HAVE A PRINCIPAL PLACE OF BUSINESS AND PROVIDING FOR SIGNING AND INSPECTION OF THE PREMISES; REQUIRING AN ANNUAL BOND FOR A BOAT DEALER; EXTENDING THE PERIOD FROM TIME OF PURCHASE TO TIME OF LICENSING A BOAT AND ALLOWING ISSUANCE OF A TEMPORARY BOAT STICKER; AMENDING SECTIONS 23-2-510, 23-2-511, AND 23-2-513, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-510, MCA, is amended to read:

"**23-2-510. Transfer of interest.** (1) Except as provided in subsection (3), upon a transfer of a certificate of ownership to a motorboat or sailboat 12 feet in length or longer registered as required under the provisions of this part, the person whose title or interest is to be transferred shall sign the certificate of ownership issued for the motorboat or sailboat in the appropriate space provided on the reverse side of the certificate, and the signature must be acknowledged before the county treasurer, a deputy county treasurer, or a notary public.

(2) Within ~~20~~ *30* calendar days after endorsement, the transferee shall make application for transfer of the certificate of ownership with the county treasurer of the county in which the transferee resides and also make application for registration of the motorboat or sailboat. The county treasurer shall forward the application to the department of justice, which shall file the application upon receipt. A certificate of ownership may not be issued by the department until any outstanding certificate is surrendered to the department or its loss is established to the department's reasonable satisfaction. The county treasurer shall collect a fee of $5 for each application for transfer of ownership, of which $3.50 must be forwarded to the department of justice for deposit in the general fund.

(3) A purchaser of a new or used motorboat or sailboat 12 feet in length or longer from a licensed dealer has a grace period of ~~20~~ *30* calendar days from the date of purchase to register the motorboat or sailboat, make application for a certificate of ownership, and obtain a decal indicating that the fee in lieu of property tax has been paid on the vessel for the current year. It is not a violation of this part or any other law for the purchaser to operate a newly acquired motorboat or sailboat 12 feet in length or longer without a certificate of ownership, certificate of registration, and decal during the ~~20-day~~ *30-day* grace period. During this period the sticker provided for in subsection (4) must remain affixed to the motorboat or sailboat.

(4) Prior to the delivery of a motorboat or sailboat 12 feet in length or longer to the purchaser, the dealer shall issue and affix to a motorboat or

sailboat constructed after October 31, 1972, a sticker as prescribed by the department of justice. The sticker must contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the motorboat or sailboat, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the department of justice.

(5) A purchaser of a new or used motorboat or sailboat who is unable to record a transfer of ownership with the county treasurer at the time he makes application for registration of the motorboat or sailboat because the certificate of ownership is lost, in the possession of third parties, or in the process of reissuance in this state or elsewhere may, upon making affidavit to that effect upon a form prescribed by the department of justice and upon the payment of the applicable fee in lieu of tax plus a fee of $2 to be collected by the county treasurer and remitted to the department of justice, obtain from the county treasurer of the county in which the boat is to be registered a temporary boat sticker of a size, color, and design as the department of justice may prescribe, to be validated by the county treasurer for a period of 60 days from the date of issuance. The purchaser, upon displaying the sticker conspicuously on the motorboat or sailboat, may operate the motorboat or sailboat during the period for which the boat sticker has been validated without displaying the numbers and license decal for the current year. The county treasurer may not sell, and a person may not purchase, more than one 60-day temporary boat sticker for any motorboat or sailboat, the ownership of which has not changed since the issuance of the previous 60-day boat sticker.

~~(5)~~*(6)* The provisions of subsection (2) do not apply in the event of the transfer of a motorboat or sailboat 12 feet in length or longer to a duly licensed dealer intending to resell the motorboat or sailboat and who operates it only for demonstration purposes, but every dealer, upon transferring his interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The department of justice, upon receipt of the certificate of ownership and application for a new certificate containing notice of a security interest, if any, shall issue a new certificate of ownership, together with a statement of any conditional sales contract, mortgage, or other lien.

~~(6)~~*(7)* When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

~~(7)~~*(8)* The provisions of 61-3-201(3) through (7) that apply to motor vehicles also apply to any certificate of ownership transferred under this section."

Section 2. Section 23-2-511, MCA, is amended to read:

"**23-2-511. Operation of unnumbered motorboats prohibited — display of decals.** (1) Every motorboat on the waters of this state, propelled by a motor or an engine of any description, must be properly numbered and display valid license decals. No person may operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered and displays valid license decals in accordance with this part, with applicable federal law, or with a federally approved numbering system of another state and unless:

(a) the certificate of number assigned to the motorboat is in full force and effect;

(b) the identifying number set forth in the certificate of number and the valid license decals are displayed on such motorboat; and

(c) a temporary permit has been obtained from the county in which the boat is being operated if that county requires a temporary permit for out-of-state motorboats, as provided in 7-16-2121.

(2) Upon transfer of ownership of a motorboat from a registered boat dealer or manufacturer, the transferred motorboat may be operated on the waters of this state for ~~20~~ *30* consecutive calendar days immediately following the transfer of ownership without displaying the numbers and license decal required by subsection (1) provided that when the motorboat is operated during those ~~20~~ *30* consecutive calendar days, a bill of sale or other evidence of transfer reciting the date of the transfer of ownership is retained in the motorboat and is exhibited to a warden or other officer upon request."

Section 3. Section 23-2-513, MCA, is amended to read:

"**23-2-513. Dealer's identification number** ***— premises — inspection — bond — judgment.*** (1) A dealer or manufacturer may apply directly to the department of justice for one identifying number and one or more certificates of number. A dealer's or manufacturer's identifying number shall be displayed on his boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer or manufacturer.

(2) The application for a dealer's or manufacturer's identifying number must include his name and business address. Each dealer or manufacturer will have one identifying number assigned to his business.

(3) An application for dealer's or manufacturer's identifying number and certificate of number must be accompanied by the following fees:

(a) for the identifying number, first certificate of number, and set of license decals, $5;

(b) for each additional certificate of number and set of license decals applied for in any application, $2.

(4) The department of justice shall issue certificates of number for the identifying numbers assigned to a dealer or manufacturer in the same manner as provided in 23-2-512(1) and (9), as amended, except that no boat may be described in the certificate and each certificate must state that the

identifying number has been assigned to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on December 31 of the year for which it is issued.

(5) A dealer's or manufacturer's identifying number shall be displayed in the same manner as provided in 23-2-512(9), as amended, except that the number may be temporarily attached. The last three letters shall be "DLR" for dealer and "MFR" for manufacturer. These letters shall be included, respectively, in dealer or manufacturer identification numbers only.

(6) No person other than a dealer or manufacturer or an employee of a dealer or manufacturer may display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(7) No dealer or manufacturer or employee of a dealer or manufacturer may use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (1) of this section.

(8) A dealer shall maintain a principal place of business, coinciding with the business address listed on the application, where he maintains all business records and where he displays, sells, and services merchandise. The dealer shall display a sign at the place of business that clearly states the name of the business. The premises of the dealer's principal place of business must be inspected by an official of the department of justice to assure compliance with this section.

(9) In order to qualify for renewal of a boat dealer's license, the dealer shall certify to the department of justice upon application for renewal that he sold five or more boats during the previous license year. If five or more boats were not sold, an additional fee of $50 is required for renewal of the dealer's license.

(10) (a) The applicant for a boat dealer's license shall file with his application a bond of $5,000. The bond must be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department of justice and filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage due to the unlawful conduct of a dealer licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required."

Approved April 6, 1991.

CHAPTER NO. 376

[HB 749]

AN ACT CLARIFYING THE LAWS RELATING TO THE OPERATIONS OF THE HARD-ROCK MINING IMPACT BOARD; MODIFYING PROVISIONS REGARDING THE TRANSFER OF FUNDS FROM THE HARD-ROCK MINING IMPACT TRUST ACCOUNT TO COUNTIES; AMENDING SECTIONS 90-6-305 AND 90-6-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-305, MCA, is amended to read:

"**90-6-305. Hard-rock mining impact board — general powers.** (1) The board may:

(a) retain professional staff, *including its administrative staff, and retain* consultants~~,~~ and advisors notwithstanding the provisions of 2-15-121;

(b) adopt rules governing its proceedings, determinations, and administration of this part;

(c) award grants to local government units subject to 90-6-306;

(d) make payments to local government units from money paid to the hard-rock mining impact account as provided in 90-6-307;

(e) make determinations as provided in 90-6-307, *90-6-311, and 90-6-403(3)*; and

(f) accept grants and other funds to be used in carrying out this part.

(2) The provisions of the Montana Administrative Procedure Act apply to the proceedings and determinations of the board."

Section 2. Section 90-6-331, MCA, is amended to read:

"**90-6-331. Fund transfer.** (1) On July 1, 1990, and ~~on~~ *prior to* each ~~July~~ *October* 1 thereafter, all ~~funds remaining~~ *money segregated by county* in the hard-rock mining impact trust account established in 90-6-304(2) ~~after~~ *as of* ~~June 30~~ *September 1* immediately preceding must be transferred to the county for which the funds have been held in deposit. The funds so transferred must be deposited in the county hard-rock mine trust reserve account established in 7-6-2225.

(2) The transfer of funds required by this section is a statutory appropriation pursuant to 17-7-502."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 6, 1991.

CHAPTER NO. 377

[HB 881]

AN ACT REVISING THE LAWS RELATING TO CERTIFICATION OF EMERGENCY MEDICAL TECHNICIANS; AUTHORIZING THE BOARD OF MEDICAL EXAMINERS TO ADOPT RULES ESTABLISHING VARIOUS LEVELS OF EMERGENCY MEDICAL TECHNICIAN CERTIFICATION AND PRESCRIBING THE TRAINING AND CERTIFICATION REQUIREMENTS FOR EACH LEVEL, AS WELL AS THE TYPES OF EMERGENCY MEDICAL SERVICES EACH MAY PERFORM; AMENDING SECTIONS 50-6-202, 50-6-203, AND 50-6-207, MCA; REPEALING SECTIONS 50-6-204 AND 50-6-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 2] gives the board of medical examiners authority to adopt rules specifying various certification levels for emergency medical technicians and requires the board to establish training, certification, and performance requirements for each level of certification. It is the intent of the legislature that the board define several certification levels for emergency medical technicians, which will differ in the amount of training required and in the acts allowed to be performed. It is also intended that the board specify the training needed by each level, the acts and procedures each level is allowed to perform, the standards that must be met to be certified and recertified at each level, and procedural requirements necessary to enforce and implement certification and training.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-6-202, MCA, is amended to read:

"**50-6-202. Definitions.** As used in this part, the following definitions apply:

(1) "Emergency medical technician~~—basic~~" means ~~personnel of volunteer or nonvolunteer police, fire, rescue, ambulance, or emergency services~~ *a person* who ~~have~~ *has* been specially trained in emergency care in a training program approved by the state board of medical examiners and certified by ~~said~~ *the* board as having demonstrated a level of competence suitable to treat victims of injury or other emergent condition.

~~(2) "Emergency medical technician—advanced" means personnel of volunteer or nonvolunteer police, fire, rescue, ambulance, or emergency services who have been specially trained in an advanced emergency medical technician training program approved by the state board of medical examiners and certified by the board as having demonstrated an advanced level of competence suitable to treat victims of severe injury or other serious emergent condition.~~

~~(3)~~*(2)* "Board" means the board of medical examiners, department of commerce."

Section 2. Section 50-6-203, MCA, is amended to read:

"**50-6-203. Rules.** *(1)* The board, after consultation with the department of health and environmental sciences, the department of justice, and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this part, including but not limited to training and certification of ~~personnel,~~ *emergency medical technicians and* administration of drugs~~, and other acts as allowed herein~~.

(2) The board may, by rule, establish various levels of emergency medical technician certification and shall specify for each level the training requirements, acts allowed, recertification requirements, and any other requirements regarding the training, performance, or certification of that level of emergency medical technician that it considers necessary or desirable."

Section 3. Section 50-6-207, MCA, is amended to read:

"**50-6-207. Construction.** Nothing in this part shall be construed to detract from the powers granted to the department of health and environmental sciences to regulate ~~ambulance service as~~ *emergency medical services* provided for in part 3 of this chapter."

Section 4. **Repealer.** Sections 50-6-204 and 50-6-205, MCA, are repealed.

Section 5. **Effective date.** [Section 2] is effective on passage and approval.

Approved April 6, 1991.

CHAPTER NO. 378

[HB 897]

AN ACT CONSOLIDATING STATE RECORDS MANAGEMENT IN THE OFFICE OF THE SECRETARY OF STATE; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP STANDARDS FOR COMPUTER AND TELECOMMUNICATIONS SYSTEMS;

AMENDING SECTIONS 2-6-203, 2-6-206, 2-6-211, 2-6-213, 2-6-302, 2-6-304, AND 2-15-1013, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-203, MCA, is amended to read:

"**2-6-203.** ~~**Department of administration's**~~ ***Secretary of state's*** **powers and duties.** (1) In order to insure the proper management and safeguarding of public records, the ~~department of administration~~ *secretary of state* shall undertake the following:

(a) establish guidelines for inventorying, cataloging, retaining, and transferring all public records of state agencies;

(b) review and analyze all state agency filing systems and procedures and approve filing system equipment requests;

(c) establish and operate the state records center, as authorized by appropriation, for the purpose of storing and servicing public records not retained in office space;

(d) gather and disseminate information on all phases of records management, including current practices, methods, procedures, and devices for the efficient and economical management of records;

(e) operate a central microfilm unit which will microfilm, on a cost recovery basis, all records approved for filming by the office of origin and the ~~department of administration~~ *secretary of state*; and

(f) approve microfilming projects and microfilm equipment purchases undertaken by all state agencies.

(2) Upon request, the ~~department~~ *secretary of state* shall assist and advise in the establishment of records management procedures in the legislative and judicial branches of state government and shall, as required by them, provide services similar to those available to the executive branch."

Section 2. Section 2-6-206, MCA, is amended to read:

"**2-6-206. Protection of essential records.** (1) In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the executive branch shall designate certain public records as essential records needed for an emergency or for the reestablishment of normal operations after any such emergency. A list of such records shall be forwarded to the ~~department of administration~~ *secretary of state.* The list shall be reviewed from time to time by the elected or appointed officers to insure its accuracy. Any changes or revisions shall be forwarded to the ~~department~~ *secretary of state.*

(2) Each elected and appointed officer of state government shall insure that the security of essential records is accomplished by the most econom-

ical means possible. Protection of essential records may be by vaulting, planned or natural dispersal of copies, storage in the state archives, or any other method approved by the ~~department~~ *secretary of state.*

(3) Reproductions of essential records may be by photocopy, magnetic tape, microfilm, or other methods approved by the ~~department~~ *secretary of state.*"

Section 3. Section 2-6-211, MCA, is amended to read:

"**2-6-211. Transfer of public records.** (1) All public records not required in the current operation of the office where they are made or kept and all records of each agency, commission, committee, or any other activity of the executive branch of state government which may be abolished or discontinued shall be, in accordance with approved records retention schedules, either transferred to the state records center or transferred to the custody of the state archives if such records are considered to have permanent administrative or historical value.

(2) When records are transferred to the state records center, the agency so doing loses none of its rights of control and access. The state records center is only a custodian of the agency records, and access will only be by agency approval. Agency records for which the state records center acts as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency to which the records belong. Fees may be charged to cover the cost of records storage and servicing.

(3) If an agency does not wish to transfer records as provided in an approved retention schedule, the agency shall, within 30 days, notify the ~~department of administration~~ *secretary of state* and request a change in the schedule."

Section 4. Section 2-6-213, MCA, is amended to read:

"**2-6-213. Agency responsibilities and transfer schedules.** Each executive branch agency of state government shall administer its records management function and shall:

(1) coordinate all aspects of the agency records management function;

(2) manage the inventorying of all public records within the agency for disposition, scheduling, and transfer action in accordance with procedures prescribed by the ~~department of administration~~ *secretary of state* and the state records committee;

(3) analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the ~~department of administration~~ *secretary of state* and the state records committee minimal retentions for all copies of public records within the agency;

(4) approve all records disposal requests which are submitted by the agency to the state records committee; and

(5) review established records retention schedules to insure that they are complete and current."

Section 5. Section 2-6-302, MCA, is amended to read:

"**2-6-302. Official records management — powers and duties.** In order to insure the proper management and safeguarding of official records, the Montana historical society shall:

(1) establish and operate the state archives as authorized by appropriation for the purpose of storing and servicing official records transferred to the custody of the state archives;

(2) in cooperation with the ~~department of administration~~ *secretary of state* and the state records committee provided for in 2-15-1013 establish guidelines for the inventorying, cataloging, retention, and transfer of all official records;

(3) maintain and enforce restrictions on access to official records in the custody of the state archives in accordance with the provisions of this part;

(4) provide adequate housing and care of official records in the custody of the state archives to insure their proper preservation and use by the public;

(5) in accordance with the guidelines established pursuant to subsection (2), remove and destroy duplicate official records and official records of insignificant historical value from the records deposited in the state archives."

Section 6. Section 2-6-304, MCA, is amended to read:

"**2-6-304. Outgoing officials — records management duties.** (1) Within 2 years after the completion of the final term of office of a constitutionally designated and elected official of the executive branch of government, all of the official records not necessary to the current operation of that office shall be subject to storage, disposal, or transfer in accordance with the provisions of this part.

(2) All official records of a retiring constitutionally designated and elected official not necessary to the current operation of that office and considered worthy of preservation by the Montana historical society shall be transferred to the custody of the state archives within that 2-year period.

(3) An outgoing official, in consultation with staff members of the Montana historical society, shall review his official records and isolate any items of a purely personal nature. Such personal papers are not subject to this part, but they may be deposited with the official papers at the official's discretion.

(4) An outgoing official, in consultation with staff members of the Montana historical society, may restrict access to certain segments of his official records. No restrictions may be longer than the lifetime of the depositing official. Restricted access may be imposed only to protect the

confidentiality of personal information contained in the records. Restricted access may not be imposed unless the demand of individual privacy clearly exceeds the merits of public disclosure.

(5) Any question concerning the transfer or other status of official records arising between the state archives and an elected official's office shall be decided by a ~~three-fourths~~ *four-fifths* vote of the members of the state records committee."

Section 7. Section 2-15-1013, MCA, is amended to read:

"**2-15-1013. Records committee — composition and meetings.** (1) There is a committee to be known as the state records committee composed of representatives of:

(a) the department of administration;

(b) the legislative auditor;

(c) the attorney general;

(d) the secretary of state; and

(e) the Montana historical society.

(2) The representatives are to be designated by the head of the respective agencies, and their appointments shall be submitted in writing to the ~~director of the department of administration~~ *secretary of state.*

(3) The committee shall meet at least quarterly.

(4) Committee members shall serve without additional salary but are entitled to reimbursement for travel expense incurred while engaged in committee activities as provided for in 2-18-501 through 2-18-503. Such expenses shall be paid from the appropriations made for operation of their respective agencies."

Section 8. **Department of administration — powers and duties.** (1) In order to ensure compatibility with the computer and telecommunications systems of state government, the department of administration shall develop standards for technological compatibility for state agencies for records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods.

(2) The department of administration shall approve all acquisitions of executive agency records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods to ensure compatibility with the standards developed under subsection (1).

(3) The department of administration is responsible for the management and operation of equipment, systems, facilities, or processes integral to the department's central computer and telecommunications systems.

Section 9. **Codification instruction.** [Section 8] is intended to be codified as an integral part of Title 2, chapter 6, part 2, and the provisions of Title 2, chapter 6, part 2, apply to [section 8].

Section 10. **Effective date.** [This act] is effective July 1, 1991.

Approved April 6, 1991.

CHAPTER NO. 379

[HB 915]

AN ACT TO AMEND THE UNIFORM CRIMINAL EXTRADITION ACT TO APPLY TO INDIAN RESERVATIONS WITHIN THE STATE OF MONTANA; AMENDING SECTIONS 46-30-101 AND 46-30-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-30-101, MCA, is amended to read:

"**46-30-101. Definitions.** Where appearing in this chapter, the term:

(1) "governor" includes any person performing the functions of governor by authority of the law of this state;

(2) "executive authority" includes the governor and any person performing the functions of governor in a state other than this state *or the chairman of a recognized Indian tribe within the state of Montana*;

(3) "state", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America *or an Indian reservation within the state of Montana*."

Section 2. Section 46-30-301, MCA, is amended to read:

"**46-30-301. Arrest of accused without warrant.** The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term ~~exceeding~~ *of* 1 year *or more*. When ~~so~~ arrested *under this section*, the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in 46-30-227. ~~Thereafter~~ *After the complaint is made*, his answer ~~shall~~ *must* be heard as if he had been arrested on a warrant."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 6, 1991.

CHAPTER NO. 380

[HB 962]

AN ACT TO CLARIFY ELEMENTARY AND HIGH SCHOOL TUITION STATUTES; AMENDING SECTIONS 20-5-305 AND 20-5-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-305, MCA, is amended to read:

"**20-5-305. Elementary tuition rates.** (1) Whenever a pupil of an elementary district has been granted approval to attend a school outside of the district in which he resides, under the provisions of 20-5-301 or 20-5-302, the district of residence shall pay tuition to the elementary district where the pupil attends school. Except as provided in subsection (2), the basis of the rate of tuition shall be determined by the attended district. The rate of tuition must be determined *on March 15* by:

(a) totaling the ~~actual~~ *previous school fiscal year's* expenditures from the district general fund, the debt service fund, and, if the pupil is a resident of another county, the retirement fund;

(b) dividing the amount determined in subsection (1)(a) by the ~~ANB~~ *October 1 enrollment* of the district for the ~~current~~ *previous school* fiscal year, as ~~determined under the provisions of 20-9-311~~ *reported to the office of public instruction for purposes of accreditation pursuant to 20-7-102 and 20-9-344*; and

(c) subtracting from the amount determined in subsection (1)(b) the per-ANB amount allowed by the foundation program schedules and the per-ANB amount ~~of guaranteed tax base aid as provided in 20-9-366 through 20-9-369~~ *that is the ANB value per mill calculated pursuant to 20-9-366, multiplied by the number of permissive and retirement mills levied.*

(2) The tuition for a full-time elementary special education pupil must be determined under rules adopted by the superintendent of public instruction for the calculation of elementary tuition for full-time elementary special education pupils as designated in 20-9-311 for funding purposes."

Section 2. Section 20-5-312, MCA, is amended to read:

"**20-5-312. Reporting, budgeting, and payment for high school tuition.** (1) Except as provided in subsection (2), ~~at the close of the school term of each school fiscal year~~ *on March 15*, the trustees of each high school district shall determine the rate of tuition for the current school fiscal year by:

(a) totaling the ~~actual~~ *previous school fiscal year's* expenditures from the district general fund, the debt service fund, and, if the pupil is a resident of another county, the retirement fund;

(b) dividing the amount determined in subsection (1)(a) above by the ~~ANB~~ *October 1 enrollment* of the district *for the previous school fiscal year,* as ~~determined under the provisions of 20-9-311~~ *reported to the office of public instruction for purposes of accreditation pursuant to 20-7-102 and 20-9-344*; and

(c) subtracting from the amount determined in subsection (1)(b) the per-ANB amount allowed by the foundation program schedules and the per-ANB amount ~~of guaranteed tax base aid as provided in 20-9-366 through 20-9-369~~ *that is the ANB value per mill calculated pursuant to 20-9-366, multiplied by the number of permissive and retirement mills levied.*

(2) The tuition for a full-time high school special education pupil must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for full-time high school special education pupils as designated in 20-9-311 for funding purposes.

(3) Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:

(a) the names, addresses, and resident districts of the pupils attending the schools of the district under an approved tuition agreement;

(b) the number of days of school attended by each pupil;

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, have the authority to waive; and

(d) the rate of current school fiscal year tuition, as determined under the provisions of this section.

(4) When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the superintendent of each district in which the reported pupils reside.

(5) When the district superintendent receives a tuition report or reports for high school pupils residing in his district and attending an out-of-district high school under approved tuition agreements, he shall determine the total amount of tuition due the out-of-district high schools on the basis of the following per-pupil schedule: the rate of tuition, number of pupils attending under an approved tuition agreement, and other information provided by each high school district where resident district pupils have attended school.

(6) The total amount of the high school tuition, with consideration of any tuition waivers, for pupils attending a high school outside the county of residence must be financed by the county basic special tax for high schools as provided in 20-9-334. In December, the county superintendent shall cause the payment by county warrant of at least one-half of the high school tuition obligations established under this section out of the first money realized from the county basic special tax for high schools. The remaining obligations must be paid by June 15 of the school fiscal year. The payments

must be made to the county treasurer of the county where each high school entitled to tuition is located. The county treasurer shall credit tuition receipts to the general fund of the applicable high school district, and the tuition receipts must be used in accordance with the provisions of 20-9-141.

(7) For pupils attending a high school outside their district of residence but within the county of residence, the total amount of the tuition, with consideration of any tuition waivers, must be paid during the ensuing school fiscal year. The trustees of the sending high school district shall include the tuition amount in the tuition fund of the preliminary and final budgets. This budgeted tuition amount is not subject to the budget adjustment provisions of 20-9-132. The county superintendent shall report the net tuition fund levy requirement for each high school district to the county commissioners on the second Monday of August, and a levy on the district must be made by the county commissioners in accordance with 20-9-142. The levy requirement must be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the cash balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated money that may be realized in the tuition fund. The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification. Payments must be made whenever there is a sufficient amount of cash available in the tuition fund but no later than the end of the school fiscal year for which the budget is adopted. However, if the trustees of either the sending or receiving high school district feel the transfer privilege provided by this subsection is being abused, they may appeal to the county superintendent of schools, who shall hold a hearing and either approve or disapprove the transfer."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 6, 1991.

CHAPTER NO. 381

[SB 250]

AN ACT AMENDING THE LAWS RELATING TO COMMITMENT OF PERSONS WHO ARE DEVELOPMENTALLY DISABLED; PROVIDING AN ADMINISTRATIVE SCREENING PROCESS PRIOR TO COMMITMENT; CLARIFYING TERMINOLOGY; PROVIDING FOR A NEW DEFINITION OF SERIOUSLY DEVELOPMENTALLY DISABLED; AMENDING SECTIONS 53-20-102, 53-20-104, 53-20-106, 53-20-111, 53-20-112, 53-20-113, 53-20-116, 53-20-121, 53-20-125, 53-20-127, 53-20-128, 53-20-129, 53-20-131, 53-20-132, 53-20-141, 53-20-142, 53-20-145, 53-20-146, 53-20-148, 53-20-161, 53-20-162, 53-20-163, AND 53-20-164, MCA; REPEALING SECTIONS 53-20-115, 53-20-117, 53-20-120, 53-20-122, 53-20-123, AND 53-20-124, MCA; AND PROVIDING A TERMINATION DATE.

STATEMENT OF INTENT

This bill provides a new definition of seriously developmentally disabled and establishes a new administrative process as part of the commitment of seriously developmentally disabled persons to residential facilities of the state of Montana. These changes are necessary to provide a commitment standard and process that will meet the new mission that has been developed for the state-operated residential facilities.

The new definition of seriously developmentally disabled incorporates behavioral language to cover endangered and dangerous persons as well as self-help deficit language to cover current residents. The incorporation into the commitment process of an administrative screening team ensures that persons who are to be placed in a residential facility are thoroughly considered for placement in community services before a commitment may be made.

Rules are necessary to implement the administrative screening process. Rules necessary for the screening process must provide for the membership, terms, and various responsibilities of the team and the standards and procedures used by the team in making placement determinations. New rules are to be adopted to implement the changes in the definition of professional person.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Residential facility screening team — referral by court — membership — rules.** (1) When the district court considers a person for commitment to a residential facility under this part, the court shall refer the person to the residential facility screening team for screening to determine whether placement and habilitation in a residential facility are appropriate for the person.

(2) A court may not commit a person to a residential facility under 53-20-125 unless the residential facility screening team determines that placement and habilitation in a residential facility are appropriate for the person.

(3) The residential facility screening team may not determine that placement and habilitation in a residential facility are appropriate unless the residential facility screening team determines that the person is seriously developmentally disabled.

(4) The residential facility screening team shall provide the court with the social and placement information relied upon by the residential facility screening team in making its determination.

(5) For purposes of this part, the department of social and rehabilitation services and the department of institutions shall adopt rules providing for the membership and terms of the members of the residential facility

screening team and setting forth the criteria and procedures to govern the determinations made by the residential facility screening team.

Section 2. Section 53-20-102, MCA, is amended to read:

"53-20-102. **Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Community-based facilities" or "community-based services" includes those services and facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, day-care facilities, sheltered workshops, and other community-based services and facilities.

(3) "Court" means a district court of the state of Montana.

(4) "Developmentally disabled" means suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the individual attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of such individual.

(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(6) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a person committed to a residential facility. The committed person is a member of the team.

~~(6)~~*(7)* "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(7)~~*(8)* "Professional person" means:

(a) a licensed ~~medical doctor; or~~

~~(b) a person who has been~~ *psychologist, licensed psychiatrist, or a person with a master's degree in psychology, who:*

(i) has training and experience in psychometric testing and evaluation;

(ii) has experience in the field of developmental disabilities; and

(iii) is certified as provided for in 53-20-106 by the department of social and rehabilitation services and the department of institutions.

(9) "Qualified mental retardation professional" means a person who has at least 1 year of experience working directly with persons with mental retardation or other developmental disabilities and who is:

(a) a licensed physician or osteopath;

(b) a registered nurse; or

(c) a professional program staff person for the residential facility who the department of institutions determines meets the professional requirements necessary for federal certification of the facility.

~~(8)~~*(10)* "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or habilitation.

~~(9)~~*(11)* "Residential facility" or "facility" means ~~any residential hospital or hospital and school which exists for the purpose of evaluating, treating, and habilitating the developmentally disabled on an inpatient basis, including~~ the Montana developmental center and the Eastmont human services center. ~~The term does not include a group home, foster home, or halfway house. A correctional facility or a facility for the treatment of the mentally ill shall not be a "residential facility" within the meaning of this part.~~

(12) "Residential facility screening team" means a team of persons appointed as provided in [section 1].

~~(10)~~*(13)* "Respondent" means a person alleged in a petition filed pursuant to this part to be developmentally disabled and in need of developmental disability services.

~~(11)~~*(14)* "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled.

~~(12)~~*(15)* "Seriously developmentally disabled" means ~~developmentally disabled due to developmental or physical disability or a combination of both, rendering a person unable to function in a community-based setting and which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health.~~ *a person who:*

(a) is developmentally disabled;

(b) is impaired in cognitive functioning; and

(c) has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits so severe as to require total care or near total care and because of those behaviors or deficits, cannot be safely and effectively habilitated in community-based services."

Section 3. Section 53-20-104, MCA, is amended to read:

"**53-20-104. Powers and duties of mental disabilities board of visitors.** (1) The board ~~shall be~~ *is* an independent board of inquiry and review to ~~assure~~ *ensure* that the treatment of all persons admitted to a residential facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research or hazardous treatment procedures involving persons admitted to ~~any~~ *a* residential facility to ~~assure~~ *ensure* that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health~~, education,~~ and ~~welfare~~ *human services*. ~~No~~ *An* experimental research project involving persons admitted to ~~any~~ *a* residential facility affected by this part may *not* be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall investigate all cases of alleged mistreatment of a resident.

(4) The board shall at least annually inspect every residential facility ~~which~~ *that* is providing a course of residential habilitation and treatment to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the ~~institution~~ *facility*.

(5) The board shall inspect the file of each person admitted to a residential facility pursuant to this part to ~~insure~~ *ensure* that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(6) The board may assist ~~any~~ *a* resident at a residential facility in resolving any grievance he may have concerning his admission or his course of treatment and habilitation in the facility.

(7) If the board believes that ~~any~~ *a* facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any resident, it shall report its findings at once to the ~~professional person in charge~~ *superintendent* of the facility and the director of the department of institutions. If appropriate, after waiting a reasonable time for a response from ~~such professional person~~ *the superintendent or the director*, the board may notify the parents or guardian of ~~any~~ *the* resident involved, the next of kin, if known, the responsible person appointed by the court for ~~any~~ *the* resident involved, and the district court ~~which~~ *that* has jurisdiction over the facility.

(8) The board shall report annually to the governor and shall report to each session of the legislature concerning the status of the residential facilities and habilitation programs ~~which~~ *that* it has inspected."

Section 4. Section 53-20-106, MCA, is amended to read:

"**53-20-106. Certification of professional persons.** (1) The department of social and rehabilitation services and the department of institutions shall certify professional persons for purposes of this part.

(2) The department of social and rehabilitation services and the department of institutions shall adopt rules governing the certification of professional persons. The rules must establish the appropriate combination of education, skills, and experience necessary for certification and set forth qualifications developed by reference to recognized national standards in the field of developmental disabilities~~, such as standards published by the accreditation council for services for mentally retarded and other developmentally disabled persons (ACMRDD), standards published in Title XIX of the Social Security Act, and other similar standards~~."

Section 5. Section 53-20-111, MCA, is amended to read:

"**53-20-111. Limitation on who compelled to undertake treatment.** ~~No~~ *A* person who has reached the age of majority ~~shall~~ *may* be compelled against his will to undertake a course of treatment and habilitation ~~solely because he~~ *in a residential facility only if the person* is *seriously* developmentally disabled~~, but only if such disability causes him to be unable to protect his life and health or to protect the life or safety of others~~."

Section 6. Section 53-20-112, MCA, is amended to read:

"**53-20-112. Procedural rights.** (1) ~~Any~~ *A* person subject to emergency admittance to a residential facility~~, to examination or evaluation by a professional person,~~ or to any hearing held pursuant to this part ~~shall have~~ *has* all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of the seriously mentally ill, *as provided in 53-21-115 through 53-21-118.*

(2) In addition, the parents or guardian of ~~any~~ *a* person alleged to be *seriously* developmentally disabled and in need of developmental disabilities services have the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional person of their choice when such professional person is reasonably available, unless the person so chosen is objected to by the respondent or by a responsible person appointed by the court."

Section 7. Section 53-20-113, MCA, is amended to read:

"**53-20-113. Waiver of rights.** (1) A person may waive his procedural rights provided that the waiver is knowingly and intentionally made.

The right to counsel in a hearing held pursuant to ~~53-20-123~~ *53-20-125* may not be waived. The right to habilitation provided for in this part may not be waived.

~~(2) In the case of a person who has been admitted to a residential facility for up to 30 days of evaluation and treatment or who, pursuant to the recommendation of a professional person, may be admitted to a residential facility for an extended course of habilitation, a waiver of rights can be knowingly and intentionally made only with the concurrence of the person's counsel, if any, his parents or guardian, and the responsible person appointed by the court, if any.~~

(2) A person admitted to a residential facility for evaluation and treatment or for an extended course of habilitation may knowingly and intentionally waive his rights only with the concurrence of the person's counsel, if any, or, if he has no counsel, his parents, guardian, or other responsible person appointed by the court.

(3) (a) In the case of a minor, the waiver of rights ~~can~~ *may* be knowingly and intentionally made:

(i) when the minor is under the age of 12, by the parents of the minor with the concurrence of the responsible person, if any;

(ii) when the minor is over the age of 12, by the minor and his parents;

(iii) when the minor is over the age of 12 and the minor and his parents do not agree, the minor ~~can~~ *may* make an effective waiver of his rights only with the advice of counsel.

(b) If the court believes that there may be a conflict of interest between a minor and his parents or guardian, the court may appoint a responsible person or guardian ad litem for the minor."

Section 8. Section 53-20-116, MCA, is amended to read:

"**53-20-116. Professional person to attend hearing.** In any hearing held pursuant to this part ~~which involves consideration of the recommendation and report of a professional person~~, *a member of the residential facility screening team or* the professional person who ~~made the recommendation and report shall~~ *evaluated the person must* be present at the hearing and subject to cross-examination."

Section 9. Section 53-20-121, MCA, is amended to read:

"**53-20-121. Petition for involuntary treatment — contents of.** (1) Any person who believes that there is a person who is *seriously* developmentally disabled and in need of ~~developmental disability services~~ *placement in a residential facility* may ~~report the situation to a professional person. If the professional person believes from the facts given to him that the person may be developmentally disabled and in need of developmental disability services, he shall contact the parents or guardian of the person alleged to be developmentally disabled or the person himself. If any of the persons so contacted refuse to cooperate with the professional person and~~

~~if the professional person believes from all the circumstances of the case that the person may be developmentally disabled and in need of developmental disability services, he shall~~ request the county attorney to file a petition alleging that ~~there is a~~ *the* person ~~in the county who~~ is *seriously* developmentally disabled and in need of ~~developmental disability services~~ *placement in a residential facility.*

(2) The petition ~~shall~~ *must* contain:

(a) the name and address of the ~~professional~~ person ~~and any other person~~ requesting the petition and their interest in the case;

(b) the name and address of the respondent;

(c) the name and address of the parents or guardian of the respondent and of any other person believed to be legally responsible for the care, support, and maintenance of the respondent;

(d) the name and address of the respondent's next of kin, to the extent known;

(e) the name and address of any person who the county attorney believes might be willing and able to be appointed responsible person; and

(f) a statement of the rights of the respondent and his parents or guardian ~~which shall~~ *that must* be in conspicuous print and identified by a suitable heading."

Section 10. Section 53-20-125, MCA, is amended to read:

"**53-20-125. Outcome of ~~evaluation and treatment~~ *screening* — recommendation for treatment at residential facility — hearing.** (1) If as a result of the ~~evaluation and treatment, either agreed to by the parents, guardian, or the person himself pursuant to 53-20-120 or ordered by the court, the professional person in charge of the case~~ *screening required by [section 1] the residential facility screening team* concludes that the person evaluated is seriously developmentally disabled and recommends ~~that~~ treatment and habilitation ~~be had~~ in a residential facility on an extended basis, the ~~professional person~~ *team* shall file ~~his~~ *its* written recommendation and report with the court and request that the court order the admission. The report shall include the factual basis for the recommendation and shall describe any tests or evaluation devices ~~which~~ *that* have been employed in evaluating the patient.

(2) If no responsible person has yet been appointed, the court may appoint one at this time. If there is no parent or guardian, the court shall appoint a responsible person.

(3) At the request of the respondent, his parents or guardian, or the responsible person, the court shall appoint counsel for the respondent. If the parents (or guardian) are indigent and if they request it, the court shall appoint counsel for the parents or guardian.

(4) Notice of the recommendation ~~shall~~ *must* be mailed or delivered to the respondent, his parents or guardian, the responsible person, next of kin, if known, and the attorney for the respondent, if any, and for the parents or guardian, if any.

~~(2)~~*(5)* The respondent, his parents or guardian, the responsible person, or the attorney for any party may request that a hearing be ~~had~~ *held* on the recommendation. If a hearing is requested, the court shall mail or deliver notice of the date, time, and place of the hearing to each of the parties listed at the beginning of this subsection. The hearing ~~shall~~ *must* be ~~to~~ *held before* the court without jury. The rules of civil procedure ~~shall~~ *must* apply.

~~(3)~~*(6)* If the court finds that the respondent is seriously developmentally disabled ~~and that available community-based services are not adequate to protect the life and physical safety of the person and others or to provide appropriate treatment and habilitation~~, it shall order the respondent admitted to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent is developmentally disabled *but not seriously developmentally disabled,* ~~in need of developmental disability services, and eligible for placement in community-based services and that available community-based services are adequate to protect the life and physical safety of the person and others and to provide appropriate treatment and habilitation,~~ it shall dismiss the petition and refer the respondent to the department of social and rehabilitation services to be considered for placement in community-based services according to 53-20-209. If the court finds that the respondent is not developmentally disabled or is not in need of developmental disability services, it shall dismiss the petition.

~~(4)~~*(7)* If none of the parties notified of the recommendation request a hearing, the court may issue an order authorizing the person to be admitted to the residential facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to whether the order should be granted. The court may refuse to authorize admission of a person to a residential facility for an extended period of treatment and habilitation if ~~such~~ admission is not in the best interests of the person."

Section 11. Section 53-20-127, MCA, is amended to read:

"**53-20-127. Transfer to another residential facility — release to community-based alternative — hearing.** (1) If, at any time during the period for which a person is admitted to a residential facility for an extended period of habilitation and treatment, the *qualified mental retardation* professional ~~person~~ in charge of the resident decides that *the person no longer requires placement in a residential facility and that* there exist sufficient community-based alternatives to provide adequate treatment and habilitation for the resident and adequate protection of the life and physical safety of the resident and others or that it is in the best interests of the resident that he be transferred to another residential facility, then he may release the resident to ~~such~~ *the* community-based alternative or transfer the resident to the other residential facility no less than 15 days after sending notice of the proposed release or transfer to the resident, his parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, and the court ~~which~~ *that* ordered the admission. If the resident has been found unfit to proceed to trial, notice ~~shall~~ *must* be sent to the court ~~which~~ *that* found the resident unfit to proceed to trial and to the county attorney and the attorney who represented the resident at the time the resident was found unfit to proceed to trial.

(a) If any of the parties so notified objects to the release or transfer, they may petition the court for a hearing to determine whether the release or transfer should be allowed. The hearing ~~shall~~ *must* comply with the procedures set forth in 53-20-125. The court may on its own initiative inquire concerning the propriety of the release or transfer.

(b) Nothing in this subsection ~~shall prevent~~ *(1) prevents* the transfer of a resident to a hospital or other medical facility for necessary medical treatment or emergency transfer of a resident to a mental health facility provided ~~such~~ *the* emergency transfer complies with the statutory requirements for emergency detention of the mentally ill. Within 24 hours of an emergency medical or psychiatric transfer, notice ~~shall~~ *must* be given to the parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

(2) If ~~any~~ *a* person is admitted to a residential facility for an extended course of habilitation without a hearing and if subsequent to ~~such~~ admission one of the parties who could have requested a hearing learns that an alternative course of treatment is available ~~which~~ *that* is more suitable to the needs of the resident, the party may request the *qualified mental retardation* professional ~~person~~ in charge of the resident to release the resident to the alternative if it is a community-based alternative or transfer the resident to the alternative if it is a residential alternative. Any ~~such~~ transfer or release ~~shall~~ *must* comply with the requirements of subsection (1) ~~of this section~~. If the *qualified mental retardation* professional ~~person~~ in charge of the resident refuses to authorize the release or transfer, then the party may petition the court for a hearing to determine whether the present residential alternative should be continued. The hearing ~~shall~~ *must* comply with the procedures set forth in 53-20-125."

Section 12. Section 53-20-128, MCA, is amended to read:

"**53-20-128. Extension of admission period — hearing.** (1) If the *qualified mental retardation* professional ~~person~~ in charge of the resident determines that the admission to the residential facility should continue beyond the period specified in the court order, he shall, at least 15 days before the end of the period set out in the court order, send written notice of his recommendation and request for renewal of the order to the court ~~which~~ *that* issued the order, the resident, his parents or guardian, the next of kin, if known, the attorney who most recently represented the resident, if any, and the responsible person appointed by the court, if any. The recommendation and request ~~shall~~ *must* be accompanied by a written report ~~which shall describe~~ *describing* the habilitation plan ~~which~~ *that* has been undertaken for the resident and the future habilitation plan ~~which~~ *that* is anticipated by the *qualified mental retardation* professional ~~person~~.

(2) If any person so notified requests a hearing, the court shall set a time and place for the hearing and shall mail or deliver notice to all of the persons informed of the recommendation. The hearing ~~shall~~ *must* be conducted in the manner set ~~out~~ *forth* in 53-20-125. If the court finds that the residential admission is still justified, it may order continuation of the admission to that residential facility or transfer of the resident to a different residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require ~~residential~~ treatment *in a residential facility* or if all parties are willing for the resident to participate in a community-based program of habilitation, it shall refer the respondent to the department of social and rehabilitation services to be considered for placement in community-based services according to 53-20-209. If the person is placed in community-based services or if the need for developmental disabilities services no longer exists, the court shall dismiss the petition. The court ~~shall~~ *may* not order continuation of admission to a residential facility ~~which~~ *that* does not have an individualized habilitation plan for the resident. In its order, the court shall make findings of fact on which its order is based. The court may on its own initiative inquire concerning the suitability of continuing an admission to a residential facility."

Section 13. Section 53-20-129, MCA, is amended to read:

"**53-20-129. Emergency admission.** ~~The parents, guardian, the person himself, or a~~ *A* professional person may admit a person believed to be *seriously* developmentally disabled to a residential facility on an emergency basis when necessary to protect the person or others from death or serious bodily harm. ~~If requested by the parents, guardian, or the person admitted on an emergency basis, a~~ *A* petition as set out in 53-20-121 and ~~53-20-122 shall~~ *53-20-125 must* be filed on the next judicial day by the county attorney of the county where the person resides. If a petition is filed, the ~~professional person assigned by the court to conduct the examination and inquiry~~ *residential facility screening team* shall report back to the court on the ~~next~~ *fifth* judicial day following the filing of the petition. Once a petition is filed, continued detention in the residential facility ~~shall~~ *may* be allowed only on order of the court when necessary to protect the respondent or others from death or serious bodily harm. In no case ~~shall~~ *may* an emergency admission to a residential facility continue for longer than 30 days without subsequent proceedings before the court."

Section 14. Section 53-20-131, MCA, is amended to read:

"**53-20-131. Placement in nonstate facility.** ~~(1) If a person is admitted to a residential facility under the provisions of this part and is eligible for hospital care, treatment, or habilitation by an agency of the United States and if a certificate of notification from such agency showing that facilities are available and that the person is eligible for care or treatment therein is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any~~

~~hospital or residential facility operated by the agency and in which the person is admitted shall, with respect to the person, be vested with the same powers as the superintendent of the Montana developmental center with respect to detention, custody, transfer, and release of the person. Jurisdiction shall be retained in the appropriate courts of this state to inquire into the mental condition of persons so admitted and to determine the necessity for continuance of their admission.~~

~~(2)~~*(1)* Consistent with other provisions of this part, a person admitted to a residential facility under this part for a period *of* more than 30 days may be committed by the court to the custody of friends or next of kin residing outside the state or transferred to ~~a residential~~ *an out-of-state* facility ~~located outside the state~~ *for the habilitation of persons who are developmentally disabled* if the out-of-state facility agrees to receive the person. ~~No such~~ *Such a* commitment or transfer ~~shall~~ *may not* be for a longer period of time than is permitted within ~~the state~~ *Montana*. If the person is indigent, the expense of supporting him in an out-of-state facility and the expense of transportation ~~shall~~ *must* be borne by the state of Montana.

~~(3)~~*(2)* The transfer of persons admitted to a residential facility out of Montana under the provisions of this part or into Montana under the laws of another jurisdiction ~~shall~~ *must* be governed by the provisions of the Interstate Compact on Mental Health."

Section 15. Section 53-20-132, MCA, is amended to read:

"**53-20-132. Court-ordered placement in community-based services prohibited.** Nothing in this part may be construed as authorizing the placement of and delivery of services to developmentally disabled persons in community-based services by court order ~~except as provided in 53-20-123(4)~~. Placement of persons in community-based services is governed by 53-20-209."

Section 16. Section 53-20-141, MCA, is amended to read:

"**53-20-141. Denial of legal rights.** (1) Unless specifically stated in an order by the court, a person admitted to a residential facility for an extended course of habilitation ~~shall~~ *does* not forfeit any legal right or suffer any legal disability by reason of the provisions of this part, except insofar as it may be necessary to detain the person for habilitation, evaluation, or care.

(2) Whenever ~~any~~ *a* person is admitted to a residential facility for a period of more than 30 days for an extended course of habilitation, the court ordering the admission may make an order stating specifically any legal rights ~~which~~ *that* are denied the respondent and any legal disabilities ~~which~~ *that* are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section ~~shall terminate~~ *terminates* upon the conclusion of the admission if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of the admission may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) ~~Any~~ *A* person who has been admitted to a residential facility pursuant to this part ~~shall~~ *must,* upon the termination of the admission, be automatically restored to all of his civil and legal rights ~~which~~ *that* may have been lost when he was admitted. However, this subsection ~~shall~~ *does* not affect any guardianship or conservatorship created independently of the admission proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. ~~Any~~ *A* person who leaves a residential facility following a period of evaluation and habilitation ~~shall~~ *must* be given a written statement setting forth the substance of this subsection.

~~(4) Any person admitted to a residential facility prior to July 1, 1975, shall enjoy all the rights and privileges of a person admitted after July 1, 1975.~~"

Section 17. Section 53-20-142, MCA, is amended to read:

"**53-20-142. Rights while in a residential facility.** Persons admitted to a residential facility for a period of habilitation shall enjoy the following rights:

(1) Residents ~~shall~~ have a right to dignity, privacy, and humane care.

(2) Residents ~~shall be~~ *are* entitled to send and receive sealed mail. Moreover, it ~~shall be~~ *is* the duty of the facility to foster the exercise of this right by furnishing the necessary materials and assistance.

(3) Residents ~~shall~~ *must* have the same rights and access to private telephone communication as patients at any public hospital except to the extent that ~~a~~ *the individual treatment planning team or the qualified mental retardation* professional ~~person~~ responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for ~~any such~~ *the* restrictions. The written order must be renewed monthly if any restrictions are to be continued.

(4) Residents ~~shall~~ have an unrestricted right to visitation except to the extent that ~~a~~ *the individual treatment planning team or the qualified mental retardation* professional ~~person~~ responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for ~~any such~~ *the* restrictions. The written order must be renewed monthly if ~~any~~ restrictions are to be continued.

(5) Residents ~~shall~~ have a right to receive suitable educational and habilitation services regardless of chronological age, degree of retardation, or accompanying disabilities or handicaps.

(6) Each resident ~~shall~~ *must* have an adequate allowance of neat, clean, suitably fitting, and seasonable clothing. Except when a particular kind of clothing is required because of a particular condition, residents ~~shall~~ *must* have the opportunity to select from various types of neat, clean, and seasonable clothing. ~~Such~~ *The* clothing ~~shall~~ *must* be considered the resident's throughout his stay in the ~~institution~~ *facility.* Clothing, both in

amount and type, ~~shall~~ *must* make it possible for residents to go out of doors in inclement weather, to go for trips or visits appropriately dressed, and to make a normal appearance in the community. The facility shall make provision for the adequate and regular laundering of the residents' clothing.

(7) Each resident ~~shall have~~ *has* the right to keep and use his own personal possessions except insofar as such clothes or personal possessions may be determined by ~~a~~ *the individual treatment planning team or the qualified mental retardation* professional ~~person~~ to be dangerous either to himself or to others.

(8) ~~A~~ *Each* resident has a right to a humane physical environment within the residential ~~facilities~~ *facility*. ~~These facilities shall~~ *The facility must* be designed to make a positive contribution to the efficient attainment of the habilitation goals of the resident. To accomplish this purpose:

(a) regular housekeeping and maintenance procedures ~~which~~ *that* will ensure that the facility is maintained in a safe, clean, and attractive condition ~~shall~~ *must* be developed and implemented;

(b) pursuant to an established routine maintenance and repair program, the physical plant ~~shall~~ *must* be kept in a continuous state of good repair and operation so as to ensure the health, comfort, safety, and well-being of the residents and so as not to impede in any manner the habilitation programs of the residents;

(c) the physical facilities must meet all fire and safety standards established by the state and locality. In addition, the facility ~~shall~~ *must* meet ~~such~~ *the* provisions of the life safety code of the national fire protection association ~~as~~ *that* are applicable to it.

(d) there must be special facilities for nonambulatory residents to ~~assure~~ *ensure* their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision ~~shall~~ *must* be made to permit nonambulatory residents to communicate their needs to staff.

(9) Residents ~~shall~~ have a right to receive prompt and adequate medical treatment for any physical or mental ailments or injuries or physical disabilities and for the prevention of any illness or disability. Such medical treatment ~~shall~~ *must* meet standards of medical practice in the community. However, nothing in this subsection may be interpreted to impair other rights of ~~any~~ *a* resident in regard to involuntary commitment for mental illness, use of psychotropic medication, use of hazardous, aversive, or experimental procedures, or the refusal of such treatment.

(10) Corporal punishment ~~shall~~ *is* not ~~be~~ permitted.

(11) The opportunity for religious worship ~~shall~~ *must* be accorded to each resident who desires such worship. Provisions for religious worship ~~shall~~ *must* be made available to all residents on a nondiscriminatory basis. ~~No~~ *An* individual ~~shall~~ *may not* be compelled to engage in any religious activities.

(12) Residents ~~shall~~ have a right to a nourishing, well-balanced diet. The diet for residents ~~shall~~ *must* provide at a minimum the recommended daily dietary allowance as developed by the national academy of sciences. Provisions ~~shall~~ *must* be made for special therapeutic diets and for substitutes at the request of the resident, his parents, guardian, or next of kin, or the responsible person appointed by the court in accordance with the religious requirements of any resident's faith. Denial of a nutritionally adequate diet ~~shall~~ *may* not be used as punishment.

(13) Residents ~~shall~~ have a right to regular physical exercise several times a week. It ~~shall be~~ *is* the duty of the facility to provide both indoor and outdoor facilities and equipment for such exercise. Residents ~~shall~~ have a right to be outdoors daily in the absence of contrary medical considerations.

(14) Residents ~~shall~~ have a right, under appropriate supervision, to suitable opportunities for the interaction with members of the opposite sex except where ~~a~~ *the individual treatment planning team or the qualified mental retardation* professional ~~person~~ responsible for the formulation of a particular resident's habilitation plan writes an order to the contrary and explains the reasons ~~therefor~~ *for the order*. The order must be renewed monthly if the restriction is to be continued."

Section 18. Section 53-20-145, MCA, is amended to read:

"**53-20-145. Right to be free from unnecessary or excessive medication.** Residents have a right to be free from unnecessary or excessive medication. ~~No medication shall~~ *Medication may not* be administered unless at the written order of a physician. The ~~professional person in charge of the facility~~ *individual treatment planning team* and the attending physician ~~shall be~~ *are* responsible for all medication given or administered to a resident. The use of medication ~~shall~~ *may* not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication ~~shall~~ *must* be kept in his medical records. A pharmacist or a registered nurse shall review monthly the record of each resident on medication for potential adverse reactions, allergies, interactions, contraindications, rationality, and laboratory test modifications and shall advise the physician of any problems. Medications ~~shall~~ *must* be reviewed quarterly by the attending or staff physician. At least monthly, an attending physician shall review the drug regimen of each patient on psychotropic medication. All prescriptions ~~shall~~ *must* be written with a termination date that may not exceed 90 days. Medication for newly admitted residents ~~shall~~ *must* be reviewed and reordered as necessary upon admission and then every 30 days for the first 90 days. Medications ~~shall~~ *may* not be used as punishment, for the convenience of staff, as a substitute for *a habilitation* program, or in quantities that interfere with the resident's treatment program. Nothing in this section may be interpreted to relieve ~~any~~ *a* physician or other professional or medical staff person from any obligation to adequately monitor the medication of ~~any~~ *a* resident, with due consideration to the nature of the medication, the purpose for which it is given, and the condition of the resident."

Section 19. Section 53-20-146, MCA, is amended to read:

"**53-20-146. Right not to be subjected to certain treatment procedures.** (1) Residents of a residential facility ~~shall~~ have a right not to be subjected to any unusual or hazardous treatment procedures without the express and informed consent of the resident, if the resident is able to give ~~such~~ consent, and of his parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and legal counsel. Such proposed procedures ~~shall~~ *must* first have been reviewed and approved by the mental disabilities board of visitors before ~~such~~ consent ~~shall be~~ *is* sought.

(2) Physical restraint ~~shall~~ *may* be employed only when absolutely necessary to protect the resident from injury to himself or to prevent injury to others. Mechanical supports used to achieve proper body position and balance ~~which~~ *that* are ordered by a physician are not considered a physical restraint. Restraint ~~shall~~ *may* not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program. Restraint ~~shall~~ *may* be applied only if alternative techniques have failed and only if ~~such~~ *the* restraint imposes the least possible restriction consistent with its purpose. ~~Only a professional person may authorize the use~~ *Use* of restraints *may be authorized by a physician, professional person, or qualified mental retardation professional.* Orders for restraints ~~by a professional person shall~~ *must* be in writing and ~~shall~~ *may* not be in force for longer than 12 hours. Whenever physical restraint is ordered, suitable provision ~~shall~~ *must* be made for the comfort and physical needs of the person restrained.

(3) Seclusion, defined as the placement of a resident alone in a locked room for nontherapeutic purposes, ~~shall~~ *may* not be employed. Legitimate "time out" procedures may be utilized under close and direct professional supervision as a technique in behavior-shaping programs.

(4) Behavior modification programs involving the use of noxious or aversive stimuli ~~shall~~ *must* be reviewed and approved by the mental disabilities board of visitors and ~~shall~~ *may* be conducted only with the express and informed consent of the affected resident, if the resident is able to give ~~such~~ consent, and of his parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel. Such behavior modification programs ~~shall~~ *may* be conducted only under the supervision of and in the presence of a *qualified mental retardation* professional ~~person~~ who has had proper training in such techniques.

(5) ~~No~~ *A* resident ~~shall~~ *may not* be subjected to a behavior modification program ~~which~~ *that* attempts to extinguish socially appropriate behavior or to develop new behavior patterns when such behavior modifications serve only institutional convenience.

(6) Electric shock devices ~~shall be~~ *are* considered a research technique for the purpose of this part. Such devices ~~shall~~ *may* be used only in extraordinary circumstances to prevent self-mutilation leading to repeated and possibly permanent physical damage to the resident and only after

alternative techniques have failed. The use of such devices ~~shall be~~ *is* subject to the conditions prescribed by this part for experimental research generally and ~~shall~~ *may* be used only under the direct and specific order of ~~the professional person in charge~~ *a physician and the superintendent* of the residential facility."

Section 20. Section 53-20-148, MCA, is amended to read:

"**53-20-148. Right to habilitation.** (1) Persons admitted to residential facilities shall have a right to habilitation, including medical treatment, education, and care suited to their needs, regardless of age, degree of retardation, or handicapping condition. Each resident has a right to a habilitation program ~~which~~ *that* will maximize his human abilities and enhance his ability to cope with his environment. Every residential facility shall recognize that each resident, regardless of ability or status, is entitled to develop and realize his fullest potential. The facility shall implement the principle of normalization so that each resident may live as normally as possible.

(2) Residents ~~shall~~ have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the facility shall make every attempt to move residents from:

(a) more to less structured living;

(b) larger to smaller facilities;

(c) larger to smaller living units;

(d) group to individual ~~residence~~ *residences*;

(e) segregated from the community to integrated into the community living;

(f) dependent to independent living.

(3) Within 30 days of his admission to a residential facility, each resident ~~shall~~ *must* have an evaluation by appropriate specialists for programming purposes.

(4) Each resident ~~shall~~ *must* have an individualized habilitation plan formulated by ~~the facility~~ *an individual treatment planning team*. This plan ~~shall~~ *must* be ~~developed by appropriate professional persons and~~ implemented as soon as possible, but no later than 30 days after the resident's admission to the facility. An interim program of habilitation, based on the preadmission evaluation conducted pursuant to this part, ~~shall~~ *must* commence promptly upon the resident's admission. Each individualized habilitation plan ~~shall~~ *must* contain:

(a) a statement of the nature of the specific limitations and the needs of the resident;

(b) a description of intermediate and long-range habilitation goals with a projected timetable for their attainment;

(c) a statement of and an explanation for the plan of habilitation for achieving these intermediate and long-range goals;

(d) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals of the resident;

(e) a specification of the ~~professional persons~~ *professionals* and other staff members who are responsible for the particular resident's attaining these habilitation goals;

(f) criteria for release to less restrictive settings for habilitation, based on the resident's needs, including criteria for discharge and a projected date for discharge.

(5) As part of his habilitation plan, each resident ~~shall~~ *must* have an individualized postinstitutionalization plan that includes an identification of services needed to make a satisfactory community placement possible. This plan ~~shall~~ *must* be developed by ~~a professional person who~~ *the individual treatment planning team that* shall begin preparation of ~~such~~ *the* plan upon the resident's admission to the ~~institution~~ *facility* and shall complete ~~such~~ *the* plan as soon as practicable. The parents or guardian or next of kin of the resident, the responsible person appointed by the court, if any, and the resident, if able to give informed consent, ~~shall~~ *must* be consulted in the development of ~~such~~ *the* plan and ~~shall~~ *must* be informed of the content of ~~such~~ *the* plan.

(6) In the interests of continuity of care, one *qualified mental retardation* professional ~~person~~ shall whenever possible be responsible for supervising the implementation of the habilitation plan, integrating the various aspects of the habilitation program, and recording the resident's progress as measured by objective indicators. ~~This~~ *The qualified mental retardation* professional ~~person~~ shall also be responsible for ensuring that the resident is released when appropriate to a less restrictive habilitation setting.

(7) The habilitation plan ~~shall~~ *must* be reviewed monthly by the *qualified mental retardation* professional ~~person~~ responsible for supervising the implementation of the plan and ~~shall~~ *must* be modified if necessary. In addition, 6 months after admission and at least annually thereafter, each resident ~~shall~~ *must* receive a comprehensive psychological, social, habilitative, and medical diagnosis and evaluation and his habilitation plan ~~shall~~ *must* be reviewed ~~by an interdisciplinary team of no less than two professional persons and such resident care workers as are directly involved in his habilitation and care~~ *and revised accordingly by the individual treatment planning team.* A habilitation plan ~~shall~~ *must* be reviewed monthly.

(8) Each resident placed in the community ~~shall~~ *must* receive transitional habilitation assistance.

(9) The ~~professional person in charge~~ *superintendent* of the residential facility, *or his designee,* shall report in writing to the parents or guardian of the resident or the responsible person at least every 6 months on the resident's habilitation and medical condition. ~~Such~~ *The* report ~~shall~~ *must*

also state any appropriate habilitation program ~~which~~ *that* has not been afforded to the resident because of inadequate habilitation resources.

(10) ~~The~~ *Each resident, the* parents or guardian of each resident, ~~or~~ *and* the responsible person appointed by the court ~~shall~~ *must* promptly upon the resident's admission receive a written copy of *and be orally informed of* all the above standards for adequate habilitation~~. Each resident, if the resident is able to comprehend, shall promptly upon his admission be orally informed in clear language of the above standards and, where appropriate, be provided with a written copy. In addition, the parents, guardian, responsible person, and where able to comprehend, the resident shall receive such,~~ *the rights accorded by 53-20-142, and* other information concerning the care and habilitation of the resident ~~as~~ *that* may be available to assist them in understanding the situation of the resident and the rights of the resident in the ~~institution~~ *facility*."

Section 21. Section 53-20-161, MCA, is amended to read:

"**53-20-161. Maintenance of records.** (1) Complete records for each resident ~~shall~~ *must* be maintained and ~~shall~~ *must* be readily available to ~~professional~~ persons~~, to the resident-care workers~~ who are directly involved with the particular resident~~,~~ and to the mental disabilities board of visitors. All information contained in a resident's records ~~shall~~ *must* be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing by the resident, if ~~such~~ *the* resident is capable of giving informed consent, or by his parents or guardian or the responsible person ~~shall~~ *must* be permitted access to the resident's records. ~~No information~~ *Information* may *not* be released from the records of a resident or former resident of the residential facility unless the release of ~~such~~ *the* information has been properly authorized in writing by:

(a) the court;

(b) the resident or former resident if he is over the age of majority and is capable of giving informed consent;

(c) the parents or guardian in charge of a resident under the age of 12;

(d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority and the resident if the resident is capable of giving informed consent;

(e) the guardian of a resident over the age of majority who is incapable of giving informed consent;

(f) the superintendent of the residential facility or his designee as custodian of a resident over the age of majority who is incapable of giving informed consent and for whom no legal guardian has been appointed;

(g) the superintendent of the residential facility or his designee as custodian of a resident under the age of majority for whom there is no parent or legal guardian; or

(h) the superintendent of the residential facility or his designee as custodian of a resident of that facility whenever release is required by federal or state law or department of social and rehabilitation services rules.

(2) Information may not be released by a superintendent or his designee as set forth in subsection (1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release of information to the resident, his parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, and the court ~~which~~ *that* ordered the admission. If any of the parties so notified objects to the release of information, they may petition the court for a hearing to determine whether the release of information should be allowed. ~~No information~~ *Information* may *not* be released pursuant to subsection (1)(f), (1)(g), or (1)(h) unless it is released to further some legitimate need of the resident or to accomplish a legitimate purpose of the ~~institution~~ *facility* ~~which~~ *that* is not inconsistent with the needs and rights of the resident. ~~No information~~ *Information* may *not* be released pursuant to these subsections except in accordance with written policies consistent with the requirements of this part adopted by the ~~institution~~ *facility*. Persons receiving notice of a proposed release of information shall also receive a copy of the written policy of the ~~institution~~ *facility* governing release of information.

(3) These records ~~shall~~ *must* include:

(a) identification data, including the resident's legal status;

(b) the resident's history, including but not limited to:

(i) family data, educational background, and employment record;

(ii) prior medical history, both physical and mental, including prior institutionalization;

(c) the resident's grievances, if any;

(d) an inventory of the resident's life skills, including mode of communication;

(e) a record of each physical examination ~~which~~ *that* describes the results of the examination;

(f) a copy of the individual habilitation plan and any modifications thereto and an appropriate summary ~~which~~ *that* will guide and assist the resident care workers in implementing the resident's program;

(g) the findings made in monthly reviews of the habilitation plan, which findings ~~shall~~ *must* include an analysis of the successes and failures of the habilitation program and ~~shall~~ direct whatever modifications are necessary;

(h) a copy of the postinstitutionalization plan that includes a statement of services needed in the community and any modifications thereto and a summary of the steps that have been taken to implement that plan;

(i) a medication history and status;

(j) a summary of each significant contact by a professional person with a resident;

(k) a summary of the resident's response to his habilitation plan, prepared by a *qualified mental retardation* professional ~~person~~ involved in the resident's habilitation and recorded at least monthly. Wherever possible, such response ~~shall~~ *must* be scientifically documented.

(l) a monthly summary of the extent and nature of the resident's work activities and the effect of ~~such~~ *the* activity upon the resident's progress ~~along~~ *in* the habilitation plan;

(m) a signed order by a *qualified mental retardation professional,* professional person, *or physician* for any physical restraints;

(n) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of resident's mistreatment;

(o) a summary of family visits and contacts;

(p) a summary of attendance and leaves from the facility;

(q) a record of any seizures, illnesses, injuries, and treatments thereof and immunizations."

Section 22. Section 53-20-162, MCA, is amended to read:

"**53-20-162. Training for resident care workers.** All resident care workers who have not had prior clinical experience in a residential facility for habilitation of the developmentally disabled ~~shall have~~ *must be given* suitable orientation training. Staff members on all levels ~~shall have~~ *must be given* suitable, regularly scheduled in-service training. Each resident care worker shall ~~be under the direct professional supervision of a professional person~~ *receive supervision that emphasizes the protection of residents and their rights.*"

Section 23. Section 53-20-163, MCA, is amended to read:

"**53-20-163. Abuse of residents prohibited.** (1) Every residential facility shall prohibit mistreatment, neglect, or abuse in any form of any resident. Alleged violations ~~shall~~ *must* be reported immediately to the ~~professional person in charge~~ *superintendent* of the facility, and there ~~shall~~ *must* be a written record that:

(a) each alleged violation has been thoroughly investigated and findings stated;

(b) the results of ~~such~~ *the preliminary* investigation are reported to the ~~professional person in charge~~ *superintendent* of the facility within 24 hours of the report of the incident.

(2) ~~Such~~ *The* reports ~~shall~~ *must* also be made to the mental disabilities board of visitors monthly ~~and to the developmental disabilities advisory council at its next scheduled public meeting~~. Each facility shall cause a written statement of this policy to be posted in each cottage and building and circulated to all staff members."

Section 24. Section 53-20-164, MCA, is amended to read:

"**53-20-164. Resident labor.** The following rules ~~shall~~ govern resident labor:

(1) ~~No~~ *A* resident ~~shall~~ *may not* be required to perform labor ~~which~~ *that* involves the operation and maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility ~~shall~~ *may* not be conditioned upon the performance of labor covered by this provision. Residents may voluntarily engage in such labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C.~~, sec.~~ 206, as amended.

(2) ~~No~~ *A* resident ~~shall~~ *may not* be involved in the care (feeding, clothing, bathing), training, or supervision of other residents unless he:

(a) has volunteered;

(b) has been specifically trained in the necessary skills;

(c) has the humane judgment required for such activities;

(d) is adequately supervised; and

(e) is reimbursed in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C.~~, sec.~~ 206, as amended.

(3) Residents may be required to perform vocational training tasks ~~which~~ *that* do not involve the operation and maintenance of the facility, subject to a presumption that an assignment of longer than 3 months to any task is not a training task, provided the specific task or any change in task assignment is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by ~~a~~ *the qualified mental retardation* professional ~~person~~ *and the individual treatment planning team* responsible for supervising the resident's habilitation; *and*

(b) supervised by a staff member to oversee the habilitation aspects of the activity.

(4) Residents may voluntarily engage in habilitative labor at nonprogram hours for which the facility would otherwise have to pay an employee, provided the specific labor or any change in labor is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by ~~a~~ *the qualified mental retardation* professional

~~person~~ *and the individual treatment planning team* responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity; and

(c) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C.~~, sec.~~ 206, as amended.

(5) If ~~any~~ *a* resident performs habilitative labor ~~which~~ *that* involves the operation and maintenance of a facility but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then ~~such~~ *the* resident may be compensated at a rate ~~which~~ *that* bears the same approximate relation to the statutory minimum wage as his ability to perform that particular job bears to the ability of a person not so afflicted.

(6) Residents may be required to perform tasks of a personal housekeeping nature, such as the making of one's own bed.

(7) Deductions or payments for care and other charges ~~shall~~ *may* not deprive a resident of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

(8) Staffing ~~shall~~ *must* be sufficient so that the facility is not dependent upon the use of residents or volunteers for the care, maintenance, or habilitation of other residents or for income-producing services. The facility shall formulate a written policy to protect the residents from exploitation when they are engaged in productive work."

Section 25. **Repealer.** Sections 53-20-115, 53-20-117, 53-20-120, 53-20-122, 53-20-123, and 53-20-124, MCA, are repealed.

Section 26. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 53, chapter 20, part 1, and the provisions of Title 53, chapter 20, part 1, apply to [section 1].

Section 27. **Termination.** The amendment to the definition of "seriously developmentally disabled" in 53-20-102(15) terminates September 30, 1995.

Approved April 8, 1991.

CHAPTER NO. 382

[SB 308]

AN ACT TO ELIMINATE ADVANCED AGE FROM THE DEFINITION OF "INCAPACITATED PERSON" FOR PURPOSES OF THE LAW RELATING TO GUARDIANSHIP AND CONSERVATORSHIP; AMEND-

ING SECTION 72-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-5-101, MCA, is amended to read:

"**72-5-101. Definitions.** Unless otherwise apparent from the context, in this code the following definitions apply:

(1) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, ~~advanced age,~~ chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or which cause has so impaired the person's judgment that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(2) "Protective proceeding" means a proceeding under the provisions of 72-5-409 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.

(3) "Protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made.

(4) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 8, 1991.

CHAPTER NO. 383

[SB 323]

AN ACT REMOVING THE REQUIREMENT THAT ONLY LICENSED MOTOR VEHICLE DEALERS MAY OFFER, SOLICIT, OR ADVERTISE THE SALE OF MOTOR VEHICLES; PROVIDING A NUMERICAL QUALIFICATION OF VEHICLE SALES FOR PERSONS ACTING AS DEALERS OF MOTOR VEHICLES; PROVIDING FOR THE LICENSING OF WHOLESALER OPERATIONS; CLARIFYING ASSIGNMENT OF RECREATIONAL VEHICLE DEALER LICENSE PLATES FOR A LICENSED RECREATIONAL VEHICLE DEALER; PROVIDING QUALIFICATIONS FOR A LICENSEE'S ESTABLISHED PLACE OF BUSI-

NESS; INCREASING THE DOLLAR AMOUNT OF LICENSEES' SURETY BONDS; SETTING FORTH A FEE STRUCTURE AND PROVISIONS RELATED TO LICENSED WHOLESALERS; AMENDING THE DEPARTMENTAL BASIS FOR DENIAL AND REVOCATION OF DEALER AND WHOLESALER LICENSES; PROVIDING AUTHORIZATION FOR OFF-PREMISES SALES BY LICENSED MOTOR VEHICLE DEALERSHIPS; REQUIRING LICENSED MOTOR VEHICLE DEALER AND WHOLESALER RECORDS TO BE KEPT UPON CERTAIN PREMISES; PROVIDING FOR TRANSFER OF LICENSE FOR LICENSED WHOLESALERS; PROVIDING THE DEPARTMENT OF JUSTICE WITH AUTHORITY TO REVOKE A LICENSED MOTOR VEHICLE DEALER'S 20-DAY PERMIT PRIVILEGES; PROVIDING FOR THE LICENSING AND REGULATION OF AUTO AUCTIONS DEALING IN MOTOR VEHICLES; AND AMENDING SECTIONS 61-1-314, 61-4-101, 61-4-102, 61-4-103, 61-4-104, 61-4-105, 61-4-106, AND 61-4-119, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-314, MCA, is amended to read:

"**61-1-314. Dealer.** (1) "Dealer" means ~~any~~*:*

(a) a person, firm, association, or corporation which, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or acting as a broker of either new or used motor vehicles, or both, and who qualifies for issuance of a dealer's license under 61-4-101 through 61-4-105*; or*

(b) an owner of real property who allows more than three new or used motor vehicles not titled in the property owner's or the seller's name to be offered for sale on the property during 1 calendar year unless the property is leased to a motor vehicle dealer licensed under 61-4-101 and the vehicles offered for sale are bona fide units of the licensed dealer's inventory.

(2) The term "dealer" does not include the following:

(a) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(b) employees of ~~such~~ *the* persons *included in subsection (2)(a)* when engaged in the specific performance of their duties as ~~such~~ employees; or

(c) public officers while performing or in the operation of their duties.

(3) A dealer dealing in used motor vehicles only shall purchase a Montana store license."

Section 2. Section 61-4-101, MCA, is amended to read:

"**61-4-101. Application for dealer's license** ***or wholesaler's license.*** (1) *(a)* ~~Every~~ *A verified application must be filed, by mail or otherwise, in the office of the department by each* person, firm, corporation, or association ~~which~~ *that,* for commission or profit, engages in*:*

(i) the business of buying, selling, exchanging, ~~offering,~~ taking for consignment, ~~soliciting, advertising the sale of,~~ or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, or special mobile equipment as defined in 61-1-104 ~~shall file, by mail or otherwise, in the office of the department a verified application~~ for licensure as a dealer~~, on a blank to be furnished by the department for that purpose and containing the information required;~~ *or*

(ii) business as a wholesaler as defined in [section 9] in order to be licensed as a wholesaler.

(b) The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the motor vehicles are not titled in the seller's name, in any 1 calendar year is prima facie evidence that a person is engaged in the business of dealing motor vehicles. Licensed wholesalers do not have the privilege of the use of dealer license plates as provided in subsection (2)(b) but are authorized to display and use demonstrator plates under the provisions of 61-4-102(2)(a)(ii). ~~The~~

(c) Each license application and all of the information contained in it must be verified by the Montana highway patrol *or an authorized representative of the department on a form to be furnished by the department for that purpose and must contain the information required.* Each application must be accompanied by the license fee specified in 61-4-102. A dealer's *or wholesaler's* license must be renewed and paid for annually, and an application for relicensure must be filed not later than January 1 of each year. If an application for renewal of a license has been received by the department prior to the expiration of the license, the ~~dealer~~ *licensee* may operate his business and display dealer *or demonstrator* plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as ~~hereinafter~~ provided *in this subsection,* the applicant must furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant must:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name and address of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(iv) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

(v) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that he is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates*;* ~~or~~ as a recreational vehicle~~,~~ *dealer and for the use of "RV" plates; as a* trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates*;* ~~or~~ as a motorcycle or quadricycle dealer and for the use of "MCD" plates~~,~~*; or as a wholesaler and for the use of demonstrator plates,* the applicant must, in addition to the matters set forth in subsections (i) and (ii) of subsection (2)(a) above, provide:

(i) a statement that the*:*

(A) applicant has ~~a building or lot and a sign readable at a minimum distance of 150 feet indicating the firm name as the principal place of business and that vehicles are offered for sale; and~~ *an established place of business that includes a lot or lots upon which motor vehicles may be displayed and a permanent nonresidential building on or contiguous to the lot or lots where records are kept and sales are made; or*

(B) wholesaler applicant has an established place of business that includes a permanent nonresidential building or office where records are kept in order that those records may be inspected;

(ii) a certificate to the effect that the applicant is a bona fide dealer *or wholesaler* in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, or quadricycles. An applicant for a recreational vehicle dealer license must also indicate on the same certificate that he is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

(c) If two or more vehicle dealer or wholesaler businesses share a location, all records, office facilities, and inventory, if applicable, must be physically segregated and clearly identified. Each applicant's established place of business shall display a sign that indicates the firm name and that vehicles are offered for sale. The letters of the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

~~(c)~~*(d)* To qualify for a used motor vehicle dealer's *or wholesaler's* license, a person must submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b).

~~(d)~~*(e)* The provisions of subsection ~~(2)(c)~~*(2)(d)* do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) (a) The applicant for a dealer's *or wholesaler's* license shall also file with his application a ~~good and sufficient~~ bond ~~in the sum~~ of ~~$5,000, and the bond~~ *$25,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a recreational vehicle dealer, a trailer dealer, or a wholesaler. However, applicants for a license as a trailer dealer or a trailer wholesaler shall file the $25,000 surety bond only if special mobile equipment, commercial trailers and semitrailers exceeding 6,000 pounds maximum gross loaded weight, mobile homes, or house trailers are sold; otherwise, all other trailer dealer, motorcycle dealer, or wholesaler license applicants shall file a bond in the sum of $10,000. All bonds* must be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage due to the unlawful conduct of a dealer *or wholesaler* licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting *on* the ~~judgment from the department~~ *bond*. The ~~department is responsible for payment under this section, in an amount not to exceed the maximum bond amount, only if the~~ judgment ~~on which the payment is based determines~~ *must determine* a specific loss or damage amount and ~~concludes~~ *conclude* that the ~~dealer's~~ *licensee's* unlawful operation caused the loss or damage *before payment on the bond is required.*"

Section 3. Section 61-4-102, MCA, is amended to read:

"**61-4-102. Fees — *restrictions on licensees.*** (1) Upon making such application, the applicant shall pay to the department, in addition to the fees required of dealers *and wholesalers* under the provisions of subsection (2), a fee of $5. Upon receipt of the application, fee, and bond, as provided above, the department shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the department is satisfied that the applicant qualifies for the issuance of a ~~dealer's~~ license under the provisions of this chapter, ~~it~~ *the department* may ~~thereupon~~ issue the ~~same~~ *license. The department may refuse, after investigation, to issue a license to an applicant as allowed by law.*

(2) Registration or license fees shall be paid upon registration or reregistration of dealers in motor vehicles, recreational vehicles, or trailers as follows:

(a) (i) all dealers in motor vehicles and recreational vehicles, a fee of $25, which shall entitle such dealer to one set of number plates, and $25 additional fee for each additional set of number plates, subject to the following limitations on the number of additional sets allowed a dealer:

(A) 5% of the first 100 vehicle sales for the previous year; plus

(B) 3% of the next 100 vehicle sales for the previous year; plus

(C) 2% of vehicle sales in excess of 200 for the previous year; and

(D) any additional sets upon a showing of good cause by the applicant dealer to the department.

(ii) in addition to the dealer plates allowed under subsection (2)(a)(i), a dealer who has purchased one or more sets of dealer plates *or a licensed wholesaler* is entitled to purchase demonstrator plates at a cost determined by the department to offset the cost of production. Demonstrator plates ~~shall~~ *must* be used in lieu of a dealer plate but only as set forth in subsection (6) and must be distinguished from dealer plates in a manner determined by the department. *Wholesaler demonstrator plates must be distinguished from dealer demonstrator plates in a manner determined by the department.*

(b) dealers in motorcycles, quadricycles, and trailers, including housetrailers, $45~~.~~*; and*

(c) wholesalers in used motor vehicles, recreational vehicles, trailers (including semitrailers and special mobile equipment), and motorcycles (including quadricycles), $30.

(3) If ~~any~~ *a* dealer *or wholesaler* is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of ~~such~~ *the* year ~~shall be~~ *is* one-half of the regular fee above given.

(4) A dealer *or wholesaler* in motor vehicles, recreational vehicles, or trailers who ~~shall maintain~~ *maintains* more than one place of business or who ~~shall maintain any~~ *maintains a* branch establishment or establishments ~~must~~ *shall* register and pay a registration or license fee for each ~~such~~ place of business or establishment. *A dealer may sell vehicles only from his licensed place of business unless the dealer notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises sale. Except for recreational vehicle dealers, an off-premises sale must be conducted within the city limits of the city of the dealer's licensed location or upon an adjacent off-premises site that is approved by the department and that is within the county of the dealer's licensed location. The sale may not exceed 10 consecutive business days, and a licensed dealer may not conduct more than 10 off-premises sales during any 1 calendar year.*

(5) A new applicant for a used motor vehicle dealer *or wholesaler* license shall pay $300 to the department in addition to any other sums required by this section or other provisions of the law. An applicant for a renewal of a used motor vehicle dealer *or wholesaler* license shall certify under oath that he has sold more than five used motor vehicles during the preceding calendar year or pay an additional $300 before he may be licensed.

(6) Demonstrator plates provided for in subsection (2)(a)(ii) may be used only as follows:

(a) New and used motor vehicle or recreational vehicle demonstrator plates may be used:

(i) to demonstrate, for no more than 72 hours, an authorized vehicle held for sale, when operated by an individual holding a valid operator's license;

(ii) on authorized vehicles owned by the firm when operated by an officer or bona fide full-time employee of the dealer *or wholesaler* and used to transport the dealer's *or wholesaler's* own tools, parts, and equipment;

(iii) on authorized vehicles being tested for repair;

(iv) on authorized vehicles being moved to or from a dealer's place of business for sale;

(v) on authorized vehicles being moved to or from service and repair facilities before sale;

(vi) on authorized vehicles being moved to or from exhibitions within the state, provided any such exhibition does not exceed a period of 20 days.

(b) Mobile home and trailer dealer demonstrator plates may be used:

(i) on units hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on mobile homes hauled to a customer's location for setup after sale;

(iii) on travel trailers held for sale to demonstrate the towing capability of the vehicle provided that a dated demonstration permit, valid for not more than 72 hours, is carried with the vehicle at all times;

(iv) on any motor vehicle owned by the dealer that is used only to move vehicles legally bearing mobile home and travel trailer dealer license plates of the dealer owning any such motor vehicle;

(v) on vehicles being moved to or from vehicle exhibitions within the state, provided any such exhibition does not exceed a period of 20 days."

Section 4. Section 61-4-103, MCA, is amended to read:

"**61-4-103. Assignment of dealer plates.** (1) Upon the licensing of a dealer as a new motor vehicle dealer, used motor vehicle dealer, recreational vehicle dealer, or trailer, semitrailer, or special mobile equipment dealer, or a dealer of the motorcycle- or quadricycle-type vehicle, the department shall assign to ~~such~~ *the* dealer a distinctive serial license number as a dealer and after payment of fees furnish every qualified dealer in motor vehicles with ~~such~~ sets of number plates as required according to need, which need ~~shall~~ *must* be justified by the dealer with the initial application for license and each renewal. Assigned number plates ~~shall~~ *must* be similar to number plates furnished to owners of motor vehicles but ~~shall~~ *must* bear ~~thereon~~, in addition to the serial number assigned ~~such~~ *the* dealer, the letter "D" if the dealer is authorized to sell new motor vehicles (including trucks and truck trailers); the letters "RV" if the dealer is authorized to sell recreational vehicles; the letters "UD" if the dealer is authorized to sell used motor vehicles (including used trucks and used truck trailers); the letters "DTR" if the dealer is authorized to sell trailers, semitrailers, or special mobile equipment (new or used); and the letters "MCD" if the dealer is authorized to sell vehicles of the motorcycle or quadricycle type (new or used).

(2) With the exception of a dealer authorized to sell new motor vehicles (including trucks and truck trailers) and to use the "D" plate or demonstrator plate, ~~no~~ *a* dealer *or wholesaler* authorized to transact business under the provisions of this section may *not* offer for sale or trade any vehicle described in this section except ~~such~~ *the* vehicles ~~as~~ *that* are authorized by the plates assigned to him. If an applicant wishes to sell more than one type of vehicle, he shall make application for each separate authorization. No plate assigned to a dealer *or wholesaler* may be used on any vehicle other than the type described in this section. *A wholesaler may not sell a motor vehicle to a person who is not a licensed dealer.* A dealer authorized to sell new motor vehicles and assigned a "D" plate or demonstrator plate is authorized to sell both new and used motor vehicles (including trucks and truck trailers), and ~~such~~ *the* plates may be displayed on either new or used motor vehicles by a licensed dealer in new vehicles.

(3) The department shall cause to be placed on each set of license plates issued to a dealer a serial number assigned to each dealer and the actual number of license plates issued to each dealer. The number of the dealer ~~shall~~ *must* follow the prefix of the county, and the number of plates issued the dealer ~~shall~~ *must* follow the prefix of the county and the number of the dealer, the dealer's number to be separated from the county prefix by a dash, and the number of plates issued to a dealer to be separated from the dealer's number by a dash, as follows: dealer number 4 in Lewis and Clark County would be numbered 5-4, and if the dealer were issued three sets of plates, they would be numbered consecutively as follows, 5-4-1, 5-4-2, and 5-4-3. *Wholesalers who receive demonstrator plates under this part must be issued license plates that are of a similar sequence to dealer and dealer demonstrator plates and display a "wholesaler" or "wholesale dealer" identifier conspicuously displayed upon the plates.*

(4) Dealers properly licensed under this section are authorized to use and display dealer's license plates on ~~any~~ *a* motor vehicle held for bona fide sale or used in the conduct of the dealer's business in selling or demonstrating motor vehicles and operated by or under the control of the dealer, his officers or employees. For purposes of this provision, "officers and employees" include only ~~such~~ *the* persons listed on the manufacturer's franchise agreement or the importer's distribution agreement and their spouses or such other persons upon whom the dealer has paid social security taxes as a full-time employee. ~~No~~ *A* dealer's *or wholesaler's* license plate ~~shall~~ *may not* be used or displayed on vehicles normally used for hire, lease, or rental or for purposes not incident to the business of a motor vehicle dealer. ~~Each~~ *A* dealer is accountable for each plate issued and shall certify quarterly to

the department the disposition of each dealer plate assigned to the dealer, including the name, address, and occupation of the person primarily using each plate.

(5) When the department has reasonable cause to believe, from an investigation made by it or information furnished to it by the sheriff or any other law enforcement officer, that ~~any such~~ *a* dealer *or wholesaler* has been improperly licensed, has used the dealer's license in a manner other than the one ~~herein~~ authorized *in this section,* ~~or~~ *has provided a material misstatement of fact in an application for a license,* is not qualified as a dealer *or wholesaler* under the requirements of this section, *or whose criminal conduct renders him unfit for licensure,* the department may revoke ~~such~~ *the* dealer's *or wholesaler's* license. ~~No~~ *A* person, firm, corporation, or association ~~shall~~ *may not,* for commission or profit, engage in the business of buying, selling, exchanging, or acting as a broker of new motor vehicles, trailers, or semitrailers unless duly licensed in compliance with this section (except trailers having an unladen weight of less than 500 pounds)."

Section 5. Section 61-4-104, MCA, is amended to read:

"**61-4-104. Record of purchase or sale.** ~~Every~~ *A* dealer *or wholesaler* licensed under 61-4-101 shall keep a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of ~~such~~ *the* vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was sold or delivered, as the case may be. The description in the case of motor vehicles ~~shall~~ *must* also include the engine number, if any, maker's number, if any, chassis number, if any, and ~~such~~ other numbers or identification marks ~~as~~ *that* appear ~~thereon~~ *on the motor vehicle* and ~~shall~~ *must* include a statement that a number has been obliterated, defaced, or changed if such is the fact. In the case of a trailer, semitrailer, or special mobile equipment, the record ~~shall~~ *must* include the manufacturer's number and ~~such~~ other numbers or identification marks ~~as~~ *that* appear thereon. The dealer ~~shall~~ *or wholesaler must* also have in his possession, *from the time the motor vehicle is delivered to him until it has been disposed of by him,* a duly assigned certificate of ownership from the owner of the motor vehicle *to the dealer or wholesaler* ~~from the time the motor vehicle is delivered to him until it has been disposed of by him~~. *It is a violation of this part for a dealer or wholesaler to fail to take assignment of all certificates of ownership or manufacturer's certificates of origin for vehicles acquired by the licensee or to fail to assign the certificate of ownership or manufacturer's certificate of origin for vehicles sold. All records required to be kept in accordance with this section, in addition to the required retention of odometer disclosure information under 61-3-206(4), must be physically located and maintained within the building referred to in 61-4-101(2)(b)(i).* An authorized representative of the department, upon presentation of his credentials, may inspect and have access to and copy any records required under this chapter."

Section 6. Section 61-4-105, MCA, is amended to read:

"**61-4-105. Criminal penalty — civil penalty imposed by agency.** (1) Any person violating the provisions of 61-4-101 through 61-4-104 *or [section 10]* is guilty of a misdemeanor and subject to a fine of not less than $250 and not more than $500. For the purposes of this section, every sale of a motor vehicle in violation of the provisions of 61-4-101 through 61-4-104 *or [section 10]* is a separate offense.

(2) In addition to all other penalties created by this part, the department is authorized to take appropriate enforcement action on its own initiative. Any person violating the provisions of 61-4-101 through 61-4-104 *or [section 10]* may be subject to administrative action, in accordance with the contested case procedures of Title 2, chapter 4, as follows:

(a) a civil penalty not to exceed $200 for each violation;

(b) suspension of the motor vehicle dealer, *wholesaler, or auto auction* license not to exceed 5 working days;

(c) revocation or denial of the motor vehicle dealer, *wholesaler, or auto auction* license; or

(d) any combination of subsections (2)(a) through (2)(c)."

Section 7. Section 61-4-106, MCA, is amended to read:

"**61-4-106. Transfer of license.** A registered dealer *or wholesaler*~~,~~ who ~~may sell or dispose~~ *sells or disposes* of his entire business to ~~any other~~ *another* person~~,~~ may have his certificate of registration transferred to ~~such~~ *the* purchaser upon filing with the department a statement containing the name of the registered dealer *or wholesaler,* the number under which ~~such dealer~~ *the business* is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of ~~such~~ *the* statement, accompanied by a filing fee of $2, the department shall note upon the registration record of ~~such~~ *the* dealer *or wholesaler* the change of ownership. ~~But no~~ *A* certificate of registration ~~can~~ *may not* be transferred unless the entire business of the dealer *or wholesaler* holding ~~such~~ *the* certificate of registration ~~be~~ *is* sold and disposed of, and ~~no such~~ *a* certificate of registration ~~can~~ *may not* be transferred to any person other than the purchasers of ~~such~~ *the* business."

Section 8. Section 61-4-119, MCA, is amended to read:

"**61-4-119. Penalty.** ~~Any~~ *A* person violating ~~the provisions~~ *a provision* of 61-4-111 or 61-4-112 is guilty of a misdemeanor and subject to a fine of not less than ~~$25~~ *$250* and not more than ~~$100~~ *$500.* Every violation of 61-4-111 and 61-4-112 is considered a separate offense."

Section 9. **Wholesaler.** "Wholesaler" means a person, firm, partnership, association, or corporation who for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, recreational vehicle, trailer, semitrailer, special mobile equipment, motorcycle, or quadricycle only to motor vehicle dealers and auto auctions licensed under this part.

Section 10. **Application for auto auction license — general regulations.** (1) A person, firm, association, or corporation that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:

(a) Each application and all of the information contained in it must be verified by the Montana highway patrol or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:

(i) the name in which the business is to be conducted and the location of premises (street address, city, county, and state) where records are kept, sales are made, and motor vehicle stock is displayed as an established place of business that displays a sign indicating the firm name and that vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.

(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license. A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor vehicle manufacturer, importer, distributor, or representative thereof, for the purpose of conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

(b) Each application must be accompanied by a bond of $25,000 and must be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually. A person who suffers loss or damage due to the unlawful conduct of an auto auction licensed under this section may proceed in the same manner as provided for licensed dealers and wholesalers in 61-4-101(3)(b).

(2) An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year. The fee required for each first-time applicant is $500 and for subsequent renewal applications is $100 each year. Upon receipt of a properly completed application, fee, and bond, the department shall issue the auto auction license and assign an auto auction license number for each applicant in a manner determined by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers.

(3) Auto auctions that are licensed under this section and that hold a current license number may issue temporary permits, which may be displayed and used by a buyer to operate an unregistered vehicle purchased from the auto auction. The temporary permit is valid for a period of 72 hours from the time of purchase and may be used only for the purpose of driving or transporting a vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary permits must be on a form prescribed by the department and must contain the name, address, and license number of the purchaser, date of sale, name, address, license number, authorized signature of the auto auction, and a description of the vehicle, including its serial number. The department shall collect a fee of $10 from the auto auction for each temporary permit, and the auto auction may charge a vehicle purchaser no more than $10 for the issuance of each permit to offset the cost of the permits. It is unlawful for the auto auction to issue more than one temporary permit per vehicle sale.

(4) A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of production. Licensed auto auctions may use the license plates to transport inventory vehicles from a point of storage or a point of delivery in this state to the auto auction's place of business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting, upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed on the rear of the vehicle. Auto auctions may appoint designated persons, partnerships, corporations, service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing of similar types of work upon a vehicle. Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this section is liable for the proper use of the license plates, which may not be used for private purposes. The department may revoke an auto auction's 72-hour temporary permit and license plate privileges if an auction issues, authorizes the use of, or uses a temporary permit or the license plate in violation of the provisions of this section.

(5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary permit issued to a vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

(i) the identification number or engine number, if any;

(ii) other numbers or identification marks on the motor vehicle; and

(iii) a statement that a number has been obliterated, defaced, or changed, if it has.

(b) An auto auction licensed under this section shall validate the sale of a motor vehicle through its auction by stamping its name and license number upon the certificate of ownership at a location on the front or back of the certificate, at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible and may not interfere with the information recorded on the certificate between transferor and transferee. If the certificate of ownership lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of auction invoice bearing the name and license number of the auction, along with an indication of the vehicle year, make, model, and identification number; name, address, and signature of transferor; name, license number, and signature of transferee; and the date the vehicle was sold through the auction.

(c) The invoice must be attached to the certificate of ownership and must be presented to the department with any application for title.

(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer data base or manual file. An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgement for the buyer under the provisions of 61-3-206.

Section 11. **Twenty-day permit limitation on issuance — violation — penalty.** (1) A dealer may not issue more than one 20-day permit under 61-4-111 or 61-4-112 per vehicle sale.

(2) A dealer who violates the provisions of subsection (1) is subject to revocation of the privilege to issue 20-day permits for a period of time determined by the department.

Section 12. **Code commissioner instruction.** Unless the context clearly requires otherwise, the code commissioner shall change "dealer" to read "dealer and wholesaler" or "dealer or wholesaler", as the usage requires, in 61-1-117, 61-2-405, 61-3-206, 61-3-508, 61-4-205, and 61-10-214.

Section 13. **Codification instruction.** (1) [Section 9] is intended to be codified as an integral part of Title 61, chapter 1, part 3, and the provisions of Title 61, chapter 1, part 3, apply to [section 9].

(2) [Sections 10 and 11] are intended to be codified as an integral part of Title 61, chapter 4, part 1, and the provisions of Title 61, chapter 4, part 1, apply to [sections 10 and 11].

Approved April 8, 1991.

CHAPTER NO. 384

[SB 392]

AN ACT ALLOWING PUBLIC ACCESS TO DEATH CERTIFICATES WHEN CONDUCTING A TITLE SEARCH; AND AMENDING SECTIONS 50-15-112 AND 50-15-114, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-15-112, MCA, is amended to read:

"**50-15-112. Inspection of records and issuance of copies limited.** (1) ~~The~~ *Except as provided in subsection (3), the* department *and county clerk and recorders* may not permit inspection of the records or issue copies of a certificate unless it is satisfied that the applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights.

(2) "Tangible interest" includes but is not limited to:

(a) the interests of the persons described in 50-15-206 for the purposes of custody or child support actions, social security eligibility determinations, or Indian tribal enrollment determinations; ~~and~~

(b) the interest of a funeral director or mortician licensed under Title 37, chapter 19, with respect to the funeral of a deceased individual named on a death certificate.

(3) The department and county clerk and recorders may, if satisfied that the information is necessary for the determination of property rights, permit inspection of a death certificate by and issue a copy of a death certificate to

a person conducting a title search to determine heirship on property owned or once owned by the deceased."

Section 2. Section 50-15-114, MCA, is amended to read:

"**50-15-114. Unlawful acts and penalties.** (1) It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law ~~and approved by the department~~.

(2) A person shall be fined not more than $1,000, imprisoned not more than 1 year, or both, if:

(a) he willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law or in an application for an amendment thereof or willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate or amendment;

(b) without lawful authority and with the intent to deceive, he makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a certified copy of the report, record, or certificate;

(c) he willfully and knowingly uses or attempts to use or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(d) with the intention to deceive, he willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person;

(e) he willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

(3) A person shall be fined not less than $25 or more than $500, imprisoned for not more than 30 days, or both, if:

(a) he knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;

(b) he refuses to provide information required by law;

(c) he willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon him by law."

Approved April 8, 1991.

CHAPTER NO. 385

[HB 116]

AN ACT REPEALING AN ADMINISTRATIVE RULE, ADOPTED BY THE BOARD OF PUBLIC EDUCATION, THAT REQUIRES EACH SCHOOL TO HAVE A GIFTED AND TALENTED CHILDREN PROGRAM; REPEALING RULE 10.55.804, ADMINISTRATIVE RULES OF MONTANA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature, not the Executive Branch, is the lawmaking branch of the state government under the Montana Constitution; and

WHEREAS, the Legislature may delegate its power to pass laws to the Executive Branch, which may then, within certain limits, adopt administrative rules that have the force and effect of law; and

WHEREAS, a rule may not conflict with a statute and is invalid if it does; and

WHEREAS, section 20-7-902(1), MCA, provides that "a school district may identify gifted and talented children and devise programs to serve them" and Rule 10.55.804, Administrative Rules of Montana, mandates a gifted and talented children program in each school, thereby directly and clearly conflicting with the statute; and

WHEREAS, the Legislature has made a gifted and talented children program discretionary, at the choice of each local school board, the Legislature nonetheless affirms its support of gifted and talented education and encourages local school districts to identify gifted and talented students and design and implement programs that meet the needs of those students.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Rule 10.55.804, Administrative Rules of Montana, is repealed.

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved April 8, 1991.

CHAPTER NO. 386

[HB 173]

AN ACT CLARIFYING CERTAIN PROCEDURES OF THE JUDICIAL STANDARDS COMMISSION; CLARIFYING PUBLIC DISCLOSURE REQUIREMENTS; AMENDING SECTIONS 3-1-1106, 3-1-1109, AND 3-1-1122, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-1106, MCA, is amended to read:

"**3-1-1106. Investigation of judicial officers — complaint — hearing — recommendations.** (1) (a) The commission, upon the filing of a written complaint by any citizen of the state, may initiate an investigation of any judicial officer in the state to determine if there are grounds for conducting additional proceedings before the commission. If the commission's investigation indicates that additional proceedings before the commission may be justified, the commission shall require the citizen who filed the original written complaint to sign a verified written complaint before conducting such additional proceedings.

(b) The commission shall give the judicial officer written notice of the citizen's complaint and of the initiation of an investigation. Notice must also be given if a verified written complaint is filed and must include the charges made, the grounds for the charges, and a statement that the judicial officer may file an answer. The notice must be signed by the commission.

(2) The commission, after such investigation as it considers necessary and upon a finding of good cause, may:

(a) order a hearing to be held before it concerning the censure, suspension, removal, or retirement of a judicial officer;

(b) confidentially advise the judicial officer and the supreme court, in writing, that the complaint will be dismissed if the judicial officer files with the commission a letter stating that he will take corrective action satisfactory to the commission; or

(c) request the supreme court to appoint one or more special masters who are judges of courts of record to hear and take evidence and to report to the commission.

(3) If after hearing or after considering the record and report of the masters the commission finds the charges true, it shall recommend to the supreme court the censure, suspension, removal, or *disability* retirement of the judicial officer."

Section 2. Section 3-1-1109, MCA, is amended to read:

"**3-1-1109. Interim disqualification of judicial officer.** *(1)* A judicial officer ~~is~~ *must be* disqualified from ~~acting~~ *serving* as ~~such~~ *a judicial officer,* without loss of salary, while there is pending~~:~~

~~(1)~~ an indictment or an information charging him with a crime punishable as a felony under Montana or federal law~~; or~~.

(2) ~~a formal proceeding before the commission for his removal or retirement~~ *When the commission files with the supreme court a recommendation that a judicial officer be removed or retired, the judicial officer must be disqualified from serving as a judicial officer, without loss of salary, pending the supreme court's review of the record and proceedings."*

Section 3. Section 3-1-1122, MCA, is amended to read:

"**3-1-1122. Judge's waiver of confidentiality — hearing made public.** ~~The~~ *In addition to the public disclosure required under 3-1-1107, 3-1-1121, and 3-1-1123 through 3-1-1126, the* commission must allow public access to all papers filed with and testimony and hearings before the commission or masters in a given case if the judge against whom a complaint has been filed waives his right of confidentiality and requests in writing that the proceedings be accessible to the public. *Public disclosure of information required under 3-1-1107, 3-1-1121, and 3-1-1123 through 3-1-1126 is not contingent upon a waiver under this section.*"

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved April 8, 1991.

CHAPTER NO. 387

[HB 260]

AN ACT REQUIRING INSURERS, HEALTH SERVICE CORPORATIONS, AND HEALTH MAINTENANCE ORGANIZATIONS TRANSACTING HEALTH INSURANCE BUSINESS IN THIS STATE TO PROVIDE COVERAGE FOR ADOPTED CHILDREN TO THE SAME EXTENT AS FOR NATURAL CHILDREN OF THE INSURED; REQUIRING COVERAGE OF AN ADOPTED CHILD'S CONDITIONS THAT EXIST PRIOR TO PLACEMENT OF THE ADOPTED CHILD IN THE ADOPTIVE HOME; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Coverage for adopted children from time of placement — preexisting conditions.** (1) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state and that provides coverage for a family member of the insured or subscriber must provide coverage for an adopted child of the insured or subscriber to the same extent as for natural children of the insured or subscriber.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" means placement for adoption as defined in 40-8-103.

Section 2. **Coverage for adopted children from time of placement — preexisting conditions.** (1) Each individual or group membership contract issued or amended by a health service corporation in this state that provides coverage of dependent children of a member must provide coverage for an adopted child of the member to the same extent as for natural children of the member.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" means placement for adoption as defined in 40-8-103.

Section 3. **Coverage for adopted children from time of placement — preexisting conditions.** (1) Each health maintenance contract regulated under this chapter must provide coverage for an adopted child of the enrollee to the same extent as for natural children of the enrollee.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" means placement for adoption as defined in 40-8-103.

Section 4. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 33, chapter 30, part 10, and the provisions of Title 33, chapter 30, part 10, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 33, chapter 31, part 1, and the provisions of Title 33, chapter 31, part 1, apply to [section 3].

Section 5. **Applicability.** [This act] applies to policies, certificates, or contracts delivered, issued for delivery, or renewed in this state on or after January 1, 1992.

Approved April 8, 1991.

CHAPTER NO. 388

[HB 545]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE MONTANA MEDICAID PROGRAM; REQUIRING FEDERALLY QUALIFIED HEALTH CENTER SERVICES TO BE INCLUDED AS A MEDICAID SERVICE; REVISING AND EXTENDING AUTHORIZATION FOR HOSPICE CARE; PROVIDING FOR THE PURCHASE OF MEDICARE BENEFITS FOR QUALIFIED DISABLED AND WORKING INDIVIDUALS; ALLOWING PAYMENT OF HEALTH INSURANCE EXPENSES FOR MEDICAID-ELIGIBLE PERSONS; REAUTHORIZING AMBULATORY PRENATAL CARE FOR PREGNANT WOMEN DURING A PRESUMPTIVE ELIGIBILITY PERIOD; AMENDING SECTIONS 53-6-101 AND 53-6-131, MCA; AMENDING SECTION 15, CHAPTER 649, LAWS OF 1989; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-101, MCA, is amended to read:

"**53-6-101. Montana medicaid program — authorization of services.** (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of social and rehabilitation services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) services provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(i) health services provided under a physician's orders by a public health department; and

~~(j) hospice care as defined in 42 U.S.C. 1396d(o)~~

(j) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23, if funds are specifically appropriated for the inclusion of these services in the Montana medicaid program;

(m) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(n) hospice care, as defined in 42 U.S.C. 1396d(o); and

~~(n)~~*(o)* any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(5) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(6) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost effective.

(7) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

(8) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(9) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(10) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted thereunder. ~~*(Subsection (2)(j) terminates June 30, 1991—sec. 4, Ch. 633, L. 1989; Subsection (3)(m) terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)*~~"

Section 2. Section 53-6-131, MCA, is amended to read:

"**53-6-131. Eligibility requirements.** (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of social and rehabilitation services to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the federal Social Security Act (42 U.S.C. 1381, et seq.) or aid to families with dependent children under Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.).

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if he were to apply for such assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, he would be receiving assistance under one of the programs in subsection (1)(a).

(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan for aid to families with dependent children, other than with respect to school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a hard-to-place child.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the medically needy income level specified for federally aided categories of assistance and his resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance, has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance and his resources are within the resource standards of the federal supplemental security income program.

(g) The person is under 1 year of age and:

(i) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(ii) has resources that do not exceed standards the department determines reasonable for purposes of the program.

(2) A person who is pregnant is eligible for pregnancy-related medical assistance under the Montana medicaid program if she:

(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(b) has resources that do not exceed standards the department determines reasonable for purposes of the program.

(3) The Montana medicaid program shall pay for the premiums necessary for participation in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare deductibles and coinsurance for a medicare-eligible person *or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239,* who:

(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(b) has resources that do not exceed standards the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

~~(4)~~*(5)* The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

~~(5)~~*(6)* Notwithstanding any other provision of this chapter, medical assistance must be provided to pregnant women and to infants whose family income does not exceed the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX). *(Subsection ~~(5)~~(6) terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)* "

Section 3. Section 15, Chapter 649, Laws of 1989, is amended to read:

"Section 15. **Program termination.** ~~The provisions of [this act]~~ *[Sections 1 through 9 and 11 through 14]* terminate June 30, 1991."

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved April 8, 1991.

CHAPTER NO. 389

[HB 485]

AN ACT REVISING THE AUTHORITY OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD; REVISING CERTAIN DEFINITIONS IN TITLE 75, CHAPTER 11, PART 3; CLARIFYING THE RESPONSIBILITIES OF A PETROLEUM STORAGE TANK OWNER OR OPERATOR AND AN AGENT DESIGNATED FOR REIMBURSEMENT; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO WAIVE NOTIFICATION OF THE EXISTENCE OF A PETROLEUM STORAGE TANK AS A PREREQUISITE TO TANK RELEASE REIMBURSEMENT; PROVIDING FOR TRIBAL REVIEW OF CLEANUP PLANS PROPOSED WITHIN A TRIBAL JURISDICTION; REVISING THE ROLES OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES IN CLAIMS REVIEW; AMENDING SECTIONS 75-11-302, 75-11-307, 75-11-308, AND 75-11-309, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-302, MCA, is amended to read:

"**75-11-302. Definitions.** The following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third party bodily injury or property damage.

(2) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(3) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(4) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(5) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(6) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(7) "Distributor" means a distributor as defined in 15-70-201.

(8) "Eligible costs" means expenses reimbursable under 75-11-307.

(9) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(10) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(11) "Gasoline" means gasoline as defined in 15-70-201.

(12) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(13) "Owner" means a person who holds title to, controls, or possesses an interest in a petroleum storage tank. The term does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(14) "Person" means an individual, firm, trust, estate, partnership, company, association, joint stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(15) "Petroleum" or "petroleum products" means crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) *or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.*

(16) "Petroleum storage tank" means a tank that ~~contains~~ *contains or contained* petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-10-403;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, ~~draft~~ *drift*, shaft, or tunnel;

(c) an above ground storage tank with a capacity less than 30,000 gallons; or

(d) above ground or underground pipes associated with tanks under subsections (16)(b) and (16)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (16)(d)(i) and (16)(d)(ii), if the facility is intrastate.

(17) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(18) "Release" means ~~a release, as defined in 75-10-701,~~ *any spilling, leaking, emitting, discharging, escaping, leaching, or disposing* of petroleum or petroleum products from a petroleum storage tank *into ground water, surface water, surface soils, or subsurface soils.*"

Section 2. Section 75-11-307, MCA, is amended to read:

"**75-11-307. Reimbursement for expenses caused by a release.** (1) Subject to the availability of funds under subsection (5), an owner or operator who is eligible under 75-11-308 and complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs; and

(b) compensation paid to third parties for bodily injury or property damage.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4).

(3) An owner or operator may designate a person as his agent to receive the reimbursement, *provided that the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.*

(4) Subject to the availability of funds under subsection (5), for releases that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500.

(5) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

Section 3. Section 75-11-308, MCA, is amended to read:

"**75-11-308. Eligibility.** (1) An owner or operator is eligible for reimbursement for eligible costs caused by a release from a petroleum storage tank only if:

(a) the release was discovered on or after April 13, 1989;

(b) the department is notified of the release in the manner and within the time provided by law or rule;

(c) the department has been notified of the existence of the tank in the manner required by department rule *or has waived the requirement for notification*;

(d) the release was an accidental release; and

(e) with the exception of the release, the operation and management of the tank complied with applicable state and federal laws and rules when the release occurred and remained in compliance following detection of the release.

(2) An owner or operator is not eligible for reimbursement for expenses caused by releases from the following petroleum storage tanks:

(a) a tank located at a refinery or a terminal of a refiner;

(b) a tank located at an oil and gas production facility;

(c) a tank that is or was previously under the ownership or control of a railroad;

(d) a tank belonging to the federal government;

(e) a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes or a tank used for storing heating oil for consumptive use on the premises where stored;

(f) a tank owned or operated by a person who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or

(g) a mobile storage tank used to transport petroleum or petroleum products from one location to another."

Section 4. Section 75-11-309, MCA, is amended to read:

"**75-11-309. Procedures for reimbursement of eligible costs.** (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from his petroleum storage tank, he shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect public health and safety and the environment.

(b) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, *tribal (where applicable),* and federal corrective action requirements.

(c) (i) The department shall review the corrective action plan and forward a copy to a local government office *and, where applicable, a tribal government office* with jurisdiction over a corrective action for the release. The local *or tribal* government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, *tribal government,* or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (c) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government *or tribal government* may not impose different corrective action requirements on the owner or operator.

(d) The department shall notify the owner or operator and the board of its approval of a corrective action plan.

(e) The owner or operator shall implement the approved plan. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, parts 4 and 7, and other applicable law and rules.

(f) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the ~~department~~ *board* in the form and manner required by the board. The ~~department~~ *board* shall forward each claim and appropriate documentation to the ~~board~~ *department.* ~~and~~ *The department shall* notify the board of any costs that the department considers not reimbursable because of any failure to meet the requirements of subsection (2). The department shall inform the owner or operator of any notification given to the board.

(g) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(2) The board shall review each claim received under subsections (1)(f) and (1)(g), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section.

(3) If an owner or operator disagrees with a board determination under subsection (2), he may submit a written request for a hearing before the board. The hearing must be held at a meeting of the board no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(4) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(5) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (5)(b) does not affect the order in which money in the fund is obligated under subsection (4).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee."

Section 5. **Saving clause.** Nothing in [this act] applies to alter a claim for reimbursement that was filed before [the effective date of this act] or that arose pursuant to a corrective action plan approved by the department before [the effective date of this act].

Section 6. **Effective date.** [This act] is effective July 1, 1991.

Approved April 8, 1991.

CHAPTER NO. 390

[HB 571]

AN ACT TO PROVIDE REFERENCES TO THE DRIVER IMPROVEMENT PROGRAM WITHIN THE STATUTES CONCERNING HABITUAL TRAFFIC OFFENDERS; TO PROVIDE FOR AN ADDITIONAL REVOCATION OF THE DRIVER'S LICENSE OR DRIVING PRIVILEGE OF A PERSON CONVICTED AS A HABITUAL OFFENDER OPERATING A MOTOR VEHICLE; TO REPEAL THE REQUIREMENT THAT CERTAIN HIGH MISDEMEANORS BE CERTIFIED TO DISTRICT COURT; AMENDING SECTIONS 61-11-211, 61-11-212, AND 61-11-213, MCA; AND REPEALING SECTION 61-11-214, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-11-211, MCA, is amended to read:

"**61-11-211. Department to revoke license of habitual offender — method of removal of points upon revocation.** Upon receipt of a court order declaring an *individual* ~~a~~ habitual offender, the department shall revoke the driver's license or driving privilege of the individual named in the order for a period of 3 years from the date of the order, *subject to the provisions of 61-2-302*. Additionally, the department shall remove from that individual's record those habitual offender points ~~which~~ *that* were certified to the county attorney in the certification required by 61-11-204."

Section 2. Section 61-11-212, MCA, is amended to read:

"**61-11-212. Penalties.** ~~No~~ *A* person who has been adjudged ~~an~~ *a* habitual traffic offender ~~shall~~ *may not* be issued a license to operate a motor vehicle in this state until:

(1) a period of 3 years has elapsed from the date of the final order of the court adjudging the person ~~an~~ *a* habitual traffic offender, *subject to the provisions of 61-2-302*;

(2) the person has met ~~all~~ the requirements of all applicable laws and rules relating to the licensing of motor vehicle operators in this state; and

(3) the person files with the department, and maintains for a period of 3 years, proof of his financial responsibility in the limits required by law."

Section 3. Section 61-11-213, MCA, is amended to read:

"**61-11-213. Habitual traffic offender operating motor vehicle guilty of misdemeanor.** ~~Any~~ *A* person found to be ~~an~~ *a* habitual traffic offender under this part~~,~~ and who ~~thereafter~~ operates a motor vehicle in this state while the order of the court prohibiting ~~such~~ *the* operation remains in effect~~, shall be~~ *is* guilty of a misdemeanor~~,~~ and upon conviction ~~thereof~~ shall be imprisoned for a period of not more than 1 year or fined not more than $1,000, or both, *and the department, upon receiving a record of the conviction of a person under this section, shall extend the period of revocation for an additional 1 year*. However, in cases ~~wherein~~ *in which* the prohibited operation of a motor vehicle by ~~an~~ *a* habitual traffic offender is necessitated in a situation of extreme emergency in order to save life, limb, or property, he ~~shall~~ *may* not be ~~deemed~~ *considered* guilty of a violation under this part."

Section 4. **Repealer.** Section 61-11-214, MCA, is repealed.

Approved April 8, 1991.

CHAPTER NO. 391

[HB 635]

AN ACT TO GENERALLY REVISE THE MONTANA LIVING WILL ACT TO CONFORM TO THE UNIFORM RIGHTS OF THE TERMINALLY ILL ACT; PROVIDING THAT OTHER INDIVIDUALS MAY AUTHORIZE THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT; CLARIFYING WHEN A DECLARATION RELATING TO THE USE OF LIFE-SUSTAINING TREATMENT IS OPERATIVE; PROVIDING FOR THE PRESUMPTION OF THE VALIDITY OF DECLARATIONS RELATING TO THE USE OF LIFE-SUSTAINING TREATMENT; AMENDING SECTIONS 50-9-101, 50-9-102, 50-9-103, 50-9-104, 50-9-201, 50-9-202, 50-9-203, 50-9-204, 50-9-205, AND 50-9-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-9-101, MCA, is amended to read:

"**50-9-101. Short title.** This chapter may be cited as the "Montana ~~Living Will~~ *Rights of the Terminally Ill* Act"."

Section 2. Section 50-9-102, MCA, is amended to read:

"**50-9-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.

(2) "Board" means the Montana state board of medical examiners.

(3) "Declaration" means a document executed in accordance with the requirements of 50-9-103.

(4) "Department" means the department of health and environmental sciences.

(5) "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other emergency services personnel acting within the ordinary course of their professions.

(6) "Health care provider" means a person who is licensed, *certified,* or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

(7) "Life-sustaining ~~procedure~~ *treatment*" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process.

(8) "Living will protocol" means a locally developed, community-wide method or a standardized, state-wide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining ~~procedures~~ *treatment* from a qualified patient under 50-9-202 by emergency medical service personnel.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

~~(9)~~*(10)* "Physician" means ~~a person~~ *an individual* licensed under Title 37, chapter 3, to practice medicine in this state.

~~(10)~~*(11)* "Qualified patient" means a patient *18 or more years of age* who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition.

~~(11)~~*(12)* "Reliable documentation" means a standardized, state-wide identification card or form or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient.

(13) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

~~(12)~~*(14)* "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining ~~procedures~~ *treatment,* will, in the opinion of the attending physician, result in death within a relatively short time."

Section 3. Section 50-9-103, MCA, is amended to read:

"**50-9-103. Declaration relating to use of life-sustaining ~~procedures~~ *treatment — designee.*** (1) ~~Any competent adult~~ *An individual of sound mind and 18 or more years of age* may execute *at any time* a declaration ~~at any time~~ ~~directing that~~ *governing the withholding or withdrawal of* life-sustaining ~~procedures be withheld or withdrawn~~ *treatment. The declarant may designate another individual of sound mind and 18 or more years of age to make decisions governing the withholding or withdrawal of life-sustaining treatment.* ~~However, the declaration is effective only if the declarant's condition is determined to be terminal and the declarant is not able to make treatment decisions.~~ The declaration must be signed by the declarant, or another at the declarant's direction, ~~in the presence of~~ *and witnessed by* two ~~witnesses~~ *individuals.* A physician or health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid.

(2) ~~It is the responsibility of the declarant to notify his physician of the declaration. A physician or other health care provider who is provided a~~

~~copy of the declaration shall make it a part of the declarant's medical records.~~

~~(3)~~ A declaration *directing a physician to withhold or withdraw life-sustaining treatment* may, but need not, be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that, *without the administration of life-sustaining treatment,* will, *in the opinion of my attending physician,* cause my death within a relatively short time~~, it is my desire that my life not be prolonged by administration of life-sustaining procedures. If my condition is terminal~~ and I am ~~unable to participate in~~ *no longer able to make* decisions regarding my medical treatment, I direct my attending physician, *pursuant to the Montana Rights of the Terminally Ill Act,* to withhold or withdraw ~~procedures~~ *treatment* that ~~merely prolong~~ *only prolongs* the ~~dying~~ process *of dying* and ~~are~~ *is* not necessary to my comfort or ~~freedom from~~ *to alleviate* pain. ~~It is my intention that this declaration shall be valid until revoked by me.~~

Signed this .... day of ...., ...
Signature ....
City, County, and State of Residence ....

The declarant ~~is known to me and~~ voluntarily signed this document in my presence.

Witness ....
Address ....
Witness ....
Address ....

(3) A declaration that designates another individual to make decisions governing the withholding or withdrawal of life-sustaining treatment may, but need not, be in the following form:

DECLARATION

If I should have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I appoint .... or, if he or she is not reasonably available or is unwilling to serve, ..., to make decisions on my behalf regarding withholding or withdrawal of treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain, pursuant to the Montana Rights of the Terminally Ill Act.

If the individual I have appointed is not reasonably available or is unwilling to serve, I direct my attending physician, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain.

Signed this .... day of ...., ...
Signature ....
City, County, and State of Residence ....

The declarant voluntarily signed this document in my presence.

Witness ....
Address ....
Witness ....
Address ....

Name and address of designee.

Name ....
Address ....

(4) If the designation of an attorney-in-fact pursuant to 72-5-501 and 72-5-502, or the judicial appointment of an individual, contains written authorization to make decisions regarding the withholding or withdrawal of life-sustaining treatment, that designation or appointment constitutes, for the purposes of this part, a declaration designating another individual to act for the declarant pursuant to subsection (1).

(5) A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, promptly so advise the declarant and any individual designated to act for the declarant."

Section 4. Section 50-9-104, MCA, is amended to read:

"**50-9-104. Revocation of declaration.** (1) A *declarant may revoke a* declaration ~~may be revoked~~ at any time and in any manner ~~by which the declarant is able to communicate his intent to revoke~~, without regard to mental or physical condition. A revocation is effective ~~only as to the attending physician or any health care provider acting under the guidance of that physician~~ upon *its* communication to the *attending* physician or *other* health care provider by the declarant or ~~by another to whom~~ *a witness to* the revocation ~~was communicated~~. A health care provider or emergency medical services personnel witnessing a revocation shall act upon the revocation and shall communicate the revocation to the attending physician at the earliest opportunity. A revocation communicated to a person other than the attending physician, emergency medical services personnel, or a health care provider is not effective unless the attending physician is informed of it before the qualified patient is in need of life-sustaining ~~procedures~~ *treatment.*

(2) The attending physician or *other* health care provider shall make the revocation a part of the declarant's medical record."

Section 5. Section 50-9-201, MCA, is amended to read:

"**50-9-201. Recording determination of terminal condition and content of declaration.** ~~When an attending physician who has been notified of the existence and content of a declaration determines that the~~

Upon determining that a declarant is in a terminal condition, the *attending* physician *who knows of a declaration* shall record that determination and the ~~content~~ *terms* of the declaration in the declarant's medical record."

Section 6. Section 50-9-202, MCA, is amended to read:

"**50-9-202. Treatment of qualified patients.** (1) A qualified patient ~~has the right to~~ *may* make decisions regarding ~~use of~~ life-sustaining ~~procedures~~ *treatment* ~~if~~ *so long as* the patient is able to do so. ~~If a qualified patient is not able to make such decisions, the declaration governs decisions regarding use of life-sustaining procedures.~~

(2) This chapter does not ~~prohibit the application of any medical procedure or intervention~~ *affect the responsibility of the attending physician or other health care provider to provide treatment,* including ~~the provision of~~ nutrition and hydration, ~~considered necessary to provide~~ *for a patient's* comfort care or ~~to alleviate~~ *alleviation of* pain.

(3) ~~The declaration of a qualified patient~~ *Life-sustaining treatment cannot be withheld or withdrawn pursuant to a declaration from an individual* known to the attending physician to be pregnant ~~must be given no effect if~~ *so long as* it is probable that the fetus ~~could~~ *will* develop to the point of live birth with continued application of life-sustaining ~~procedures~~ *treatment.*"

Section 7. Section 50-9-203, MCA, is amended to read:

"**50-9-203. Transfer of patients.** ~~(1)~~ An attending physician *or other health care provider* who is unwilling to comply with ~~the requirements of 50-9-201 or who is unwilling to comply with the declaration of a qualified patient in accordance with 50-9-202~~ *this chapter* shall take all reasonable steps *as promptly as practicable* to transfer *care of* the declarant to another physician *or health care provider who is willing to do so.*

~~(2)~~ If the policies of a health care facility preclude compliance with the declaration of a qualified patient under this chapter, that facility shall take all reasonable steps to transfer the patient to a facility in which the provisions of this chapter can be carried out."

Section 8. Section 50-9-204, MCA, is amended to read:

"**50-9-204. Immunities.** (1) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

(a) a physician who causes the withholding or withdrawal of life-sustaining ~~procedures~~ *treatment* from a qualified patient;

(b) a person who participates in the withholding or withdrawal of life-sustaining ~~procedures~~ *treatment* under the direction or with the authorization of a physician;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining ~~procedures~~ *treatment* under the direction of or with the authorization of a physician or who on receipt of reliable documentation follow a living will protocol;

(d) emergency medical services personnel who proceed to provide life-sustaining treatment to a qualified patient pursuant to a revocation communicated to them; and

(e) a health care facility in which withholding or withdrawal occurs.

(2) A physician *or other health care provider whose action under this chapter is in accord with reasonable medical standards* is not subject to civil or criminal liability ~~for actions under this chapter that are in accord with reasonable medical standards~~ *or discipline for unprofessional conduct with respect to that decision.*

(3) A physician or other health care provider whose decision about the validity of consent under [section 12] is made in good faith is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to that decision.

(4) An individual designated pursuant to 50-9-103(1) or an individual authorized to consent pursuant to [section 12], whose decision is made or consent is given in good faith pursuant to this chapter, is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to that decision."

Section 9. Section 50-9-205, MCA, is amended to read:

"**50-9-205. Effect on insurance — patient's decision.** (1) Death resulting from the withholding or withdrawal of life-sustaining ~~procedures pursuant to a declaration and~~ *treatment* in accordance with this chapter ~~is~~ *does* not *constitute,* for any purpose, a suicide or homicide.

(2) The making of a declaration pursuant to 50-9-103 does not affect ~~in any manner~~ the sale, procurement, or issuance of any policy of life insurance *or annuity,* nor does it *affect, impair, or* modify the terms of an existing policy of life insurance. ~~No~~ *A* policy of life insurance is *not* legally impaired or invalidated ~~in any manner~~ by the withholding or withdrawal of life-sustaining ~~procedures~~ *treatment* from an insured ~~qualified patient~~, notwithstanding any term of the policy to the contrary.

(3) ~~No physician, health care facility, or other health care provider and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan~~ *A person* may *not prohibit or* require ~~any person to execute~~ *the execution of* a declaration as a condition for being insured for or receiving health care services.

(4) This chapter creates no presumption concerning the intention of an individual who has *revoked or has* not executed a declaration with respect

to the use, withholding, or withdrawal of life-sustaining ~~procedures~~ *treatment* in the event of a terminal condition.

(5) ~~Nothing in this~~ *This* chapter ~~increases or decreases~~ *does not affect* the right of a patient to make decisions regarding use of life-sustaining ~~procedures if~~ *treatment, so long as* the patient is able to do so, or ~~impairs~~ *impair* or ~~supersedes~~ *supersede* ~~any~~ *a* right or responsibility that any person has to effect the withholding or withdrawal of medical care ~~in any lawful manner. In that respect, the provisions of this chapter are cumulative~~.

(6) This chapter does not require a physician or other health care provider to take action contrary to reasonable medical standards.

~~(6)~~*(7)* This chapter does not *condone,* authorize, or approve mercy killing *or euthanasia.*"

Section 10. Section 50-9-206, MCA, is amended to read:

"**50-9-206. Penalties.** (1) A physician *or other health care provider* who willfully fails to transfer *the care of a patient* in accordance with 50-9-203 is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(2) A physician who willfully fails to record the determination of terminal condition *or the terms of a declaration* in accordance with 50-9-201 is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(3) ~~A person~~ *An individual* who purposely conceals, cancels, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(4) ~~A person~~ *An individual* who falsifies or forges the declaration of another *individual* or purposely conceals or withholds personal knowledge of a revocation as provided in 50-9-104~~, with the intent to cause a withholding or withdrawal of life-sustaining procedures,~~ is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(5) A person who requires or prohibits the execution of a declaration as a condition for being insured for or receiving health care service is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(6) A person who coerces or fraudulently induces an individual to execute a declaration is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(7) The penalties provided in this section do not displace any sanction applicable under other law."

Section 11. **When declaration operative.** (1) A declaration becomes operative when:

(a) it is communicated to the attending physician; and

(b) the declarant is determined by the attending physician to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment.

(2) When the declaration becomes operative, the attending physician and other health care providers shall act in accordance with its provisions and with the instructions of a designee under 50-9-103(1) or comply with the transfer requirements of 50-9-203.

Section 12. **Consent by others to withholding or withdrawal of treatment.** (1) If a written consent to the withholding or withdrawal of the treatment, witnessed by two individuals, is given to the attending physician, the attending physician may withhold or withdraw life-sustaining treatment from an individual who:

(a) has been determined by the attending physician to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment; and

(b) has no effective declaration.

(2) The authority to consent or to withhold consent under subsection (1) may be exercised by the following individuals, in order of priority:

(a) the spouse of the individual;

(b) an adult child of the individual or, if there is more than one adult child, a majority of the adult children who are reasonably available for consultation;

(c) the parents of the individual;

(d) an adult sibling of the individual or, if there is more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation; or

(e) the nearest other adult relative of the individual by blood or adoption who is reasonably available for consultation.

(3) If a class entitled to decide whether to consent is not reasonably available for consultation and competent to decide or if it declines to decide, the next class is authorized to decide. However, an equal division in a class does not authorize the next class to decide.

(4) A decision to grant or withhold consent must be made in good faith. A consent is not valid if it conflicts with the expressed intention of the individual.

(5) A decision of the attending physician acting in good faith that a consent is valid or invalid is conclusive.

(6) Life-sustaining treatment cannot be withheld or withdrawn pursuant to this section from an individual known to the attending physician to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.

Section 13. **When health care provider may presume validity of declaration.** In the absence of knowledge to the contrary, a physician or other health care provider may assume that a declaration complies with this chapter and is valid.

Section 14. **Effect of previous declaration.** An instrument executed before October 1, 1991, that substantially complies with 50-9-103(1) is effective under this chapter.

Section 15. **Codification instruction.** [Sections 11 through 14] are intended to be codified as an integral part of Title 50, chapter 9, and the provisions of Title 50, chapter 9, apply to [sections 11 through 14].

Section 16. **Effective date.** [This act] is effective on passage and approval.

Approved April 8, 1991.

CHAPTER NO. 392

[HB 639]

AN ACT TO AUTHORIZE A LATE FEE FOR LATE RENEWAL OF A LICENSE TO ENGAGE IN THE BUSINESS OF CLEANING SEPTIC TANKS, CESSPOOLS, AND PRIVIES; TO ALLOCATE PROCEEDS FROM LATE FEES AND THE STATE'S SHARE OF ANNUAL LICENSE FEES TO FUND PROGRAMS TO ENFORCE THE LAWS REGULATING THE BUSINESS OF CLEANING SEPTIC TANKS, CESSPOOLS, AND PRIVIES; AND AMENDING SECTION 37-41-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-41-202, MCA, is amended to read:

"**37-41-202. Licenses — nontransferability — fees.** (1) Licenses expire on December 31 of each calendar year. Licenses are not transferable. If a licensee ceases to do business, the license ~~shall~~ *must* be surrendered to the department.

(2) The fee for each license is $25, payable at the time of application for *the* license. A federal agency, city, town, or other political subdivision is not required to pay the license fee, but such agency, including a federal agency if allowed by federal law, shall comply with all other requirements of this chapter. The department shall annually return 80% of the fees ~~collected from a county to that~~ *to the* county *where the fees were collected.* The state

portion of the fee ~~shall~~ *must* be deposited in the ~~state general fund~~ *account provided for in [section 2].* The county portion of the fee ~~shall~~ *must* be used to defer cost of the county to enforce this chapter.

(3) In addition to the license fee required under subsection (2), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of his current license and who operates a business governed by this chapter in the licensing year. The late fee is $25 and must be deposited in the account provided for in [section 2]."

Section 2. **Special revenue account.** There is an account in the state special revenue fund. Money in the account is allocated to the department to fund programs to enforce the provisions of this chapter and rules adopted by the department under 37-41-103.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 37, chapter 41, and the provisions of Title 37, chapter 41, apply to [section 2].

Approved April 8, 1991.

CHAPTER NO. 393

[HB 831]

AN ACT AUTHORIZING THE DEPARTMENT OF INSTITUTIONS TO ADOPT STANDARDS GOVERNING THE APPROVAL OF CHEMICAL DEPENDENCY TREATMENT PROGRAMS AND RULES GOVERNING THE USE OF COUNTYWIDE TREATMENT PLANS IN DETERMINING COUNTY NEEDS FOR TREATMENT, REHABILITATION, AND PREVENTION OF CHEMICAL DEPENDENCY; AND AMENDING SECTIONS 53-24-208 AND 53-24-211, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 1] requires the department of institutions to adopt standards for approval of chemical dependency treatment programs and because [section 2] grants the department the authority to adopt rules specifying the use to be made of countywide plans for the treatment, rehabilitation, and prevention of chemical dependency in the department's determination of the needs of the counties. It is the intent of the legislature that the department adopt rules addressing the content, organization, management, and personnel requirements of treatment programs and that the rules governing the use of the countywide plans discourage duplication of program services.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-24-208, MCA, is amended to read:

"**53-24-208. Facility standards.** (1) The department shall establish standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility and fix the fees to be charged for the required inspections. The standards *shall be adopted by rule and* may concern ~~only~~ the health standards to be met and standards ~~of~~ *for the approval of* treatment ~~to be afforded~~ *programs for* patients.

(2) Facilities applying for approval must demonstrate a local need currently exists for proposed services and that the proposed services do not duplicate existing local services.

(3) The department shall periodically inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(4) The department shall maintain a list of approved public and private treatment facilities.

(5) Each approved public and private treatment facility shall, on request, file with the department data, statistics, schedules, and information the department reasonably requires. An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules, or information as requested or files fraudulent returns thereof shall be removed from the list of approved treatment facilities.

(6) The department, after holding a hearing in accordance with the Montana Administrative Procedure Act, may suspend, revoke, limit, or restrict an approval or refuse to grant an approval for failure to meet its standards.

(7) A district court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

(8) Upon petition of the department and after a hearing held upon reasonable notice to the facility, a district court may issue a warrant to the department authorizing it to enter and inspect at reasonable times and examine the books and accounts of any approved public or private treatment facility refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter."

Section 2. Section 53-24-211, MCA, is amended to read:

"**53-24-211. County plan to be submitted to department.** (1) Every 4 years each county shall submit to the department a comprehensive countywide plan for the treatment, rehabilitation, and prevention of chemical dependency. Each county shall also submit annual plan updates that include, at a minimum, allocation to approved programs of revenues generated by taxation on alcoholic beverages.

(2) The plan must have been approved by the board of county commissioners and must contain information regarding existing private and public chemical dependency programs within the county. The plan must also contain information regarding the current and future needs of the county for the treatment, rehabilitation, and prevention of chemical dependency.

(3) The department shall approve or disapprove the countywide plan and annual updates. If the department disapproves a plan or update, the county may submit another plan or update to the department. In distributing funds to approved programs in a county, the department shall give consideration to the county plan.

(4) The department may adopt rules regarding the submission, submission dates, updates, approval, and disapproval of plans *and the use of plans by the department in determining the needs of the county for the treatment, rehabilitation, and prevention of chemical dependency.* No money may be distributed to a county by the department for the treatment, rehabilitation, and prevention of chemical dependency if the county does not comply with these rules."

Approved April 8, 1991.

CHAPTER NO. 394

[HB 974]

AN ACT ESTABLISHING A RURAL PHYSICIAN INCENTIVE PROGRAM; CREATING A RURAL PHYSICIAN INCENTIVE TRUST FUND; PROVIDING FUNDING FOR THE RURAL PHYSICIAN INCENTIVE TRUST FUND; PROVIDING EDUCATIONAL DEBT PAYMENT PROVISIONS FOR ELIGIBLE RURAL PHYSICIANS; AUTHORIZING THE BOARD OF REGENTS OF HIGHER EDUCATION TO CHARGE CERTAIN STUDENTS FEES FOR PURPOSES OF FUNDING THE PROGRAM; STATUTORILY APPROPRIATING THE RURAL PHYSICIAN INCENTIVE TRUST FUND TO THE BOARD OF REGENTS; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Rural physician incentive trust fund.** There is a rural physician incentive expendable trust fund in the state treasury. Money is payable into the fund as provided in [section 2]. Income and earnings on the fund must be redeposited in the fund. The fund must be administered by the board of regents of higher education as provided in [sections 1 through 4].

Section 2. **Fee assessments — deposits.** The board of regents of higher education may assess a fee to students preparing to be physicians in the fields of medicine or osteopathic medicine who are supported by the state pursuant to an interstate compact for a professional education program in those fields, as those fields are defined by the compact. The fee may not exceed an amount equal to 8% of the annual individual medicine support fee paid by the state pursuant to 20-25-804. The fee must be assessed by the board of regents and deposited in the rural physician incentive trust fund established in [section 1].

Section 3. **Use of rural physician incentive trust fund.** (1) The rural physician incentive trust fund is statutorily appropriated, as provided in 17-7-502, to the board of regents of higher education to be used to pay:

(a) the educational debts of rural physicians who practice in medically underserved areas of the state that demonstrate a need for assistance in physician recruitment; and

(b) the expenses of administering the rural physician incentive program. The expenses of administering the program may not exceed 10% of the annual fees assessed pursuant to [section 2].

(2) The board of regents shall establish procedures for determining the areas of the state that qualify for assistance in physician recruitment. An eligible area must demonstrate that a physician shortage exists or that the area has been unsuccessful in recruiting physicians by other mechanisms.

(3) A physician from an area determined to be eligible under subsection (2) may apply to the board of regents for payment of an educational debt directly related to a professional school, as provided in subsection (4). Physicians who have paid the fee authorized in [section 2] must be given a preference over other applicants. To receive the educational debt payments, the physician shall sign an annual contract with the board of regents. The contract must provide that the physician is liable for the payments if the physician ceases to practice in the eligible area during the contract period.

(4) The maximum amount of educational debt payment that a rural physician may receive is $30,000 over a 4-year period or a proportionally reduced amount for a shorter period.

(5) The amount contractually committed in a year may not exceed the annual amount deposited in the rural physician incentive trust fund.

Section 4. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; *[section 3];* and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 5. **Applicability.** [This act] applies to students enrolling in a professional school on or after July 1, 1992.

Section 6. **Effective date.** [This act] is effective July 1, 1991.

Approved April 8, 1991.

CHAPTER NO. 395

[SB 107]

AN ACT REVISING THE AMOUNT OF MONEY A LOCAL GOVERNMENT MAY APPROPRIATE TO FINANCE A STUDY COMMISSION; AND AMENDING SECTION 7-3-184, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-184, MCA, is amended to read:

"**7-3-184. Financial administration.** (1) A study commission shall prepare a budget for each fiscal year it is in existence and submit it to the local governing body for approval.

(2) (a) For the support of the study commission, for each fiscal year the study commission is in existence, each local government under study shall appropriate ~~the equivalent of at least 1 mill~~ *an amount necessary to fund the study, not to exceed 1 mill,* and the local government may levy up to 1 mill in excess of all other mill levies authorized by law to fund the appropriation for the support of the study commission.

(b) The local government shall provide office and meeting space and clerical assistance to the study commission. The cost of clerical assistance and other in-kind services provided by the local government may be used to partially fulfill the appropriation requirement of subsection (2)(a).

(c) The local government may in its discretion provide additional funds and other assistance.

(3) The study commission may apply for and accept available private, state, and federal money and may accept donations from any source.

(4) All money received by the study commission shall be deposited with the local government finance administrator. The finance administrator is authorized to disburse appropriated money of the study commission on the study commission's order after approval of the budget by the governing body. Unexpended money of the study commission does not revert to the general fund of the local government at the end of the fiscal year but carries over to the study commission's appropriation for the following fiscal year. Upon termination of the study commission, unexpended money reverts to the general fund of the local government."

Approved April 9, 1991.

CHAPTER NO. 396

[SB 276]

AN ACT REQUIRING PAYMENT OF A PARTIAL SALARY TO A FIREFIGHTER INJURED IN THE PERFORMANCE OF DUTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Payment of partial salary to firefighter injured in performance of duty.** (1) A member of a fire department of a first- or second-class municipality who is injured in the performance of duty must be paid by the municipality the difference between his net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the firefighter must require medical or other remedial treatment and must be incapable of performing his duties as a result of the injury.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 33, part 41, and the provisions of Title 7, chapter 33, part 41, apply to [section 1].

Approved April 9, 1991.

CHAPTER NO. 397

[SB 321]

AN ACT REVISING THE CRIME VICTIMS COMPENSATION ACT OF MONTANA TO PROVIDE COMPENSATION TO INNOCENT VICTIMS OF DUI OFFENDERS; PROVIDING BENEFITS TO VICTIMS INJURED OR KILLED IN STATES THAT DO NOT HAVE VICTIMS COMPENSATION PROGRAMS THAT COMPENSATE RESIDENTS OF THIS STATE; REMOVING THE FAMILY EXCLUSION AND PROVIDING BENEFITS TO AN INNOCENT VICTIM REGARDLESS OF RESIDENCE WITH THE OFFENDER OR HIS ACCOMPLICE; AMENDING SECTIONS 53-9-102, 53-9-103, AND 53-9-125, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-9-102, MCA, is amended to read:

"**53-9-102. Legislative purpose and intent.** It is the intent of the legislature of this state to provide a method of compensating and assisting those persons within the state who are innocent victims of criminal acts and who suffer bodily injury or death *and those innocent citizens of this state who are injured or killed in a state that does not have a crime victims compensation program that covers out-of-state residents injured or killed in that state.* To this end, it is the legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons."

Section 2. Section 53-9-103, MCA, is amended to read:

"**53-9-103. Definitions.** As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part which the claimant has received or which is readily available to him from:

(a) the offender;

(b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;

(c) social security, medicare, and medicaid;

(d) workers' compensation;

(e) wage continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the claimant for loss which was sustained because of the criminally injurious conduct; ~~or~~

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. Any such contract in this state may not provide that benefits under this part shall be a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source~~.~~*; or*

(h) a crime victims compensation program operated by the state in which the victim was injured or killed that compensates residents of this state injured or killed in that state.

(3) "Criminally injurious conduct" means conduct that:

(a) occurs or is attempted in this state;

(b) results in bodily injury or death; and

(c) is punishable by fine, imprisonment, or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires the mental state of purposely as an element of the offense~~.~~ *or the injury or death was inflicted by the driver of a motor vehicle who is found by the division, by a preponderance of the evidence, to have been operating the motor vehicle while under the influence, as that term is defined in 61-8-401; or*

(d) is committed in a state without a crime victims compensation program that covers a resident of this state if the conduct meets the requirements in subsections (3)(b) and (3)(c).

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Division" means the division of crime control of the department of justice.

(6) "Victim" means a person who suffers bodily injury or death as a result of:

(a) criminally injurious conduct;

(b) his good faith effort to prevent criminally injurious conduct; or

(c) his good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct."

Section 3. Section 53-9-125, MCA, is amended to read:

"**53-9-125. Limitations on awards.** (1) Compensation may not be awarded unless the claim is filed with the division within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. The time for filing a claim may be extended by the division for good cause shown.

(2) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice. ~~Unless the division determines that the interests of justice otherwise require in a particular case, compensation may not be awarded to the spouse of or a person living in the same household with the offender or his accomplice or to the parent, child, brother, or sister of the offender or his accomplice.~~

(3) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the division finds there was good cause for the failure to report within that time.

(4) In order to be entitled to benefits under this part, a claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally injurious conduct. The division, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.

(5) Compensation otherwise payable to a claimant shall be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.

(6) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of such person are not entitled to the benefits of this part.

(7) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection shall be in proportion to what the division finds to be the victim's contribution to the infliction of death or injury."

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved April 9, 1991.

CHAPTER NO. 398

[SB 346]

AN ACT ESTABLISHING A SOLID WASTE MANAGEMENT FEE ON WASTE GENERATED OUT OF STATE; AMENDING SECTIONS 75-10-104, 75-10-105, 75-10-116, AND 75-10-117, MCA; REPEALING SECTION 75-10-110, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, the State of Montana presently is faced with proposals to import out-of-state waste for disposal in Montana; and

WHEREAS, Senate Bill No. 209 would enact a tipping fee on disposal of solid waste generated within Montana to fund the development of an adequate solid waste regulatory program; and

WHEREAS, the citizens of Montana should not have to subsidize the regulation of solid waste that originates in other states.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Solid waste management fee.** (1) A person who owns an incinerator that burns solid waste or a solid waste disposal facility that is licensed pursuant to 75-10-221 and to rules adopted under 75-10-221 shall pay to the department a quarterly fee of $5 for each ton of solid waste generated outside Montana and incinerated or disposed of at the facility.

(2) All fees must be deposited in the solid waste management account provided for in 75-10-117.

Section 2. Section 75-10-104, MCA, is amended to read:

"**75-10-104. Duties of department.** The department shall:

(1) prepare a state solid waste management and resource recovery plan for submission to the board;

(2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

(b) governing procedures to be followed in applying for and making loans;

(c) governing agreements between a local government and the department for grants or loans under this part;

(d) establishing, for the purpose of determining the solid waste management fee to which a facility is subject under ~~75-10-115~~ *[section 1]*, methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility; *and*

(e) providing procedures for the quarterly collection of the solid waste management fee provided for in ~~75-10-115~~ *[section 1]*; ~~and~~

~~(f) providing guidelines for a waiver of fees for certain incineration or disposal of solid waste, as provided for in 75-10-115(2);~~

(3) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system which is compatible with the state plan whenever financial assistance is available;

(4) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating a solid waste management system in order to insure that the system conforms to the state plan;

(5) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for loans are available;

(6) enforce and administer the provisions of this part;

(7) administer loans made by the state under the provisions of this part; and

(8) approve plans for a proposed solid waste management system submitted by a local government."

Section 3. Section 75-10-105, MCA, is amended to read:

"**75-10-105. Powers of department.** The department may:

(1) accept loans and grants from the federal government and other sources to carry out the provisions of this part;

(2) make loans to a local government for the planning, design, and implementation of a solid waste management system;

(3) make grants for a local government for planning or implementation of a solid waste management system; and

(4) collect the solid waste management fee provided for in ~~75-10-115~~ *[section 1]*."

Section 4. Section 75-10-116, MCA, is amended to read:

"**75-10-116. Penalties for failure to pay fee.** A person who owns a solid waste disposal facility subject to a fee under ~~75-10-115~~ *[section 1]* and fails to pay the fee in the manner provided by department rule is subject to a fine of not more than $2,000 or imprisonment not to exceed 6 months, or both, and shall reimburse the department for the amount of the fee owed and interest calculated at a rate equal to the previous fiscal year's average rate of return on the board of investments' short-term investment pool."

Section 5. Section 75-10-117, MCA, is amended to read:

"**75-10-117. Solid waste management account.** (1) There is a solid waste management account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue from the solid waste management fee provided for in ~~75-10-115~~ *[section 1]*; and

(b) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source, intended to be used for the purposes of the account.

(3) The account may be used by the department only for the administration of part 2, this part, and 75-2-215."

Section 6. **Repealer.** Section 75-10-110, MCA, is repealed.

Section 7. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 10, part 1, and the provisions of Title 75, chapter 10, part 1, apply to [section 1].

Section 8. **Effective date.** [This act] is effective July 1, 1993.

Approved April 9, 1991.

CHAPTER NO. 399

[HB 175]

AN ACT TO PROVIDE THAT THE TRUSTEES OF AN ELEMENTARY SCHOOL DISTRICT SHALL ESTABLISH OR MAKE AVAILABLE A KINDERGARTEN PROGRAM IN THE DISTRICT; AMENDING SEC-

TION 20-7-117, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-117, MCA, is amended to read:

"**20-7-117. Five-year-old schooling and preschool programs.** (1) The trustees of an elementary district ~~may~~ *shall* establish *or make available* a program capable of accommodating, at a minimum, all the children in the district who will be 5 years old on or before September 10 of the school year for which the program is to be conducted or *who* have been enrolled by special permission of the board of trustees. The program ~~shall~~ *must* be an integral part of the elementary school and ~~shall~~ *must* be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to 20-9-311, a child must have reached the age of 5 on or before September 10 of the school year covered by the calculation or have been enrolled by special permission of the board of trustees.

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of 3 and 5 years. When ~~such~~ preschool programs are established, they ~~shall~~ *must* be an integral part of the elementary school and ~~shall~~ *must* be governed accordingly. Financing of preschool programs ~~shall~~ *may* not be supported by ~~moneys~~ *money* available from state equalization aid."

Section 2. **Effective date.** [This act] is effective July 1, 1992.

Approved April 9, 1991.

CHAPTER NO. 400

[HB 383]

AN ACT TO ALLOW THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO REGULATE INDUSTRIAL FURNACES AND INDUSTRIAL BOILERS THAT BURN HAZARDOUS WASTES IF THERE ARE NO FEDERAL REGULATIONS OR TO REGULATE THEM MORE STRINGENTLY THAN FEDERAL REGULATIONS; AMENDING SECTION 75-10-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it expands and clarifies rulemaking authority delegated to the department of health and environmental sciences. It is the intent of the legislature to provide the authority for the adoption of administrative rules for the operation and performance of industrial boilers and industrial furnaces that burn hazardous wastes. The department currently has two applications for interim status permits for such fuel-burning activities at cement plants operating in the state.

The United States environmental protection agency (EPA) was scheduled to have published performance regulations by the end of 1990 for industrial furnaces and industrial boilers, including cement kilns, but it has not published these regulations. The EPA has the authority and has been requested to approve two cement kilns that would burn hazardous wastes before the EPA regulations are in effect. It is the intent of the legislature to ensure that adequate state regulations are in place before any hazardous wastes are burned.

It is the additional intent of the legislature to allow the state regulations to be more restrictive than the federal regulations if needed to adequately protect the citizens and environment of Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-405, MCA, is amended to read:

"**75-10-405. Administrative rules.** (1) The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, renewal, modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for corrective action within and outside of facility boundaries and for financial assurance of that corrective action;

(f) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(g) requirements for training of facility personnel and for financial assurance of facility owners and operators and for liability of guarantors providing financial assurance;

(h) requirements for registration of generators and transporters;

(i) a schedule of fees for hazardous waste management facility permits and registration of hazardous waste generators;

(j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412;

(k) requirements for availability to the public of information obtained by the department regarding facilities and sites used for the treatment, storage, and disposal of hazardous wastes; and

(l) other rules which are necessary to obtain and maintain authorization under the federal program.

(2) The department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, except that the department:

(a) may require the registration of transporters not otherwise required to register with the state of Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(b) may require generators and facilities to report on an annual rather than on a biennial basis;

(c) may adopt requirements for the prevention and correction of leakage from underground storage tanks, including:

(i) reporting by owners and operators;

(ii) financial responsibility;

(iii) release detection, prevention, and corrective action;

(iv) standards for design, construction, installation, and closure;

(v) development of a schedule of fees, not to exceed $50 for a tank over 1,100 gallons and not to exceed $20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state and local costs of implementing an underground storage tank program; and

(vi) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the state fire marshal that relate to underground storage tanks.

(d) may adopt regulatory requirements for hazardous waste transfer facilities; ~~and~~

(e) shall require the owner or manager of any proposed commercial facility for the storage, collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441~~.~~*; and*

(f) may adopt rules and performance standards for industrial furnaces and boilers that burn hazardous wastes. The rules and performance standards:

(i) may be adopted if there are no federal regulations; or

(ii) may be more restrictive than federal regulations."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 9, 1991.

CHAPTER NO. 401

[HB 390]

AN ACT ELIMINATING THE SALE OF SPECIAL WILD BUFFALO LICENSES; ESTABLISHING THE WILD BUFFALO OR BISON AS A SPECIES IN NEED OF MANAGEMENT; ESTABLISHING DEPARTMENTAL MANAGEMENT DUTIES; URGING THE STATE AND THE NATIONAL PARK SERVICE TO ENTER INTO AN AGREEMENT FOR THE LONG-TERM MANAGEMENT OF THE YELLOWSTONE NATIONAL PARK HERD; REQUIRING A REPORT ON THE PROGRESS OF BISON MANAGEMENT TO THE 53RD LEGISLATURE; AMENDING SECTION 87-2-701, MCA; REPEALING SECTION 87-2-723, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 2] requires the department of fish, wildlife, and parks to develop rules to implement a program for management of wild buffalo or bison that have not been reduced to captivity and that threaten property or persons in this state. It is intended that the rules be consistent, as far as practicable, with the general nongame wildlife management policy set out in 87-5-103, except that the department may provide for means of controlling or eliminating wild buffalo or bison that pose a potential threat to property or persons in Montana and may adopt other rules specific to wild buffalo or bison as may be necessary for the proper and safe management of the species. It is intended that the authority of the department be exercised in coordination with and complementary to the authority of the department of livestock to regulate, control, and eliminate wild buffalo or bison that pose a threat of the transmission of contagious disease to persons or livestock in Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-701, MCA, is amended to read:

"**87-2-701.** *(Temporary)* **Special licenses.** (1) Any applicant who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license which, in the judgment of the department, is to be issued and shall pay the following fees therefor:

(a) moose—resident, $50; nonresident, $320;

(b) mountain goat—resident, $50; nonresident, $320;

(c) mountain sheep—resident, $50; nonresident, $320;

(d) antelope—resident, $6; nonresident, $120;

(e) grizzly bear—resident, $50; nonresident, $300;

(f) black or brown bear—nonresident, $120~~;~~

~~(g) wild buffalo—resident, $200; nonresident, $1,000~~.

(2) In the event a holder of a valid special grizzly bear license kills a grizzly bear, he ~~must~~ *shall* purchase a trophy license for a fee of $25 within 10 days after date of kill. ~~Such~~ *The* trophy license ~~shall authorize~~ *authorizes* the holder to possess and transport ~~said~~ *the* trophy.

(3) Special licenses ~~shall~~ *must* be issued in a manner prescribed by the department. *(Terminates March 1, 1994—sec. 12, Ch. 598, L. 1987.)*

87-2-701. *(Effective March 1, 1994)* **Special licenses.** (1) Any applicant who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license which, in the judgment of the department, is to be issued and shall pay the following fees therefor:

(a) moose—resident, $50; nonresident, $300;

(b) mountain goat—resident, $50; nonresident, $300;

(c) mountain sheep—resident, $50; nonresident, $300;

(d) antelope—resident, $6; nonresident, $100;

(e) grizzly bear—resident, $50; nonresident, $300;

(f) black or brown bear—nonresident, $100~~;~~

~~(g) wild buffalo—resident, $200; nonresident, $1,000~~.

(2) In the event a holder of a valid special grizzly bear license kills a grizzly bear, he ~~must~~ *shall* purchase a trophy license for a fee of $25 within 10 days after date of kill. ~~Such~~ *The* trophy license ~~shall authorize~~ *authorizes* the holder to possess and transport ~~said~~ *the* trophy.

(3) Special licenses ~~shall~~ *must* be issued in a manner prescribed by the department."

Section 2. **Wild buffalo as species in need of management — policy — department duties.** (1) The legislature finds that the management through hunting of wild buffalo or bison is not appropriate but that significant potential exists for the spread of contagious disease to persons or livestock in Montana and damage to persons and property by wild buffalo or bison. Therefore, it is the purpose of this section to designate wild buffalo or bison, which have not been reduced to captivity, as a species in need of management and to set out specific departmental duties for management of the species.

(2) The department:

(a) is responsible for and shall develop rules to implement the management of wild buffalo or bison in this state that threaten persons or property other than through the transmission of contagious disease;

(b) shall develop rules to manage and reduce the number of wild buffalo or bison that leave Yellowstone national park.

(3) The department of livestock shall, within its statutory authority, regulate wild buffalo or bison in this state that pose a threat to persons or livestock in Montana through the transmission of contagious disease.

(4) The department of fish, wildlife, and parks and the department of livestock are strongly urged to enter into an agreement with the national park service for the long-term management of the Yellowstone national park herd. If the national park service does not proceed in good faith in a timely manner to enter a long-term management agreement that in the determination of the department of fish, wildlife, and parks and the department of livestock responds adequately to the needs of Montana, the departments are strongly urged to take appropriate court action. The department of fish, wildlife, and parks and the department of livestock shall prepare a joint report to the 53rd legislature regarding the present state of bison management in Montana and any progress on an agreement for the long-term management of the Yellowstone national park herd.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 87, chapter 1, and the provisions of Title 87, chapter 1, apply to [section 2].

Section 4. **Repealer.** Section 87-2-723, MCA, is repealed.

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved April 9, 1991.

CHAPTER NO. 402

[HB 640]

AN ACT TO REVISE THE DEFINITION OF "FETAL DEATH" TO INCLUDE THE BIRTH OF A DEAD FETUS BEFORE 20 WEEKS OF GESTATION IF THE FETUS WEIGHS MORE THAN 500 GRAMS AT THE TIME OF DELIVERY; AND AMENDING SECTION 50-15-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-15-101, MCA, is amended to read:

"**50-15-101. Definitions.** Unless the context requires otherwise, in parts 1 through 4 the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Dead body" means a lifeless human body or parts of a body from which it reasonably may be concluded that death occurred recently.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(5) "Fetal death" means a birth after 20 weeks of gestation ~~which~~, *or before 20 weeks of gestation if the fetus weighs more than 500 grams at the time of delivery, that* is not a live birth.

(6) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

(7) "Live birth" means the birth of a child who shows evidence of life after being entirely outside the mother.

(8) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

(9) "Person in charge of interment" means a person who places or causes to be placed a dead body or the ashes after cremation in a grave, vault, urn, or other receptacle or otherwise disposes of the body.

(10) "Physician" means a person legally authorized to practice medicine in this state.

(11) "Vital statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births,

adoptions, legitimations, deaths, fetal deaths, marital status, and incidental supporting data."

Approved April 9, 1991.

CHAPTER NO. 403

[HB 641]

AN ACT MODIFYING REQUIREMENTS FOR AN APPLICATION FOR A PERMIT UNDER THE METAL MINE RECLAMATION STATUTES; AND AMENDING SECTION 82-4-335, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-335, MCA, is amended to read:

"**82-4-335. Operating permit — limitation.** (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the board. A separate operating permit is required for each complex.

(2) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of his operation where the cyanide ore-processing reagent will be used or disposed of.

(3) Prior to receiving an operating permit from the board, a person shall pay the basic permit fee of $25 and shall submit an application on a form provided by the board, which must contain the following information and any other pertinent data required by rule:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, *and the* location of proposed access roads to be built~~, and~~*;*

(f) the names and addresses of the ~~surface and mineral owners of all lands within the mining area, to the extent known to the applicant~~ *owners of record and any purchasers under contracts for deed of the surface of the*

land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

~~(f)~~*(i)* types of access roads to be built and manner of reclamation of road sites on abandonment;

~~(g)~~*(j)* a plan which will provide, within limits of normal operating procedures of the industry, for completion of the operation;

~~(h)~~*(k)* ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

~~(i)~~*(l)* a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

~~(j)~~*(m)* a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

~~(k)~~*(n)* an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

(4) Except as provided in subsection (6), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the board, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(5) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302(4) and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the board with

proof that he has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that he has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the board that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the board shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(6) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(7) A person may not be issued an operating permit if that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond unless that person meets the conditions described in 82-4-360."

Approved April 9, 1991.

CHAPTER NO. 404

[HB 642]

AN ACT TO REVISE THE MONTANA CHILD CARE ACT; TO CHANGE THE DEFINITION OF "CHILD" TO MEAN A PERSON UNDER 13 YEARS OF AGE; TO LIMIT THE TYPE OF GROUP EDUCATION FACILITIES THAT ARE EXCLUDED FROM LICENSURE OR REGISTRATION AS A DAY-CARE FACILITY; TO DEFINE THE TERM "RELATED BY BLOOD OR MARRIAGE" FOR THE PURPOSE OF CLARIFYING THOSE PERSONS WHO MAY PROVIDE DAY CARE TO CHILDREN WITHOUT MEETING STATE LICENSING AND REGISTRATION REQUIREMENTS; AMENDING SECTION 52-2-703, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-2-703, MCA, is amended to read:

"**52-2-703. Definitions.** In this part, the following definitions apply:

(1) "Child" means a person under ~~12~~ *13* years of age.

(2) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that provides day care on a regular basis. It includes a family day-care home, a day-care center, or a group day-care home. The term does not include:

(a) a person who limits care to children who are related to him by blood or marriage or under his legal guardianship; or

(b) any group facility established chiefly for educational purposes *that limits its services to children who are 3 years of age or older.*

(3) "Day-care center" means a place in which day care is provided to 13 or more children on a regular basis.

(4) "Department" means the department of family services provided for in 2-15-2401.

(5) "Day care" or "child care" means less-than-24-hour out-of-home care for children, whether that care is for daytime or nighttime hours.

(6) "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks.

(7) "Family day-care home" means a private residence in which day care is provided to three to six children from separate families on a regular basis.

(8) "Group day-care home" means a private residence in which day care is provided to 7 to 12 children on a regular basis.

(9) "Registration" means the process whereby the department maintains a record of all family day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the operator of a family day-care home or a group day-care home to certify that he has complied with the prescribed standards and promulgated rules.

(10) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

(11) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department his compliance with this part and the applicable standards for family day-care homes and group day-care homes.

(12) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day-care centers.

(13) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.

(14) (a) "Related by blood or marriage" means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.

(b) The term includes the status of a child described in subsection (14)(a) in a step or adoptive relationship."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved April 9, 1991.

CHAPTER NO. 405

[HB 700]

AN ACT TO ALLOW THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ISSUE HEALTH CARE FACILITY LICENSES FOR A PERIOD OF 1 TO 3 YEARS IN DURATION; ALLOWING THE DEPARTMENT TO INSPECT HEALTH CARE FACILITIES LESS OFTEN THAN ANNUALLY; AND AMENDING SECTIONS 50-5-201, 50-5-203, AND 50-5-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-201, MCA, is amended to read:

"50-5-201. License requirements. (1) A licensee who contemplates construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

(2) No person may operate a health care facility unless the facility is licensed by the department. Licenses ~~shall be for 1 year unless issued for a shorter period~~ *may be issued for a period of 1 to 3 years in duration.* A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(3) Upon discontinuance of the operation or upon transfer of ownership of a facility, the license must be returned to the department.

(4) Licenses shall be displayed in a conspicuous place near the admitting office of the facility."

Section 2. Section 50-5-203, MCA, is amended to read:

"50-5-203. Application for license. The procedure to apply for a license is as follows:

(1) At least 30 days prior to the opening of a facility and ~~annually thereafter~~ *after that no later than the expiration date of the license,* application is made to the department accompanied by the license fee.

(2) The application shall contain:

(a) the name and address of the applicant if an individual, the name and address of each member if a firm, partnership, or association, or the name and address of each officer if a corporation;

(b) the location of the facility;

(c) the name of the person or persons who will manage or supervise the facility;

(d) the number and type of patients or residents for which care is provided;

(e) any information which the department may require pertaining to the number, experience, and training of employees;

(f) information on ownership, contract, or lease agreement if operated by a person other than the owner."

Section 3. Section 50-5-204, MCA, is amended to read:

"50-5-204. Issuance and renewal of licenses — inspections. (1) After receipt of a new ~~or renewal~~ application, the department or its authorized agent shall ~~inspect the facility without prior notice to the operator or staff~~ *conduct an initial inspection of the facility within 45 days.*

(2) After receipt of an application for renewal of a license, the department or its authorized agent shall inspect the facility without prior notice to the operator or staff.

~~(2)~~*(3)* If the department determines that the facility meets minimum standards and the proposed or existing staff is qualified, the department shall issue a license for ~~1 year~~ *a period of 1 to 3 years in duration.*

~~(3)~~*(4)* If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community.

~~(4)~~*(5)* The minimum standards which home health agencies must meet in order to be licensed must be as outlined in 42 U.S.C. 1395 x(o), as amended, and in rules implementing it which add minimum standards.

~~(5)~~*(6)* The department may inspect a licensed health care facility whenever it considers it necessary. The entire premises of a licensed facility must be open to inspection, and access to all records must be granted at all reasonable times."

Approved April 9, 1991.

CHAPTER NO. 406

[HB 765]

AN ACT REQUIRING THAT A VOTER REGISTRATION FORM BE ATTACHED TO DRIVER'S LICENSE APPLICATIONS; PROVIDING

FOR VOTER REGISTRATION AT THE TIME OF APPLICATION; AMENDING SECTION 61-5-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, commercial vehicle operator's endorsement, or motorcycle endorsement. (1) Every application for an instruction permit, driver's license, commercial vehicle operator's endorsement, or motorcycle endorsement shall be made upon a form furnished by the department. A motorcycle endorsement is required for the operation of a quadricycle. Every application shall be accompanied by the proper fee, and payment of such fee shall entitle the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. *A voter registration form for mail registration as prescribed by the secretary of state shall be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.*

(2) Every such application shall state the full name, date of birth, sex, and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal.

(3) Whenever application is received from an applicant previously licensed by any other jurisdiction, the department shall request a copy of such applicant's driving record from such previous licensing jurisdiction. When received, such driving records shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance."

Approved April 9, 1991.

CHAPTER NO. 407

[HB 858]

AN ACT ESTABLISHING A STATEWIDE HOUSEHOLD HAZARDOUS WASTE PUBLIC EDUCATION PROGRAM; DEFINING HOUSEHOLD HAZARDOUS WASTE; AND AMENDING SECTION 75-10-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-203, MCA, is amended to read:

"**75-10-203. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Household hazardous waste" means products commonly used in the home that due to corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human health or the environment. Household hazardous waste includes but is not limited to cleaning, home maintenance, automobile, personal care, and yard maintenance products.

~~(4)~~*(5)* "Household waste" means any solid waste derived from households, including single and multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public land management facilities.

~~(5)~~*(6)* "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste. The term does not include land application units, surface impoundments, injection wells, or waste piles.

~~(6)~~*(7)* "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

~~(7)~~*(8)* "Resource recovery" means the recovery of material or energy from solid waste.

~~(8)~~*(9)* "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

~~(9)~~*(10)* "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

~~(10)~~*(11)* "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

~~(11)~~*(12)* "Solid waste management system" means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste.

~~(12)~~*(13)* "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

~~(13)~~*(14)* "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

~~(14)~~*(15)* "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume."

Section 2. **Statewide household hazardous waste public education program.** The department shall implement a statewide household hazardous waste public education program. The program must include but is not limited to providing information about:

(1) alternatives to disposal of household hazardous waste at municipal solid waste landfills and other disposal sites;

(2) methods of reusing or recycling household hazardous waste; and

(3) alternatives to the use of products that lead to the generation of household hazardous waste.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 75, chapter 10, part 2, and the provisions of Title 75, chapter 10, part 2, apply to [section 2].

Approved April 9, 1991.

CHAPTER NO. 408

[HB 952]

AN ACT REQUIRING SAND AND GRAVEL OPENCUT MINES AND CONCRETE AND ASPHALT PROCESSING FACILITIES TO COMPLY WITH APPLICABLE LOCAL ZONING REGULATIONS; AMENDING SECTIONS 76-1-113, 76-2-209, 82-4-431, AND 82-4-432, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-1-113, MCA, is amended to read:

"**76-1-113. Effect of chapter on natural resources.** ~~Nothing~~ *(1) Except as provided in subsection (2), nothing* in this chapter ~~shall~~ *may* be ~~deemed~~ *considered* to authorize an ordinance, resolution, or rule ~~which~~ *that* would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under Title 76, chapter 2."

Section 2. Section 76-2-209, MCA, is amended to read:

"**76-2-209. Effect on natural resources.** *(1)* ~~No~~ *Except as provided in 82-4-431 and 82-4-432, a* resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, ~~shall~~ *may not* prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under this chapter."

Section 3. Section 82-4-431, MCA, is amended to read:

"**82-4-431. Contract for reclamation required.** (1) After March 16, 1973, ~~no~~ *an* operator may *not* conduct opencut-mining operations which will result in the removal of 10,000 cubic yards or more of product or overburden until he has entered into a contract with the board for the reclamation of the land affected. An operator conducting a number of operations, each of which results in the removal of less than 10,000 cubic yards of product or overburden but which result in the removal of 10,000 cubic yards or more of product or overburden in the aggregate, is subject to the provisions of this part, except as provided in this section.

(2) (a) Except as provided in or conditioned under subsections (2)(b) and (2)(c), an operator who holds a contract for reclamation may operate an opencut mine without first securing an additional contract or an amendment to the existing contract or bond if the mine meets the following criteria:

(i) the total amount of material and overburden removed does not exceed 1,000 cubic yards; and

(ii) the operator notifies the department of state lands prior to beginning such operations and, within 30 days of notifying the department, submits a completed site information form, salvages and stockpiles all root-bearing soil materials, regrades the affected area to 3:1 or flatter slope and blends the reclaimed area into the adjacent topography, and during the first appropriate growing season replaces all topsoil and reseeds or revegetates as required by the department.

(b) The department may refuse to allow the operator to operate an opencut mine under subsection (2)(a) if, at the time of notification by the operator to the department, the operator has a pattern of violations or is in current violation of this part or rules adopted under this part or provisions of a contract for reclamation.

(c) The department may require an additional bond as a condition for the operation of an opencut mine under subsection (2)(a).

(3) Opencut mines described in subsection (2) may not be placed in flowing, ephemeral, or intermittent streams, in the bottom or head of a confined drainage, in an area where the operation will intercept ground water or intercept any slope that is naturally steeper than 3:1, or in any area where mining would be restricted by other laws.

(4) Sand and gravel opencut mines must meet applicable local zoning regulations adopted under Title 76, chapter 2."

Section 4. Section 82-4-432, MCA, is amended to read:

"82-4-432. **Application for contract — contents — issuance — amendment.** (1) Applications for a contract ~~shall~~ *must* be made upon a form furnished by the board~~, which~~. *The* form ~~shall~~ *must* contain the following:

(a) the name of the operator and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the volume of earth to be removed, as accurately as the volume may then be estimated, and the volume which has been previously removed, if any;

(d) the location of the operation by legal subdivision, section, township and range, and county;

(e) the date when the operation was or will be commenced; and

(f) a statement that the applicant has the right and power by legal estate owned to mine by opencut mining the lands so described.

(2) The application ~~shall~~ *must* be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a fee of $50; ~~and~~

(c) a statement from the local governing body having jurisdiction over the area to be mined certifying that a proposed sand and gravel opencut mine

and its operating and reclamation plans comply with applicable local zoning regulations adopted under Title 76, chapter 2; and

~~(c)~~*(d)* the operator's plan of his operation and the method and manner of reclamation that will be used or followed.

(3) If, prior to applying for a contract, the operator notifies the board of his intention to submit a plan and requests the board to examine the area to be mined, the board shall cause the area to be examined and make recommendations to the operator regarding reclamation.

(4) Upon receipt of the application, bond or security, and fee due from the operator and upon agreement to the terms of the contract by the parties, the board may issue a contract to the applicant which entitles him to continue in or engage in opencut mining on the land therein described.

(5) An operator desiring to have his contract amended to cover additional contiguous or nearby land may file an amended application with the board. Upon receipt of the amended application and such additional bond as may be required and upon agreement to the terms of the amendment by the parties, the board may issue an amendment to the original contract covering the additional land described in the amended application without the payment of any additional fee.

(6) An operator may withdraw any land covered by contract, except affected land, by notifying the board thereof, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this part shall be reduced proportionately."

Section 5. **Applicability.** (1) [This act] does not apply to:

(a) an area for which a contract was issued prior to [the effective date of this act] or for which an application for contract or contract amendment was filed with the department of state lands prior to February 23, 1991; or

(b) an area:

(i) that is contiguous to an area described in subsection (1)(a);

(ii) for which the holder of the contract has the legal right to mine on [the effective date of this act]; and

(iii) for which the contract holder files with the department on or before January 1, 1992, on a form provided by the department, a legal description of the area, evidence of the legal right to mine, and certification that the contract holder holds the property for the purpose of future sand or gravel mining.

(2) Before June 1, 1991, the department shall mail notice of the provisions and passage of [this act] and the form described in subsection (1)(b)(iii) to each person who holds a current contract on [the effective date of this act] or who had, prior to February 23, 1991, submitted an application for contract or contract amendment that the department had not approved or denied as of February 23, 1991.

(3) The department shall maintain a list of areas for which certifications have been filed pursuant to subsection (1)(b) and shall provide a copy of the list to any person who requests the list.

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved April 9, 1991.

CHAPTER NO. 409

[SB 8]

AN ACT REGULATING THE PRACTICE OF REAL ESTATE APPRAISING; ESTABLISHING THE BOARD OF REAL ESTATE APPRAISERS; PROVIDING FOR LICENSURE AND CERTIFICATION OF REAL ESTATE APPRAISERS; PROVIDING PENALTIES; ESTABLISHING FEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] grants rulemaking authority to the newly established board of real estate appraisers.

(1) It is the intent of [section 4] that the board have authority to adopt rules to implement and enforce [sections 1, 2, and 4 through 28], including specific authority to adopt rules regarding:

(a) license and certificate applications and procedures necessary to receive and process those applications;

(b) examinations and criteria for grading examinations;

(c) disciplinary standards for licensees and certificate holders, including definitions of conduct for which discipline may be appropriate;

(d) continuing education requirements;

(e) the investigation of complaints received under [section 10];

(f) the setting and modification of appropriate fees;

(g) a process for renewal of licenses and certificates, including a procedure for late renewal;

(h) the retention of board records;

(i) the adoption and modification of standards of professional appraisal practice as set out in [section 13];

(j) reciprocity conditions applicable to licensure and certification as set out in [section 23]; and

(k) procedures for granting temporary permits as set out in [section 28].

(2) It is the intent of [section 3] that the governor have the authority to implement staggered terms for board members during the appointment process.

(3) It is intended that the board of real estate appraisers address by rule the implementation of practices mandated for the profession by future federal legislation and notify the department of commerce of statutory changes necessary to effect those practices, to allow consideration by the legislature.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1, 2, and 4 through 28] may be cited as the "Real Estate Appraiser Licensing and Certification Act".

Section 2. **Definitions.** As used in [sections 1, 2, and 4 through 28], unless the context requires otherwise, the following definitions apply:

(1) "Appraisal" or "real estate appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of a specified interest in or aspects of identified real estate.

(2) "Appraisal assignment" means an appraisal classified by the nature of the assignment as:

(a) a valuation appraisal, which is an analysis, opinion, or conclusion prepared by a real estate appraiser that estimates the value of an identified parcel of real estate or identified real property at a particular point in time;

(b) an analysis assignment, which is an analysis, opinion, or conclusion prepared by a real estate appraiser that relates to the nature, quality, or utility of identified real estate or identified real property; or

(c) a review assignment, which is an analysis, opinion, or conclusion prepared by a real estate appraiser that forms an opinion as to the adequacy and appropriateness of a valuation appraisal.

(3) "Appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987. The purposes of the appraisal foundation are to:

(a) establish and improve uniform appraisal standards by defining, issuing, and promoting those standards;

(b) establish appropriate criteria for the certification and recertification of qualified appraisers by defining, issuing, and promoting qualification criteria and disseminate the qualification criteria to states and other governmental entities; and

(c) develop or assist in the development of appropriate examinations for qualified appraisers.

(4) "Appraisal report" means a written or oral communication of a real estate appraisal. An appraisal report for a federally related transaction must be in writing. An appraisal report may be classified by the nature of the assignment as a "valuation report", an "analysis report", or a "review report". For the purposes of [sections 1, 2, and 4 through 28], testimony of a licensed or certified real estate appraiser dealing with the appraiser's analyses, opinions, or conclusions concerning identified real estate or identified real property is considered an oral appraisal report.

(5) "Board" means the board of real estate appraisers provided for in [section 3].

(6) "Certified appraisal report" means an appraisal or appraisal report given or signed and certified by a certified real estate appraiser. When identifying an appraisal or appraisal report as "certified", the certified real estate appraiser shall indicate the class of certification the appraiser holds.

(7) "Certified real estate appraiser" means a person who develops and communicates real estate appraisals and who has a valid real estate appraisal certificate issued under [section 21].

(8) "Department" means the department of commerce provided for in 2-15-1801.

(9) "Independent appraisal service" means an engagement for which a person is employed or retained to act, or would be perceived by a third party or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of identified real estate or identified real property.

(10) "Licensed real estate appraiser" means a person who holds a current valid real estate appraiser license issued under [section 5].

(11) "Real estate" means an identified parcel or tract of land, including any improvements on the land.

(12) "Real property" means one or more defined interests, benefits, and rights inherent in the ownership of real estate.

Section 3. **Board of real estate appraisers.** (1) There is a board of real estate appraisers.

(2) The board consists of five members appointed by the governor with the consent of the senate.

(3) Three members must be licensed or certified real estate appraisers, and two members must be representatives of the public who are not engaged in the occupation of real estate appraisal.

(4) Only one member of the board may be primarily affiliated with the same recognized appraisal group defined by the appraisal foundation.

(5) (a) Before January 1, 1992, a real estate appraiser board member must be a designated member of a national real estate appraisal organization that requires for membership appraisal experience, certain educational qualifications, successful completion of an examination, and adherence to the standards of professional appraisal practice.

(b) On and after January 1, 1992, three real estate appraiser board members must be certified real estate appraisers.

(6) Members shall serve staggered 3-year terms. A member may not serve for more than two consecutive terms.

(7) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121.

(8) A board member may be removed from the board by the governor for neglect or cause.

(9) The board shall meet at least once each calendar quarter to transact its business. Three members constitute a quorum for transacting business.

(10) The board shall elect a chairman from among its members.

(11) A board member shall receive compensation and travel expenses as provided in 37-1-133.

Section 4. **Powers and duties of board.** The board shall:

(1) adopt rules to implement and administer the provisions of [sections 1, 2, and 4 through 28];

(2) establish and collect fees commensurate with the costs of licensure and certification and renewal of a license or certificate;

(3) make available application forms for licensure and certification within 15 days of the first meeting of the board;

(4) establish minimum requirements for education, experience, and examination for licensure and certification as set out by the appraisal qualification board of the appraisal foundation;

(5) receive applications for examination from qualified applicants, prescribe and administer examinations to qualified applicants, and determine the acceptable level of performance on examinations;

(6) receive and review applications for licensure and certification and issue licenses and certificates;

(7) review periodically the standards for development and communication of appraisals and adopt rules explaining and interpreting the standards;

(8) retain all applications and other records submitted to it;

(9) maintain a registry of the names and addresses of licensees and certificate holders;

(10) establish disciplinary procedures for reprimand, suspension, or revocation of a license and certificate;

(11) adopt by rule standards of professional appraisal practice in this state;

(12) reprimand, suspend, revoke, or refuse to renew the license or certificate of a person who has violated the standards established for licensed and certified real estate appraisers;

(13) establish criteria for courses and seminars consistent with the continuing education requirements set out in [sections 8 and 24]; and

(14) perform other duties necessary to implement [sections 1, 2, and 4 through 28].

Section 5. **Real estate appraiser license — scope and display of license.** (1) Upon proof that an applicant meets the qualifications set out in [section 6] and upon payment of license fees adopted under [section 4], the board shall issue to the applicant a real estate appraiser license.

(2) The term "licensed real estate appraiser" may not be used to describe a firm, partnership, corporation, group, or anyone other than an individual licensee. However, a licensed real estate appraiser may engage in real estate appraisal as a professional corporation.

(3) Nothing in [sections 1, 2, and 4 through 28] precludes a person who is not a licensed or certified real estate appraiser from appraising real property for nonfederally related transactions for compensation, provided the person does not represent himself as a licensed or certified real estate appraiser. A person who refers to himself or his company as being licensed under this section or certified under [sections 18 through 20] without possessing the applicable license or certificate is guilty of a misdemeanor.

(4) This section does not:

(a) prohibit a person who is licensed to practice in this state under any law from engaging in the practice for which he is licensed;

(b) apply to public officials in the conduct of their official duties that are not governed by the rules established by the Federal Financial Institutions Examination Council (FFIEC) agencies.

(5) A licensed real estate appraiser has restrictions on the scope of practice, depending on the value and complexity of the federally related transaction or transactions pursuant to rules established by the federal financial institutions examination council (FFIEC) agencies, and the restrictions must remain current with any changes in those rules.

(6) A licensed real estate appraiser shall conspicuously display the license in his principal place of business.

Section 6. **Qualifications for licensure.** To qualify for a real estate appraiser license, an applicant:

(1) shall successfully complete at least 75 classroom hours of a course of study described in [section 7] and approved by the board.

(a) The course of study must be conducted by:

(i) an accredited university, college, or junior college;

(ii) an approved real estate appraisal or real estate-related organization; or

(iii) another school approved by the board.

(b) The classroom hours must include:

(i) at least 60 hours relating to the basic principles of land economics and real estate appraisal; and

(ii) at least 15 hours relating to the standards of professional appraisal practice set out in [section 13] and the ethical rules, as established by board rule, to be observed by a real estate appraiser.

(2) shall pass an examination administered by the board that is based on the study required by [section 7] and subsection (1) of this section and is designed to test the applicant's knowledge of the basic principles of land economics and real estate appraisal, standards of professional appraisal practice, and ethical rules to be observed by a real estate appraiser;

(3) must be of good moral character;

(4) must have experience in real estate appraisal as prescribed by the board. The board shall adopt rules pertaining to real estate appraisal experience that substantially comply with and are not more stringent than those required for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(5) shall comply with any other requirements related to the practice of real estate appraisal as prescribed by the board by rule.

Section 7. **Course of study.** A course of study acceptable under [section 6] must include the following subjects:

(1) technical terms commonly used in or related to:

(a) real estate appraisal;

(b) appraisal report writing; and

(c) economic concepts applicable to real estate;

(2) basic principles of land economics and real estate appraisal;

(3) problems likely to be encountered in gathering, interpreting, and processing data required in the real estate appraisal process;

(4) standards for the development and communication of real estate appraisals as provided in [sections 1, 2, and 4 through 28];

(5) ethical rules that a real estate appraiser is required to observe;

(6) (a) theories of depreciation and cost estimating;

(b) methods of capitalization; and

(c) the mathematics of real estate appraisal;

(7) basic real estate law; and

(8) types of misconduct for which disciplinary proceedings may be initiated against a licensed real estate appraiser, as set forth in [sections 1, 2, and 4 through 28].

Section 8. **License renewal — continuing education requirements.** (1) A real estate appraiser's license expires 3 years from the date of issuance.

(2) A licensee may renew his license, other than a temporary permit issued under [section 28], by filing an application with the board on a form approved by the board, paying a renewal fee prescribed by the board, and meeting all requirements of this section.

(3) In renewing a license, the board shall assure that the licensee has a working knowledge of:

(a) current real estate appraisal theories; and

(b) practices and techniques that will enable the licensee to provide competent independent appraisal service under the authority of his license.

(4) An application for renewal must include evidence satisfactory to the board that within the 3-year period immediately preceding the application for renewal, the licensee has completed at least 45 classroom hours of instruction in courses or seminars approved by the board, at least 15 hours of which must be related to standards of professional appraisal practice.

Section 9. **Late renewal of license.** (1) A licensee who does not renew a license within 3 years from the date of issuance may renew it, within 2 years from the date the license expires, by:

(a) filing with the board an application for late renewal on a form approved by the board;

(b) satisfying the continuing education requirements of [section 8]; and

(c) paying a late renewal fee prescribed by the board.

(2) The board may refuse to renew a license if the licensee has continued to perform independent appraisal services as a licensed real estate appraiser following expiration of the license.

Section 10. **Complaints and investigations — penalties.** (1) The board may, upon its own motion, and shall, upon the written complaint of an aggrieved person, investigate an alleged violation of [sections 1, 2, and 4 through 28] by a licensee or applicant for licensure in this state. If the investigation discloses a probable violation of [sections 1, 2, and 4 through 28], the board shall file a formal complaint against the licensee or applicant.

(2) If after a contested case hearing held pursuant to Title 2, chapter 4, part 6, the board determines that a licensee or applicant has violated a provision of [sections 1, 2, and 4 through 28], the board shall:

(a) deny an application or suspend or revoke a license;

(b) issue a formal reprimand to the licensee or applicant;

(c) impose upon the licensee or applicant a fine not to exceed $500; or

(d) impose any combination of penalties set out in subsections (2)(a) through (2)(c).

(3) The penalties provided in subsection (2) do not apply to a person convicted under [section 5(3)].

Section 11. **Place of business.** (1) A resident licensed or certified real estate appraiser shall maintain a principal place of business in this state. If the appraiser changes his principal place of business, he shall promptly notify the board in writing of the change. Upon receipt of notice of the change, the board shall issue a new license or certificate for the unexpired term, stating the principal place of business.

(2) A nonresident licensee is not required to maintain a place of business in this state if he maintains a principal place of business in his domicile state.

Section 12. **Collection of appraisal fees.** A person who performs independent appraisal services as a licensed or certified real estate appraiser in this state may not bring an action in any court in this state to collect compensation for the performance of those services unless he alleges and proves that he held a valid license or certificate at all times during the performance of those services.

Section 13. **Standards of professional appraisal practice.** (1) A licensed or certified real estate appraiser shall comply with generally accepted standards of professional appraisal practice, evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation.

(2) If the appraisal standards board of the appraisal foundation modifies the standards or issues supplemental standards that it considers appropriate for all classes of real estate appraisers and requests the board to consider the adoption of the modifications or supplements, the board shall conduct a public hearing to determine whether the modified or supplemented standards must be observed in this state. If following the hearing

the board determines the modified or supplemented standards are appropriate, the board shall adopt the standards by rule.

Section 14. **Denial, suspension, or revocation of license or certificate.** (1) The board may refuse to issue a license or certificate to an applicant or may revoke, suspend, or refuse to renew the license or certificate of a licensee if the licensee or applicant:

(a) procures or attempts to procure a license or certificate under [sections 1, 2, and 4 through 28]:

(i) through fraud;

(ii) by knowingly making a false statement;

(iii) by submitting false information; or

(iv) by making a material misrepresentation in an application filed with the board;

(b) pays money other than fees to any member or employee of the board or department to procure a license or certificate under [sections 1, 2, and 4 through 28];

(c) commits or omits any act in the practice of real estate appraisal that constitutes dishonesty, fraud, or misrepresentation with the intent to substantially benefit the licensee or another person or substantially injure another person;

(d) has entered against him a final civil or criminal judgment on grounds of fraud, misrepresentation, or deceit in the making of a real estate appraisal;

(e) is convicted of a crime that is substantially related to the qualifications, functions, or duties of a person engaging in real estate appraisals;

(f) engages in the business of real estate appraisal under an assumed or fictitious name not properly registered in the state of jurisdiction;

(g) pays a finder's fee or referral fee in connection with a real estate appraisal in this state to a person who does not have a real estate appraiser's license in this state;

(h) makes a false or misleading statement in that portion of the written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

(i) violates any section of [sections 1, 2, and 4 through 28] or any rule promulgated under [sections 1, 2, and 4 through 28];

(j) violates the confidential nature of governmental records to which he gained access through employment or engagement as a real estate appraiser by a governmental agency; or

(k) accepts a fee for performing an independent appraisal service if the employment or fee is contingent upon:

(i) the appraiser reporting a predetermined estimate, valuation, analysis, opinion, or conclusion; or

(ii) the consequences resulting from the appraisal.

(2) In a disciplinary proceeding based on a civil judgment, a licensee may not collaterally attack the judgment but must be allowed to present matters in mitigation or extenuation.

(3) Denial, suspension, or revocation of a license or certificate is permissible only after a hearing and procedures that comply with the applicable requirements of Title 2, chapter 4.

Section 15. **Retention of records.** (1) A licensed or certified real estate appraiser shall retain for 5 years from the date of submission of an appraisal report to a client:

(a) an original or true copy of any written contract engaging his services as an appraiser;

(b) an appraisal report prepared or signed by the licensed or certified real estate appraiser; and

(c) all supporting data assembled and formulated by the licensed or certified real estate appraiser in preparing the appraisal report.

(2) If a licensed or certified real estate appraiser is notified within this 5-year period that the appraisal report is involved in litigation, the appraiser shall retain the appraisal report for 5 years from the final date of disposition of the litigation.

(3) The licensed or certified real estate appraiser shall make available to the board at reasonable times, for inspection and copying, any appraisal report he is required to maintain under the provisions of this section.

Section 16. **Classification of services.** (1) A client or employer may retain or employ a licensed or certified real estate appraiser to:

(a) act as a disinterested third party in rendering an unbiased analysis, opinion, conclusion, or estimate of value; or

(b) provide specialized appraisal services to facilitate the client's or employer's objectives.

(2) In either instance described in subsection (1), the appraisal and appraisal report must comply with the provisions of [sections 1, 2, and 4 through 28].

Section 17. **Certification — use of term — standards of practice.** (1) A person may not represent himself to be a certified real estate appraiser unless he is certified under [sections 1, 2, and 4 through 28].

(2) Only a certified real estate appraiser may prepare and sign a certified appraisal report relating to real estate or real property in this state. If an appraisal report is prepared, signed, and certified by a certified real estate appraiser, a person licensed under [sections 1, 2, and 4 through 28] who assisted in the preparation of the appraisal may cosign the appraisal report.

(3) The term "certified real estate appraiser" may not be used to describe a firm, partnership, corporation, group, or anyone other than an individual certificate holder. However, a certified real estate appraiser may develop and communicate an appraisal on behalf of a firm, partnership, corporation, or group.

Section 18. **Certification process — fees.** (1) An application for examination for certification, original certification, or renewal of certification must be made in writing to the board on forms approved by the board.

(2) A fee established by the board by rule must accompany the application.

(3) When an applicant files an application for original certification or renewal of certification, the applicant shall sign a pledge that he will comply with the standards of professional appraisal practice established for certified real estate appraisers under [section 13]. He shall also affirm that he understands the types of misconduct for which disciplinary action may be initiated against him under [section 14].

(4) To be eligible for original certification as a real estate appraiser, an applicant shall:

(a) specify the class or classes of certification for which the applicant is applying and provide evidence satisfactory to the board that he has the education required for the class or classes of certification for which he is applying; and

(b) pass an examination prescribed by the board.

(5) A certificate issued under [section 21] must bear the signatures or facsimile signatures of the members of the board and a certificate number assigned by the board.

Section 19. **Classes of certification — education and experience requirements.** (1) A real estate appraiser may be certified in any one or more of the following classes:

(a) general real estate, which relates to the appraisal of all types of real property;

(b) agricultural/rural lands, which relates to the appraisal of agricultural and rural lands, including timberlands.;

(c) residential real estate, which relates to the appraisal of expensive or complex 1 to 4 family homes.

(2) The board shall adopt rules pertaining to real estate appraisal education and experience that are at least as stringent as those required for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Section 20. **Certification examination.** (1) A person who satisfies the qualification requirements of [section 6] and the education and experience requirements of [section 19] may apply for examination as a certified real estate appraiser in the manner prescribed by this section.

(2) The board shall adopt and administer a written examination for certified real estate appraisers and establish standards of acceptable performance for each class of certification that are at least as stringent as those required for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(3) An applicant must be examined on the following subjects:

(a) technical terms commonly used in or related to:

(i) real estate appraisal;

(ii) appraisal report writing; and

(iii) economic concepts applicable to real estate;

(b) principles of land economics, real estate law, and real estate appraisal processes;

(c) problems likely to be encountered in gathering, interpreting, and processing data required for developing and communicating an appraisal;

(d) standards for the development and communication of certified real estate appraisals;

(e) (i) theories of depreciation and cost estimating;

(ii) methods of capitalization; and

(iii) the mathematics of real estate appraisal appropriate to the class or classes of certification sought by the applicant; and

(f) types of misconduct for which disciplinary action may be initiated under [sections 1, 2, and 4 through 28].

(4) Examinations must be given at least four times each year in Helena and at other times and places as the board determines.

(5) An applicant may not retake the examination within 6 months after having failed it a second or subsequent time.

Section 21. **Issuance and display of certificate.** (1) The board shall issue a certificate and a pocket card to a person who meets the requirements of [sections 18 through 20].

(2) The certificate must include the dates of issuance and renewal of certification.

(3) A certified real estate appraiser shall conspicuously display the certificate in his principal place of business.

(4) A certified real estate appraiser shall designate the class for which he is certified and place his certificate number on each appraisal report, contract, or other instrument used by him in conducting real estate appraisal activities.

Section 22. **Deposit of fees.** Fees collected by the board under [sections 1, 2, and 4 through 28] must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6), and may be used to pay the compensation of board members and other expenses necessary to administer [sections 1, 2, and 4 through 28].

Section 23. **Reciprocity — consent to service of process.** (1) A person who holds a valid real estate appraiser's license or certificate in a state that grants reciprocity to Montana real estate appraisers and that has substantially equivalent licensure or certification requirements to this state may be licensed or certified in this state. The person shall conform to the requirements of [sections 1, 2, and 4 through 28].

(2) In addition, an applicant for reciprocity under this section shall submit an irrevocable consent that in any action against the applicant arising out of the applicant's activities as a real estate appraiser licensed or certified by this state, service of process may be made upon him by delivery of the process to the secretary of state of this state if the plaintiff cannot effect personal service upon the applicant in the exercise of due diligence.

Section 24. **Renewal of certificate — continuing education requirements.** (1) A certificate issued under [section 21] must be renewed every 3 years.

(2) A certificate may be renewed upon payment of a renewal fee and production of evidence satisfactory to the board that during the certification period immediately preceding the application for renewal, the certified real estate appraiser has:

(a) completed at least 45 classroom hours of instruction in courses or seminars approved by the board, at least 15 hours of which must be related to standards of professional appraisal practice;

(b) completed an education program determined by the board to be equivalent to the courses and seminars approved under subsection (2)(a); or

(c) participated, other than as a student, in an education program approved by the board that relates to the theory and technique of real property appraisal.

(3) An applicant for renewal shall state the class of certification previously held and presently sought.

Section 25. **Late renewal of certificate.** (1) A certificate holder who does not renew a certificate within 3 years from the date of issuance may renew it, within 2 years from the date the certificate expires, by:

(a) filing with the board an application for late renewal on a form approved by the board;

(b) satisfying the continuing education requirements of [section 24]; and

(c) paying a late renewal fee prescribed by the board.

(2) The board may refuse to renew a certificate if the certificate holder has continued to perform independent appraisal services in this state following expiration of the certificate.

Section 26. **Roster of licensed and certified real estate appraisers.** The board shall prepare and issue at least once each calendar year a roster listing the name and principal place of business of each real estate appraiser currently licensed or certified under [sections 1, 2, and 4 through 28]. A member of the public may obtain a copy of the roster by applying to the board. The board may set a reasonable fee for the cost of providing the roster.

Section 27. **Certificate of good standing.** The board may issue a certificate of good standing to any licensed or certified real estate appraiser who holds a current valid license or certificate in this state.

Section 28. **Licensure and certification of nonresidents — temporary permit — service of process.** (1) A person not a resident of this state who has complied with the provisions of subsection (3) may obtain a license or certificate as a real estate appraiser in this state by complying with the provisions of [sections 1, 2, and 4 through 28] relating to the licensure or certification of real estate appraisers.

(2) (a) A person not a resident of this state who has complied with the consent provisions of subsection (3) may obtain a temporary permit to perform a contract relating to the appraisal of real estate or real property in this state. To qualify for a temporary permit, an applicant shall:

(i) submit an application to the board on a form approved by the board;

(ii) submit evidence that the applicant is licensed or otherwise authorized to appraise real estate or real property in the applicant's domicile state;

(iii) submit a copy of the contract for appraisal services that requires the applicant to appraise real estate or real property in this state and certify that the contract is in force and effect;

(iv) certify that no disciplinary proceeding is pending against the applicant in the applicant's domicile state;

(v) pay an application fee in an amount prescribed by the board; and

(vi) comply with the other requirements established by the board.

(b) A temporary permit issued under this section is limited to a grant of authority to perform independent appraisal services required by the contract for appraisal services submitted with the application for a temporary permit.

(c) A temporary permit expires upon completion of the appraisal services under the contract or 6 months after issuance of the temporary permit, whichever is earlier. A temporary permit may not be renewed.

(3) An applicant for licensure or certification under [sections 1, 2, and 4 through 28] who is not a resident of this state shall submit, with his application for licensure or certification, an irrevocable consent that service of process upon the applicant may be made by delivery of the process to the secretary of state of this state if, in an action against the applicant in a court in this state arising out of the applicant's activities as a licensed or certified real estate appraiser in this state, the plaintiff cannot effect personal service upon the applicant in the exercise of due diligence.

Section 29. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 30. **Codification instruction.** (1) [Section 3] is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to [section 3].

(2) [Sections 1, 2, and 4 through 28] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1, 2, and 4 through 28].

Section 31. **Effective date.** [This act] is effective on passage and approval.

Approved April 9, 1991.

CHAPTER NO. 410

[SB 1]

AN ACT TO GENERALLY REVISE THE UNIFORM COMMERCIAL CODE; REVISING THE UNIFORM COMMERCIAL CODE PROVISIONS GOVERNING NEGOTIABLE INSTRUMENTS TO REFLECT TECHNOLOGICAL CHANGES AND TO CONFORM TO COURT DECISIONS; LIMITING THE APPLICATION OF THE PROVISIONS GOV-

ERNING NEGOTIABLE INSTRUMENTS TO CHECKS, BEARER INSTRUMENTS, AND ORDER INSTRUMENTS; ELIMINATING THE SUM CERTAIN REQUIREMENT FOR NEGOTIABLE INSTRUMENTS; PROVIDING CONTRIBUTION RULES FOR MULTIPLE PARTIES TO A DRAFT OR NOTE; PROVIDING STATUTES OF LIMITATION FOR AN ACTION BASED ON A NEGOTIABLE INSTRUMENT; REVISING THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE GOVERNING BANK DEPOSITS AND COLLECTIONS TO CONFORM TO THE REVISIONS GOVERNING NEGOTIABLE INSTRUMENTS; ADOPTING THE PROVISIONS GOVERNING FUNDS TRANSFERS; ADOPTING THE UNIFORM COMMERCIAL CODE PROVISIONS ON LEASES; PROVIDING GENERAL RULES PERTAINING TO THE CONSTRUCTION OF LEASING CONTRACTS; DEFINING THE RIGHTS AND REMEDIES OF LESSORS AND LESSEES; PROVIDING RULES FOR PERFORMANCE OF LEASING CONTRACTS; MAKING CERTAIN LEASES SECURED TRANSACTIONS; REVISING THE LAWS GOVERNING BULK SALES; AMENDING SECTIONS 27-1-717, 30-1-105, 30-1-201, 30-1-207, 30-2-103, 30-2-403, 30-2-511, 30-3-101, 30-3-102, 30-3-104, 30-3-105, 30-3-107, 30-3-108, 30-3-109, 30-3-111, 30-3-114, 30-3-115, 30-3-119, 30-3-122, 30-3-202, 30-3-203, 30-3-204, 30-3-205, 30-3-208, 30-3-301, 30-3-302, 30-3-303, 30-3-304, 30-3-305, 30-3-306, 30-3-307, 30-3-401, 30-3-403, 30-3-404, 30-3-405, 30-3-406, 30-3-407, 30-3-409, 30-3-410, 30-3-412, 30-3-413, 30-3-414, 30-3-415, 30-3-417, 30-3-419, 30-3-504, 30-3-508, 30-3-510, 30-3-601, 30-3-603, 30-3-604, 30-3-605, 30-4-102, 30-4-103, 30-4-104, 30-4-105, 30-4-106, 30-4-108, 30-4-201, 30-4-202, 30-4-203, 30-4-204, 30-4-205, 30-4-206, 30-4-207, 30-4-208, 30-4-209, 30-4-210, 30-4-211, 30-4-212, 30-4-213, 30-4-214, 30-4-301, 30-4-302, 30-4-303, 30-4-401, 30-4-402, 30-4-403, 30-4-406, 30-4-407, 30-4-503, AND 30-9-113, MCA; AND REPEALING SECTIONS 30-3-103, 30-3-106, 30-3-110, 30-3-112, 30-3-113, 30-3-116, 30-3-117, 30-3-118, 30-3-120, 30-3-121, 30-3-123, 30-3-201, 30-3-206, 30-3-207, 30-3-402, 30-3-408, 30-3-411, 30-3-416, 30-3-418, 30-3-501, 30-3-502, 30-3-503, 30-3-505, 30-3-506, 30-3-507, 30-3-509, 30-3-511, 30-3-602, 30-3-606, 30-3-701, 30-3-801, 30-3-802, 30-3-803, 30-3-804, 30-3-805, 30-4-109, 30-6-101, 30-6-102, 30-6-103, 30-6-104, 30-6-105, 30-6-106, 30-6-107, 30-6-108, 30-6-109, 30-6-110, 30-6-111, 30-9-111, 70-1-601, 70-1-602, 70-1-603, 70-1-604, 70-1-605, 70-1-606, 70-1-607, 70-1-608, 70-1-609, 70-1-610, 70-1-611, 70-8-101, 70-8-102, 70-8-103, AND 70-8-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-1-105, MCA, is amended to read:

"**30-1-105. Territorial application of the code — parties' power to choose applicable law.** (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement, this code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. 30-2-402.

Applicability of [sections 7 through 86] on Leases. [Sections 11 and 12].

Applicability of the Chapter on Bank Deposits and Collections. 30-4-102.

Governing law in the Chapter on Funds Transfers. [Section 226].

~~Bulk transfers subject to the Chapter on Bulk Transfers. 30-6-102.~~

Applicability of the Chapter on Investment Securities. 30-8-106.

Perfection provisions of the Chapter on Secured Transactions. 30-9-103."

Section 2. Section 30-1-201, MCA, is amended to read:

"**30-1-201. General definitions.** Subject to additional definitions contained in the subsequent chapters of this code which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this code:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this code (30-1-205 and 30-2-208). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts (30-1-103).

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be considered to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: Non-Negotiable Bill of Lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this code and any other applicable rules of law.

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible

for the purposes of this code to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder", *with respect to a:*

(a) negotiable instrument, means the person in possession if the instrument is payable to bearer or to the person in possession;

(b) certified security, means the person in possession is the registered owner, the security has been indorsed to the person in possession by the registered owner, or the security is in bearer form; or

(c) document of title, means ~~a~~ *the* person ~~who is~~ in possession ~~of a document of title or an instrument or a certificated investment security drawn, issued, or endorsed to him or to his order or~~ *if the goods are deliverable* to bearer or ~~in blank~~ *to the order of the person in possession.*

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government ~~as a part of its currency~~ *or intergovernmental organization.*

(25) A person has "notice" of a fact when:

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party" as distinct from "third party" means a person who has engaged in a transaction or made an agreement within this code.

(30) "Person" includes an individual or an organization.

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) *(a)* "Security interest" means an interest in personal property or fixtures ~~which~~ *that* secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper ~~which~~ *that* is subject to ~~Chapter~~ *chapter* 9. The

special property interest of a buyer of goods on identification of ~~such~~ *those* goods to a contract for sale under 30-2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with ~~Chapter~~ *chapter* 9. Unless a ~~lease or~~ consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment ~~is~~ in any event *is* subject to the provisions on consignment sales (30-2-326). ~~Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.~~ *Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:*

(i) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(ii) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(iii) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(iv) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(b) A transaction does not create a security interest merely because it provides that:

(i) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(ii) the lessee assumes risk of loss of the goods or agrees to pay taxes, insurance, filing, recording, or registration fees or service or maintenance costs with respect to the goods;

(iii) the lessee has an option to renew the lease or to become the owner of the goods;

(iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market value for the use of the goods for the term of the renewal at the time the option is to be performed; or

(v) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection (37):

(i) additional consideration is not nominal if:

(A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(B) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed;

(ii) additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(iii) "reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iv) "present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed, and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature ~~or endorsement~~ means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (30-3-303, 30-4-208, and 30-4-209), a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form."

Section 3. Section 30-1-207, MCA, is amended to read:

"**30-1-207. Performance or acceptance under reservation of rights.** *(1)* A party ~~who~~ *that,* with explicit reservation of rights, performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest", or the like are sufficient.

(2) Subsection (1) does not apply to an accord and satisfaction."

Section 4. Section 30-2-103, MCA, is amended to read:

"**30-2-103. Definitions and index of definitions.** (1) In this chapter, unless the context otherwise requires, *the following definitions apply*:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith", in the case of a merchant, means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this chapter or to specified parts thereof~~,~~ and the sections in which they appear are:

"Acceptance". 30-2-606.

"Banker's credit". 30-2-325.

"Between merchants". 30-2-104.

"Cancellation". 30-2-106(4).

"Commercial unit". 30-2-105.

"Confirmed credit". 30-2-325.

"Conforming to contract". 30-2-106.

"Contract for sale". 30-2-106.

"Cover". 30-2-712.

"Entrusting". 30-2-403.

"Financing agency". 30-2-104.

"Future goods". 30-2-105.

"Goods". 30-2-105.

"Identification". 30-2-501.

"Installment contract". 30-2-612.

"Letter of credit". 30-2-325.

"Lot". 30-2-105.

"Merchant". 30-2-104.

"Overseas". 30-2-323.

"Person in position of seller". 30-2-707.

"Present sale". 30-2-106.

"Sale". 30-2-106.

"Sale on approval". 30-2-326.

"Sale or return". 30-2-326.

"Termination". 30-2-106.

(3) The following definitions in other chapters apply to this chapter:

"Check". 30-3-104.

"Consignee". 30-7-102.

"Consignor". 30-7-102.

"Consumer goods". 30-9-109.

"Dishonor". ~~30-3-507~~ *[section 146]*.

"Draft". 30-3-104.

(4) In addition, ~~Chapter~~ *chapter* 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 5. Section 30-2-403, MCA, is amended to read:

"**30-2-403. Power to transfer — good faith purchase of goods — "entrusting".** (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:

(a) the transferor was deceived as to the identity of the purchaser;

(b) the delivery was in exchange for a check which is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through fraud punishable as theft under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods has been such as to constitute theft under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the chapters on secured transactions (chapter 9)~~, bulk transfers (chapter 6)~~ and documents of title (chapter 7)."

Section 6. Section 30-2-511, MCA, is amended to read:

"**30-2-511. Tender of payment by buyer — payment by check.** (1) Unless otherwise agreed, tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this code on the effect of an instrument on an obligation (~~30-3-802~~ *[section 123]*), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment."

Section 7. **Short title.** [Sections 7 through 86] shall be known and may be cited as Uniform Commercial Code—Leases.

Section 8. **Scope.** [Sections 7 through 86] applies to any transaction, regardless of form, that creates a lease.

Section 9. **Definitions and index of definitions.** (1) In [sections 7 through 86] unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person, who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but the term does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine; a set of articles, as a suite of furniture or a line of machinery; a quantity, as a gross or carload; or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that is in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed $25,000.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

(I) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;

(II) that the lessee is entitled under [sections 7 through 86] to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

(III) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures [(section 45)], but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in [sections 7 through 86]. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by [sections 7 through 86] and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person, who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but the term does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to [sections 7 through 86] and the sections in which they appear are:

(a) "Accessions". [Section 46(1)].

(b) "Construction mortgage". [Section 45(1)(d)].

(c) "Encumbrance". [Section 45(1)(e)].

(d) "Fixtures". [Section 45(1)(a)].

(e) "Fixture filing". [Section 45(1)(b)].

(f) "Purchase money lease". [Section 45(1)(c)].

(3) The following definitions in other chapters apply to [sections 7 through 86]:

(a) "Account". Section 30-9-106.

(b) "Between merchants". Section 30-2-104(3).

(c) "Buyer". Section 30-2-103(1)(a).

(d) "Chattel paper". Section 30-9-105(1)(b).

(e) "Consumer goods". Section 30-9-109(1).

(f) "Document". Section 30-9-105(1)(f).

(g) "Entrusting". Section 30-2-403(3).

(h) "General intangibles". Section 30-9-106.

(i) "Good faith". Section 30-2-103(1)(b).

(j) "Instrument". Section 30-9-105(1)(i).

(k) "Merchant". Section 30-2-104(1).

(l) "Mortgage". Section 30-9-105(1)(j).

(m) "Pursuant to commitment". Section 30-9-105(1)(k).

(n) "Receipt". Section 30-2-103(1)(c).

(o) "Sale". Section 30-2-106(1).

(p) "Sale on approval". Section 30-2-326.

(q) "Sale or return". Section 30-2-326.

(r) "Seller". Section 30-2-103(1)(d).

(4) In addition, Title 30, chapter 1, contains general definitions and principles of construction and interpretation applicable throughout [sections 7 through 86].

Section 10. **Leases subject to other law.** (1) A lease, although subject to [sections 7 through 86], is also subject to any applicable:

(a) certificate of title statute of this state;

(b) certificate of title statute of another jurisdiction ([section 11]); or

(c) consumer protection statute of this state or final consumer protection decision of a court of this state existing on October 1, 1991.

(2) In case of conflict between [sections 7 through 86], other than [sections 11, 40(3), and 41(3)], and a statute or decision referred to in subsection (1), the statute or decision controls.

(3) Failure to comply with an applicable law has only the effect specified therein.

Section 11. **Territorial application of chapter to goods covered by certificate of title.** Subject to the provisions of [sections 40(3) and 41(3)], with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of:

(1) surrender of the certificate; or

(2) 4 months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

Section 12. **Limitation on power of parties to consumer lease to choose applicable law and judicial forum.** (1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter or in which the goods are to be used, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

Section 13. **Waiver or renunciation of claim or right after default.** Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

Section 14. **Unconscionability.** (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(3) Before making a finding of unconscionability under subsection (1) or (2), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof or of the conduct.

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(a) if the court finds unconscionability under subsection (1) or (2), the court shall award reasonable attorney fees to the lessee;

(b) if the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he knew to be groundless, the court shall award reasonable attorney fees to the party against whom the claim is made;

(c) in determining attorney fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) is not controlling.

Section 15. **Option to accelerate at will.** (1) A term providing that one party or his successor in interest may accelerate payment of performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import must be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired.

(2) With respect to a consumer lease, the burden of establishing good faith under subsection (1) is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

Section 16. **Statute of frauds.** (1) A lease contract is not enforceable by way of action or defense unless:

(a) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than $1,000; or

(b) there is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1), but which is valid in other respects, is enforceable:

(a) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a lease contract was made but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) is:

(a) if there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) a reasonable lease term.

Section 17. **Final written expression — parol or extrinsic evidence.** Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1) by course of dealing or usage of trade or by course of performance; and

(2) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Section 18. **Seals inoperative.** The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument, and the law with respect to sealed instruments does not apply to the lease contract or offer.

Section 19. **Formation in general.** (1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties that recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

Section 20. **Firm offers.** An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

Section 21. **Offer and acceptance in formation of lease contract.** (1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

Section 22. **Course of performance or practical construction.** (1) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(2) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(3) Subject to the provisions of [section 23] on modification and waiver, course of performance is relevant to show a modification or waiver of any term inconsistent with the course of performance.

Section 23. **Modification, rescission, and waiver.** (1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2), it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

Section 24. **Lessee under finance lease as beneficiary of supply contract.** (1) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee provided for under subsection (1) does not:

(a) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise; or

(b) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless before the modification or rescission the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is considered to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1), the lessee retains all rights that the lessee may have against the supplier that arise from an agreement between the lessee and the supplier or under other law.

Section 25. **Express warranties.** (1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee that relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods that is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee", or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

Section 26. **Warranties against interference and against infringement — lessee's obligation against infringement.** (1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, that will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease, there is in a lease contract by a lessor, who is a merchant regularly dealing in goods of the kind, a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

Section 27. **Implied warranty of merchantability.** (1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as:

(a) pass without objection in the trade under the description in the lease agreement;

(b) in the case of fungible goods, are of fair average quality within the description;

(c) are fit for the ordinary purposes for which goods of that type are used;

(d) run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(e) are adequately contained, packaged, and labeled as the lease agreement may require; and

(f) conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade.

Section 28. **Implied warranty of fitness for particular purpose.** Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

Section 29. **Exclusion or modification of warranties.** (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed whenever reasonable as consistent with each other; but, subject to the provisions of [section 17] on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it, the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection (3), to exclude or modify any implied warranty of fitness, the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous, and states, for example, "There is no warranty that the goods will be fit for a particular purpose".

(3) Notwithstanding subsection (2), but subject to subsection (4):

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions, such as "as is" or "with all faults", or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement ([section 26]) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including

course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

Section 30. **Cumulation and conflict of warranties express or implied.** Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention, the following rules apply:

(1) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(2) A sample from an existing bulk displaces inconsistent general language of description.

(3) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

Section 31. **Third-party beneficiaries of express and implied warranties.** A warranty to or for the benefit of a lessee under [sections 7 through 86], whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section.

Section 32. **Identification.** Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(1) when the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(2) when the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

(3) when the young are conceived, if the lease contract is for a lease of unborn young of animals.

Section 33. **Insurance and proceeds.** (1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notifi-

cation to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subsections (1) and (2), the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

Section 34. **Risk of loss.** (1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of [sections 7 through 86] on the effect of default on risk of loss ([section 35]), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier, but if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within subsection (2)(a) or (2)(b), the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor or, in the case of a finance lease, the supplier is a merchant; otherwise the risk passes to the lessee on tender of delivery.

Section 35. **Effect of default on risk of loss.** (1) When risk of loss is to pass to the lessee and the time of passage is not stated:

(a) if a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor or, in the case of a finance lease, the supplier until cure or acceptance.

(b) if the lessee rightfully revokes acceptance, he, to the extent of any deficiency in his effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is

otherwise in default under the lease contract, the lessor or, in the case of a finance lease, the supplier, to the extent of any deficiency in his effective insurance coverage, may treat the risk of loss as resting on the lessee for a commercially reasonable time.

Section 36. **Casualty to identified goods.** If a lease contract requires goods identified when the lease contract is made and the goods suffer casualty without fault of the lessee, the lessor, or the supplier before delivery or if the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or [section 34], then:

(1) if the loss is total, the lease contract is avoided; and

(2) if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

Section 37. **Enforceability of lease contract.** Except as otherwise provided in [sections 7 through 86], a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods, and against creditors of the parties.

Section 38. **Title to and possession of goods.** Except as otherwise provided in [sections 7 through 86], each provision of [sections 7 through 86] applies whether the lessor or a third party has title to the goods and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

Section 39. **Alienability of party's interest under lease contract or of lessor's residual interest in goods — delegation of performance — transfer of rights.** (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Title 30, chapter 9, secured transactions, by reason of 30-9-102(1)(b).

(2) Except as provided in subsections (3) and (4), a provision in a lease agreement that prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods or that makes such a transfer an event of default gives rise to the rights and remedies provided in subsection (5), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) (a) A provision in a lease agreement that prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods or that makes such a transfer an event of default is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of

possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision.

(b) Neither the granting nor the enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the lessee within the purview of subsection (5) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(4) A provision in a lease agreement that prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation or that makes such a transfer an event of default is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the other party to the lease contract within the purview of subsection (5).

(5) Subject to subsections (3) and (4):

(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in [section 55];

(b) if subsection (5)(a) is not applicable and if a transfer is made that is prohibited under a lease agreement or that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract:

(i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer; and

(ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(6) A transfer of "the lease" or of "all my rights under the lease" or a transfer in similar general terms is a transfer of rights, and unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(7) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(8) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

Section 40. **Subsequent lease of goods by lessor.** (1) Subject to [section 39], a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer and, except as provided in subsection (2) and [section 81(4)], takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(a) the lessor's transferor was deceived as to the identity of the lessor;

(b) the delivery was in exchange for a check that is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

Section 41. **Sale or sublease of goods by lessee.** (1) Subject to the provisions of [section 39], a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer and, except as provided in subsection (2) and [section 65(4)], takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease, the lessee has that power even though:

(a) the lessor was deceived as to the identity of the lessee;

(b) the delivery was in exchange for a check that is later dishonored; or

(c) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

Section 42. **Priority of certain liens arising by operation of law.** If a person in the ordinary course of business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or [sections 7 through 86] unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

Section 43. **Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.** (1) Except as otherwise provided in [section 42], a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsections (3) and (4) and in [sections 42 and 44], a creditor of a lessor takes subject to the lease contract unless:

(a) the creditor holds a lien that attached to the goods before the lease contract became enforceable;

(b) the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) the creditor holds a security interest in the goods that was perfected (30-9-303) before the lease contract became enforceable.

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (30-9-303) and the lessee knows of its existence.

(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever occurs first, unless the future advances are made pursuant to a

commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

Section 44. **Special rights of creditors.** (1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in [sections 7 through 86] impairs the rights of creditors of a lessor if the lease contract:

(a) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like; and

(b) is made under circumstances that under any statute or rule of law apart from [sections 7 through 86] would constitute the transaction as a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

Section 45. **Lessor's and lessee's rights when goods become fixtures.** (1) In this section:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of 30-9-402(5);

(c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under [sections 7 through 86], a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under [sections 7 through 86] of ordinary building materials incorporated into an improvement on land.

(3) [Sections 7 through 86] do not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable;

(b) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable;

(c) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding the provisions of subsection (4)(a) but otherwise subject to the provisions of subsections (4) and (5), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the provisions of subsections (1) through (6), priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may, on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and [sections 7 through 86] or if necessary to enforce other rights and remedies of the lessor or lessee under [sections 7 through 86], remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate. However, the lessor or lessee shall reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed to the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the chapter on secured transactions (Title 30, chapter 9).

Section 46. **Lessor's and lessee's rights when goods become accessions.** (1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4).

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(4) The interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) is subordinate to the interest of:

(a) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(b) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When under subsections (2) and (4) or (3) and (4) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may, on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and [sections 7 through 86] or if necessary to enforce his other rights and remedies under [sections 7 through 86], remove the goods from the whole, free and clear of all interests in the whole, but he must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed to the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

Section 47. **Priority subject to subordination.** Nothing in [sections 7 through 86] prevents subordination by agreement by any person entitled to priority.

Section 48. **Insecurity — adequate assurance of performance.** (1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable, the insecure party may suspend any performance for which he has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

Section 49. **Anticipatory repudiation.** If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(1) for a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(2) make demand pursuant to [section 48] and await assurance of future performance adequate under the circumstances of the particular case; or

(3) resort to any right or remedy upon default under the lease contract or [sections 7 through 86], even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of [sections 7 through 86] on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods ([section 78]).

Section 50. **Retraction of anticipatory repudiation.** (1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under [section 48].

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

Section 51. **Substituted performance.** (1) If without fault of the lessee, the lessor, and the supplier the agreed berthing, loading, or unloading facilities fail, the agreed type of carrier becomes unavailable, or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent and if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

Section 52. **Excused performance.** Subject to [section 51] on substituted performance, the following rules apply:

(1) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subsections (2) and (3) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good

faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(2) If the causes mentioned in subsection (1) affect only part of the lessor's or the supplier's capacity to perform, he shall allocate production and deliveries among his customers but at his option may include regular customers not then under contract for sale or lease as well as his own requirements for further manufacture. He may so allocate in any manner that is fair and reasonable.

(3) The lessor seasonably shall notify the lessee and, in the case of a finance lease, the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subsection (2), of the estimated quota thus made available for the lessee.

Section 53. **Procedure on excused performance.** (1) If the lessee receives notification of a material or indefinite delay or an allocation justified under [section 52], the lessee may by written notification to the lessor as to any goods involved and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired ([section 64]):

(a) terminate the lease contract ([section 59(2)]); or

(b) except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under [section 49], the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.

Section 54. **Irrevocable promises — finance leases.** (1) In the case of a finance lease that is not a consumer lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1):

(a) is effective and enforceable between the parties and by or against third parties, including assignees of the parties; and

(b) is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

Section 55. **Default — procedure.** (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and [sections 7 through 86].

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in [sections 7 through 86] and, except as limited by [sections 7 through 86], as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with [sections 7 through 86].

(4) Except as otherwise provided in 30-1-106(1), [sections 7 through 86], or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under [sections 55 through 86] as to the goods or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case [sections 55 through 86] do not apply.

Section 56. **Notice after default.** Except as otherwise provided in [sections 7 through 86] or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

Section 57. **Modification or impairment of rights and remedies.** (1) Except as otherwise provided in [sections 7 through 86], the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in [sections 7 through 86] and may limit or alter the measure of damages recoverable under [sections 7 through 86].

(2) Resort to a remedy provided under [sections 7 through 86] or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose or provision for an exclusive remedy is unconscionable, remedy may be had as provided in [sections 7 through 86].

(3) Consequential damages may be liquidated under [section 58] or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable, but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by [sections 7 through 86].

Section 58. **Liquidation of damages.** (1) Damages payable by either party for default or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to a lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages and such provision does not comply with subsection (1) or if such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in [sections 7 through 86].

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency ([section 79 or 80]), the lessee is entitled to restitution of any amount by which the sum of his payments exceeds:

(a) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1); or

(b) in the absence of those terms, 20% of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term or, in the case of a consumer lease, the lesser of such amount or $500.

(4) A lessee's right to restitution under subsection (3) is subject to offset to the extent the lessor establishes:

(a) a right to recover damages under the provisions of [sections 7 through 86] other than subsection (1); and

(b) the amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

Section 59. **Cancellation and termination — effect of cancellation, termination, rescission, or fraud on rights and remedies.** (1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation", "rescission", or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under [sections 7 through 86] for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be considered inconsistent with a claim for damages or other right or remedy.

Section 60. **Statute of limitations.** (1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within 4 years after the cause of action accrued. By the original lease contract, the parties may reduce the period of limitation to not less than 1 year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations, nor does it apply to causes of action that have accrued before [sections 7 through 86] becomes effective.

Section 61. **Proof of market rent — time and place.** (1) Damages based on market rent [section 73 or 82] are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the time of the default.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in [sections 7 through 86] is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term that in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in [sections 7 through 86] offered by one party is not admissible unless and until he has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as

the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

Section 62. **Lessee's remedies.** (1) If a lessor fails to deliver the goods in conformity to the lease contract ([section 63]) or repudiates the lease contract ([section 49]) or if a lessee rightfully rejects the goods ([section 63]) or justifiably revokes acceptance of the goods ([section 71]), then with respect to any goods involved and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired ([section 64]), the lessor is in default under the lease contract and the lessee may:

(a) cancel the lease contract ([section 59(1)]);

(b) recover so much of the rent and security as has been paid and is just under the circumstances;

(c) cover and recover damages as to all goods affected whether or not they have been identified to the lease contract ([sections 72 and 74]) or recover damages for nondelivery ([sections 73 and 74]);

(d) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(a) if the goods have been identified, recover them ([section 76]); or

(b) in a proper case, obtain specific performance or replevy the goods ([section 75]).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in [section 73(3)].

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages ([section 73(4)]).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to [section 81(5)].

(6) Subject to the provisions of [section 54], a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

Section 63. **Lessee's rights on improper delivery — rightful rejection.** (1) Subject to the provisions of [section 64] on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

Section 64. **Installment lease contracts — rejection and default.** (1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole, there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

Section 65. **Merchant lessee's duties as to rightfully rejected goods.** (1) Subject to any security interest of a lessee ([section 62(5)]), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (subsection (1)) or any other lessee ([section 66]) disposes of goods, he is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade or, if there is none, to a reasonable sum not exceeding 10% of the gross proceeds.

(3) In complying with this section or [section 66], the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section or [section 66] takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of [sections 7 through 86].

Section 66. **Lessee's duties as to rightfully rejected goods.** (1) Except as otherwise provided with respect to goods that threaten to decline in value speedily ([section 65]) and subject to any security interest of a lessee ([section 62(5)]):

(a) the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account, ship them to the lessor or the supplier, or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in [section 65]; but

(c) the lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) is not acceptance or conversion.

Section 67. **Cure by lessor of improper tender or delivery — replacement.** (1) If any tender or delivery by the lessor or the supplier is rejected because it is nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he seasonably notifies the lessee.

Section 68. **Waiver of lessee's objections.** (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it ([section 67]); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents.

Section 69. **Acceptance of goods.** (1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

(a) the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) the lessee fails to make an effective rejection of the goods ([section 63(2)]).

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

Section 70. **Effect of acceptance of goods — notice of default — burden of establishing default after acceptance — notice of claim or litigation to person answerable over.** (1) A lessee shall pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance may not be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance may not be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by [sections 7 through 86] or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like ([section 26]) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) the burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over, the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after seasonable receipt of the notice does come in and defend, that person is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation, including settlement if the claim is one for infringement or the like ([section 26]) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control, the lessee is so barred.

(5) Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like ([section 26]).

Section 71. **Revocation of acceptance of goods.** (1) A lessee may revoke acceptance of a lot or commercial unit the nonconformity of which substantially impairs its value to the lessee if the lessee has accepted it:

(a) except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods that is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

Section 72. **Cover — substitute goods.** (1) After a default by a lessor under the lease contract of the type described in [section 62(1)] or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement ([section 58]) or otherwise determined pursuant to agreement of the parties (30-1-102(3) and [section 57]), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

(a) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and

(b) any incidental or consequential damages less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and [section 73] governs.

Section 73. **Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.** (1) Except as otherwise provided with respect to damages liquidated in the lease agreement ([section 58]) or otherwise determined pursuant to agreement of the parties (30-1-102(3) and [section 57]), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under [section 72(2)] or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification ([section 70(3)]), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

Section 74. **Lessee's incidental and consequential damages.** (1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked; any commercially reasonable charges; expenses or commissions in connection with effecting cover; and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include:

(a) any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and that could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

Section 75. **Lessee's right to specific performance or replevin.** (1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court considers just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

Section 76. **Lessee's right to goods on lessor's insolvency.** (1) Subject to subsection (2) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract ([section 32]) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within 10 days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

Section 77. **Lessor's remedies.** (1) If a lessee wrongfully rejects or revokes acceptance of goods, fails to make a payment when due, or repudiates with respect to a part or the whole, then with respect to any goods involved and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired ([section 64]), the lessee is in default under the lease contract and the lessor may:

(a) cancel the lease contract ([section 59(1)]);

(b) proceed respecting goods not identified to the lease contract ([section 78]);

(c) withhold delivery of the goods and take possession of goods previously delivered ([section 79]);

(d) stop delivery of the goods by any bailee ([section 80]);

(e) dispose of the goods and recover damages ([section 81]), retain the goods and recover damages ([section 82]), or in a proper case, recover rent ([section 83]);

(f) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2); or

(b) if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2).

Section 78. **Lessor's right to identify goods to lease contract.** (1) If a lessee under a lease contract defaults as described in [section 77] or, if agreed, after other default by the lessee, a lessor may:

(a) identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) dispose of goods ([section 81(1)]) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

Section 79. **Lessor's right to possession of goods.** (1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in [section 77(1) or (3)(a)] or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor that is reasonably convenient to both parties. Without removal, the

lessor may render unusable any goods employed in trade or business and may dispose of goods on the lessee's premises ([section 81]).

(3) The lessor may proceed under subsection (2) without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

Section 80. **Lessor's stoppage of delivery in transit or otherwise.** (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until:

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Section 81. **Lessor's rights to dispose of goods.** (1) After a default by a lessee under the lease contract described in [section 77(1) or (3)(a)] or after the lessor refuses to deliver or takes possession of goods ([section 79 or 80]) or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement ([section 58]) or otherwise determined pursuant to agreement of the parties (30-1-102(3) and [section 57]), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:

(a) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement;

(b) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement; and

(c) any incidental damages allowed under [section 84] less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and [section 82] governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of [sections 7 through 86].

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest ([section 62(5)]).

Section 82. **Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.** (1) Except as otherwise provided with respect to damages liquidated in the lease agreement ([section 58]) or otherwise determined pursuant to agreement of the parties (30-1-102(3) and [section 57]), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under [section 81(2)] or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in [section 77(1) or (3)(a)] or, if agreed, for other default of the lessee:

(a) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor;

(b) the present value as of the date determined under subsection (1)(a) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located, computed for the same lease term; and

(c) any incidental damages allowed under [section 84] less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead,

that the lessor would have made from full performance by the lessee, together with any incidental damages allowed under [section 84], allowance due for costs reasonably incurred, and credit due for payments or proceeds of disposition.

Section 83. **Lessor's action for rent.** (1) After default by the lessee under the lease contract of the type described in [section 77(1) or (3)(a)] or, if agreed, after other default by the lessee, if the lessor complies with subsection (2), the lessor may recover from the lessee as damages:

(a) for goods accepted by the lessee and not repossessed by or tendered to the lessor and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee ([section 34]):

(i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor;

(ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement; and

(iii) any incidental damages allowed under [section 84] less expenses saved in consequence of the lessee's default; and

(b) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing:

(i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor;

(ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement; and

(iii) any incidental damages allowed under [section 84] less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by [section 81 or 82] and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to [section 81 or 82].

(4) Payment of the judgment for damages obtained pursuant to subsection (1) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) If a lessee under a lease contract defaults as described in [section 77(1) or (3)(a)] or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under [section 81 or 82].

Section 84. **Lessor's incidental damages.** Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery; in the transportation, care, and custody of goods after the lessee's default; in connection with return or disposition of the goods; or otherwise resulting from the default.

Section 85. **Standing to sue third parties for injury to goods.** (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract:

(a) the lessor has a right of action against the third party; and

(b) the lessee also has a right of action against the third party if the lessee:

(i) has a security interest in the goods;

(ii) has an insurable interest in the goods; or

(iii) bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his suit or settlement, subject to his own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern.

Section 86. **Lessor's rights to residual interest.** In addition to any other recovery permitted by [sections 7 through 86] or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

Section 87. Section 30-3-101, MCA, is amended to read:

"**30-3-101. Short title.** This chapter shall be known and may be cited as Uniform Commercial Code~~—Commercial Paper~~ *Negotiable Instruments.*"

Section 88. **Subject matter.** (1) This chapter applies to negotiable instruments. It does not apply to money or to payment orders governed by [sections 189 through 226]. A negotiable instrument that is also a certificated security under 30-8-102(1)(a) is subject to chapter 8 and to this chapter.

(2) In the event of conflict between the provisions of this chapter and those of chapter 4, chapter 8, or chapter 9, the provisions of chapter 4, chapter 8, and chapter 9 prevail over those of this chapter.

(3) Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this chapter to the extent of the inconsistency.

Section 89. Section 30-3-102, MCA, is amended to read:

"**30-3-102. Definitions ~~and index of definitions~~.** (1) In this chapter, unless the context otherwise requires, *the following definitions apply*:

(a) ~~"Issue" means the first delivery of an instrument to a holder or a remitter.~~ *"Acceptor" means a drawee that has accepted a draft.*

(b) "Drawee" means a person ordered in a draft to make payment.

(c) "Drawer" means a person that signs a draft as a person ordering payment.

(d) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(e) "Maker" means a person that signs a note as promisor of payment.

~~(b)~~*(f)* ~~An "order~~ *"Order"* ~~is a direction~~ *means a written instruction* to pay ~~and must be more than an authorization or request~~ *money signed by the person giving the instruction.* ~~It must identify the person to pay with reasonable certainty. It may be addressed to one or more such~~ *The instruction may be addressed to any person, including the person giving the instruction, or to one or more* persons jointly or in the alternative but not in succession. *An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.*

(g) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which that person is located, with respect to the business in which that person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this chapter or chapter 4.

(h) "Party" means party to an instrument.

~~(c)~~*(i)* ~~A "promise~~ *"Promise"* ~~is an~~ *means a written* undertaking to pay *money signed by the person undertaking to pay.* ~~and must be more than an acknowledgment of an~~ *An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the* obligation.

~~(d) "Secondary party" means a drawer or endorser.~~

~~(e) "Instrument" means a negotiable instrument.~~

(j) "Prove" with respect to a fact means to meet the burden of establishing the fact (30-1-201(8)).

(k) "Remitter" means a person that purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance". 30-3-410.

"Accommodated party". 30-3-415.

"Accommodation party". 30-3-415.

"Alteration". 30-3-407.

"Anomalous indorsement". 30-3-204.

"Blank indorsement". 30-3-204.

"Cashier's check". 30-3-104.

"Certificate of deposit". 30-3-104.

"Certified check". 30-3-410.

~~"Certification". 30-3-411.~~

"Check". 30-3-104.

"Consideration". 30-3-303.

~~"Definite time". 30-3-109.~~

~~"Dishonor". 30-3-507.~~

"Draft". 30-3-104.

"Fiduciary". [section 120].

"Holder in due course". 30-3-302.

"Incomplete instrument". 30-3-115.

"Indorsement". 30-3-203.

"Indorser". 30-3-203.

"Instrument". 30-3-104.

"Issue". [section 91].

"Issuer". [section 91].

"Negotiable instrument". 30-3-104.

"Negotiation". 30-3-202.

"Note". 30-3-104.

~~"Notice of dishonor". 30-3-508.~~

~~"On demand". 30-3-108.~~

"Payable at a definite time". 30-3-109.

"Payable on demand". 30-3-108.

"Payable to bearer". 30-3-111.

"Payable to order". 30-3-111.

"Payment". 30-3-603.

"Person entitled to enforce". 30-3-301.

"Presentment". 30-3-504.

~~"Protest". 30-3-509.~~

"Reacquisition". 30-3-208.

"Represented person". [section 120].

~~"Restrictive endorsement". 30-3-205.~~

~~"Signature". 30-3-401.~~

"Special indorsement". 30-3-204.

"Teller's check". 30-3-104.

"Transfer of instrument". [section 109].

"Traveler's check". 30-3-104.

"Value". 30-3-303.

(3) The following definitions in other chapters apply to this chapter:

~~"Account". 30-4-104.~~

"Bank". 30-4-105.

"Banking day". 30-4-104.

"Clearinghouse". 30-4-104.

"Collecting bank". 30-4-105.

"Customer". 30-4-104.

"Depositary bank". 30-4-105.

"Documentary draft". 30-4-104.

"Intermediary bank". 30-4-105.

"Item". 30-4-104.

~~"Midnight deadline". 30-4-104.~~

"Payor bank". 30-4-105.

"Suspends payments". 30-4-104.

(4) In addition, ~~Chapter~~ *chapter* 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 90. Section 30-3-104, MCA, is amended to read:

"**30-3-104.** ~~**Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note"**~~ ***Negotiable instrument.*** (1) ~~Any writing to be a negotiable instrument within this chapter must:~~

~~(a) be signed by the maker or drawer; and~~

~~(b) contain~~ *"Negotiable instrument" means* an unconditional promise or order to pay a ~~sum certain in~~ *fixed amount of* money, ~~and no other promise, order, obligation or power given by the maker or drawer except as authorized by this chapter; and~~ *with or without interest or other charges described in the promise or order, if it:*

(a) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

~~(c)~~*(b)* ~~be~~ *is* payable on demand or at a definite time; and

~~(d) be payable to order or to bearer~~

(c) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money except that the promise or order may contain:

(i) an undertaking or power to give, maintain, or protect collateral to secure payment;

(ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral; or

(iii) a waiver of the benefit of any law intended for the advantage or protection of any obligor.

(2) ~~A writing which complies with the requirements of this section is:~~

~~(a) a "draft" ("bill of exchange") if it is an order;~~

~~(b) a "check" if it is a draft drawn on a bank and payable on demand;~~

~~(c) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;~~

~~(d) a "note" if it is a promise other than a certificate of deposit.~~

~~(3) As used in other chapters of this code, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable within this chapter as well as to instruments which are so negotiable.~~ *"Instrument" means a negotiable instrument.*

(3) An order that meets all of the requirements of subsection (1) except subsection (1)(a) and otherwise falls within the definition of "check" in subsection (6) is a negotiable instrument and a check.

(4) Notwithstanding the provisions of subsection (1), a promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, indicating that the writing is not an instrument governed by this chapter.

(5) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both note and draft, the person entitled to enforce the instrument may treat it as either.

(6) (a) "Check" means:

(i) a draft, other than a documentary draft, payable on demand and drawn on a bank; or

(ii) a cashier's check or teller's check.

(b) An instrument may be a check even though it is described on its face by another term, such as "money order".

(7) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(8) "Teller's check" means a draft drawn by a bank:

(a) on another bank; or

(b) payable at or through a bank.

(9) "Traveler's check" means an instrument that:

(a) is payable on demand;

(b) is drawn on or payable at or through a bank;

(c) is designated by the term traveler's check or by a substantially similar term; and

(d) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(10) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank."

Section 91. **Issue of instrument.** (1) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(2) An unissued instrument or an unissued incomplete instrument (30-3-115) that is completed is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(3) "Issuer" applies to issued and unissued instruments and means any person that signs an instrument as maker or drawer.

Section 92. Section 30-3-105, MCA, is amended to read:

"**30-3-105.** ~~**When**~~ ***Unconditional*** **promise or order** ~~**unconditional.**~~ (1) *(a)* ~~A~~ *Except as provided in subsections (2) and (3), for the purposes of 30-3-104(1), a* promise or order ~~otherwise~~ *is* unconditional ~~is not made conditional by the fact that the instrument~~ *unless it states*:

(i) an express condition to payment; or

~~(a) is subject to implied or constructive conditions; or~~

~~(b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or~~

~~(c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or~~

~~(d) states that it is drawn under a letter of credit; or~~

~~(e) states that it is secured, whether by mortgage, reservation of title or otherwise; or~~

~~(f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or~~

~~(g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or~~

~~(h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued~~

(ii) that the promise or order is subject to or governed by another writing or that the rights or obligations with respect to the promise or order are stated in another writing.

(b) A mere reference to another writing does not make the promise or order conditional.

(2) A promise or order is not ~~unconditional if the instrument~~ *made conditional*:

(a) ~~states that it is subject to or governed by any other agreement~~ *by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration*; or

(b) ~~states that it is to be paid only out of~~ *because payment is limited to or resorts to* a particular fund or source ~~except as provided in this section~~.

(3) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of 30-3-104(1). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(4) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of 30-3-104(1), but there cannot be a holder in due course of the promise or order."

Section 93. Section 30-3-107, MCA, is amended to read:

"30-3-107. ~~Money~~ *Instrument payable in foreign money.* ~~(1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.~~

~~(2) A promise or order to pay a sum stated~~ *Unless the instrument otherwise provides, an instrument that states the amount payable* in ~~a~~ foreign ~~currency is for a sum certain in~~ money ~~and, unless a different medium of payment is specified in the instrument,~~ may be ~~satisfied by payment of that number of dollars which the stated~~ *paid in the* foreign ~~currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency~~ *money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid."*

Section 94. Section 30-3-108, MCA, is amended to read:

"**30-3-108. Payable on demand.** ~~Instruments~~ *A promise or order is* "payable on demand" *if:* ~~include those~~

(1) it states that it is payable *on demand or* at sight *or otherwise indicates that it is payable at the will of the holder;* or

(2) ~~on presentation and those in which no time for~~ *it does not state any time of* payment ~~is stated~~."

Section 95. Section 30-3-109, MCA, is amended to read:

"**30-3-109. Definite time.** (1) ~~An instrument~~ *A promise or order* is "payable at a definite time" if ~~by its terms~~ it is payable *on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to the rights of:*

(a) ~~on or before a stated date or at a fixed period after a stated date~~ *prepayment;* ~~or~~

(b) ~~at a fixed period after sight; or~~

~~(c) at a definite time subject to any~~ acceleration; ~~or~~

~~(d)~~*(c)* ~~at a definite time subject to~~ extension at the option of the holder~~,~~*;* or

(d) ~~to~~ extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(2) ~~An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred.~~ *If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.*"

Section 96. Section 30-3-111, MCA, is amended to read:

"**30-3-111. Payable to bearer *or to order*.** *(1)* ~~An instrument~~ *A promise or order* is "payable to bearer" ~~when by its terms it is payable to~~ *if it:*

(a) *states that it is payable to* bearer or *to* the order of bearer *or otherwise indicates that the person in possession of the promise or order is entitled to payment;* ~~or~~

(b) ~~a specified person or bearer~~ *does not state a payee;* or

(c) ~~"cash" or~~ *states that it is payable to or to* the order of "cash"~~;~~ or ~~any other indication which does not purport to designate a specific payee~~ *otherwise indicates that it is not payable to an identified person.*

(2) A promise or order that is not payable to bearer is "payable to order" if it is payable to the order of an identified person or to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(3) An instrument payable to bearer may become payable to an identified person if it is specially indorsed as stated in 30-3-204(1). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank as stated in 30-3-204(2)."

Section 97. **Identification of person to whom instrument is payable.** (1) A person to whom an instrument is payable is determined by the intent of the person, whether or not authorized, signing as, in the name of, or on behalf of the maker or drawer. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or on behalf of the maker or drawer and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(2) If the signature of the maker or drawer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(3) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(a) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(b) If an instrument is payable to:

(i) a trust, estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) a person described as agent or similar representative of a named or identified person, the instrument is payable either to the represented person, the representative, or a successor of the representative;

(iii) a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(4) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

Section 98. **Place of payment.** Except as otherwise provided for items in chapter 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

Section 99. **Interest.** (1) Unless otherwise provided in the instrument, an instrument is not payable with interest and interest on an interest-bearing instrument is payable from the date of the instrument.

(2) Interest may be stated in an instrument as a fixed or variable amount of money, or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

Section 100. Section 30-3-114, MCA, is amended to read:

"**30-3-114. Date~~, antedating, postdating~~** ***of instrument.*** (1) ~~The negotiability of an~~ *An* instrument ~~is not affected by the fact that it is undated,~~ *may be* antedated or postdated.

~~(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated~~ *The* date *stated determines the time of payment* if the instrument is payable ~~on demand or~~ at a fixed period after date. *Except as provided in 30-4-401(3), an instrument payable on demand is not payable before the date of the instrument.*

~~(3)~~*(2)* ~~Where the instrument or any signature thereon is dated, the date is presumed to be correct.~~ *If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.*"

Section 101. **Contradictory terms of instrument.** If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

Section 102. Section 30-3-115, MCA, is amended to read:

"30-3-115. Incomplete ~~instruments~~ *instrument.* (1) ~~When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.~~ *"Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.*

(2) *Subject to subsection (3), if an incomplete instrument is an instrument under 30-3-104, it may be enforced according to its terms if it is not completed or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under 30-3-104 but, after completion, the requirements of 30-3-104 are met, the instrument may be enforced according to its terms as augmented by completion.*

(3) If ~~the completion is unauthorized the rules as to material alteration apply (~~*words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument governed by* 30-3-407~~), even though the paper was not delivered by the maker or drawer;~~.

(4) ~~but the~~ *The* burden of establishing that ~~any completion is unauthorized~~ *words or numbers were added to an incomplete instrument without authority of the signer* is on the ~~party so~~ *person* asserting *the lack of authority."*

Section 103. **Joint and several liability — contribution.** (1) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who are indorsing joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(2) Except as provided in [section 142(5)] or by agreement of the affected parties, a party with joint and several liability that pays the instrument is entitled to receive from any party with the same joint and several liability contribution in accordance with applicable law.

(3) Discharge of one party with joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (2) of a party with the same joint and several liability to receive contribution from the party discharged.

Section 104. Section 30-3-119, MCA, is amended to read:

"30-3-119. Other ~~writings~~ *agreements* affecting instrument. ~~(1) As between the obligor and his immediate obligee or any transferee the terms of an~~ *Subject to applicable law regarding exclusion of proof of contemporaneous or prior agreements, the obligation of a party to an instrument to pay the* instrument may be modified, *supplemented,* or ~~affected~~ *nullified* by ~~any other written~~ *a separate* agreement ~~executed~~ *of the obligor and a person entitled to enforce the instrument if the instrument is issued or the obligation is incurred in reliance on the agreement or* as ~~a~~ part of the same transaction~~, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument~~ *giving rise to the agreement.*

~~(2) A separate agreement does not affect the negotiability of an instrument.~~ *To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation."*

Section 105. Section 30-3-122, MCA, is amended to read:

"30-3-122. ~~Accrual of cause of action~~ *Statute of limitations.* (1) ~~A cause of action against a maker or an acceptor accrues:~~

~~(a) in the case of a time instrument on the day after maturity;~~

~~(b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue~~ *Except as provided in subsection (5), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within 6 years after the payment date or dates stated in the note or, if a payment date is accelerated, within 6 years after the accelerated payment date.*

(2) Except as provided in subsection (4) or (5), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within 6 years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

(3) Except as provided in subsection (4), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within 6 years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.

(4) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within 6 years after demand for payment is made to the acceptor or issuer, as the case may be.

~~(2)~~*(5)* ~~A cause of~~ *An* action ~~against the obligor of a demand or time~~ *to enforce the obligation of a party to a* certificate of deposit ~~accrues upon demand, but demand on a time certificate may not be made until on or after the date of~~ *to pay the instrument must be commenced within 6 years after demand for payment is made to the maker, but if the instrument states a* *maturity date and the maker is not required to pay before that date, the 6-year period begins when a demand for payment is in effect and the* maturity *date has passed.*

~~(3) A cause of action against a drawer of a draft or an endorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.~~

~~(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment:~~

~~(a) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;~~

~~(b) in all other cases from the date of accrual of the cause of action.~~

(6) This subsection applies to an action to enforce the obligation of a party to pay an accepted draft, other than a certified check. If the obligation of the acceptor is payable at a definite time, the action must be commenced within 6 years after the payment date or dates stated in the draft or acceptance. If the obligation of the acceptor is payable on demand, the action must be commenced within 6 years after the date of the acceptance.

(7) Unless governed by other law regarding claims for indemnity or contribution, an action for conversion of an instrument, for money had and received, or for like action based on conversion; for breach of warranty; or to enforce an obligation, duty, or right arising under this chapter and not governed by this section must be commenced within 3 years after the cause of action accrues."

Section 106. **Notice of right to defend action.** In an action for breach of an obligation for which a third person is answerable over pursuant to this chapter or chapter 4, the defendant may give the third person written notice of the litigation and the person notified may then give similar notice to any other person who is answerable over. If the notice states that the person notified may come in and defend and that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

Section 107. Section 30-3-202, MCA, is amended to read:

"**30-3-202. Negotiation.** (1) "Negotiation" ~~is the~~ *means a* transfer *of possession, whether voluntary or involuntary,* of an instrument ~~in such form that the transferee~~ *to a person who thereby* becomes ~~a~~ *its* holder *if possession is obtained from a person other than the issuer of the instrument.* ~~If the instrument is payable to order it is negotiated by delivery with any necessary endorsement; if payable to bearer it is negotiated by delivery.~~

(2) ~~An endorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.~~ *Except for negotiation by a remitter, if an instrument is payable*

to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

~~(3) An endorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.~~

~~(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an endorsement do not affect its character as an endorsement.~~"

Section 108. **Negotiation subject to rescission.** (1) Negotiation is effective even if obtained:

(a) from an infant, a corporation exceeding its powers, or a person without capacity; or

(b) by fraud, duress, or mistake or in breach of duty or as part of an illegal transaction.

(2) To the extent permitted by law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

Section 109. **Rights acquired by transfer.** (1) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(2) Transfer of an instrument, regardless of whether the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee may not acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the purchaser engaged in fraud or illegality affecting the instrument.

(3) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(4) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee.

Section 110. Section 30-3-203, MCA, is amended to read:

"**30-3-203.** ~~**Wrong or misspelled name**~~ ***Indorsement.*** *(1) "Indorsement" means a signature, other than that of a maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the* *purpose of negotiating the instrument, restricting payment of the instrument, or incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, the terms of the instrument, the place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.*

(2) "Indorser" means a person who makes an indorsement.

(3) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(4) ~~Where~~ *If* an instrument is ~~made~~ payable to a ~~person~~ *holder* under a ~~misspelled~~ name ~~or one other than his own he may endorse in that name or his own~~ *that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name,* or both~~;~~, but signature in both names may be required by a person paying or ~~giving value for~~ *taking* the instrument *for value or collection."*

Section 111. Section 30-3-204, MCA, is amended to read:

"**30-3-204. Special ~~endorsement~~ *indorsement* — blank ~~endorsement~~ *indorsement* — *anomalous indorsement.*** (1) ~~A special endorsement specifies the~~ *If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a* person to whom ~~or to whose order~~ it makes the instrument payable, *it is a "special indorsement".* ~~Any instrument~~ *When* specially ~~endorsed~~ *indorsed, an instrument* becomes payable to the ~~order of the special endorsee~~ *identified person* and may be ~~further~~ negotiated only by ~~his endorsement~~ *the indorsement of that person. The principles stated in [section 97] apply to special indorsements.*

(2) ~~An endorsement in~~ *If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a* "blank *indorsement"* ~~specifies no particular endorsee and may consist of a mere signature~~. ~~An instrument payable to order and endorsed~~ *When indorsed* in blank, *an instrument* becomes payable to bearer and may be negotiated by ~~delivery~~ *transfer of possession* alone until specially ~~endorsed~~ *indorsed.*

(3) The holder may convert a blank ~~endorsement~~ *indorsement that consists only of a signature* into a special ~~endorsement~~ *indorsement* by writing, ~~over~~ *above* the signature of the ~~endorser~~ *indorser,* ~~in blank any contract consistent with the character of the endorsement~~ *words identifying the person to whom the instrument is made payable.*

(4) "Anomalous indorsement" means an indorsement made by a person that is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated."

Section 112. Section 30-3-205, MCA, is amended to read:

"**30-3-205. Restrictive ~~endorsements~~** ***indorsement.*** *(1)* An ~~endorsement~~ *indorsement* ~~is restrictive which either:~~

~~(a) is conditional;~~ *limiting payment to a particular person* or

~~(b) purports to prohibit~~ *otherwise prohibiting* further transfer *or negotiation* of the instrument~~; or~~ *is not effective to prevent further transfer or negotiation of the instrument.*

(2) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

~~(c) includes~~ *(3) The following rules apply to an instrument bearing an indorsement, described in 30-4-201(2), or in blank or to a particular bank using* the words "for collection", "for deposit", ~~"pay any bank",~~ or ~~like terms signifying~~ *other words indicating* a purpose of ~~deposit or collection~~ *having the instrument collected by a bank for the indorser or for a particular account:* ~~; or~~

(a) A person, other than a bank, that purchases the instrument when so indorsed converts the instrument unless the proceeds of the instrument are received by the indorser or are applied consistently with the indorsement.

(b) A depositary bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(c) A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(d) Except as otherwise provided in subsection (3)(c), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

~~(d)~~*(4)* ~~otherwise states that it is~~ *Except for an indorsement covered by subsection (3), the following rules apply to an instrument bearing an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary* for the benefit ~~or use~~ of the ~~endorser~~ *indorser* or ~~of~~ another person*:*

(a) Unless there is notice of breach of fiduciary duty as provided in [section 120], a person that purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee

without regard to whether the indorsee violates a fiduciary duty to the indorser.

(b) A later transferee of the instrument or person that pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(5) Purchase of an instrument bearing an indorsement to which this section applies does not prevent the purchaser from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (3).

(6) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section."

Section 113. Section 30-3-208, MCA, is amended to read:

"**30-3-208. Reacquisition.** ~~Where~~ *Reacquisition of* an instrument ~~is returned to or reacquired by a prior party he~~ *occurs if it is transferred, by negotiation or otherwise, to a former holder. A former holder that reacquires the instrument* may cancel ~~any endorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party~~ *indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled* is discharged, ~~as~~ *and the discharge is effective* against ~~the reacquiring party and subsequent holders not in due course and if his endorsement has been canceled is discharged as against subsequent holders in due course as well~~ *any late holder."*

Section 114. Section 30-3-301, MCA, is amended to read:

"**30-3-301.** ~~**Rights of a holder**~~ ***Person entitled to enforce instrument.*** ~~The~~ *"Person entitled to enforce" an instrument means the* holder of an instrument, *a nonholder in possession of the instrument who has the rights of a holder, or a person not in possession of the instrument who is entitled to enforce the instrument pursuant to [section 122]. A person may be a person entitled to enforce the instrument* ~~whether or not he~~ *even though the person* is *not* the owner *of the instrument* ~~may transfer or negotiate it and, except as otherwise provided in 30-3-603 on payment or satisfaction, discharge it or enforce payment in his own name~~ *or is in wrongful possession of the instrument."*

Section 115. Section 30-3-302, MCA, is amended to read:

"**30-3-302. Holder in due course.** (1) ~~A~~ *Subject to subsection (3) and 30-3-105(4),* "holder in due course" ~~is a~~ *means the* holder ~~who takes the~~ *of an* instrument *if*:

(a) *the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and*

(b) the holder took the instrument:

(i) for value; ~~and~~

~~(b)~~*(ii)* in good faith; ~~and~~

~~(c)~~*(iii)* without notice that it is overdue or has been dishonored or *that there is an uncured default with respect to payment of another instrument issued as part of the same series;*

(iv) without notice that the instrument contains an unauthorized signature or has been altered;

(v) without notice of any claim to the instrument stated in 30-3-306; and

(vi) without notice that any party to the instrument has ~~of~~ any defense ~~against~~ or claim ~~to it on the part of any person~~ *in recoupment stated in 30-3-305(1).*

(2) ~~A payee may be a holder in due course.~~ *Notice of discharge of a party to the instrument, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (1), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.*

(3) ~~A holder~~ *Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person* does not ~~become~~ *acquire rights of* a holder in due course of an instrument *taken*:

(a) *by legal process or* by purchase ~~of it~~ at ~~judicial~~ *at an execution, bankruptcy, or creditor's* sale or ~~by taking it under legal process~~ *similar proceeding;* ~~or~~

(b) ~~by acquiring it in taking over an estate; or~~

~~(c)~~ by ~~purchasing it~~ *purchase* as part of a bulk transaction not in ~~regular~~ *ordinary* course of business of the transferor; *or*

(c) as the successor in interest to an estate or other organization.

(4) If, under 30-3-303(1)(a), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

~~(4)~~*(5)* ~~A purchaser of a limited interest can be~~ *If the person entitled to enforce an instrument has only a security interest in the instrument and the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted* *the security interest, the person entitled to enforce the instrument may assert rights as* a holder in due course only to ~~the extent of the interest purchased~~ *an amount payable under the instrument that, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.*

(6) To be effective, notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

(7) This section is subject to any law limiting status as a holder in due course in particular classes of transactions."

Section 116. Section 30-3-303, MCA, is amended to read:

"**30-3-303. ~~Taking for value~~ *Value and consideration.*** *(1)* ~~A holder takes the~~ *An* instrument *is issued or transferred* for value *if*:

(a) *the instrument is issued or transferred for a promise of performance,* to the extent that the ~~agreed consideration~~ *promise* has been performed*;*

(b) ~~or that he~~ *the transferee* acquires a security interest ~~in~~ or ~~a~~ *other* lien ~~on~~ *in* the instrument ~~otherwise~~ *other* than *a lien obtained* by ~~legal process~~ *judicial proceedings*; ~~or~~

~~(b)~~*(c)* ~~when he takes~~ the instrument ~~in~~ *is issued or transferred as* payment of, or as security for, an ~~antecedent claim against~~ *an existing obligation of* any person, whether or not the ~~claim~~ *obligation* is due; ~~or~~

(d) the instrument is issued or transferred in exchange for a negotiable instrument; or

~~(c)~~*(e)* ~~when he gives a negotiable~~ *the* instrument *is issued or transferred in exchange* for ~~it or makes an~~ *the incurring of an* irrevocable ~~commitment~~ *obligation* to a third ~~person~~ *party by the person taking the instrument.*

(2) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the drawer or maker has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (1), the instrument is also issued for consideration."

Section 117. Section 30-3-304, MCA, is amended to read:

"**30-3-304. ~~Notice to purchaser~~ *Overdue instrument.*** (1) ~~The purchaser has notice of a claim or defense if:~~

~~(a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or~~

~~(b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.~~

~~(2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.~~

~~(3) The purchaser has notice that an instrument is overdue if he has reason to know:~~

~~(a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or~~

~~(b) that acceleration of the instrument has been made; or~~

~~(c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be 30 days.~~

~~(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim:~~

~~(a) that the instrument is antedated or postdated;~~

~~(b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;~~

~~(c) that any party has signed for accommodation;~~

~~(d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;~~

~~(e) that any person negotiating the instrument is or was a fiduciary;~~
An instrument payable on demand becomes overdue at the earliest of the following times:

(a) on the day after the day demand for payment is duly made;

(b) if the instrument is a check, 90 days after its date; or

(c) if the instrument is not a check, when the instrument has been outstanding for a period of time after its date that is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and trade usage.

(2) With respect to an instrument payable at a definite time, the following rules apply:

(a) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(b) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(c) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

~~(f)~~*(3)* ~~that~~ *Unless the due date of principal has been accelerated, an instrument does not become overdue if* there ~~has been~~ *is a* default in payment of interest ~~on the instrument or~~ *but no default* in payment of ~~any other instrument, except one of the same series~~ *principal.*

~~(5) The filing or recording of a document does not of itself constitute notice within the provisions of this chapter to a person who would otherwise be a holder in due course.~~

~~(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.~~"

Section 118. Section 30-3-305, MCA, is amended to read:

"**30-3-305.** ~~**Rights of a holder in due course**~~ ***Defenses and claims in recoupment.*** ~~To the extent that a holder is a holder in due course he takes the instrument free from:~~

~~(1) all claims to it on the part of any person; and~~

~~(2) all defenses of any party to the instrument with whom the holder has not dealt except:~~ *(1) Except as stated in subsection (2), the right to enforce the obligation of a party to pay the instrument is subject to the following:*

(a) *A defense of the obligor based on:*

(i) infancy~~,~~ *of the obligor* to the extent that it is a defense to a simple contract; ~~and~~

~~(b)~~*(ii)* ~~such other incapacity, or~~ duress, *lack of legal capacity,* or illegality of the transaction~~,~~ ~~as renders~~ *that nullifies* the obligation of the ~~party a nullity~~ *obligor*; ~~and~~

~~(c)~~*(iii)* ~~such misrepresentation as has~~ *fraud that* induced the ~~party~~ *obligor* to sign the instrument with neither knowledge nor reasonable opportunity to ~~obtain knowledge~~ *learn* of its character or its essential terms; ~~and~~ *or*

~~(d)~~*(iv)* discharge *of the obligor* in insolvency proceedings~~; and~~

~~(e) any other discharge of which the holder has notice when he takes the instrument~~.

(b) A defense of the obligor stated in another section of this chapter or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract.

(c) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument. The claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(2) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (1)(a) but is not subject to defenses of the obligor stated in subsection (1)(b) or claims in recoupment stated in subsection (1)(c) against a person other than the holder.

(3) Except as stated in subsection (4), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (30-3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(4) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (1) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, or lack of legal capacity."

Section 119. Section 30-3-306, MCA, is amended to read:

"**30-3-306.** ~~**Rights of one not holder in due course**~~ ***Claims to an instrument.*** ~~Unless he has the~~ *A person taking an instrument, other than a person having* rights of a holder in due course, ~~any person takes the instrument subject to:~~

~~(a) all valid claims to it on the part of any person; and~~

~~(b) all defenses of any party which would be available in an action on a simple contract; and~~

~~(c) the defenses of want or failure of consideration, nonperformance of any condition precedent, nondelivery, or delivery for a special purpose (30-3-408); and~~

~~(d) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive endorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party~~ *is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation* *and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument."*

Section 120. **Notice of breach of fiduciary duty.** (1) This section applies if an instrument is taken from a fiduciary for payment or collection or for value, the taker has knowledge of the fiduciary status of the fiduciary, and the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty. Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person. "Fiduciary" means an agent, trustee, partner, corporation officer or director, or other representative owing a fiduciary duty with respect to the instrument. "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty is owed.

(2) If the instrument is payable to the fiduciary, as such, or to the represented person, the taker has notice of the breach of fiduciary duty if the instrument is:

(a) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(b) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

(c) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If the instrument is made or drawn by the fiduciary, as such, payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If the instrument is made or drawn by or on behalf of the represented person to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is:

(a) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(b) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

(c) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

Section 121. Section 30-3-307, MCA, is amended to read:

"**30-3-307. ~~Burden of establishing~~ *Proof of* signatures~~, defenses~~ and *status as holder in* due course.** (1) ~~Unless specifically denied in the pleadings~~ *In an action with respect to an instrument, the authenticity of and authority to make* each signature on ~~an~~ *the* instrument is admitted *unless specifically denied in the pleadings.* ~~When the effectiveness~~ *If the validity* of a signature is ~~put in issue:~~

~~(a)~~ *denied in the pleadings,* the burden of establishing ~~it~~ *validity* is on the ~~party~~ *person* claiming ~~under the signature;~~ *validity,* but

~~(b)~~ the signature is presumed to be ~~genuine or~~ *authentic and* authorized ~~except where~~ *unless* the action is to enforce the ~~obligation~~ *liability* of ~~a~~ *the* purported signer ~~who has died~~ *and the signer is dead* or ~~become~~ incompetent ~~before proof is required~~ *at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person pursuant to 30-3-403(1).*

(2) ~~When~~ *If the validity of* signatures ~~are~~ *is* admitted or ~~established, production of~~ *proved and there is compliance with subsection (1), a plaintiff producing* the instrument ~~entitles a holder to recover on it~~ *is entitled to payment if the plaintiff proves entitlement to enforce the instrument under 30-3-301,* unless the defendant ~~establishes~~ *proves* a defense *or claim in recoupment.*

~~(3) After it is shown that a defense exists a person claiming the~~ *If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim except to the extent the plaintiff proves that the plaintiff has* rights of a holder in due course ~~has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course~~ *that are not subject to the defense or claim."*

Section 122. **Enforcement of lost, destroyed, or stolen instrument.** (1) A person not in possession of an instrument is entitled to enforce the instrument if:

(a) that person was in rightful possession of the instrument and entitled to enforce it when loss of possession occurred;

(b) the loss of possession was not the result of a voluntary transfer by that person or a lawful seizure; and

(c) that person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(2) A person seeking enforcement of an instrument pursuant to subsection (1) shall prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, 30-3-307 applies to the case as though the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

Section 123. **Effect of instrument on obligation for which taken.** (1) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(2) Unless otherwise agreed and except as provided in subsection (1), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken.

(3) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(4) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(5) If the check or note is dishonored and the obligee of the obligation for which the instrument was taken has possession of the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person that is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(6) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent, the obligee's rights against the obligor are limited to enforcement of the instrument.

(7) If an instrument other than one described in subsection (1) or (2) is taken for an obligation, the effect is:

(a) that stated in subsection (1) if the instrument is one on which a bank is liable as maker or acceptor; or

(b) that stated in subsection (2) in any other case.

Section 124. **Accord and satisfaction by use of instrument.** (1) This section applies if a person against whom a claim is asserted proves that:

(a) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim;

(b) the amount of the claim was unliquidated or subject to a bona fide dispute; and

(c) the claimant obtained payment of the instrument.

(2) Unless subsection (3) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(3) Subject to subsection (4), a claim is not discharged under subsection (2) if the claimant is an organization and proves that within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place and the instrument or accompanying communication was not received by that designated person, office, or place.

(4) Notwithstanding subsection (3), a claim is discharged under subsection (2) if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, an agent of the claimant having direct responsibility with respect to the disputed obligation knew that the instrument was tendered in full satisfaction of the claim or received the instrument and any accompanying written communication.

Section 125. Section 30-3-401, MCA, is amended to read:

"**30-3-401. Signature.** (1) ~~No~~ *A* person is *not* liable on an instrument unless*:*

(a) ~~his signature appears thereon~~ *the person signed the instrument; or*

(b) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under 30-3-403.

(2) A signature is made*:*

(a) manually or by means of a device or machine; and

(b) by use of any name, including any trade or assumed name, ~~upon an instrument,~~ or by any word, ~~or~~ mark, *or symbol* ~~used in lieu of a written signature~~ *executed or adopted by a person with present intention to authenticate a writing.*"

Section 126. Section 30-3-403, MCA, is amended to read:

"**30-3-403. Signature by ~~authorized~~ representative.** (1) ~~A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.~~ *If a* *person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.*

(2) ~~An authorized~~ *If a* representative ~~who~~ signs ~~his own~~ *the* name *of the representative* to an instrument *and that signature is an authorized signature of the represented person, the following rules apply*:

(a) ~~is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;~~ *If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.*

(b) ~~except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but~~ *Subject to subsection (3), if the form of the signature* does not show *unambiguously* that the ~~representative signed~~ *signature is made* in a representative capacity, or ~~if~~ *the represented person is not identified in* the instrument, ~~does not name the person represented but does show~~ *the representative is liable on the instrument to a holder in due course that took the instrument without notice* that the representative ~~signed in a representative capacity~~ *was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties to the instrument did not intend the representative to be liable on the instrument.*

(3) ~~Except as otherwise established~~ *If a representative signs* the name of ~~an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity~~ *the representative as drawer of a check without indication of the representative's status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.*"

Section 127. Section 30-3-404, MCA, is amended to read:

"**30-3-404. Unauthorized signatures.** (1) ~~Any~~ *Unless otherwise provided in this chapter, an* unauthorized signature is ~~wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates~~ *ineffective except* as the signature of the unauthorized signer in favor of ~~any~~ *a* person who in good faith pays the instrument or takes it for value.

~~(2) Any~~ *An* unauthorized signature may be ratified for all purposes of this chapter. ~~Such ratification does not of itself affect any rights of the person ratifying against the actual signer.~~

(2) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is missing.

(3) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this chapter that makes the unauthorized signature effective for the purposes of this chapter."

Section 128. Section 30-3-405, MCA, is amended to read:

"**30-3-405. Impostors — ~~signature in name of payee~~ *fictitious payees.*** (1) ~~An endorsement by any person in the name of a named payee is effective if:~~

~~(a)~~ *If* an impostor by use of the mails or otherwise ~~has induced~~ *induces* the maker or drawer *of an instrument* to issue the instrument to ~~him or his confederate~~ *the impostor or to a person acting in concert with the impostor by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person* in the name of the payee *is effective as the indorsement of the payee in favor of any person who in good faith pays the instrument or takes it for value or for collection*~~; or~~

~~(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or~~

~~(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.~~

(2) ~~Nothing in this section shall affect the criminal or civil liability of the person so endorsing.~~ *If a person whose intent determines to whom an instrument is payable ([section 97(1) or (2)]) does not intend the person identified as payee to have any interest in the instrument or if the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:*

(a) Any person in possession of the instrument is its holder.

(b) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of any person who in good faith pays the instrument or takes it for value or for collection.

(3) Under subsection (1) or (2), an indorsement is made in the name of a payee if:

(a) it is made in a name substantially similar to that of the payee; or

(b) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.

(4) With respect to an instrument to which subsection (1) or (2) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument,

the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss."

Section 129. **Employer responsibility for fraudulent indorsement by employee.** (1) This section applies to fraudulent indorsements of instruments with respect to which an employer has entrusted an employee with responsibility as part of the employee's duties. The following definitions apply to this section:

(a) "Employee" includes, in addition to an employee of an employer, an independent contractor and employee of an independent contractor retained by the employer.

(b) "Fraudulent indorsement" means:

(i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer; or

(ii) in the case of an instrument with respect to which the employer is drawer or maker, a forged indorsement purporting to be that of the person identified as payee.

(c) (i) "Responsibility" with respect to instruments means authority to:

(A) sign or indorse instruments on behalf of the employer;

(B) process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition;

(C) prepare or process instruments for issue in the name of the employer;

(D) supply information determining the names or addresses of payees of instruments to be issued in the name of the employer;

(E) control the disposition of instruments to be issued in the name of the employer; or

(F) otherwise act with respect to instruments in a responsible capacity.

(ii) The term does not include the assignment of duties that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(2) For purposes of determining the rights and liabilities of a person who in good faith pays an instrument or takes it for value or for collection, if an employee entrusted with responsibility with respect to the instrument or a person acting in concert with the employee makes a fraudulent indorsement to the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the

instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(3) Under subsection (2), an indorsement is made in the name of the person to whom an instrument is payable if:

(a) it is made in a name substantially similar to the name of that person; or

(b) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to the name of that person.

Section 130. Section 30-3-406, MCA, is amended to read:

"**30-3-406. Negligence contributing to ~~alteration~~ *forged signature* or ~~unauthorized signature~~ *alteration of instrument.*** *(1)* ~~Any~~ *A* person ~~who by his negligence~~ *whose failure to exercise ordinary care* substantially contributes to ~~a material~~ *an* alteration of ~~the~~ *an* instrument or to the making of ~~an unauthorized~~ *a forged* signature *on an instrument* is precluded from asserting the alteration or ~~lack of authority~~ *the forgery* against a ~~holder in due course or against a drawee or other payor who~~ *a person who in good faith* pays the instrument ~~in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business~~ *or takes it for value.*

(2) If the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(3) Under subsection (1), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (2), the burden of proving failure to exercise ordinary care is on the person precluded."

Section 131. Section 30-3-407, MCA, is amended to read:

"**30-3-407. Alteration.** (1) ~~Any alteration of~~ *"Alteration" means:*

(a) an unauthorized change in an instrument ~~is material which changes the contract of any party thereto~~ *that purports to modify* in any respect~~, including any such change in:~~

~~(a) the number or relations of the parties~~ *the obligation of a party to the instrument*; or

(b) *an unauthorized addition of words or numbers or other change to* an incomplete instrument~~, by completing it otherwise than as authorized; or~~

~~(c) the writing as signed, by adding to it or by removing any part of it~~ *relating to the obligation of any party to the instrument.*

(2) ~~As against any person other than a subsequent holder in due course:~~

~~(a) alteration by the holder which is both fraudulent and material~~ *Except as provided in subsection (3), an alteration fraudulently made* discharges any party whose ~~contract is thereby changed~~ *obligation is affected by the alteration* unless that party assents or is precluded from asserting the ~~defense;~~

~~(b) no~~ *alteration. No* other alteration discharges any party, and the instrument may be enforced according to its original ~~tenor, or as to incomplete instruments according to the authority given~~ *terms.*

(3) A ~~subsequent holder in due course may in all cases~~ *person paying a fraudulently altered instrument or taking it for value in good faith and without notice of the alteration may* enforce *rights with respect to* the instrument*:*

(a) according to its original ~~tenor, and when~~ *terms; or*

(b) in the case of an incomplete instrument ~~has been completed, he may enforce it~~ *altered by unauthorized completion, according to its terms* as completed."

Section 132. Section 30-3-409, MCA, is amended to read:

"**30-3-409.** ~~**Draft not an assignment**~~ ***Drawee not liable on unaccepted draft.*** ~~(1)~~ A check or other draft does not of itself operate as an assignment of ~~any~~ funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until ~~he~~ *the drawee* accepts it.

~~(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.~~"

Section 133. Section 30-3-410, MCA, is amended to read:

"**30-3-410.** ~~**Definition and operation of acceptance**~~ ***Acceptance of draft — certified check.*** (1) "Acceptance" ~~is~~ *means* the drawee's signed ~~engagement to honor the~~ *agreement to pay a* draft as presented. It must be written on the draft~~,~~ and may consist of ~~his~~ *the drawee's* signature alone. ~~It~~ *Acceptance may be made at any time and* becomes ~~operative~~ *effective* when ~~completed by delivery or~~ notification *pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.*

(2) A draft may be accepted although it has not been signed by the drawer, ~~or~~ is otherwise incomplete, ~~or~~ is overdue, or has been dishonored.

(3) ~~Where the~~ *If a* draft is payable at a fixed period after sight and the acceptor fails to date ~~his~~ *the* acceptance, the holder may complete ~~it~~ *the acceptance* by supplying a date in good faith.

(4) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (1) or by a writing on the check that indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check."

Section 134. Section 30-3-412, MCA, is amended to read:

"**30-3-412. Acceptance varying draft.** (1) ~~Where the~~ *If the terms of a* drawee's ~~proffered~~ acceptance ~~in any manner varies~~ *vary from the terms of* the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. ~~in which~~ *In that* case, the drawee ~~is entitled to have his~~ *may cancel the* acceptance ~~canceled~~.

(2) The terms of the draft are not varied by an acceptance to pay at ~~any~~ *a* particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at ~~such~~ *that* bank or place.

(3) ~~Where~~ *If* the holder assents to an acceptance varying the terms of ~~the~~ *a* draft, *the obligation of* each drawer and ~~endorser~~ *indorser* ~~who~~ *that* does not ~~affirmatively~~ *expressly* assent *to the acceptance* is discharged."

Section 135. **Refusal to pay cashier's checks, teller's checks, and certified checks.** (1) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(2) If the obligated bank wrongfully refuses to pay a cashier's check or certified check, stops payment of a teller's check, or refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(3) Expenses or consequential damages under subsection (2) are not recoverable if the refusal of the obligated bank to pay occurs because:

(a) the bank suspends payments;

(b) the obligated bank is asserting a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument;

(c) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument; or

(d) payment is prohibited by law.

Section 136. Section 30-3-413, MCA, is amended to read:

"**30-3-413. ~~Contract~~ *Obligation* of maker~~, drawer and acceptor.~~** ~~(1) The~~ *A* maker ~~or acceptor engages that he will~~ *of a note is obliged to* pay the ~~instrument~~ *note:*

(1) according to its ~~tenor~~ *terms* at the time ~~of his engagement~~ *it was issued or, if not issued, at the time it first came into possession of a holder;* or

(2) if the maker signed an incomplete instrument, according to its terms ~~as~~ *when* completed ~~pursuant to~~ *as stated in* 30-3-115 ~~on incomplete instruments~~ *and 30-3-407.*

(3) The obligation is owed to a person entitled to enforce the note or to an indorser that paid the note pursuant to 30-3-414.

~~(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any endorser who takes it up. The drawer may disclaim this liability by drawing without recourse.~~

~~(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to endorse.~~"

Section 137. **Obligation of acceptor.** (1) An acceptor of a draft is obliged to pay the draft:

(a) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms;

(b) if the acceptance varies the terms of the draft, according to the terms of the draft as varied; or

(c) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed as stated in 30-3-115 and 30-3-407.

(2) The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser that paid the draft pursuant to [section 138] or 30-3-414.

(3) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. The obligation of the acceptor is the amount of the instrument at the time it was negotiated to the holder in due course if:

(a) the certification or acceptance does not state an amount;

(b) the instrument is subsequently altered by raising its amount; and

(c) the instrument is then negotiated to a holder in due course.

Section 138. **Obligation of drawer.** (1) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft:

(a) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder; or

(b) if the drawer signed an incomplete instrument, according to its terms when completed as stated in 30-3-115 and 30-3-407.

(2) The obligation is owed to a person entitled to enforce the draft or to an indorser that paid the draft pursuant to 30-3-414.

(3) If a draft is accepted by a bank and the acceptor dishonors the draft, the drawer has no obligation to pay the draft because of the dishonor, regardless of when or by whom acceptance was obtained.

(4) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser stated in 30-3-414(1) and (3).

(5) Words in a draft indicating that the draft is drawn without recourse are effective to disclaim all liability of the drawer to pay the draft if the draft is not a check, but they are not effective to disclaim the obligation stated in subsection (1) if the draft is a check.

(6) The drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds if:

(a) a check is not presented for payment or given to a depositary bank for collection within 30 days after its date;

(b) the drawee suspends payments after expiration of the 30-day period without paying the check; and

(c) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check.

Section 139. Section 30-3-414, MCA, is amended to read:

"30-3-414. ~~Contract~~ *Obligation* of ~~endorser — order of liability~~ *indorser.* (1) *Subject to subsections (2) through (4) and to 30-3-415(4), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument according to the terms of the instrument at the time it was indorsed or if the indorser indorsed an incomplete instrument, according to its terms when completed as stated in 30-3-115 and 30-3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser that paid the instrument pursuant to this section.*

(2) ~~Unless the endorsement otherwise specifies (as by such words as~~ *If an indorsement states that it is made* "without recourse"~~) every endorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his endorsement to the holder or to any subsequent endorser who takes it up, even though the endorser who takes it up was not obligated to do so~~ *or*

otherwise disclaims liability of the indorser, the indorser is not liable under subsection (1) to pay the instrument.

~~(2) Unless they otherwise agree endorsers are liable to one another in the order in which they endorse, which is presumed to be the order in which their signatures appear on the instrument.~~

(3) If notice of dishonor of an instrument is required by 30-3-508 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (1) is discharged.

(4) If a draft is accepted by a bank after an indorsement is made and the acceptor dishonors the draft, the indorser is not liable under subsection (1) to pay the instrument.

(5) If an indorser of a check is liable under subsection (1) and the check is not presented for payment or given to a depositary bank for collection within 30 days after the day the indorsement was made, the liability of the indorser under subsection (1) is discharged."

Section 140. Section 30-3-415, MCA, is amended to read:

"30-3-415. ~~Contract of~~ *Instruments signed for* accommodation ~~party~~. (1) ~~An~~ *If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another part to the instrument* ("accommodation party") ~~is one who~~ signs the instrument ~~in any capacity~~ for the purpose of ~~lending his name to another party to it~~ *incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".*

(2) *An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (4), is obliged to pay the instrument in the capacity in which the accommodation party signs.* ~~When the instrument has been taken for value before it is due the~~ *The obligation of an* accommodation party ~~is liable in the capacity in which he has signed even though the taker knows of~~ *may be enforced notwithstanding any statute of frauds and regardless of whether the accommodation party receives consideration for* the accommodation.

(3) ~~As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.~~ *A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in [section 154], the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.*

(4) ~~An endorsement which shows that it is not in the chain of title is notice of its accommodation character.~~ *If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if:*

(a) execution of judgment against the other party has been returned unsatisfied;

(b) the other party is insolvent or in an insolvency proceeding;

(c) the other party cannot be served with process; or

(d) it is otherwise apparent that payment cannot be obtained from the party whose obligation is guaranteed.

(5) An accommodation party ~~is not liable to the party accommodated, and if he~~ *that* pays the instrument *is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party that pays the instrument* has ~~a~~ *no* right of recourse ~~on the instrument~~ against, *and is not entitled to contribution from,* ~~such~~ *an accommodation* party."

Section 141. Section 30-3-417, MCA, is amended to read:

"**30-3-417.** ~~**Warranties on presentment and transfer**~~ ***Transfer warranties.*** (1) ~~Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that:~~

~~(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and~~

~~(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith:~~

~~(i) to a maker with respect to the maker's own signature; or~~

~~(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or~~

~~(iii) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and~~

~~(c) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith:~~

~~(i) to the maker of a note; or~~

~~(ii) to the drawer of a draft whether or not the drawer is also the drawee; or~~

~~(iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or~~

~~(iv) to the acceptor of a draft with respect to an alteration made after the acceptance.~~

~~(2) Any~~ *A* person who transfers an instrument ~~and receives~~ *for* consideration warrants to ~~his~~ *the* transferee and, if the transfer is by ~~endorsement~~ *indorsement,* to any subsequent ~~holder who takes the instrument in good faith~~ *transferee* that:

(a) ~~he has a good title to~~ *the warrantor is a person entitled to enforce* the instrument ~~or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful~~; ~~and~~

(b) all signatures *on the instrument* are ~~genuine or~~ *authentic and* authorized; ~~and~~

(c) the instrument has not been ~~materially~~ altered; ~~and~~

(d) ~~no~~ *the instrument is not subject to a* defense *or claim in recoupment (30-3-305(1))* of any party ~~is good against him~~ *that can be asserted against the warrantor*; and

(e) ~~he~~ *the warrantor* has no knowledge of any insolvency proceeding ~~instituted~~ *commenced* with respect to the maker or acceptor or, *in the case of an unaccepted draft,* the drawer ~~of an unaccepted instrument~~.

~~(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2)(d) to a warranty that he has no knowledge of such a defense.~~

~~(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.~~

(2) A person to whom the warranties under subsection (1) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(3) The warranties stated in subsection (1) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(4) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach."

Section 142. **Presentment warranties.** (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making the payment or accepting the draft in good faith that:

(a) the warrantor is or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) the draft has not been altered; and

(c) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor, and if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under 30-3-405 or [section 129] or the drawer is precluded under 30-3-406 or 30-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(4) This subsection applies if a dishonored draft is presented for payment to the drawer or an indorser or any other instrument is presented for payment to a party obliged to pay the instrument and payment is received. The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (4) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 143. **Payment or acceptance by mistake.** (1) Except as provided in subsection (3), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that payment of the draft had not been stopped under 30-4-403, the signature of the purported drawer of the draft was authorized, or the balance in the drawer's account with the drawee represented available funds, the drawee may recover the amount paid for the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(2) Except as provided in subsection (3), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (1), the person paying or accepting may recover the amount paid or revoke acceptance to the extent allowed by the law governing mistake and restitution.

(3) The remedies provided by subsection (1) or (2) may not be asserted against a person who took the instrument in good faith and for value. This subsection does not limit remedies provided by [section 142] for breach of warranty.

Section 144. Section 30-3-419, MCA, is amended to read:

"**30-3-419. Conversion of instrument ~~— innocent representative.~~** (1) *The law applicable to conversion of personal property applies to instruments.* An instrument is *also* converted ~~when:~~

~~(a) a~~ *if the instrument lacks an indorsement necessary for negotiation and it is purchased or taken for collection or the* drawee ~~to whom it is delivered for acceptance refuses to return it on demand; or~~

~~(b) any person to whom it is delivered for~~ *takes the instrument and makes* payment ~~refuses on demand either to pay or to return it; or~~

~~(c) it is paid on a forged endorsement~~ *to a person not entitled to receive payment. An action for conversion of an instrument may not be brought by:*

(a) the maker, drawer, or acceptor of an instrument; or

(b) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or copayee.

(2) In an action ~~against a drawee~~ under subsection (1), the measure of ~~the drawee's~~ liability is *presumed to be* the ~~face~~ amount ~~of~~ *payable on* the instrument, *but recovery may not exceed the amount of the plaintiff's interest in the instrument.* ~~In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.~~

(3) ~~Subject to the provisions of this code concerning restrictive endorsements a~~ *A* representative, ~~including~~ *other than* a depositary ~~or collecting~~ bank, ~~who~~ *that* has in good faith ~~and in accordance with the reasonable~~

~~commercial standards applicable to the business of such representative~~ dealt with an instrument or its proceeds on behalf of one who was not the ~~true owner~~ *person entitled to enforce the instrument* is not liable in conversion ~~or otherwise to the true owner~~ *to that person* beyond the amount of any proceeds ~~remaining in his hands~~ *that it has not paid out.*

~~(4) An intermediary bank or payor bank which is not a depositary bank is not liable in conversion solely by reason of the fact that proceeds of an item endorsed restrictively (30-3-205 and 30-3-206) are not paid or applied consistently with the restrictive endorsement of an endorser other than its immediate transferor.~~"

Section 145. Section 30-3-504, MCA, is amended to read:

"30-3-504. ~~**How presentment made**~~ ***Presentment.*** (1) "Presentment" ~~is~~ *means* a demand*:*

(a) ~~for acceptance or payment~~ *to pay an instrument* made ~~upon~~ *to* the maker, ~~acceptor,~~ drawee, or ~~other payor by or on behalf of the holder~~ *acceptor or, in the case of a note of accepted draft payable at a bank, to the bank; or*

(b) to accept a draft made to the drawee by a person entitled to enforce the instrument.

(2) *Subject to chapter 4, agreement of the parties, clearing house rules and the like* ~~Presentment may be made~~:

(a) *presentment may be made* ~~by mail, in which event the time of presentment is determined by the time of receipt of the mail; or~~

~~(b) through a clearinghouse; or~~

~~(c)~~—at the place of ~~acceptance or~~ payment ~~specified in~~ *of* the instrument ~~or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.~~

~~(3) It~~ *and must be made at the place of payment if the instrument is payable at a bank in the United States;* may be made~~:~~ *by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; is effective if made*

~~(a)~~—to any one of two or more makers, acceptors, drawees, or other payors; ~~or~~ *and*

(b) ~~to any person who has authority to make or refuse the acceptance or payment~~ *without dishonoring the instrument, the party to whom presentment is made may:*

(i) treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than 2 p.m. for the receipt and processing of instru-

ments presented for payment or acceptance and presentment is made after the cutoff hour;

(ii) require exhibition of the instrument;

(iii) require reasonable identification of the person making presentment and evidence of authority to make it if made on behalf of another person;

(iv) require a signed receipt on the instrument for any payment made or surrender of the instrument if full payment is made;

(v) return the instrument for lack of a necessary indorsement; or

(vi) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other law or applicable rule.

~~(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.~~

~~(5) In the cases described in 30-4-210 presentment may be made in the manner and with the result stated in that section.~~"

Section 146. **Dishonor.** (1) Dishonor of a note is governed by the following rules:

(a) If the note is payable on demand, the note is dishonored if presentment is duly made and the note is not paid on the day of presentment.

(b) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(c) If the note is not payable on demand and subsection (1)(b) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(2) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(a) If a check is presented for payment otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under 30-4-301 or 30-4-302 or becomes accountable for the amount of the check under 30-4-302.

(b) If the draft is payable on demand and subsection (2)(a) does not apply, the draft is dishonored if presentment for payment is duly made and the draft is not paid on the day of presentment.

(c) If the draft is payable on a date stated in the draft, the draft is dishonored if:

(i) presentment for payment is duly made and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later; or

(ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(d) If the draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(3) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsections (2)(b) through (2)(d) except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those subsections.

(4) Dishonor of an accepted draft is governed by the following rules:

(a) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made and the draft is not paid on the day of presentment.

(b) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(5) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under [section 148], dishonor occurs without presentment if the instrument is not duly accepted or paid.

(6) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

Section 147. Section 30-3-508, MCA, is amended to read:

"**30-3-508. Notice of dishonor.** *(1) The obligation of an indorser stated in 30-3-414(1) and the obligation of a drawer stated in [section 138(3)] may not be enforced unless:*

(a) the indorser or drawer is given notice of dishonor of the instrument complying with this section; or

(b) notice of dishonor is excused under [section 148(3)].

~~(1)~~*(2)* Notice of dishonor may be given to any person; ~~who~~ may be ~~liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received~~ *given by any commercially reasonable means, including an oral, written, or electronic* *communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is a sufficient notice of dishonor.*

~~(2)~~*(3)* ~~Any necessary~~ *Subject to [section 148(4)], with respect to an instrument taken for collection by a collecting bank,* notice *of dishonor* must be given by a bank before ~~its~~ midnight ~~deadline~~ *of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument* and by any other person ~~before midnight of the third business day after dishonor or receipt of~~ *within 30 days following the day on which the person receives* notice of dishonor. *With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.*

~~(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.~~

~~(4) Written notice is given when sent although it is not received.~~

~~(5) Notice to one partner is notice to each although the firm has been dissolved.~~

~~(6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.~~

~~(7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.~~

~~(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified.~~"

Section 148. **Excused presentment and notice of dishonor.** (1) Presentment for payment or acceptance of an instrument is excused if:

(a) the person entitled to present the instrument cannot with reasonable diligence make presentment;

(b) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings;

(c) by the terms of the instrument, presentment is not necessary to enforce the obligation of indorsers or the drawer; or

(d) the drawer or indorser whose obligation is being enforced waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted.

(2) Presentment for payment or acceptance of a draft is also excused if the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(3) Notice of dishonor is excused if by the terms of the instrument, notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument or the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(4) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

Section 149. Section 30-3-510, MCA, is amended to read:

"**30-3-510. Evidence of dishonor ~~and notice of dishonor~~.** *(1)* The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor ~~therein shown~~ *stated:*

(a) a document regular in form as provided in ~~the preceding section which~~ *subsection (2) that* purports to be a protest;

(b) the purported stamp or writing of the drawee, payor bank, or presenting bank on ~~the instrument~~ or accompanying ~~it~~ *the instrument* stating that acceptance or payment has been refused *unless reasons for the refusal are stated and the* ~~for~~ reasons *are not* consistent with dishonor;

(c) ~~any~~ *a* book or record of the drawee, payor bank, or ~~any~~ collecting bank, kept in the usual course of business ~~which~~ *that* shows dishonor, even ~~though~~ *if* there is no evidence of who made the entry.

(2) A protest is a certificate of dishonor made by a United States consul or vice consul or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties."

Section 150. Section 30-3-601, MCA, is amended to read:

"**30-3-601. Discharge ~~of parties~~ *and effect of discharge.*** (1) ~~The extent of the discharge of any party from liability on an instrument is governed by the sections on:~~

~~(a) payment or satisfaction (30-3-603); or~~

~~(b) tender of payment (30-3-604); or~~

~~(c) cancellation or renunciation (30-3-605); or~~

~~(d) impairment of right of recourse or of collateral (30-3-606); or~~

~~(e) reacquisition of the instrument by a prior party (30-3-208); or~~

~~(f) fraudulent and material alteration (30-3-407); or~~

~~(g) certification of a check (30-3-411); or~~

~~(h) acceptance varying a draft (30-3-412); or~~

~~(i) unexcused delay in presentment or notice of dishonor or protest (30-3-502).~~

~~(2) Any~~ *The obligation of a* party *to pay the instrument* is ~~also~~ discharged ~~from his liability on an instrument to another party~~ *as stated in this chapter or* by ~~any other~~ *an* act or agreement with ~~such~~ *the* party ~~which~~ *that* would discharge ~~his~~ *an obligation to pay money under a* simple contract ~~for the payment of money~~.

~~(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument:~~

~~(a) reacquires the instrument in his own right; or~~

~~(b) is discharged under any provision of this chapter, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (30-3-606).~~

(2) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge."

Section 151. Section 30-3-603, MCA, is amended to read:

"**30-3-603. Payment ~~or satisfaction~~.** (1) ~~The liability of any party is discharged~~ *Subject to subsection (2), an instrument is paid* to the extent ~~of his~~ payment ~~or satisfaction to the holder even though it~~ *is made by or on behalf of a party obliged to pay the instrument and to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment* is made with knowledge of a claim ~~of another person~~ to the instrument ~~unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability:~~

~~(a) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or~~

~~(b) of a party (other than an intermediary bank or a payor bank which is not a depositary bank) who pays or satisfies the holder of an instrument~~

~~which has been restrictively endorsed in a manner not consistent with the terms of such restrictive endorsement~~ *under 30-3-306 by another person.*

(2) ~~Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (30-3-201).~~ *The obligation of a party to pay the instrument is not discharged under subsection (1) if:*

(a) a claim to the instrument under 30-3-306 is enforceable against the party receiving payment and:

(i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction; or

(ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(b) the person making payment knows that the instrument is a stolen instrument and pays a person that it knows is in wrongful possession of the instrument."

Section 152. Section 30-3-604, MCA, is amended to read:

"**30-3-604. Tender of payment.** (1) ~~Any party making~~ *If* tender of ~~full~~ payment ~~to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees~~ *of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.*

(2) ~~The holder's refusal of such~~ *If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the* tender ~~wholly discharges any party who has~~ *is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having* a right of recourse ~~against the party making~~ *with respect to the obligation to which* the tender *relates.*

(3) ~~Where the maker or acceptor of an instrument payable otherwise than on demand~~ *If tender of payment of an amount due on an instrument is made by or on behalf of the obligor to the person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor* is able and ready to pay *on the due date* at every place of payment ~~specified~~ *stated* in the instrument, ~~when it is due, it is equivalent to~~ *the obligor is considered to have made* tender *of payment on the due date to the person entitled to enforce the instrument.*"

Section 153. Section 30-3-605, MCA, is amended to read:

"**30-3-605. ~~Cancellation and~~ *Discharge by cancellation or renunciation.*** (1) ~~The holder of an instrument may even~~ *A person entitled to enforce an instrument may, with or* without consideration, discharge *the obligation of* ~~any~~ *a* party *to pay the instrument*:

(a) ~~in any manner apparent on the face of the instrument or the endorsement, as by intentionally canceling~~ *by an intentional voluntary act, such as surrender of* the instrument ~~or the party's signature by~~ *to the party;* destruction, ~~or~~ mutilation, *or cancellation of the instrument; cancellation* or ~~by~~ striking out *of* the party's signature*; or the addition of words to the instrument indicating discharge*; or

(b) by *agreeing not to sue or otherwise* renouncing ~~his~~ rights *against the party* by a *signed* writing ~~signed and delivered or by surrender of the instrument to the party to be discharged~~.

(2) ~~Neither cancellation nor renunciation without surrender of the instrument affects the title thereto~~ *Cancellation or striking out of an indorsement pursuant to subsection (1) does not affect the status and rights of a party derived from the indorsement.*"

Section 154. **Discharge of indorsers and accommodation parties.** (1) For the purposes of this section, the term "indorser" includes a drawer having the obligation stated in [section 138(3)].

(2) Discharge of the obligation of a party to the instrument under 30-3-605 does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(3) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party to the instrument, including an extension of the due date, there is discharge of the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The indorser or accommodation party is considered to have suffered loss as a result of the modification equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was less than the amount of the right of recourse.

(4) If the obligation of a party to an instrument is secured by an interest in collateral and impairment of the value of the interest is caused by a person entitled to enforce the instrument, there is discharge of the obligation of an indorser or accommodation party having a right of recourse against the obligor to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge or the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(5) If the obligation of a party to an instrument is secured by an interest in collateral not provided by an accommodation party and the value of the interest is impaired by a person entitled to enforce the instrument, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (4), the party is considered to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(6) Under subsection (4) or (5), causation of impairment includes:

(a) failure to obtain or maintain perfection or recordation of the interest in collateral;

(b) release of collateral without substitution of collateral of equal value;

(c) failure to perform a duty to preserve the value of collateral owed, under chapter 9 or other law, to a debtor or surety or other person secondarily liable; or

(d) failure to comply with applicable law in disposing of collateral.

(7) An accommodation party is not discharged under subsection (3) or (4) unless the person agreeing to the modification or causing the impairment knows of the accommodation or has notice under 30-3-415(3) that the instrument was signed for accommodation. There is no discharge of any party under subsection (3), (4), or (5) if:

(a) the party asserting discharge consents to the event or conduct that is the basis of the discharge; or

(b) the instrument or a separate agreement of the party provides for waiver of discharge under this section, either specifically or by general language, indicating that parties to the instrument waive defenses based on suretyship or impairment of collateral.

Section 155. Section 30-4-102, MCA, is amended to read:

"**30-4-102. Applicability.** (1) To the extent that items within this chapter are also within the scope of ~~Chapters~~ *chapters* 3, *5,* and 8, they are subject to the provisions of those chapters. In the event of conflict the provisions of this chapter govern those of ~~Chapter~~ *chapter* 3 but the provisions of ~~Chapter~~ *chapters 5 and* 8 govern those of this chapter.

(2) The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located."

Section 156. Section 30-4-103, MCA, is amended to read:

"**30-4-103. Variation by agreement — measure of damages — ~~certain~~ action constituting ordinary care.** (1) The effect of the provisions of this chapter may be varied by agreement, ~~except that no~~ *but the parties to the* agreement ~~can~~ *may not* disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or ~~can~~ limit the measure of damages for ~~such~~ *the* lack or failure~~; but~~. *However,* the parties may *determine* by agreement ~~determine~~ the standards by which ~~such~~ *the bank's* responsibility is to be measured if ~~such~~ *those* standards are not manifestly unreasonable.

(2) Federal Reserve regulations and operating ~~letters~~ *circulars,* clearinghouse rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or nonaction approved by this chapter or pursuant to Federal Reserve regulations or operating ~~letters~~ *circulars* constitutes the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearinghouse *and similar* rules ~~and the like~~ or with a general banking usage not disapproved by this chapter, *constitutes* prima facie ~~constitutes~~ the exercise of ordinary care.

(4) The specification or approval of certain procedures by this chapter does not constitute disapproval of other procedures ~~which~~ *that* may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount ~~which~~ *that* could not have been realized by the ~~use~~ *exercise* of ordinary care~~, and where~~. *If* there is *also* bad faith it includes *any* other damages~~, if any, suffered by~~ the party *suffered* as a proximate consequence."

Section 157. Section 30-4-104, MCA, is amended to read:

"**30-4-104. Definitions and index of definitions.** (1) In this chapter unless the context otherwise requires:

(a) "Account" means any *deposit or credit* account with a bank and includes a ~~checking~~ *demand,* time, ~~interest or~~ savings, *passbook, share draft, or like* account, *other than an account evidenced by a certificate of deposit;*

(b) "Afternoon" means the period of a day between noon and midnight;

(c) "Banking day" means ~~that~~ *the* part of ~~any~~ *a* day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "Clearinghouse" means ~~any~~ *an* association of banks or other payors regularly clearing items;

(e) "Customer" means ~~any~~ *a* person having an account with a bank or for whom a bank has agreed to collect items and includes a bank ~~carrying~~ *maintaining* an account ~~with~~ *at* another bank;

(f) "Documentary draft" means ~~any negotiable or nonnegotiable~~ *a* draft ~~with accompanying~~ *to be presented for acceptance or payment if specified* documents, *certificated* securities or ~~other papers to be delivered against honor~~ *transfer statements for uncertificated securities, or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment* of the draft;

(g) "Draft" means a draft as defined in 30-3-104 or an item, other than an instrument, that is an order.

~~(g)~~*(h)* "Item" means ~~any~~ *an* instrument ~~for the payment of money even though it is not negotiable but does not include~~ *or a promise or an order to pay* money *handled by a bank for collection or payment. The term does not include a payment order governed by [sections 189 through 226] or a credit or debit card slip*;

~~(h)~~*(i)* "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

~~(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;~~

(j) "Settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as ~~instructed~~ *agreed.* A settlement may be either provisional or final;

(k) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Bank". 30-4-105.

"Collecting bank". 30-4-105.

"Depositary bank". 30-4-105.

"Intermediary bank". 30-4-105.

"Payor bank". 30-4-105.

"Presenting bank". 30-4-105.

"Presentment notice". [section 162].

~~"Remitting bank". 30-4-105.~~

(3) The following definitions in other chapters apply to this chapter:

"Acceptance". 30-3-410.

"Alteration". 30-3-407.

"Cashier's check". 30-3-104.

"Certificate of deposit". 30-3-104.

~~"Certification". 30-3-411.~~

"Certified check". 30-3-410.

"Check". 30-3-104.

~~"Draft". 30-3-104.~~

"Drawee". 30-3-102.

"Good faith". 30-3-102.

"Holder in due course". 30-3-302.

"Instrument". 30-3-104.

"Notice of dishonor". 30-3-508.

"Order". 30-3-102.

"Ordinary care". 30-3-102.

"Person entitled to enforce". 30-3-301.

"Presentment". 30-3-504.

"Promise". 30-3-102.

~~"Protest". 30-3-509.~~

"Prove". 30-3-102.

~~"Secondary party". 30-3-102.~~

"Teller's check". 30-3-104.

"Unauthorized signature". 30-3-404.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 158. Section 30-4-105, MCA, is amended to read:

"**30-4-105. *"Bank"* — "~~Depositary~~ *depositary* bank" — "intermediary bank" — "collecting bank" — "payor bank" — "presenting bank" ~~— "remitting bank"~~.** In this chapter unless the context otherwise requires:

(1) "bank" means any person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;

~~(a)~~*(2)* "~~Depositary~~ *depositary* bank" means the first bank to ~~which~~ *take* an item ~~is transferred for collection~~ even though it is also the payor bank, *unless the item is presented for immediate payment over the counter*;

~~(b)~~*(3)* "~~Payor~~ *payor* bank" means a bank ~~by which an item is payable as drawn or accepted~~ *that is the drawee of a draft*;

~~(c)~~*(4)* "~~Intermediary~~ *intermediary* bank" means ~~any~~ *a* bank to which an item is transferred in course of collection except the depositary or payor bank;

~~(d)~~*(5)* "~~Collecting~~ *collecting* bank" means ~~any~~ *a* bank handling ~~the~~ *an* item for collection except the payor bank;

~~(e)~~*(6)* "~~Presenting~~ *presenting* bank" means ~~any~~ *a* bank presenting an item except a payor bank~~;~~

~~(f) "Remitting bank" means any payor or intermediary bank remitting for an item.~~"

Section 159. **Payable through or payable at bank — collecting bank.** (1) If an item states that it is "payable through" a bank identified in the item:

(a) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item; and

(b) the item may be presented for payment only by or through the bank.

(2) If an item states that it is "payable at" a bank identified in the item, the item is drawn on the bank.

Section 160. Section 30-4-106, MCA, is amended to read:

"**30-4-106. Separate office of a bank.** A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders ~~shall~~ *must* be given under this chapter and under ~~Chapter~~ *chapter* 3."

Section 161. Section 30-4-108, MCA, is amended to read:

"**30-4-108. Delays.** (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment ~~may, in the case~~ of *a* specific ~~items~~ *item drawn on a payor other than a bank* and with or without the approval of any person involved~~,~~ *may* waive, modify, or extend time limits imposed or permitted by this code for a period not ~~in excess of an~~ *exceeding 2* additional banking ~~day~~ *days* without discharge of ~~secondary parties and without~~ *drawers or indorsers or* liability to its transferor or ~~any~~ *a* prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this code or by instructions is excused if*:*

(a) the delay is caused by interruption of communication *or computer* facilities, suspension of payments by another bank, war, emergency conditions, *failure of equipment,* or other circumstances beyond the control of the bank ~~provided it~~; *and*

(b) the bank exercises such diligence as the circumstances require."

Section 162. **Truncation.** (1) "Truncation agreement" means an agreement, clearinghouse rule, or federal reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the truncation agreement.

(2) If presentment is made pursuant to a truncation agreement, a reference to "item" or "check" in this chapter means the presentment notice unless the context otherwise indicates.

(3) An intermediary bank handling a presentment notice pursuant to a truncation agreement has the rights of a holder of the item to the same extent it would have had rights in the item if the item had been physically transferred to it in the course of collection.

Section 163. **Statute of limitations.** An action to enforce an obligation, duty, or right arising under this chapter must be commenced within 3 years after the cause of action accrues.

Section 164. Section 30-4-201, MCA, is amended to read:

"**30-4-201. Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank".** (1) Unless a contrary intent clearly appears and ~~prior to~~ *before* the time that a settlement given by a collecting bank for an item is or becomes final (~~subsection~~ *subsections* (3) *and (4)* of 30-4-211 and ~~30-4-212~~ *subsections (2)* and *(3) of* 30-4-213), the bank *with respect to the item* is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of endorsement or lack of endorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and valid rights of *recoupment or* setoff. ~~When~~ *If* an item is handled by banks for purposes of presentment, payment, ~~and~~ collection, *or return,* the relevant provisions of this chapter apply even though action of *the* parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been endorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder:

(a) until the item has been returned to the customer initiating collection; or

(b) until the item has been specially endorsed by a bank to a person who is not a bank."

Section 165. Section 30-4-202, MCA, is amended to read:

"**30-4-202. Responsibility for collection *or return* — when action ~~seasonable~~ *timely.*** (1) A collecting bank must ~~use~~ *exercise* ordinary care in:

(a) presenting an item or sending it for presentment; ~~and~~

(b) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor ~~or directly to the depositary bank under subsection (2) of 30-4-212~~ after learning that the item has not been paid or accepted, as the case may be; ~~and~~

(c) settling for an item when the bank receives final settlement; and

(d) ~~making or providing for any necessary protest; and~~

~~(e)~~ notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank *exercises ordinary care under subsection (1) by* taking proper action before its midnight deadline following receipt of an item, notice, or ~~payment acts seasonably; taking~~ *settlement. Taking* proper action within a reasonably longer time may ~~be seasonable~~ *constitute the exercise of ordinary care,* but the bank has the burden of so establishing.

(3) Subject to subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in transit or in the possession of others."

Section 166. Section 30-4-203, MCA, is amended to read:

"**30-4-203. Effect of instructions.** Subject to the provisions of ~~Chapter~~ *chapter* 3 concerning conversion of instruments (30-3-419) and ~~the provisions of both Chapter 3 and this chapter concerning~~ restrictive endorsements *(30-3-205),* only a collecting bank's transferor can give instructions ~~which~~ *that* affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor."

Section 167. Section 30-4-204, MCA, is amended to read:

"**30-4-204. Methods of sending and presenting — sending ~~direct~~ *directly* to payor bank.** (1) A collecting bank ~~must~~ *shall* send items by *a* reasonably prompt method, taking into consideration any relevant instructions, the nature of the item, the number of ~~such~~ *those* items on hand,

and the cost of collection involved and the method generally used by it or others to present ~~such~~ *those* items.

(2) A collecting bank may send:

(a) ~~any~~ *an* item ~~direct~~ *directly* to the payor bank;

(b) ~~any~~ *an* item to any nonbank payor if authorized by its transferor; and

(c) ~~any~~ *an* item other than documentary drafts to ~~any~~ *a* nonbank payor, if authorized by ~~Federal Reserve~~ *federal reserve* regulation or operating ~~letter~~ *circular,* clearinghouse rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank *or other payor* has requested that presentment be made."

Section 168. Section 30-4-205, MCA, is amended to read:

"**30-4-205.** ~~**Supplying missing endorsement — no notice from prior endorsement**~~ ***Depositary bank holder of unindorsed item.*** ~~(1)~~ ~~A~~ *If a customer is a holder of an item that is delivered to a* depositary bank ~~which has taken an item~~ for collection*:*

(1) the depositary bank becomes a holder of the item at the time it receives the item for collection, whether or not the customer indorses, and if it satisfies the other requirements of 30-3-302, it may be a holder in due course; and

(2) ~~may supply any endorsement of the customer which is necessary to title unless the item contains the words "payee's endorsement required" or the like. In the absence of such a requirement a statement placed on the item by~~ the depositary bank ~~to the effect that the item was~~ *warrants to subsequent collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or* deposited ~~by a customer or credited~~ to ~~his~~ *the customer's* account ~~is effective as the customer's endorsement~~.

~~(2) An intermediary bank, or payor bank which is not a depositary bank, is neither given notice nor otherwise affected by a restrictive endorsement of any person except the bank's immediate transferor.~~"

Section 169. Section 30-4-206, MCA, is amended to read:

"**30-4-206. Transfer between banks.** Any agreed method ~~which~~ *that* identifies the transferor bank is sufficient for the item's further transfer to another bank."

Section 170. Section 30-4-207, MCA, is amended to read:

"**30-4-207.** ~~**Warranties of customer and collecting bank on transfer or presentment of items — time for claims**~~ ***Transfer warranties.*** (1) ~~Each customer or collecting bank who obtains payment or acceptance~~

~~of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that:~~

~~(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and~~

~~(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:~~

~~(i) to a maker with respect to the maker's own signature; or~~

~~(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or~~

~~(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized ; and~~

~~(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:~~

~~(i) to the maker of a note; or~~

~~(ii) to the drawer of a draft whether or not the drawer is also the drawee; or~~

~~(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or~~

~~(iv) to the acceptor of an item with respect to an alteration made after the acceptance.~~

~~(2) Each~~ *A* customer ~~and~~ *or* collecting bank ~~who~~ *that* transfers an item and receives a settlement or other consideration ~~for it~~ warrants to ~~his~~ *the* transferee and to any subsequent collecting bank ~~who takes the item in good faith~~ that:

(a) ~~he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful~~ *the warrantor is a person entitled to enforce the item*; ~~and~~

(b) all signatures *on the item* are ~~genuine or~~ *authentic and* authorized; ~~and~~

(c) the item has not been ~~materially~~ altered; ~~and~~

(d) ~~no~~ *the item is not subject to a* defense *or claim in recoupment stated in 30-3-305(1)* of any party ~~is good against him~~ *to the item that can be asserted against the warrantor*; and

(e) ~~he~~ *the warrantor* has no knowledge of any insolvency proceeding ~~instituted~~ *commenced* with respect to the maker or acceptor or, *in the case of an unaccepted draft,* the drawer ~~of an unaccepted item~~.

(2) ~~In addition each~~ *If an item is dishonored, a* customer and collecting bank ~~so~~ transferring ~~an~~ *the* item and receiving ~~a~~ settlement or other consideration ~~engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item~~ *is obliged to pay the amount due on the item according to the terms of the item at the time it was transferred or, if the transfer was of an incomplete item, according to its terms when completed as stated in 30-3-115 and 30-3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor may not disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.*

(3) ~~The~~ *A person to whom the* warranties ~~and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of endorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any~~ *under subsection (1) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.*

(4) *The warranties stated in subsection (1) cannot be disclaimed with respect to checks.* Unless *notice of* a claim for breach of warranty ~~under this section~~ is ~~made~~ *given to the warrantor* within ~~a reasonable time~~ *30 days* after the ~~person claiming learns~~ *claimant has reason to know* of the breach *and the identity of the warrantor,* the ~~person liable~~ *warrantor* is discharged to the extent of any loss caused by the delay in ~~making~~ *giving notice of the* claim.

(5) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach."

Section 171. **Presentment warranties.** (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(a) the warrantor is or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) the draft has not been altered; and

(c) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft:

(a) breach of warranty is a defense to the obligation of the acceptor; and

(b) the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection (2) if the acceptor makes payment with respect to the draft.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under 30-3-405 or [section 129] or the drawer is precluded under 30-3-406 or 30-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(4) This subsection applies if a dishonored draft is presented for payment to the drawer or an indorser or any other item is presented for payment to a party obliged to pay the item and the item is paid. The person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (4) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 172. **Encoding and retention warranties.** (1) A person that encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

(2) A person that undertakes to retain an item pursuant to a truncation agreement warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the truncation agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

(3) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach plus expenses and loss of interest incurred as a result of the breach.

Section 173. Section 30-4-208, MCA, is amended to read:

"**30-4-208. Security interest of collecting bank in items, accompanying documents, and proceeds.** (1) A *collecting* bank has a security interest in an item and any accompanying documents or the proceeds of either:

(a) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon ~~and whether~~ or ~~not~~ there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) ~~When~~ *If* credit ~~which has been~~ given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents, or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of ~~Chapter~~ *chapter* 9 except that:

(a) no security agreement is necessary to make the security interest enforceable (30-9-203); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds."

Section 174. Section 30-4-209, MCA, is amended to read:

"**30-4-209. When bank gives value for purposes of holder in due course.** For purposes of determining its status as a holder in due course, ~~the~~ *a* bank has given value to the extent ~~that~~ it has a security interest in an item, provided ~~that~~ the bank otherwise complies with the requirements of 30-3-302 on what constitutes a holder in due course."

Section 175. Section 30-4-210, MCA, is amended to read:

"**30-4-210. Presentment by notice of item not payable by, through, or at a bank — liability of secondary parties.** (1) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under ~~30-3-505~~ *30-3-504* by the close of the bank's next banking day after it knows of the requirement.

(2) ~~Where~~ *If* presentment is made by notice and neither ~~honor~~ *payment, acceptance,* nor request for compliance with a requirement under ~~30-3-505~~ *30-3-504* is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending ~~him~~ *it* notice of the facts."

Section 176. Section 30-4-211, MCA, is amended to read:

"**30-4-211. ~~Media of remittance — provisional~~ *Medium* and ~~final~~ *time of* settlement ~~in remittance cases~~ *by bank.*** (1) ~~A collecting~~ *With respect to settlement by a* bank, *the medium and time of* ~~may take in~~ settlement ~~of an item~~ *may be prescribed by federal reserve regulations or circulars, clearinghouse rules, and the like or by agreement. In the absence of such prescription:*

(a) ~~a check of the remitting bank or of another bank on any bank except the remitting bank~~ *the medium of settlement is cash or credit to an account in a federal reserve bank of or specified by the person to receive settlement;* ~~or~~ *and*

(b) *the time of settlement is:*

(i) with respect to tender of settlement by cash, a cashier's check, *or a teller's check,* ~~or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearinghouse or group as the collecting bank~~ *when the cash or check is sent or delivered;* ~~or~~

(ii) with respect to tender of settlement by credit in an account in a federal reserve bank, when the credit is made;

~~(c)~~*(iii)* ~~appropriate authority to charge~~ *with respect to tender of settlement by a credit or debit to* an account ~~of the remitting~~ *in a* bank, ~~or of another bank with the collecting bank~~ *when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered;* or

~~(d)~~*(iv)* ~~if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation~~

with respect to tender of settlement by a funds transfer, when payment is made pursuant to [section 219 (1)] to the person receiving settlement.

(2) If the tender of settlement is not by a medium authorized by subsection (1) or the time of settlement is not fixed by subsection (1), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

~~(2)~~*(3)* If *settlement for an item is made by cashier's check or teller's check and the person receiving settlement,* before its midnight deadline*:*

(a) ~~the collecting bank properly dishonors a remittance check or authorization to charge on itself or~~ presents or forwards *the check* for collection, ~~a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization~~ *settlement is final when the check is finally paid; or*

(b) fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

~~(3)~~*(4)* ~~A~~ *If* settlement for an item ~~by means of a remittance instrument or authorization~~ *is made by giving authority* to charge ~~is or becomes a final settlement as to both the person making and the person~~ *the account of the bank giving settlement in the bank* receiving ~~the~~ settlement~~:~~

~~(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization, at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;~~

~~(b) if the person receiving the settlement has authorized remittance by a nonbank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1)(b), at the time of the receipt of such remittance check or obligation; or~~

~~(c) if in a case not covered by subparagraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline, at such midnight deadline~~ *settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.*"

Section 177. Section 30-4-212, MCA, is amended to read:

"**30-4-212. Right of charge-back or refund — *liability of collecting bank — return of item.*** (1) If a collecting bank has made provisional settlement with its customer for an item and ~~itself~~ fails by reason of dishonor, suspension of payments by a bank or otherwise to receive ~~a~~ settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer, whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. *If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer but is liable for any loss resulting from the delay.* These rights to revoke, charge back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (~~subsection~~ *subsections* (3) *and (4)* of 30-4-211 and subsections (2) and (3) of 30-4-213).

(2) ~~Within the time and manner prescribed by this section and 30-4-301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depositary bank and may send for collection a draft on the depositary bank and obtain reimbursement. In such case, if the depositary bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.~~ *A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.*

(3) A depositary bank which is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (30-4-301).

(4) The right to charge-back is not affected by:

(a) ~~prior~~ *previous* use of ~~the~~ *a* credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(5) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in ~~a~~ foreign ~~currency~~ *money,* the dollar amount of any charge-back or refund ~~shall~~ *must* be calculated on the basis of the ~~buying sight~~ *bank-offered spot* rate for the foreign ~~currency~~ *money* prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course."

Section 178. Section 30-4-213, MCA, is amended to read:

"**30-4-213. Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal.** (1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(a) paid the item in cash; or

(b) settled for the item without ~~reserving~~ *having* a right to revoke the settlement ~~and without having such right~~ under statute, clearinghouse rule, or agreement; or

~~(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or~~

~~(d)~~*(c)* made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearinghouse rule or agreement. ~~Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.~~

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearinghouse or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final (~~subsection~~ *subsections* (3) *and (4)* of 30-4-211~~,~~ *and* subsection (2) of 30-4-213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to *applicable law stating a time for availability of funds and* any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in ~~an~~ *a customer's* account ~~with its customer~~ becomes available for withdrawal as of right:

(a) ~~in any case where~~ *if* the bank has received a provisional settlement for the item,—when such settlement becomes final and the bank has had a reasonable time to ~~learn that the settlement is final~~ *receive return of the item and the item has not been received within that time*;

(b) ~~in any case where~~ *if* the bank is both ~~a~~ *the* depositary bank and ~~a~~ *the* payor bank and the item is finally paid,—at the opening of the bank's second banking day following receipt of the item.

(5) ~~A deposit of money in a bank is final when made but, subject~~ *Subject to applicable law stating a time for availability of funds and* any right of ~~the~~ *a* bank to apply ~~the~~ *a* deposit to an obligation of the ~~customer~~ *depositor,* ~~the~~ *a* deposit *of money* becomes available for withdrawal as of right at the opening of the bank's next banking day ~~following~~ *after* receipt of the deposit."

Section 179. Section 30-4-214, MCA, is amended to read:

"**30-4-214. Insolvency and preference.** (1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (~~subsection~~ *subsections* (3) *and (4)* of 30-4-211~~;~~ *and* subsections ~~(1)(d)~~ *(1)(c),* (2), and (3) of 30-4-213).

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer ~~which~~ *that* is or becomes final, the owner of the item has a preferred claim against ~~such~~ *the* collecting bank."

Section 180. Section 30-4-301, MCA, is amended to read:

"**30-4-301. Deferred posting — recovery of payment by return of items — time of dishonor — *return of items by payor bank.*** (1) ~~Where an authorized settlement~~ *If a payor bank settles* for a demand item (other than a documentary draft) ~~received by a payor bank~~ *presented* otherwise than for immediate payment over the counter ~~has been made~~ before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover any ~~payment~~ *settlement* if before it has ~~made final payment~~ *paid the item in cash* (subsection (1)*(a)* of 30-4-213) and before its midnight deadline it:

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is ~~held for protest or is otherwise~~ unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) as to an item ~~received~~ *presented* through a clearinghouse, when it is delivered to the presenting or last collecting bank or to the clearinghouse or is sent or delivered in accordance with ~~its~~ *clearinghouse* rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to ~~his~~ instructions."

Section 181. Section 30-4-302, MCA, is amended to read:

"**30-4-302. Payor bank's responsibility for late return of item.** *(1)* ~~In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of 30-4-207), settlement effected or the like, if~~ *If* an item is presented ~~on~~ *to* and received by a payor bank the bank is accountable for the amount of:

~~(1)~~*(a)* a demand item, other than a documentary draft, whether properly payable or not if the bank, in any case ~~where~~ *in which* it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depositary bank, does not ~~pay~~ *settle for* or return the item or send notice of dishonor until after its midnight deadline; or

~~(2)~~*(b)* any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.

(2) The liability of a payor bank to pay an item pursuant to subsection (1) is subject to defenses based on breach of a presentment warranty ([section 171]) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank."

Section 182. Section 30-4-303, MCA, is amended to read:

"**30-4-303. When items subject to notice, stop order, legal process or setoff — order in which items may be charged or certified.** (1) Any knowledge, notice, or stop order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend, or modify such right or duty if the knowledge, notice, stop order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the ~~bank has done any~~ *earliest* of the following:

(a) ~~accepted or certified~~ *the bank accepts or certifies* the item;

(b) ~~paid~~ *the bank pays* the item in cash;

(c) ~~settled~~ *the bank settles* for the item without ~~reserving~~ *having* a right to revoke the settlement ~~and without having such right~~ under statute, clearinghouse rule, or agreement;

(d) ~~completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or~~

~~(e) become~~ *the bank becomes* accountable for the amount of the item under ~~subsection (1)(d) of 30-4-213 and~~ 30-4-302 dealing with the payor bank's responsibility for late return of items~~.~~; *or*

(e) with respect to checks, a cutoff hour no earlier than 1 hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(2) Subject to the provisions of subsection (1) items may be accepted, paid, certified, or charged to the indicated account of its customer in any order ~~convenient to the bank~~."

Section 183. Section 30-4-401, MCA, is amended to read:

"**30-4-401. When bank may charge customer's account.** (1) ~~As against its customer, a~~ *A* bank may charge against ~~his~~ *the* account ~~any~~ *of a customer an* item ~~which~~ *that* is ~~otherwise~~ properly payable from that account even though the charge creates an overdraft. *An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and the bank.*

(2) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(3) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice will be effective for the period stated in 30-4-403(2) for stop orders and must be received at a time and in a manner as to afford the bank a reasonable opportunity to act on it before any action by the bank with respect to the check described in 30-4-303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items pursuant to 30-4-402.

~~(2)~~*(4)* A bank ~~which~~ *that* in good faith makes payment to a holder may charge the indicated account of its customer according to:

(a) the original ~~tenor~~ *terms* of ~~his~~ *the* altered item; or

(b) the ~~tenor~~ *terms* of ~~his~~ *the* completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper."

Section 184. Section 30-4-402, MCA, is amended to read:

"**30-4-402. Bank's liability to customer for wrongful dishonor — *time of determining insufficiency of account.*** *(1) Except as otherwise provided in this chapter, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.*

(2) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. ~~When the dishonor occurs through mistake liability~~ *Liability* is limited to actual damages proved~~. If so proximately caused and proved damages~~ *and* may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(3) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one such determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful."

Section 185. Section 30-4-403, MCA, is amended to read:

"30-4-403. Customer's right to stop payment — burden of proof of loss. (1) Subject to 27-1-717, a customer *or any person authorized to draw on the account if there is more than one* may ~~by order to his bank~~ stop payment of any item ~~payable for his account but the order must be~~ *drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty and* received *by the bank* at ~~such~~ *a* time and in ~~such~~ *a* manner as to afford the bank a reasonable opportunity to act on it ~~prior to~~ *before* any action by the bank with respect to the item described in 30-4-303. *If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.*

(2) ~~An oral~~ *A stop* order is ~~binding upon the bank only for~~ *effective for 6 months after the time it is received, but it lapses after* 14 calendar days ~~unless~~ *if the original order was oral and was not* confirmed in writing within that period. A ~~written~~ *stop* order ~~is effective for only~~ *may be renewed for additional* ~~6 months unless renewed in~~ *6-month periods by a* writing *given to the bank within a period during which the stop order is effective.*

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order *or order to close an account* is on the customer. *The loss from payment of an item contrary to a binding stop payment order may include damages for dishonor of subsequent items pursuant to 30-4-402."*

Section 186. Section 30-4-406, MCA, is amended to read:

"30-4-406. Customer's duty to discover and report unauthorized signature or alteration. (1) ~~When a~~ *A* bank *that* sends *or makes available* to ~~its~~ *a* customer a statement of account ~~accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the~~

~~customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof~~ *showing payment of items for the account shall either return to the customer the items paid or provide information in the statement of account sufficient to allow the customer to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.*

(2) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of 7 years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(3) If a bank sends or makes available a statement of account or items pursuant to subsection (1), the customer shall exercise reasonable promptness in examining the statement or the item to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer has a duty to give prompt notification to the bank of the relevant facts.

~~(2)~~*(4)* If the bank ~~establishes~~ *proves* that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection ~~(1)~~ *(3)* the customer is precluded from asserting against the bank:

(a) ~~his~~ *the customer's* unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) ~~an~~ *the customer's* unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank ~~after the first item and statement was available to the customer for a reasonable period not exceeding 14 calendar days and before the bank receives notification from the customer of any such~~ *if the payment was made before the bank received notification from the customer of the* unauthorized signature or alteration *and after the customer had been afforded a reasonable period of time in which to examine the item or statement of account and notify the bank. "Reasonable period of time" is presumed to be 14 calendar days after the item or statement pursuant to subsection (1) was received by or made available to the customer.*

~~(3)~~*(5)* ~~The preclusion under subsection (2) does not apply if~~ *If subsection (4) applies and* the customer ~~establishes lack of~~ *proves that the bank failed to exercise* ordinary care ~~on the part of the bank~~ in paying the ~~item(s)~~ *item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of each to exercise ordinary care* *contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (4) does not apply.*

~~(4)~~*(6)* Without regard to care or lack of care of either the customer or the bank a customer who does not within 1 year from the time the statement ~~and~~ *or* items are made available to the customer (subsection (1)) discover and report ~~his~~ *the customer's* unauthorized signature or any alteration ~~on the face or back of the item or does not within 3 years from that time discover and report any unauthorized endorsement~~ is precluded from asserting against the bank such unauthorized signature or ~~endorsement or such~~ alteration. *If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under [section 171] with respect to the unauthorized signature or alteration to which the preclusion applies.*

~~(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.~~"

Section 187. Section 30-4-407, MCA, is amended to read:

"30-4-407. **Payor bank's right to subrogation on improper payment.** If a payor bank has paid an item over the stop payment order of the drawer or maker, *after an account has been closed,* or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights:

~~(a)~~*(1)* of any holder in due course on the item against the drawer or maker; and

~~(b)~~*(2)* of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

~~(c)~~*(3)* of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose."

Section 188. Section 30-4-503, MCA, is amended to read:

"30-4-503. **Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need.** *(1)* Unless otherwise instructed and except as provided in ~~Chapter~~ *chapter* 5, a bank presenting a documentary draft:

(a) ~~must~~ *shall* deliver the documents to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment; and

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize ~~his~~ *the referee's* services, it ~~must~~ *shall* use diligence and good faith to ascertain the reason for dishonor, ~~must~~ *shall* notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and ~~must~~ *shall* request instructions.

(2) ~~But the~~ *The* presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for ~~such~~ *those* expenses."

Section 189. **Short title.** [Sections 189 through 226] may be cited as Uniform Commercial Code—Funds Transfers.

Section 190. **Subject matter.** Except as otherwise provided in [section 196], [sections 189 through 226] apply to funds transfers defined in [section 192].

Section 191. **Payment order — definitions.** (1) In [sections 189 through 226], the following definitions apply:

(a) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment;

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(b) "Beneficiary" means the person to be paid by the beneficiary's bank.

(c) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or that otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(d) "Receiving bank" means the bank to which the sender's instruction is addressed.

(e) "Sender" means the person giving the instruction to the receiving bank.

(2) If an instruction complying with subsection (1)(a) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(3) A payment order is issued when it is sent to the receiving bank.

Section 192. **Funds transfer — definitions.** In [sections 189 through 226], the following definitions apply:

(1) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(2) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(3) "Originator" means the sender of the first payment order in a funds transfer.

(4) "Originator's bank" means:

(a) the receiving bank to which the payment order of the originator is issued if the originator is not a bank; or

(b) the originator if the originator is a bank.

Section 193. **Other definitions.** (1) In [sections 189 through 226], the following definitions apply:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of [sections 189 through 226].

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Prove", with respect to a fact, means to meet the burden of establishing the fact (30-1-201(8)).

(2) Other definitions applying to [sections 189 through 226] and the sections in which they appear are:

"Acceptance" [section 205]

"Beneficiary" [section 191]

"Beneficiary's bank" [section 191]

"Executed" [section 209]

"Execution date" [section 209]

"Funds transfer" [section 192]

"Funds-transfer system rule" [section 220]

"Intermediary bank" [section 192]

"Originator" [section 192]

"Originator's bank" [section 192]

"Payment by beneficiary's bank to beneficiary" [section 218]

"Payment by originator to beneficiary" [section 219]

"Payment by sender to receiving bank" [section 216]

"Payment date" [section 214]

"Payment order" [section 191]

"Receiving bank" [section 191]

"Security procedure" [section 197]

"Sender" [section 191]

(3) The following definitions in chapter 4 apply to [sections 189 through 226]:

"Clearinghouse" 30-4-104

"Item" 30-4-104

"Suspends payments" 30-4-104

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Section 194. **Time payment order is received.** (1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in 30-1-201(27). A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(2) If [sections 189 through 226] refer to an execution date or payment date or state a day on which a receiving bank is required to take action and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in [sections 189 through 226].

Section 195. **Federal reserve regulations and operating circulars.** Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of [sections 189 through 226] to the extent of the inconsistency.

Section 196. **Exclusion of consumer transactions governed by federal law.** [Sections 189 through 226] do not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.) as amended from time to time.

Section 197. **Security procedure.** "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of verifying that a payment order or communication amending or canceling a payment order is that of the customer or detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

Section 198. **Authorized and verified payment orders.** (1) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(2) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender

will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if the security procedure is a commercially reasonable method of providing security against unauthorized payment orders and the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(3) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is considered to be commercially reasonable if:

(a) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer; and

(b) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in the customer's name and accepted by the bank in compliance with the security procedure chosen by the customer.

(4) The term "sender" in [sections 189 through 226] includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (1) or if it is effective as the order of the customer under subsection (2).

(5) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(6) Except as provided in this section and in [section 199(1)(a)], rights and obligations arising under this section or [section 199] may not be varied by agreement.

Section 199. **Unenforceability of certain verified payment orders.** (1) If an accepted payment order is not, under [section 198(1)], an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to [section 198(2)], the following rules apply:

(a) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(b) (i) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person:

(A) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure; or

(B) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault.

(ii) Information includes any access device, computer software, or the like.

(2) This section applies to amendments of payment orders to the same extent it applies to payment orders.

Section 200. **Refund of payment and duty of customer to report with respect to unauthorized payment order.** (1) If a receiving bank accepts a payment order issued in the name of its customer as sender that is not authorized and not effective as the order of the customer under [section 198] or not enforceable, in whole or in part, against the customer under [section 199], the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(2) Reasonable time under subsection (1) may be fixed by agreement as stated in 30-1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (1) may not otherwise be varied by agreement.

Section 201. **Erroneous payment orders.** (1) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order erroneously instructed payment to a beneficiary not intended by the sender, erroneously instructed payment in an amount greater than the amount intended by the sender, or was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(a) If the sender proves that the sender or a person acting on behalf of the sender pursuant to [section 202] complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in subsections (1)(b) and (1)(c).

(b) Except as provided in subsection (1)(c), if the funds transfer is completed on the basis of an erroneous payment order described in subsection (1), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(c) If the funds transfer is completed on the basis of a payment order erroneously instructing payment in an amount greater than the amount intended by the sender, as described in subsection (1), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(2) If the sender of an erroneous payment order described in subsection (1) is not obliged to pay all or part of the order and the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(3) This section applies to amendments to payment orders to the same extent it applies to payment orders.

Section 202. **Transmission of payment order through funds-transfer or other communication system.** (1) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is considered to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the federal reserve banks.

(2) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

Section 203. **Misdescription of beneficiary.** (1) Subject to subsection (2), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(2) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(a) Except as otherwise provided in subsection (3), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(b) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(3) If a payment order described in subsection (2) is accepted, the originator's payment order described the beneficiary inconsistently by name and number, and the beneficiary's bank pays the person identified by number as permitted by subsection (2)(a), the following rules apply:

(a) If the originator is a bank, the originator is obliged to pay its order.

(b) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(4) In a case governed by subsection (2)(a), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(a) If the originator is obliged to pay its payment order as stated in subsection (3), the originator has the right to recover.

(b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

Section 204. **Misdescription of intermediary bank or beneficiary's bank.** (1) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number as follows:

(a) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(b) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank, both by name and an identifying number, if the name and number identify different persons as follows:

(a) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (2)(a), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(c) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(d) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in [section 210(1)(a)].

Section 205. **Acceptance of payment order.** (1) Subject to subsection (4), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(2) Subject to subsections (3) and (4), a beneficiary's bank accepts a payment order at the earliest of the following times:

(a) when the bank:

(i) pays the beneficiary as stated in [section 218(1) or (2)]; or

(ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(b) when the bank receives payment of the entire amount of the sender's order pursuant to [section 216(1)(a) or (1)(b)]; or

(c) the opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or if the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within 1 hour after that time or 1 hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(3) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (2)(b) or (2)(c) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(4) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank or until the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to [section 207(2)], the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

Section 206. **Rejection of payment order.** (1) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order:

(a) any means complying with the agreement is reasonable; and

(b) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(2) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to [section 207(4)] or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(3) If a receiving bank suspends payments, all unaccepted payment orders issued to it are considered rejected at the time the bank suspends payments.

(4) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

Section 207. **Cancellation and amendment of payment order.** (1) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(2) Subject to subsection (1), a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(3) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank as follows:

(a) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(b) (i) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order or because of a mistake by a sender in the funds transfer that resulted in the issuance of a payment order:

(A) that is a duplicate of a payment order previously issued by the sender;

(B) that orders payment to a beneficiary not entitled to receive payment from the originator; or

(C) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator.

(ii) If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(4) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(5) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is considered to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(6) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(7) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(8) A funds-transfer system rule is not effective to the extent it conflicts with subsection (3)(b).

Section 208. **Liability and duty of receiving bank regarding unaccepted payment order.** If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in [sections 189 through 226] but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action or refrain from taking action with respect to the order except as provided in [sections 189 through 226] or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in [section 205], and liability is limited to that provided in [sections 189 through 226]. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in [sections 189 through 226] or by express agreement.

Section 209. **Execution and execution date.** (1) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank may be accepted but cannot be executed.

(2) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

Section 210. **Obligations of receiving bank in execution of payment order.** (1) Except as provided in subsections (2) through (4), if the receiving bank accepts a payment order pursuant to [section 205(1)], the bank has the following obligations in executing the order:

(a) (i) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning:

(A) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer; or

(B) the means by which payment orders are to be transmitted in the funds transfer.

(ii) If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(b) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(2) Unless otherwise instructed, a receiving bank executing a payment order may use any funds-transfer system if use of that system is reasonable in the circumstances and issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(3) Unless subsection (1)(b) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(4) Unless instructed by the sender:

(a) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges; and

(b) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

Section 211. **Erroneous execution of payment order.** (1) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order or issues a payment order in execution of the sender's order and then issues a duplicate order is entitled to payment of the amount of the sender's order under [section 215(3)] if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(2) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under [section 215(3)] if that subsection is otherwise satisfied and the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the

erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(3) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

Section 212. **Duty of sender to report erroneously executed payment order.** If the sender of a payment order that is erroneously executed as stated in [section 211] receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under [section 215(4)] for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

Section 213. **Liability for late or improper execution or failure to execute payment order.** (1) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of [section 210] results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (3), additional damages are not recoverable.

(2) If execution of a payment order by a receiving bank in breach of [section 210] results in noncompletion of the funds transfer, failure to use an intermediary bank designated by the originator, or issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (1), resulting from the improper execution. Except as provided in subsection (3), additional damages are not recoverable.

(3) In addition to the amounts payable under subsections (1) and (2), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(4) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender

for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank but are not otherwise recoverable.

(5) Reasonable attorney fees are recoverable if demand for compensation under subsection (1) or (2) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (4) and the agreement does not provide for damages, reasonable attorney fees are recoverable if demand for compensation under subsection (4) is made and refused before an action is brought on the claim.

(6) Except as stated in this section, the liability of a receiving bank under subsections (1) and (2) may not be varied by agreement.

Section 214. **Payment date.** "Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

Section 215. **Obligation of sender to pay receiving bank.** (1) This section is subject to [sections 201 and 203].

(2) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(3) This subsection is subject to subsection (5) and to [section 211]. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(4) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in [sections 200 and 212], interest is payable on the refundable amount from the date of payment.

(5) If a funds transfer is not completed as stated in subsection (3) and an intermediary bank is obliged to refund payment as stated in subsection (4) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in [section 210(1)(a)], to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order

that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (4).

(6) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (3) or to receive refund under subsection (4) may not be varied by agreement.

Section 216. **Payment by sender to receiving bank.** (1) Payment of the sender's obligation under [section 215] to pay the receiving bank occurs as follows:

(a) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a federal reserve bank or through a funds-transfer system.

(b) If the sender is a bank and the sender credited an account of the receiving bank with the sender or caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(c) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(2) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in this subsection has been exercised.

(3) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under [section 215] will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank must be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(4) In a case not covered by subsection (1), the time when payment of the sender's obligation under [section 215(2) or (3)] occurs is governed by applicable principles of law that determine when an obligation is satisfied.

Section 217. **Obligation of beneficiary's bank to pay and give notice to beneficiary.** (1) Subject to [sections 207(5) and 218(4) and (5)], if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(2) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first-class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(3) The right of a beneficiary to receive payment and damages as stated in subsection (1) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (2) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

Section 218. **Payment by beneficiary's bank to beneficiary.** (1) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under [section 217(1)] occurs when and to the extent:

(a) the beneficiary is notified of the right to withdraw the credit;

(b) the bank lawfully applies the credit to a debt of the beneficiary; or

(c) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(2) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under

[section 217(1)] occurs is governed by principles of law that determine when an obligation is satisfied.

(3) Except as stated in subsections (4) and (5), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(4) (a) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if:

(i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated;

(ii) the beneficiary, the beneficiary's bank, and the originator's bank agreed to be bound by the rule; and

(iii) the beneficiary's bank did not receive payment of the payment order that it accepted.

(b) If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under [section 219].

(5) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that nets obligations multilaterally among participants and has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer:

(a) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance;

(b) the beneficiary's bank is entitled to recover payment from the beneficiary;

(c) no payment by the originator to the beneficiary occurs under [section 219]; and

(d) subject to [section 215(5)], each sender in the funds transfer is excused from its obligation to pay its payment order under [section 215(3)] because the funds transfer has not been completed.

Section 219. **Payment by originator to beneficiary — discharge of underlying obligation.** (1) Subject to [sections 207(5) and 218(4) and (5)], the originator of a funds transfer pays the beneficiary of the originator's payment order:

(a) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer; and

(b) in an amount equal to the amount of the order accepted by the beneficiary's bank but not more than the amount of the originator's order.

(2) (a) If payment under subsection (1) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless:

(i) the payment under subsection (1) was made by a means prohibited by the contract of the beneficiary with respect to the obligation;

(ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment;

(iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary; and

(iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract.

(b) If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under [section 217(1)].

(3) For the purpose of determining whether discharge of an obligation occurs under subsection (2), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is considered to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(4) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

Section 220. **Variation by agreement and effect of funds-transfer system rule.** (1) Except as otherwise provided in [sections 189 through 226], the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(2) (a) "Funds-transfer system rule" means a rule of an association of banks:

(i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders; or

(ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a federal reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank.

(b) Except as otherwise provided in [sections 189 through 226], a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with [sections 189 through 226] and indirectly affects another party to the funds transfer that does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in [sections 217(3), 218(4), and 226(3)].

Section 221. **Creditor process served on receiving bank — setoff by beneficiary's bank.** (1) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(2) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order, the balance in the authorized account is considered to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(3) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(a) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(b) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(c) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(4) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the

beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

Section 222. **Injunction or restraining order with respect to funds transfer.** (1) For proper cause and in compliance with applicable law, a court may restrain:

(a) a person from issuing a payment order to initiate a funds transfer;

(b) an originator's bank from executing the payment order of the originator; or

(c) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds.

(2) A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

Section 223. **Order in which items and payment orders may be charged to account — order of withdrawals from account.** (1) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(2) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

Section 224. **Preclusion of objection to debit of customer's account.** If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within 1 year after the notification was received by the customer.

Section 225. **Rate of interest.** (1) If, under [sections 189 through 226], a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined:

(a) by agreement of the sender and receiving bank; or

(b) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(2) If the amount of interest is not determined by an agreement or rule as stated in subsection (1), the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal

funds rates published by the federal reserve bank of New York for each of the days for which interest is payable divided by 360. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

Section 226. **Choice of law.** (1) The following rules apply unless the affected parties otherwise agree or subsection (3) applies:

(a) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(b) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(c) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(2) If the parties described in subsection (1) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(3) (a) A funds-transfer system rule may select the law of a particular jurisdiction to govern:

(i) the rights and obligations between participating banks with respect to payment orders transmitted or processed through the system; or

(ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system.

(b) A choice of law made pursuant to subsection (3)(a)(i) is binding on participating banks. A choice of law made pursuant to subsection (3)(a)(ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(4) In the event of inconsistency between an agreement under subsection (2) and a choice-of-law rule under subsection (3), the agreement under subsection (2) prevails.

(5) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

Section 227. **What constitutes filing — duties of filing officer — information from filing officer.** (1) Presentation of a notice or list of claimants for filing and tender of the filing fee or acceptance of the notice or list by the filing officer constitutes filing under this chapter.

(2) The filing officer shall:

(a) mark each notice or list with a file number and with the date and hour of filing;

(b) hold the notice or list or a copy for public inspection;

(c) index the notice or list according to each name given for the seller and for the buyer; and

(d) note in the index the file number and the addresses of the seller and buyer given in the notice or list.

(3) If the person filing a notice or list furnishes the filing officer with a copy, the filing officer upon request shall note upon the copy the file number and date and hour of the filing of the original and send or deliver the copy to the person.

(4) The fee for filing and indexing and for stamping a copy furnished by the person filing to show the date and place of filing is 50 cents for the first page and 25 cents for each additional page. The fee for indexing each name more than two is $2.

(5) Upon request of any person, the filing officer shall issue a certificate showing whether any notice or list with respect to a particular seller or buyer is on file on the date and hour stated in the certificate. If a notice or list is on file, the certificate must give the date and hour of filing of each notice or list and the name and address of each seller, buyer, auctioneer, or liquidator. The fee for the certificate is $2 if the request for the certificate is in the standard form prescribed by the county clerk and recorder and otherwise is $5. Upon request of any person, the filing officer shall furnish a copy of any filed notice or list for a fee of 50 cents.

(6) The filing officer shall keep each notice or list for 2 years after it is filed.

Section 228. Section 30-9-113, MCA, is amended to read:

"**30-9-113. Security interests arising under chapter on sales *or under chapter on leases.*** A security interest arising solely under the chapter on sales (chapter 2) *or [sections 7 through 86] on leases ([sections 7 through 86])* is subject to the provisions of this chapter except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods:

~~(a)~~*(1)* no security agreement is necessary to make the security interest enforceable; ~~and~~

~~(b)~~*(2)* no filing is required to perfect the security interest; and

~~(c)~~*(3)* the rights of the secured party on default by the debtor are governed*:*

(a) by the chapter on sales (chapter 2) *in the case of a security interest arising solely under that chapter; or*

(b) by [sections 7 through 86] on leases ([sections 7 through 86]) in the case of a security interest arising solely under [sections 7 through 86]."

Section 229. Section 27-1-717, MCA, is amended to read:

"**27-1-717. Issuing a bad check or stopping payment — civil liability.** (1) A person who issues a check, draft, or an order for the payment of money is liable for damages in a civil action as provided in subsection (2) to the person to whom the check, draft, or order is issued if the check, draft, or order is:

(a) dishonored for lack of funds or credit or because the issuer has no account with the drawee; or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) The amount of damages awarded pursuant to subsection (1) shall be an amount equal to the greater of $100 or three times the amount for which the check, draft, or order was issued. However, damages may not exceed the value of the check, draft, or order by more than $500.

(3) The remedy provided by this section is available only if:

(a) the person to whom the check, draft, or order was issued has made written demand, mailed to the last known address or the address shown on the check, to the drawer for payment of the amount of such check, draft, or order not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded prior to the commencement of the action.

(4) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the ~~engagement~~ *obligation* of the drawer provided for in ~~30-3-413~~ *[section 137]* to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply."

Section 230. **Repealer.** Sections 30-3-103, 30-3-106, 30-3-110, 30-3-112, 30-3-113, 30-3-116, 30-3-117, 30-3-118, 30-3-120, 30-3-121, 30-3-123, 30-3-201, 30-3-206, 30-3-207, 30-3-402, 30-3-408, 30-3-411, 30-3-416, 30-3-418, 30-3-501, 30-3-502, 30-3-503, 30-3-505, 30-3-506, 30-3-507, 30-3-509, 30-3-511, 30-3-602, 30-3-606, 30-3-701, 30-3-801, 30-3-802, 30-3-803, 30-3-804, 30-3-805, 30-4-109, 30-6-101, 30-6-102, 30-6-103, 30-6-104, 30-6-105, 30-6-106, 30-6-107, 30-6-108, 30-6-109, 30-6-110, 30-6-111, 30-9-111, 70-1-601, 70-1-602, 70-1-603, 70-1-604, 70-1-605, 70-1-606, 70-1-607, 70-1-608, 70-1-609, 70-1-610, 70-1-611, 70-8-101, 70-8-102, 70-8-103, and 70-8-104, MCA, are repealed.

Section 231. **Codification instruction.** (1) [Sections 7 through 86] are intended to be codified as an integral part of Title 30, chapters 1 through 9, and the provisions of Title 30, chapters 1 through 9, apply to [sections 7 through 86].

(2) [Sections 88, 91, 97 through 99, 101, 103, 106, 108, 109, 120, 122 through 124, 129, 135, 137, 138, 142, 143, 146, 148, and 154] are intended to be codified as an integral part of Title 30, chapter 3, and the provisions of Title 30, chapter 3, apply to [sections 88, 91, 97 through 99, 101, 103, 106, 108, 109, 120, 122 through 124, 129, 135, 137, 138, 142, 143, 146, 148, and 154].

(3) [Sections 159, 162, 163, 171, and 172] are intended to be codified as an integral part of Title 30, chapter 4, and the provisions of Title 30, chapter 4, apply to [sections 159, 162, 163, 171, and 172].

(4) [Sections 189 through 226] are intended to be codified as an integral part of Title 30, chapters 1 through 9, and the provisions of Title 30, chapters 1 through 9, apply to [sections 189 through 226].

(5) [Section 227] is intended to be codified as an integral part of Title 30, chapter 6, and the provisions of Title 30, chapter 6, apply to [section 227].

Section 232. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 10, 1991.

CHAPTER NO. 411

[HB 741]

AN ACT TO GENERALLY REVISE NONPROFIT CORPORATE LAW; AMENDING SECTIONS 15-1-101, 33-17-211, 35-6-104, AND 35-6-201, MCA; REPEALING SECTIONS 35-2-102 THROUGH 35-2-112, 35-2-201 THROUGH 35-2-211, 35-2-301 THROUGH 35-2-304, 35-2-401 THROUGH 35-2-413, 35-2-501 THROUGH 35-2-509, 35-2-601 THROUGH 35-2-607, 35-2-701 THROUGH 35-2-706, 35-2-711 THROUGH 35-2-719, 35-2-801 THROUGH 35-2-819, 35-2-901 THROUGH 35-2-903, 35-2-1001, 35-2-1002, 35-2-1101 THROUGH 35-2-1106, AND 35-2-1201 THROUGH 35-2-1203, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants authority to the secretary of state to establish fees and mandate the use of forms. The fees established by the secretary of state must be commensurate with the cost of the service performed. The forms adopted should be based on forms recommended by this bill.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 168], the following definitions apply:

(1) "Approved by the members" means approved and ratified by the affirmative vote:

(a) of a majority of the votes represented and voting:

(i) at a meeting at which a quorum is present and the affirmative votes constitute a majority of the required quorum;

(ii) by a written ballot or written consent in conformity with [sections 1 through 168]; or

(iii) by the affirmative vote, written ballot, or written consent of the majority; and

(b) that includes the votes of all the members of any class, unit, or grouping that may be required by the articles, bylaws, or [sections 1 through 168] for any specified member action.

(2) "Articles of incorporation" or "articles" include amended and restated articles of incorporation and articles of merger.

(3) "Board" or "board of directors" means the board of directors except that a person or group of persons is not the board of directors because of powers delegated to that person or group pursuant to [section 75].

(4) "Bylaws" means the code, codes, or rules, other than the articles, adopted pursuant to [sections 1 through 168] for the regulation or management of the affairs of the corporation, regardless of the name or names by which the code, codes, or rules are designated.

(5) "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution, redemption and transfer. For the purpose of this section, rights must be considered the same if they are determined by a formula applied uniformly.

(6) "Corporation" means a public benefit corporation, mutual benefit corporation, or religious corporation.

(7) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

(8) "Deliver" includes mail.

(9) "Directors" means individuals:

(a) designated in the articles or bylaws or elected by the incorporators and their successors; and

(b) elected or appointed by any other name or title to act as members of the board.

(10) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

(11) "Domestic corporation" means a corporation.

(12) "Effective date of notice" has the meaning provided in [section 2(5)].

(13) "Employee" does not include an officer or director who is not otherwise employed by the corporation.

(14) "Entity" includes:

(a) a corporation and foreign corporation;

(b) a business corporation and foreign business corporation;

(c) a profit and nonprofit unincorporated association;

(d) a corporation sole;

(e) a business trust, an estate, a partnership, a trust, and two or more persons having a joint or common economic interest; and

(f) a state, the United States, and a foreign government.

(15) "File", "filed", or "filing" means filed in the office of the secretary of state.

(16) "Foreign corporation" means a corporation that is organized under a law other than the law of this state and that would be a nonprofit corporation if formed under the laws of this state.

(17) "Governmental subdivision" includes an authority, county, district, and municipality.

(18) "Includes" denotes a partial definition.

(19) "Individual" includes the estate of an incompetent individual.

(20) "Means" denotes a complete definition.

(21) (a) "Member" means, without regard to what a person is called in the articles or bylaws, a person or persons who, on more than one occasion and pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors.

(b) A person is not a member by virtue of any of the following:

(i) any rights the person has as a delegate;

(ii) any rights the person has to designate a director or directors; or

(iii) any rights the person has as a director.

(22) "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws, and [sections 1 through 168].

(23) "Mutual benefit corporation" means a domestic corporation designated as a mutual benefit corporation.

(24) "Notice" means that term as described in [section 2].

(25) "Person" includes any individual or entity.

(26) "Principal office" means the office, in the state or out of the state, that is designated in the annual report filed pursuant to [section 168] as the place where the principal office of a domestic or foreign corporation is located.

(27) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(28) "Public benefit corporation" means a domestic corporation designated as a public benefit corporation.

(29) "Record date" means the date established under [sections 39 through 74] on which a corporation determines the identity of its members for the purposes of [sections 1 through 168].

(30) "Religious corporation" means a domestic corporation designated as a religious corporation.

(31) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under [section 95(2)] for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

(32) "State", when referring to a part of the United States, includes:

(a) a state and commonwealth and their agencies and governmental subdivisions; and

(b) a territory and insular possession, their agencies, and governmental subdivisions of the United States.

(33) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

(34) "Vote" includes authorization by written ballot and written consent.

(35) (a) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made.

(b) The term excludes a vote that is contingent upon the happening of a condition or event that has not occurred at the time.

(c) When a class is entitled to vote as a class for directors, the determination of voting power of the class must be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

Section 2. **Notice.** (1) Notice under [sections 1 through 168] must be in writing unless oral notice is reasonable under the circumstances.

(2) (a) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form of wire or wireless communication; or by mail or private carrier.

(b) If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where it is published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its members, if in a comprehensible form, is effective when mailed if it is mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to:

(a) its registered agent at its registered office; or

(b) the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsections (3) and (4), written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) when received;

(b) 5 days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed postpaid and with correct postage; or

(c) on the date shown on the return receipt, if it is sent by certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if it is communicated in a comprehensible manner.

(7) If [sections 1 through 168] prescribe notice requirements for particular circumstances, those requirements govern. If the articles of incorporation or bylaws prescribe notice requirements that are consistent with this section or other provisions of [sections 1 through 168], those requirements govern.

Section 3. **Reservation of power to amend or repeal.** The legislature has power to amend or repeal all or part of [sections 1 through 168] at any time, and all domestic and foreign corporations subject to [sections 1 through 168] are governed by the amendment or repeal.

Section 4. **Filing requirements.** All of the following requirements must be met before a document is entitled to be filed under this section by the secretary of state:

(1) A document that is required or permitted by [sections 1 through 168] to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by [sections 1 through 168]. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. However, a corporate name need not be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations need not be in English if it is accompanied by a reasonably authenticated English translation.

(5) The document must be executed:

(a) by the presiding officer of its board of directors, its president, or another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The person executing the document shall sign it and state beneath or opposite the signature his name and the capacity in which the person signs. The document may but need not contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for a document under [section 6].

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) one copy, except as provided in [sections 36 and 155];

(b) the correct filing fee; and

(c) any franchise tax, license fee, or penalty required by [sections 1 through 168], rules promulgated under [sections 1 through 168], or other law.

Section 5. **Facsimile filing.** (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under [sections 4 through 14] and the signatures on the facsimile copy in the same manner as an original for purposes of [sections 4 through 14] provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A facsimile copy is entitled to be filed under this section if it is:

(a) produced by a method of transmission of images in which the image is scanned at the transmitter; and

(b) legible and the same size as the original.

(3) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(4) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(5) A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false document.

Section 6. **Forms.** (1) The secretary of state may by rule prescribe and furnish on request forms or computer formats for:

(a) an application for a certificate of existence;

(b) a foreign corporation's application for a certificate of authority to transact business in this state;

(c) a foreign corporation's application for a certificate of withdrawal;

(d) the annual report; and

(e) other documents required or permitted to be filed by [sections 1 through 168].

(2) If the secretary of state so requires, use of any of the forms or formats listed in subsection (1) is mandatory.

(3) The secretary of state may by rule prescribe and furnish on request forms or computer formats for other documents required or permitted to be filed by [sections 1 through 168], but their use is not mandatory.

Section 7. **Fees for filing, copying, and services.** (1) The secretary of state shall establish by rule fees for filing documents and issuing certificates as required by [sections 1 through 168].

(2) The secretary of state shall by rule establish fees for copying documents, priority handling, transmitting, or filing facsimile copies and for providing computer-generated information.

(3) The fees presented under this section must be reasonably related to the costs of processing the documents and preparing and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section.

Section 8. **Effective date of document.** (1) Except as provided in subsection (2), a document is effective:

(a) at the time of filing on the date it is filed, as evidenced by the secretary of state's endorsement on the original document; or

(b) at the time specified in the document as its effective time on the date it is filed.

(2) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than 90 days after the date it is filed.

Section 9. **Correcting filed document.** (1) A domestic or foreign corporation may correct a document filed by the secretary of state if the document:

(a) contains an incorrect statement; or

(b) was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document is corrected:

(a) by preparing articles of correction that:

(i) describe the document, including its filing date, or have attached a copy of the document;

(ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(iii) correct the incorrect statement or defective execution; and

(b) by delivering the articles of correction to the secretary of state.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Section 10. **Filing duty of secretary of state.** (1) If a document delivered to the office of the secretary of state for filing satisfies the applicable requirements of [sections 4 and 5], the secretary of state shall file it.

(2) The secretary of state shall file a document by stamping or otherwise endorsing "Filed", together with the secretary of state's name, official title, and the date and the time of receipt, on the original, the copy of the document, and the receipt for the filing fee. Except as provided in [sections 37 and 156], after filing a document, the secretary of state shall deliver the document copy to the domestic or foreign corporation or its representative, together with the filing fee receipt or acknowledgment of receipt if no fee is required.

(3) Upon refusing to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within 10 days after the document was delivered, together with a brief written explanation of the reason or reasons for the refusal.

(4) The secretary of state's duty concerning the documents under this section is ministerial. Filing or refusal to file a document does not:

(a) affect the validity or invalidity of the document in whole or in part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Section 11. **Appeal from secretary of state's refusal to file document.** (1) If the secretary of state refuses to file a document delivered for filing to the secretary of state's office, the domestic or foreign corporation may appeal the refusal to the district court for the first judicial district. The appeal is commenced by petitioning the court to compel the filing of the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

(2) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

Section 12. **Evidentiary effect of copy of filed document.** A certificate attached to a copy of a document, bearing the secretary of state's signature, which may be in facsimile, and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

Section 13. **Certificate of existence.** (1) A person may apply to the secretary of state to furnish a certificate of existence for a domestic or foreign corporation.

(2) The certificate of existence must set forth:

(a) the domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) (i) that the domestic corporation is incorporated under the laws of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) that the foreign corporation is authorized to transact business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid, if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the good standing of the domestic or foreign corporation;

(d) that its most recent annual report required by [section 168] has been delivered to the secretary of state;

(e) that articles of dissolution have not been filed; and

(f) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate of existence issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this state.

Section 14. **Penalty for signing false documents.** (1) The execution of any document that must be filed with the secretary of state under [sections 4 through 14] constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by the secretary of state under [sections 1 through 168].

Section 15. **Secretary of state — powers — rulemaking.** (1) The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state's office by [sections 1 through 168].

(2) The secretary of state may adopt rules to perform the duties required of the secretary of state under [sections 1 through 168], including establishing necessary fees.

Section 16. **Designation of status of nonprofit corporations.** (1) A domestic corporation must be designated as either a public benefit, mutual benefit, or religious corporation. The specific designation of a corporation is as follows:

(a) A corporation designated by its articles of incorporation as a public benefit corporation, a mutual benefit corporation, or a religious corporation is the type of corporation designated by its articles of incorporation.

(b) A corporation that is not designated by its articles of incorporation as a public benefit corporation, a mutual benefit corporation, or religious corporation is the type of corporation designated in the annual report filed in 1995.

(2) A foreign corporation must be designated as either a foreign public benefit, foreign mutual benefit, or foreign religious corporation. The specific designation of a corporation is as follows:

(a) A foreign corporation designated by its articles of incorporation as a public benefit corporation, mutual benefit corporation, or religious corporation is the type of foreign corporation designated by its articles of incorporation.

(b) A foreign corporation not designated as provided in subsection (2)(a), but designated in its application for a certificate of authority, or any amendments of the application, as a public benefit corporation, mutual benefit corporation, or religious corporation is the type of foreign corporation it designated in its application for a certificate of authority.

(c) A foreign corporation not designated as provided in subsection (2)(a) or (2)(b) is the type of corporation it designated in the annual report filed in 1995.

(3) A domestic or foreign corporation not designated as provided in subsections (1) and (2) must be designated pursuant to [section 173].

Section 17. **Private foundations.** (1) Except as otherwise determined by a court of competent jurisdiction, a corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code of 1986:

(a) shall distribute amounts for each taxable year at a time and in a manner as not to subject the corporation to tax under section 4942 of the Internal Revenue Code;

(b) may not engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(c) may not retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(d) may not make any taxable investments or expenditures as provided in sections 4944 and 4945 of the Internal Revenue Code; and

(e) may not make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code.

(2) All references in this section to sections of the Internal Revenue Code are to sections of the Internal Revenue Code of 1986, as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States.

Section 18. **Judicial relief.** (1) If for any reason it is impractical or impossible for a corporation to call or conduct a meeting of its members, delegates, or directors or to otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or [sections 1 through 168], then upon petition of a director, officer, delegate, member, or the attorney general, the state district court for the judicial district in which the registered office is located may order that a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized, in the manner the court finds fair and equitable under the circumstances.

(2) In an order issued pursuant to this section, the court shall provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws, and [sections 1 through 168], whether or not the method results in actual notice to all persons entitled to notice or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

(3) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or [sections 1 through 168].

(4) Whenever practical, an order issued pursuant to this section must limit the subject matter of meetings or other forms of consent authorized to approve items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section. However, an order under this

section may also authorize the obtaining of votes and approvals necessary for dissolution, merger, or sale of assets.

(5) A meeting or other method of obtaining the vote of members, delegates, or directors that is conducted pursuant to an order issued under this section and that complies with all the provisions of the order is for all purposes a valid meeting or vote, and has the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and [sections 1 through 168].

Section 19. **Attorney general.** (1) Notice must be given to the attorney general of the commencement of any proceeding that [sections 1 through 168] authorizes the attorney general to bring but that has been commenced by another person.

(2) Whenever a provision of [sections 1 through 168] requires that notice be given to the attorney general before or after commencing a proceeding or permits the attorney general to commence a proceeding if no proceeding has been commenced, the attorney general may take appropriate action including but not limited to seeking injunctive relief. If a proceeding has been commenced by a person other than the attorney general, the attorney general may intervene, as of right, in the proceeding.

Section 20. **Religious corporations — constitutional protections.** If the religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of [sections 1 through 168] on the same subject, the religious doctrine controls to the extent required by the United States or the Montana constitutions.

Section 21. **Incorporators.** One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

Section 22. **Articles of incorporation.** (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of [section 31];

(b) a statement that:

(i) the corporation is a public benefit corporation;

(ii) the corporation is a mutual benefit corporation; or

(iii) the corporation is a religious corporation;

(c) (i) the street address of the corporation's initial registered office and, if different, the mailing address; and

(ii) the name of its initial registered agent at that office;

(d) the name and address of each incorporator;

(e) whether or not the corporation will have members; and

(f) provisions consistent with law regarding the distribution of assets on dissolution.

(2) The articles of incorporation may set forth:

(a) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(b) the names and addresses of the individuals who are to serve as the initial directors;

(c) provisions consistent with law regarding:

(i) managing and regulating the affairs of the corporation;

(ii) defining, limiting, and regulating the powers of the corporation, its board of directors, its members, or any class of members; and

(iii) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;

(d) any provision that under [sections 1 through 168] is required or permitted to be set forth in the bylaws; and

(e) provisions eliminating or limiting the personal liability of a director to the corporation or members of the corporation for monetary damages for breach of a director's duties to the corporation and its members, provided that the provision may not eliminate or limit the liability of a director:

(i) for a breach of the director's duty of loyalty to the corporation or its members;

(ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

(iii) for a transaction from which a director derived an improper personal economic benefit; or

(iv) under [sections 92 through 94].

(3) A provision referred to in subsection (2)(e) may not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.

(4) Each incorporator and director named in the articles shall sign the articles.

(5) The articles of incorporation need not set forth any of the corporate powers enumerated in [sections 1 through 168].

Section 23. **Incorporation.** (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed by the secretary of state.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators have satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Section 24. **Liability for preincorporation transactions.** A person who purports to act as or on behalf of a corporation but who knows that there was no incorporation under [sections 1 through 168] is jointly and severally liable for all liabilities created while so acting.

Section 25. **Organization of corporation.** (1) After incorporation:

(a) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(b) if initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by [sections 1 through 168] to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in the state or out of the state in accordance with [section 85].

Section 26. **Bylaws.** (1) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

(2) The bylaws may contain any provision for regulating and managing the affairs of the corporation consistent with law or the articles of incorporation.

Section 27. **Emergency bylaws and powers.** (1) Unless the articles provide otherwise, the directors of a corporation may adopt, amend, or repeal bylaws to be effective only in an emergency as defined in subsection (4). The emergency bylaws, which are subject to amendment or repeal by the members, may provide special procedures necessary for managing the corporation during the emergency, including:

(a) how to call a meeting of the board;

(b) quorum requirements for the meeting; and

(c) designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain in effect during the emergency. The emergency bylaws are not in effect after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) binds the corporation; and

(b) may not be used to impose liability on a corporate director, officer, employee, or agent.

(4) For purposes of this section, an emergency exists if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Section 28. **Purposes.** (1) A corporation incorporated under [sections 1 through 168] has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under [sections 1 through 168] only if the incorporation under [sections 1 through 168] is not prohibited by the other statute. The corporation is subject to all limitations of the other statute.

Section 29. **General powers.** (1) Unless its articles of incorporation provide otherwise, a corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power:

(a) to sue and be sued, complain, and defend in its corporate name;

(b) to have a corporate seal, which may be altered at will, and to use it or a facsimile of the seal by impressing, affixing, or in any other manner reproducing it;

(c) to make and amend bylaws, consistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation;

(d) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;

(e) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(f) to purchase, receive, subscribe for, or otherwise acquire any other entity; to own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of any other entity; and to deal in and with shares or other interests in or obligations of any other entity;

(g) to make contracts and guaranties; to incur liabilities; to borrow money; to issue notes, bonds, and other obligations; and to secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(h) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by [section 93];

(i) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(j) to conduct its activities, locate offices, and exercise the powers granted by [sections 1 through 168] in the state or out of the state;

(k) to elect or appoint directors, officers, employees, and agents of the corporation; to define their duties; and to fix their compensation;

(l) to pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;

(m) to make donations consistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest;

(n) to impose dues, assessments, admission, and transfer fees upon its members;

(o) to establish conditions for admission of members, admit members, and issue memberships;

(p) to carry on a business; or

(q) to do all things necessary or convenient consistent with law to further the activities and affairs of the corporation.

(2) A corporation may not have or issue shares of stock.

Section 30. **Ultra vires.** (1) Except as provided in subsection (2), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act when a third party has not acquired rights. The proceeding may be brought by the attorney general, by a director, or by a member or members in a derivative proceeding.

(3) (a) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation.

(b) The proceeding may be brought:

(i) by a director;

(ii) by the corporation, directly, derivatively, or through a receiver, a trustee, or other legal representative; or

(iii) in the case of a public benefit corporation, by the attorney general.

Section 31. **Corporate name.** (1) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by [section 28] and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(b) a corporate name reserved or registered under [section 32 or 33] or Title 35, chapter 1;

(c) the fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a domestic business or nonprofit corporation that has been dissolved, but only distinguishable for a period of 120 days after the effective date of the dissolution; or

(e) any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) [Sections 1 through 168] do not control the use of fictitious names.

Section 32. **Reserved name.** (1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. Upon finding that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

Section 33. **Registered name of foreign corporation.** (1) A foreign corporation may register its corporate name, or its corporate name with any change required by [section 152], if the name is distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state; and

(b) a corporate name reserved under [section 32], Title 35, chapter 1, or registered under this section.

(2) A foreign corporation shall register its corporate name, or its corporate name with any change required by [section 152], by delivering to the secretary of state, for filing, an application:

(a) setting forth its corporate name or its corporate name with any change required by [section 152], the state or country, the date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(b) accompanied by a certificate of existence, or a similar document, from the state or country of incorporation.

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later incorporated under [sections 1 through 168] or by another foreign corporation later authorized to transact business in this state. The registration terminates when the foreign corpo-

ration is incorporated as a domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

Section 34. **Registered name and registered agent.** Each corporation shall continuously maintain in this state:

(1) a registered office with the same address as that of the registered agent; and

(2) a registered agent, who must be one of the following:

(a) an individual who resides in this state and whose office is identical to the registered office;

(b) a domestic business or nonprofit corporation whose office is identical to the registered office; or

(c) a foreign business or nonprofit corporation authorized to transact business in this state whose office is identical to the registered office.

Section 35. **Change of registered office or registered agent.** (1) A corporation may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

(a) the name of the corporation;

(b) the street address of its current registered office and, if different, the mailing address;

(c) if the current registered office is to be changed, the street address of the new registered office, and, if different, the mailing address;

(d) the name of its current registered agent;

(e) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment, either on the statement or attached to it; and

(f) that after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(2) If the street address of a registered agent's office is changed, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement that complies with the requirements of subsection (1) and that states that the corporation has been notified of the change.

Section 36. **Resignation of registered agent.** (1) A registered agent may resign as registered agent by signing and delivering to the secretary of state, for filing, the original and two copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall mail one copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office as shown in the most recent annual report filed pursuant to [section 168].

(3) The agency appointment is terminated, and the registered office discontinued, if so provided, 31 days after the date on which the statement was filed.

Section 37. **Service of process on corporation.** (1) Service of process on a corporation must be made upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

(2) The following are to be considered trustees for the corporation and its members, for the purpose of service or demand, on a corporation dissolved pursuant to [sections 34 through 57]:

(a) in the case of a dissolution, any one of those persons designated as trustees for service of process pursuant to a filing made with the secretary of state or, if no filing is made, any one of the directors or officers of the corporation listed in the annual report most recently filed with the secretary of state; or

(b) in the case of an involuntary dissolution or expiration of a corporation's term:

(i) any one of those persons designated as receiver by a court of competent jurisdiction; or

(ii) any one of the directors or officers of the corporation listed in the annual report most recently filed with the secretary of state.

Section 38. **Demand on or notice to corporation.** (1) This section applies when a demand or notice is required or permitted by law, but the demand or notice is not required to be served in accordance with the Montana Rules of Civil Procedure.

(2) A corporation's registered agent is the corporation's agent for demand or notice required or permitted by law.

(3) If a corporation has no registered agent or the agent cannot with reasonable diligence be served, the demand may be made or the corporation may be notified by certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. The demand or notice is perfected under this subsection at the earliest of:

(a) the date the corporation receives the mail;

(b) the date shown on the return receipt, if signed on behalf of the corporation; or

(c) 5 days after its deposit in the United States mail if it is mailed postpaid and correctly addressed.

Section 39. **Admission.** (1) The articles or bylaws may establish criteria or procedures for admission of members.

(2) A person may not be admitted as a member without his consent.

Section 40. **Consideration.** Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for consideration determined by the board.

Section 41. **No requirement of members.** A corporation is not required to have members.

Section 42. **Differences in rights and obligations of members.** All members have the same rights and obligations with respect to voting, dissolution, redemption, and transfer unless the articles or bylaws establish classes of membership with different rights or obligations. All members have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

Section 43. **Transfers.** (1) Except as set forth in or authorized by the articles or bylaws, a member of a mutual benefit corporation may not transfer a membership or any right arising from a membership.

(2) A member of a public benefit or religious corporation may not transfer a membership or any right arising from a membership.

(3) When transfer rights have been provided, a restriction on them is not binding on a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

Section 44. **Member's liability to third parties.** A member of a corporation is not, as a member, personally liable for the acts, debts, liabilities, or obligations of the corporation.

Section 45. **Member's liability for dues, assessments, and fees.** A member may become liable to the corporation for dues, assessments, or fees. However, an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments, or fees does not, of itself, create liability.

Section 46. **Creditor's action against member.** (1) A proceeding may not be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless further proceeding would be useless.

(2) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (1) to reach and apply unpaid amounts due the corpora-

tion. Any or all members who owe amounts to the corporation may be joined in the proceeding.

Section 47. **Resignation.** (1) A member may resign at any time.

(2) The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

Section 48. **Termination, expulsion, and suspension.** (1) A member of a public benefit corporation or mutual benefit corporation may not be expelled or suspended and membership in these corporations may not be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(2) A procedure is fair and reasonable when either:

(a) the articles or bylaws set forth a procedure that provides:

(i) not less than 15 days' prior written notice of the expulsion, suspension, or termination and the reasons for it; and

(ii) an opportunity for the member to be heard, orally or in writing, not less than 5 days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or

(b) it takes into consideration all relevant facts and circumstances.

(3) A written notice given by mail must be given by first-class or certified mail sent to the last address of the member shown on the corporation's records.

(4) A proceeding that challenges an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within 1 year after the effective date of the expulsion, suspension, or termination.

(5) A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to the expulsion or suspension.

Section 49. **Purchase of memberships.** (1) A public benefit corporation or religious corporation may not purchase any of its memberships or any right arising from membership.

(2) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws. A payment may not be made in violation of [sections 132 and 133].

Section 50. **Standing.** (1) For purposes of [sections 50 through 56], "derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in [section 56], in the right of a foreign corporation.

(2) A derivative proceeding may be commenced or maintained by a complainant who is:

(a) a director at the time of the bringing of the proceeding; or

(b) a member or members having 5% or more of the voting power or by 50 members, whichever is less. Each member must be a member at the time of the proceeding, including the time of the complained act or omission.

Section 51. **Demand.** A complainant may not commence a derivative proceeding until:

(1) a written demand has been made upon the corporation to take suitable action;

(2) 90 days have expired from the date the demand was made, unless the complainant has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period; and

(3) the complainant has notified the attorney general prior to commencing a proceeding if the proceeding involves a public benefit corporation or assets held in charitable trust by a mutual benefit corporation. Notification of the attorney general must be made by mailing the attorney general a copy of the complaint.

Section 52. **Stay of proceedings.** If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for any period the court considers appropriate.

Section 53. **Dismissal.** (1) The court shall dismiss a derivative proceeding on motion by the corporation if one of the groups specified in subsection (2) or (6) has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (6), the determination in subsection (1) must be made by:

(a) a majority vote of independent directors present at a meeting of the board of directors if independent directors constitute a quorum; or

(b) a majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not the independent directors constitute a quorum.

(3) None of the following may by itself cause a director to be considered not independent for purposes of this section:

(a) the nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) the naming of the director as a defendant in the derivative proceeding or as a defendant against whom action is demanded; or

(c) the approval by the director of the act being challenged in the derivative proceeding or demand if the act did not result in personal benefit to the director.

(4) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a complainant, the complaint must allege with particularity facts establishing either that a majority of the board of directors did not consist of independent directors at the time the determination was made or, that the requirements of subsection (1) have not been met.

(5) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation has the burden of proving that the requirements of subsection (1) have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the complainant has the burden of proving that the requirements of subsection (1) have not been met.

(6) Upon motion by the corporation, the court may appoint a panel of one or more independent persons to make a determination of whether the maintenance of the derivative proceeding is in the best interests of the corporation. In this case, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

Section 54. **Discontinuance or settlement — notice.** A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's members or a class of members, the court shall direct that notice be given to the members affected.

Section 55. **Payment of expenses.** On termination of the derivative proceeding, the court may order:

(1) the corporation to pay the complainant's reasonable expenses, including attorney fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation; or

(2) the complainant to pay any defendant's reasonable expenses, including attorney fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

Section 56. **Applicability to foreign corporations.** In a derivative proceeding in the right of a foreign corporation, the matter covered by [sections 50 through 56] is governed by the laws of the jurisdiction of incorporation of the foreign corporation, except for [sections 52, 54, and 55].

Section 57. **Delegates.** (1) A corporation may provide in its articles or bylaws for delegates who have some or all of the authority of members.

(2) The articles or bylaws may set forth provisions relating to:

(a) the characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;

(b) calling, noticing, holding, and conducting meetings of delegates; and

(c) carrying on corporate activities during and between meetings of delegates.

Section 58. **Annual and regular meetings.** (1) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(2) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(3) Annual and regular membership meetings may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual and regular meetings must be held at the corporation's principal office.

(4) At the annual meeting:

(a) the president and chief financial officer shall report on the activities and financial condition of the corporation; and

(b) the members shall consider and act upon other matters that are raised consistent with the notice and voting requirements of [sections 62 and 69(2)].

(5) At regular meetings, the members shall consider and act upon matters raised consistent with the notice and voting requirements of [sections 62 and 69(2)].

(6) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(7) If the corporation has 50 or fewer members and if permitted by the bylaws, members may participate in a meeting of the members by means of a conference telephone call or similar communication equipment through which all persons participating in the meeting can hear each other at the same time. Participation in this manner constitutes presence in person at a meeting.

Section 59. **Special meeting.** (1) A corporation with members shall hold a special meeting of members:

(a) on the call of its board or of the person authorized to do so by the articles or bylaws; or

(b) except as provided in the articles or bylaws of a religious corporation, if the holders of at least 5% of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting that describe the purpose or purposes for which it is to be held.

(2) For purposes of determining whether the 5% requirement of subsection (1) has been met, the record date is at the close of business on the 30th day before delivery of the demand or demands for a special meeting to any corporate officer.

(3) If a notice for a special meeting demanded under subsection (1)(b) is not given pursuant to [section 62] within 30 days after the date the written demand is delivered to a corporate officer, regardless of the requirements of subsection (4), a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to [section 62].

(4) Special meetings of members may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated or fixed in accordance with the bylaws, special meetings must be held at the corporation's principal office.

(5) Only those matters that are within the purpose or purposes described in the meeting notice required by [section 62] may be conducted at a special meeting of members.

Section 60. **Court-ordered meeting.** (1) The district court for the judicial district of the county where a corporation's principal office is located, or, if the principal office is not located in this state, where its registered office is located may summarily order a meeting to be held:

(a) on application of a member or other person entitled to participate in an annual or regular meeting and, in the case of a public benefit corporation, the attorney general, if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting;

(b) on application of a member or other person entitled to participate in a regular meeting and, in the case of a public benefit corporation, the attorney general, if a regular meeting is not held within 40 days after the date it was required to be held; or

(c) on application of a member who signed a demand for a special meeting valid under [section 59], a person entitled to call a special meeting and, in the case of a public benefit corporation, the attorney general, if:

(i) notice of the special meeting was not given within 30 days after the date the demand was delivered to a corporate officer; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) If the court orders a meeting, it may also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

Section 61. **Action by written consent.** (1) Unless limited or prohibited by the articles or bylaws, action required or permitted by [sections 1 through 168] to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least 80% of the voting power. The action must be evidenced by one or more written consents that describe the action taken, be signed by those members representing at least 80% of the voting power, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise determined under [section 60 or 64], the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (1).

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document filed with the secretary of state.

(4) Written notice of member approval pursuant to this section must be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section is effective 10 days after written notice is given.

Section 62. **Notice of meeting.** (1) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(2) Any notice that conforms to the requirements of subsection (3) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered. However, notice of matters referred to in subsection (3)(b) must be given as specified in subsection (3).

(3) Notice is fair and reasonable if:

(a) the corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members not less than 10 days before the meeting date or, if notice is mailed by certified mail, not less than 30 or more than 60 days before the meeting date;

(b) notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members under [sections 92, 107, 112, 119, 126, 131, 134, or 135]; and

(c) notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(4) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under [section 64], notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

(5) When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if:

(a) requested in writing to do so by a person entitled to call a special meeting; and

(b) the request is received by the secretary or president of the corporation at least 10 days before the corporation gives notice of the meeting.

Section 63. **Waiver of notice.** (1) A member may waive a notice required by [sections 1 through 168], the articles, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A member's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting unless the member, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the member objects to considering the matter when it is presented.

Section 64. **Record date — determining members entitled to notice and vote.** (1) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing a record date, the board may fix a future date as the record date. If a record date is not fixed, members are entitled to notice of the meeting:

(a) at the close of business on the business day preceding the day on which notice is given; or

(b) if notice is waived, at the close of business on the business day preceding the day on which the meeting is held.

(2) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing a record date, the board may fix a future date as the record date. If a record date is not fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(3) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing a record date, the board may fix in advance the record date. If a record date is not fixed, members are entitled to exercise the rights at the close of business on the day on which the board adopts the resolution relating to it or 60 days prior to the date of other action, whichever is later.

(4) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of members occurs.

(5) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than 70 days after the record date for determining members entitled to notice of the original meeting.

(6) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

Section 65. **Action by written ballot.** (1) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A written ballot must:

(a) set forth each proposed action; and

(b) provide an opportunity to vote for or against each proposed action.

(3) Approval by written ballot pursuant to this section is valid only when:

(a) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and

(b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All solicitations for votes by written ballot must:

(a) indicate the number of responses needed to meet the quorum requirements;

(b) state the percentage of approvals necessary to approve each matter other than election of directors; and

(c) specify the time by which a ballot must be received by the corporation in order to be counted.

(5) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

Section 66. **Members' list for meeting.** (1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare, on a current basis through the time of the membership meeting, a list of members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of members.

(2) The list of members must be available:

(a) for inspection by any member for the purpose of communication with other members concerning the meeting, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting; and

(b) at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or a member's attorney is entitled, on written demand, to inspect and, subject to the limitations of [sections 162(3) and 165] to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting or to copy the list as permitted by subsection (2), the district court for the judicial district of the county where a corporation's principal office or, if the principal office is not located in this state, where its registered office is located, on application of the member, may summarily order the inspection or copying at the corporation's expense, may postpone the meeting for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

(5) Unless a written demand to inspect and copy a membership list has been made under subsection (2) prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(6) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

Section 67. **Voting entitlement generally.** (1) Unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members.

(2) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, their acts with respect to voting have the following effect:

(a) if only one votes, the act binds all; and

(b) if more than one votes, the vote is divided on a pro rata basis.

Section 68. **Quorum requirements.** (1) Unless [sections 1 through 168], the articles, or bylaws provide for a higher or lower quorum, 10% of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.

(2) A bylaw amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.

(3) A bylaw amendment to increase the quorum required for any member action must be approved by the members.

(4) Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

Section 69. **Voting requirements.** (1) Unless [sections 1 through 168], the articles, or bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting, if they are a majority of the required quorum, is the act of the members.

(2) A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members.

Section 70. **Proxies.** (1) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form, either personally or by an attorney-in-fact.

(2) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment

is valid for 11 months unless a different period is expressly provided in the appointment form. However, a proxy is not valid for more than 3 years from its date of execution.

(3) An appointment of a proxy is revocable by the member.

(4) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(5) Appointment of a proxy is revoked by the person appointing the proxy:

(a) attending any meeting and voting in person; or

(b) signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(6) Subject to [section 73] and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member who made the appointment.

Section 71. **Cumulative voting for directors — exception.** (1) If the articles or bylaws provide for cumulative voting by members, members may so vote by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote and casting the product for a single candidate or distributing the product among two or more candidates.

(2) Cumulative voting is not authorized at a particular meeting unless:

(a) the meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(b) a member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes. If one member gives this notice, all other members participating in the election are entitled to cumulate their votes without giving further notice.

(3) A director elected by cumulative voting may be removed by the members without cause if the requirements of [section 80] are met unless the votes cast against removal or not consenting in writing to removal would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast or, if the action is taken by written ballot, all memberships entitled to vote were voted, and if the entire number of directors authorized at the time of the director's most recent election were then being elected.

(4) Members may not cumulatively vote if the directors and members are identical.

Section 72. **Other methods of electing directors.** A corporation may provide in its articles or bylaws for election of directors by members or delegates:

(1) on the basis of chapter or other organizational unit;

(2) by region or other geographic unit;

(3) by preferential voting; or

(4) by any other reasonable method.

Section 73. **Corporation's acceptance of votes.** (1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(a) the member is an entity and the name signed purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(b) the name signed purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) two or more persons hold the membership as cotenants or fiduciaries and:

(i) the name signed purports to be the name of at least one of the coholders; and

(ii) the person signing appears to be acting on behalf of all the coholders; or

(d) in the case of a mutual benefit corporation:

(i) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(ii) the name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(3) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

Section 74. **Voting agreements.** (1) Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose. Voting agreements may be valid for a period of up to 10 years. For public benefit corporations, voting agreements must have a reasonable purpose consistent with the corporation's public or charitable purposes.

(2) A voting agreement created under this section is specifically enforceable.

Section 75. **Requirement for and duties of board.** (1) Each corporation must have a board of directors.

(2) Except as provided in [sections 1 through 168] or subsection (3), all corporate powers are exercised by or under the authority of the board, and the affairs of the corporation managed under the direction of its board.

(3) The articles may authorize a person or persons to exercise some or all of the powers that would otherwise be exercised by a board. To the extent authorized, a person authorized under this subsection has the duties and responsibilities of the directors and the directors must be relieved from the duties and responsibilities to that extent.

Section 76. **Qualifications and numbers of directors.** (1) All directors must be individuals. The articles or bylaws may prescribe other qualifications for directors.

(2) A board of directors must consist of three or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.

(3) The number of directors may be increased or decreased, but to not fewer than three, from time to time by amendment to or in the manner prescribed in the articles or bylaws.

Section 77. **Election, designation and appointment of directors.** (1) If the corporation has members, all the directors except the initial directors must be elected at the first annual meeting of members and at each annual meeting thereafter unless the articles or bylaws provide some other time or method of election or provide that some of the directors are appointed by some other person or are designated.

(2) If the corporation does not have members, all the directors except the initial directors must be elected, appointed, or designated as provided in the articles or bylaws. If a method of designation or appointment is not set forth in the articles or bylaws, the directors, other than the initial directors, must be elected by the board.

Section 78. **Terms of directors generally — staggered terms.** (1) The articles or bylaws must specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed 5 years. In the absence of any term specified in the articles or bylaws, the term of each director is 1 year. Directors may be elected for successive terms.

(2) A decrease in the number of directors or term of office does not shorten an incumbent director's term.

(3) Except as provided in the articles or bylaws:

(a) the term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(b) the term of a director filling any other vacancy expires at the end of the unexpired term that the director is filling.

(4) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed and qualifies or until there is a decrease in the number of directors.

(5) The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the groups need not be uniform.

Section 79. **Resignation of directors.** (1) A director may resign at any time by delivering written notice to the board of directors, its presiding officer, the president, or the secretary.

(2) A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

Section 80. **Removal of directors elected by members or directors.** (1) The members may remove one or more directors elected by them without cause.

(2) If a director is elected by a class, chapter, or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.

(3) Except as provided in subsection (9), a director may be removed under subsection (1) or (2) only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(4) If cumulative voting is authorized, a director may not be removed:

(a) if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal; or

(b) if the director was elected by a class, chapter, unit, or grouping of members and the number of votes of that class, chapter, unit, or grouping of members sufficient to elect the director under cumulative voting is voted against the director's removal.

(5) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose or one of the purposes of the meeting is removal of the director.

(6) In computing whether a director is protected from removal under subsections (2) through (4), it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(7) An entire board of directors may be removed under subsections (1) through (5).

(8) A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or by a greater number as is set forth in the articles or bylaws. However, a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.

(9) If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

(10) The articles or bylaws of a religious corporation may:

(a) limit the application of this section; and

(b) set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members of the board.

Section 81. **Removal of designated or appointed directors.** (1) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(2) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director. The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary. The removal of an appointed director is effective when the notice is effective unless the notice specifies a future effective date.

Section 82. **Removal of directors by judicial proceeding.** (1) The district court for the judicial district of the county where a corporation's principal office is located or, if the principal office is not located in the state, the county where its registered office is located may remove any director of the corporation from office in a proceeding commenced by the corporation, by its members holding at least 10% of the voting power of any class, or by the attorney general in the case of a public benefit corporation, if the court finds that:

(a) (i) the director engaged in fraudulent or dishonest conduct or in gross abuse of authority or discretion, with respect to the corporation; or

(ii) a final judgment has been entered finding that the director has violated a duty set forth in [sections 91 through 94]; and

(b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

(3) If members or the attorney general commence a proceeding under subsection (1), the corporation must be made a party defendant.

(4) If a public benefit corporation or its members commence a proceeding under subsection (1), they shall give the attorney general written notice of the proceeding.

(5) The articles or bylaws of a religious corporation may limit or prohibit the application of this section.

Section 83. **Vacancy on board.** (1) Unless the articles or bylaws provide otherwise and except as provided in subsections (2) and (3), if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) (i) the members, if any, may fill the vacancy; or

(ii) if the vacant office was held by a director elected by a class, chapter, organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy if it is filled by the members;

(b) the board of directors may fill the vacancy; or

(c) if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(3) If a vacant office was held by a designated director, the vacancy must be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(4) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under [section 79(2)] or otherwise, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

Section 84. **Compensation of directors.** Unless the articles or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Section 85. **Regular and special meetings.** (1) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

(2) A board of directors may hold regular or special meetings in the state or out of the state.

(3) Unless the articles or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by or to conduct the meeting through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

Section 86. **Action without meeting.** (1) Unless the articles or bylaws provide otherwise, action required or permitted by [sections 1 through 168] to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, be signed by each director, and be included in the minutes filed with the corporate records reflecting the action taken.

(2) Action taken under this section is effective when the last director signs the consent unless the consent specifies a different effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document.

Section 87. **Call and notice of meetings.** (1) Unless the articles or bylaws provide otherwise or unless the provisions of subsection (3) apply, regular meetings of the board may be held without notice.

(2) Unless the articles, bylaws, or subsection (3) provide otherwise, regular meetings of the board must be preceded by at least 2 days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

(3) In a corporation without members, any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members is not valid unless each director is given at least 7 days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to [section 88].

(4) Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president, or 20% of the directors then in office may call and give notice of a meeting of the board.

Section 88. **Waiver of notice.** (1) A director may at any time waive a notice required by [sections 1 through 168], the articles, or bylaws. Except as provided in subsection (2), the waiver must be in writing, be signed by the director entitled to the notice, and be filed with the minutes or the corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with [sections 1 through 168], the articles, or bylaws, objects to lack of notice and does not vote for or assent to that action.

Section 89. **Quorum and voting.** (1) Except as otherwise provided in [sections 1 through 168], the articles, or bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. In no event may the articles or bylaws authorize a quorum of fewer than the greater of one-third of the number of directors in office or two directors.

(2) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless [sections 1 through 168], the articles, or bylaws require the vote of a greater number of directors.

Section 90. **Committees of the board.** (1) Unless prohibited or limited by the articles or bylaws, a board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee must have two or more directors who serve at the pleasure of the board.

(2) The creation of a committee and appointment of members to it must be approved by the greater of:

(a) a majority of all the directors in office when the action is taken; or

(b) the number of directors required by the articles or bylaws to take action under [section 89].

(3) [Sections 85 through 89], which govern meetings, action without meetings, notice, waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members.

(4) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under [section 75].

(5) A committee of the board may not:

(a) authorize distributions;

(b) approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets;

(c) elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; or

(d) adopt, amend, or repeal the articles or bylaws.

(6) The creation of, delegation of authority to, or action by a committee does not by itself constitute compliance by a director with the standards of conduct described in [section 91].

Section 91. **General standards for directors.** (1) A director shall discharge his duties as a director, including his duties as a member of a committee:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons with regard to matters the director reasonably believes are within the person's professional or expert competence;

(c) a committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(d) in the case of religious corporations, religious authorities, ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director if the director acted in compliance with this section.

(5) A director may not be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including but not limited to property that may be subject to restrictions imposed by the donor or transferor of the property.

(6) [Sections 1 through 168] do not modify any limitation of liability of directors provided by Title 27.

Section 92. **Director conflict of interest.** (1) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsections (2) or (3).

(2) A transaction in which a director of a public benefit corporation or religious corporation has a conflict of interest may be approved:

(a) in advance by the vote of the board of directors or a committee of the board if:

(i) the material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and

(ii) the directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation; or

(b) before or after it is consummated by obtaining approval of:

(i) the attorney general; or

(ii) a state district court in an action in which the attorney general is joined as a party.

(3) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:

(a) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction; or

(b) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(4) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:

(a) another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or

(b) another entity of which the director is a director, officer, or trustee is a party to the transaction.

(5) For purposes of subsections (2) and (3), a conflict of interest transaction is authorized, approved, or ratified, if it receives the affirmative vote of a majority of the directors on the board or on the committee who have no direct or indirect interest in the transaction. However, a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of or a vote cast by a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsections (2)(a) or (3)(a) if the transaction is otherwise approved as provided in subsection (2) or (3).

(6) For purposes of subsection (3)(b), a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction and votes cast by or voted under the control of an entity described in subsection (4)(a) may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (3)(b). The vote of these members, however, is counted in determining whether the transaction is approved under other sections of [sections 1 through 168]. A majority of the voting power, whether or not present, that is entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(7) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

Section 93. **Loans to or guaranties for directors and officers.** (1) A corporation may not lend money to or guarantee the obligation of a director or officer of the corporation.

(2) The fact that a loan or guaranty is made in violation of this section does not affect the borrower's liability on the loan.

Section 94. **Liability for unlawful distributions.** (1) Unless a director complies with the applicable standards of conduct described in [section 91], a director who votes for or assents to a distribution made in violation of [sections 1 through 168] is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating [sections 1 through 168].

(2) A director held liable for an unlawful distribution under subsection (1) is entitled to contribution:

(a) from every other director who voted for or assented to the distribution and who did not comply with the applicable standards of conduct described in [section 91]; and

(b) from each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of [sections 1 through 168].

Section 95. **Required officers.** (1) Unless otherwise provided in the articles or bylaws, a corporation has a president, a secretary, a treasurer, and any other officers appointed by the board.

(2) The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(3) A person may simultaneously hold more than one office in a corporation.

Section 96. **Duties and authority of officers.** Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.

Section 97. **Standards of conduct for officers.** (1) An officer with discretionary authority shall discharge his duties under that authority:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

(2) In discharging his duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, pubic accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or

(c) in the case of religious corporations, religious authorities, ministers, priests, rabbis, or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and who the officer believes to be reliable and competent in the matters presented.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) An officer is not liable to the corporation, any member, or any other person for an action taken or not taken as an officer if the officer acted in compliance with this section.

(5) [Sections 75 through 109] do not modify any limitation of liability of officers provided by Title 27.

Section 98. **Resignation and removal of officers.** (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

(2) A board may remove any officer at any time, with or without cause.

Section 99. **Contract rights of officers.** (1) The appointment of an officer does not of itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Section 100. **Officers' authority to execute documents.** A contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by a lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers did not have authority to execute the contract or other instrument if it is signed by:

(1) the presiding officer of the board and the president; or

(2) one person from each of the following:

(a) the presiding officer of the board or the president; and

(b) a vice president, the secretary, treasurer, or executive director.

Section 101. **Definitions.** As used in [sections 101 through 109], the following definitions apply:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) (a) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or the participants in or beneficiaries of the plan.

(b) Director includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include attorney fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax assessed with respect to an employee benefit plan, or reasonable expenses actually incurred with respect to a proceeding.

(5) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; or

(ii) when used with respect to an individual other than a director, as contemplated in [section 107], the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

(b) Official capacity does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

Section 102. **Authority to indemnify.** (1) Except as provided in subsection (4), an individual made a party to a proceeding because the individual is or was a director may be indemnified against liability incurred in the proceeding if the individual:

(a) conducted himself in good faith;

(b) reasonably believed:

(i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

(ii) in all other cases, that his conduct was at least not opposed to its best interests; and

(c) in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (1)(b)(ii).

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, a determination that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) in connection with any other proceeding that charges improper personal benefit to the director, whether or not involving action in his official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

Section 103. **Mandatory indemnification.** Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he is or was a director of the corporation, against reasonable expenses actually incurred by the director in connection with the proceeding.

Section 104. **Advance for expenses.** (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) the director furnishes the corporation a written affirmation of his good faith belief that he has met the standard of conduct described in [section 102];

(b) the director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under [sections 101 through 109].

(2) The undertaking required by subsection (1)(b) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section must be made in the manner specified in [section 106].

Section 105. **Court-ordered indemnification.** Unless limited by a corporation's articles of incorporation, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the amount it considers proper if it determines that the director:

(1) is entitled to mandatory indemnification under [section 103], in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in [section 102(1)] or was adjudged liable as described in [section 102(4)]. If the director was adjudged liable, indemnification is limited to reasonable expenses incurred.

Section 106. **Determination and authorization of indemnification.** (1) A corporation may not indemnify a director under [section 102] unless it is authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in [section 102].

(2) The determination must be made:

(a) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) if a quorum cannot be obtained under subsection (2)(a), by majority vote of a committee designated by the board of directors consisting solely of two or more directors not at the time parties to the proceeding;

(c) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subsection (2)(a) or (2)(b); or

(ii) if a quorum of the board cannot be obtained under subsection (2)(a) and a committee cannot be designated under subsection (2)(b), selected by majority vote of the full board, in which selected directors who are parties may participate; or

(d) by the members of a mutual benefit corporation. However, directors who are at the time parties to the proceeding may not vote on the determination.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination is

made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses must be made by those entitled under subsection (2)(c) to select counsel.

(4) A director of a public benefit corporation may not be indemnified until 20 days after the effective date of written notice to the attorney general of the proposed indemnification.

Section 107. **Indemnification of officers, employees, and agents.** Unless limited by a corporation's articles of incorporation:

(1) an officer of the corporation who is not a director is entitled to mandatory indemnification under [section 103] and is entitled to apply for court-ordered indemnification under [section 105] to the same extent as a director;

(2) the corporation may indemnify and advance expenses under [sections 101 through 109] to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) a corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

Section 108. **Insurance.** A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the person against the same liability under [section 102 or 103].

Section 109. **Application.** (1) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, its bylaws, a resolution of its members or board of directors, a contract, or other instrument is valid only if and to the extent the provision is consistent with [sections 101 through 109]. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(2) [Sections 101 through 109] do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

Section 110. **Authority to amend.** A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

Section 111. **Amendment by directors.** (1) Unless the articles provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles without member approval:

(a) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(b) to delete the names and addresses of the initial directors;

(c) to delete the name and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state;

(d) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd." for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution to the name; or

(e) to make any other change expressly permitted by [sections 1 through 168] to be made by action of the board of directors.

(2) If a corporation has no members, its incorporators, until directors have been chosen, and later its board of directors may adopt one or more amendments to the corporation's articles subject to any approval required pursuant to [section 121]. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice must be in accordance with [section 87(3)]. The notice must also state that the purpose or one of the purposes of the meeting is to consider a proposed amendment to the articles and must contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

Section 112. **Amendment by directors and members.** (1) Unless [sections 1 through 168], the articles, the bylaws, the members acting pursuant to subsection (2), or the board of directors acting pursuant to subsection (3) require a greater vote or voting by class to be adopted, an amendment to a corporation's articles must be approved:

(a) by the board if the corporation is a public benefit corporation or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(b) except as provided in [section 111(1)], by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by [section 121].

(2) The members may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(3) If the board initiates an amendment to the articles or if board approval is required by subsection (1)(a) to adopt an amendment to the articles, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

(4) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with [section 62]. The notice must state that the purpose or one of the purposes of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy or summary of the amendment.

(5) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the amendment.

Section 113. **Class voting by members on amendments.** (1) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would change the rights of that class as to voting in a manner different from the manner in which the amendment affects another class or members of another class.

(2) The members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would:

(a) affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different from the manner in which the amendment would affect another class;

(b) change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;

(c) increase or decrease the number of memberships authorized for that class;

(d) increase the number of memberships authorized for another class;

(e) cause an exchange, reclassification, or termination of the memberships of that class; or

(f) authorize a new class of memberships.

(3) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the articles only if a class vote is provided for in the articles or bylaws.

(4) If a class is to be divided into two or more classes as a result of an amendment to the articles of a public benefit corporation or mutual benefit corporation, the amendment must be approved by the members of each class that would be created by the amendment.

(5) Except as provided in the articles or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of a corporation, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(6) A class of members of a public benefit corporation or mutual benefit corporation is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

Section 114. **Articles of amendment.** A corporation that amends its articles shall deliver to the secretary of state, for filing, articles of amendment setting forth:

(1) the name of the corporation;

(2) the text of each amendment adopted;

(3) the date of each amendment's adoption;

(4) if approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators;

(5) if approval by members was required:

(a) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment; and

(b) (i) either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each class; and

(ii) a statement that the number cast for the amendment by each class was sufficient for approval by that class; and

(6) if approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to [section 121], a statement that the approval was obtained.

Section 115. **Restated articles of incorporation.** (1) A corporation's board of directors may restate its articles of incorporation at any time, with or without approval by members or any other person.

(2) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring approval by

the members or any other person, it must be adopted as provided in [section 112].

(3) If the restatement includes an amendment requiring approval by members, the board must submit the restatement to the members for their approval.

(4) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in accordance with [section 62]. The notice must also state that the purpose or one of the purposes of the meeting is to consider the proposed restatement and must contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change that the restatement would make in the articles.

(5) If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval must contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(6) A restatement requiring approval by the members must be approved by the same vote as an amendment to articles under [section 112].

(7) If the restatement includes an amendment that requires approval pursuant to [section 121], the board must submit the restatement for this approval.

(8) A corporation that restates its articles shall deliver to the secretary of state, for filing, articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation, together with a certificate setting forth:

(a) whether the restatement contains an amendment to the articles requiring approval by the members or any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement; or

(b) if the restatement contains an amendment to the articles requiring approval by the members, the information required by [section 114]; and

(c) if the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to [section 121], a statement that the approval was obtained.

(9) Adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(10) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (8).

Section 116. **Amendment pursuant to judicial reorganization.** (1) A corporation's articles may be amended without board approval, approval by the members, or approval required pursuant to [section 121] if necessary to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles, after amendment, contain only provisions required or permitted by [section 22].

(2) The individual or individuals designated by the court shall deliver to the secretary of state, for filing, articles of amendment setting forth:

(a) the name of the corporation;

(b) the text of each amendment approved by the court;

(c) the date of the court's order or decree approving the articles of amendment;

(d) the title of the reorganization proceeding in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the proceeding under federal statute.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Section 117. **Effect of amendment and restatement.** An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation, or any property held by it by virtue of any trust upon which the property is held by the corporation, or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

Section 118. **Amendment by directors.** If a corporation does not have members, its incorporators, until directors have been chosen, and later its board of directors may adopt one or more amendments to the corporation's bylaws subject to any approval required pursuant to [section 121]. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice must be in accordance with [section 87(3)]. The notice must also state that the purpose or one of the purposes of the meeting is to consider a proposed amendment to the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

Section 119. **Amendment by directors and members.** (1) Unless [sections 1 through 168], the articles, the bylaws, the members acting pursuant to subsection (2), or the board of directors acting pursuant to subsection (3) require a greater vote or voting by class to be adopted, an amendment to a corporation's bylaws must be approved:

(a) by the board if the corporation is a public benefit corporation or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(b) by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; or

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by [section 121].

(2) The members may condition the amendment's adoption on its receipt of a higher percentage of affirmative votes or on any other basis.

(3) If the board initiates an amendment to the bylaws or if board approval is required by subsection (1)(a) to adopt an amendment to the bylaws, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with [section 62]. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy or summary of the amendment.

(5) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the amendment.

Section 120. **Class voting by members on amendments.** (1) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would change the rights of that class as to voting in a manner different from the manner in which the amendment would affect another class or members of another class.

(2) Members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would:

(a) affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different from the manner in which the amendment would affect another class;

(b) change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;

(c) increase or decrease the number of memberships authorized for that class;

(d) increase the number of memberships authorized for another class;

(e) cause an exchange, reclassification, or termination of all or part of the memberships of that class; or

(f) authorize a new class of memberships.

(3) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the bylaws only if a class vote is provided for in the articles or bylaws.

(4) If a class is to be divided into two or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment.

(5) If a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(6) A class of members is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

Section 121. **Approval by third persons.** The articles may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such an article provision may only be amended with the approval in writing of the person or persons.

Section 122. **Amendment terminating members or redeeming or canceling memberships.** (1) Any amendment to the articles or bylaws of a public benefit corporation or mutual benefit corporation that would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships must meet the requirements of [sections 1 through 168] and this section.

(2) Before adopting a resolution proposing an amendment described in subsection (1), the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.

(3) After adopting a resolution proposing an amendment described in subsection (1), the notice to members proposing the amendment must include one statement of up to 500 words opposing the proposed amendment if the statement is submitted by any five members or members having 3% or more of the voting power, whichever is less, not later than 20 days after the board has voted to submit the amendment to the members for their approval. In public benefit corporations, the production and mailing costs must be paid by the corporation.

(4) Any amendment under this section must be approved by the members by two-thirds of the votes cast by each class.

(5) The provisions of [section 48] do not apply to any amendment that meets the requirements of [sections 1 through 168] and this section.

Section 123. **Approval of plan of merger.** (1) Subject to the limitations set forth in [section 124], profit corporations may merge into a business or nonprofit corporation if the plan of merger is approved as provided in [section 125].

(2) The plan of merger must set forth:

(a) the name of each corporation planning to merge and the name of the surviving corporation into which each plans to merge;

(b) the terms and conditions of the planned merger;

(c) the manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the surviving corporation; and

(d) if the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations, or securities of the surviving or any other corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) any amendments to the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger; and

(b) other provisions relating to the planned merger.

Section 124. **Limitations on mergers by public benefit or religious corporations.** (1) Without the prior approval of the district court for the judicial district in which the corporation's registered office is located, in a proceeding of which the attorney general has been given written notice, a public benefit corporation or religious corporation may merge only with:

(a) a public benefit corporation or religious corporation;

(b) a foreign corporation that would qualify under [sections 1 through 168] as a public benefit corporation or religious corporation;

(c) a wholly owned foreign or domestic business or mutual benefit corporation, if the public benefit corporation or religious corporation is the surviving corporation and continues to be a public benefit corporation or religious corporation after the merger; or

(d) a business or mutual benefit corporation, provided that:

(i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including good will, of the public benefit corporation or the fair market value of the public benefit corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under [section 139 (1)(e) and (f)] had it dissolved;

(ii) it shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance in case of merger, in accordance with the condition; and

(iii) the merger is approved by a majority of directors of the public benefit corporation or religious corporation who are not and will not become members or shareholders in or officers, employees, agents, or consultants of the surviving corporation.

(2) At least 20 days before consummation of any merger of a public benefit corporation or a religious corporation pursuant to subsection (1)(d), notice, including a copy of the proposed plan of merger, must be delivered to the attorney general.

(3) Without the prior written consent of the attorney general or of the district court in a proceeding in which the attorney general has been given notice, a member of a public benefit corporation or religious corporation may not receive or keep anything as a result of a merger other than a membership in the surviving public benefit corporation or religious corporation. The court shall approve the transaction if it is in the public interest.

Section 125. **Action on plan by board, members, and third persons.** (1) Unless [sections 1 through 168], the articles, the bylaws, or the board of directors or members, acting pursuant to subsection (3), require a greater vote or voting by class to be adopted, a plan of merger must be approved:

(a) by the board;

(b) by the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by [section 121], for an amendment to the articles or bylaws.

(2) If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice, in accordance with [section 87(3)], of any directors' meeting at which approval is to be obtained. The notice must also state that the purpose or one of the purposes of the meeting is to consider the proposed merger.

(3) The board may condition its submission of the proposed merger and the members may condition their approval of the merger on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of

the proposed membership meeting in accordance with [section 62]. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation must include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation must include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(5) If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation must include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation must include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(6) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under [section 113 or 120]. The plan is approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(7) After a merger is adopted and at any time before articles of merger are filed, the planned merger may be abandoned, subject to any contractual rights, without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if no procedure is set forth, in the manner determined by the board of directors.

Section 126. **Articles of merger.** After a plan of merger is approved by the board of directors and, if required by [section 125], by the members and any other persons, the surviving or acquiring corporation shall deliver to the secretary of state, for filing, articles of merger setting forth:

(1) the plan of merger;

(2) if approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(3) if approval by members was required:

(a) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(b) (i) either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class; and

(ii) a statement that the number cast for the plan by each class was sufficient for approval by that class;

(4) if approval of the plan by some person or persons other than the members or the board is required pursuant to [section 125(1)(c)], a statement that the approval was obtained.

Section 127. **Effect of merger.** When a merger takes effect:

(1) every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(2) the title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment, subject to any conditions to which the property was subject prior to the merger;

(3) the surviving corporation has all liabilities and obligations of each corporation party to the merger;

(4) a proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and

(5) the articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

Section 128. **Merger with foreign corporation.** (1) Except as provided in [section 124], one or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(a) the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger; or

(b) the foreign corporation complies with [section 126] if it is the surviving corporation of the merger; and

(c) each domestic nonprofit corporation complies with the applicable provisions of [sections 123 through 125] and, if it is the surviving corporation of the merger, with the provisions of [section 126].

(2) When the merger takes effect, the surviving foreign business or nonprofit corporation is considered to have irrevocably appointed the secretary of state as its agent for service of process in any proceeding brought against it.

Section 129. **Bequests, devises, and gifts.** A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a constituent corporation and that takes effect or remains payable after the merger inures to the surviving corporation unless the will or other instrument specifically provides otherwise.

Section 130. **Sale of assets in regular course of activities — mortgage of assets.** (1) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(a) sell, lease, exchange, or otherwise dispose of all or substantially all of its property in the usual and regular course of its activities; or

(b) mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property, whether or not in the usual and regular course of its activities.

(2) Unless the articles require it, approval of the members or any other person of a transaction described in subsection (1) is not required.

(3) Unless the articles provide otherwise, approval of a transaction described in subsection (1)(a) is required by a vote of a majority of the directors in office at the time the transaction is approved.

Section 131. **Sale of assets other than in regular course of activities.** (1) A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property, which may include the good will, other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is approved as required by subsection (2).

(2) Unless [sections 1 through 168], the articles, bylaws, or the board of directors or members, acting pursuant to subsection (4), require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

(a) by the board;

(b) by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by [section 121], for an amendment to the articles or bylaws.

(3) If the corporation does not have members, the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice, in accordance with [section 87(3)], of any directors' meeting at which approval is to be obtained. The notice must also state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the

corporation and must contain or be accompanied by a copy or summary of a description of the transaction.

(4) The board may condition its submission of the proposed transaction and the members may condition their approval of the transaction on receipt of a higher percentage of affirmative votes or on any other basis.

(5) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with [section 62]. The notice must state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and must contain or be accompanied by a copy or summary of a description of the transaction.

(6) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of a description of the transaction.

(7) A public benefit corporation or religious corporation must give written notice to the attorney general 20 days before it sells, leases, exchanges, or otherwise disposes of all or substantially all of its property if the transaction is not in the usual and regular course of its activities unless the attorney general has given the corporation a written waiver of this subsection.

(8) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if no procedure is set forth, in the manner determined by the board of directors.

Section 132. **Prohibited distributions.** Except as authorized by [section 133], a corporation may not make any distributions.

Section 133. **Authorized distributions.** (1) A mutual benefit corporation may purchase its memberships if after the purchase is completed:

(a) the corporation would be able to pay its debts as they become due in the usual course of its activities; and

(b) the corporation's total assets would at least equal the sum of its total liabilities.

(2) Corporations may make distributions upon dissolution in conformity with [sections 134 through 146].

Section 134. **Dissolution by incorporators or directors and third persons.** (1) A majority of the incorporators or directors of a corporation that does not have members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the secretary of state articles of dissolution.

(2) The corporation shall give notice of any meeting at which dissolution will be approved. The notice must be in accordance with [section 87(3)]. The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolution of the corporation.

(3) In approving dissolution, the incorporators or directors shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

Section 135. **Dissolution by directors, members, and third persons.** (1) Unless [sections 1 through 168], the articles, bylaws, or the board of directors or members, acting pursuant to subsection (1)(c), require a greater vote or voting by class, dissolution is authorized if it is approved:

(a) by the board;

(b) by the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing, by any person or persons whose approval is required by a provision of the articles, as authorized by [section 121], for an amendment to the articles or bylaws.

(2) If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which approval is to be obtained in accordance with [section 87(3)]. The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(3) The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with [section 62]. The notice must state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation and must contain or be accompanied by a copy or summary of the plan of dissolution.

(5) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the plan of dissolution.

(6) The plan of dissolution must indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

Section 136. **Notices to the attorney general.** (1) A public benefit corporation or religious corporation shall give the attorney general written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the secretary of state. The notice must include a copy or summary of the plan of dissolution.

(2) Assets may not be transferred or conveyed by a public benefit corporation or religious corporation as part of the dissolution process until 20 days after it has given the written notice required by subsection (1) to the attorney general or until the attorney general has consented in writing to the dissolution or indicated in writing that he will not take action in respect to the transfer or conveyance, whichever is earlier.

(3) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the attorney general a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list must indicate the address of each person, other than creditors, who received assets and indicate what assets each received.

Section 137. **Articles of dissolution.** (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state articles of dissolution setting forth:

(a) the name of the corporation;

(b) the date dissolution was authorized;

(c) a statement that dissolution was approved by a sufficient vote of the board;

(d) if approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;

(e) if approval by members was required:

(i) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution; and

(ii) (A) either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class; and

(B) a statement that the number cast for dissolution by each class was sufficient for approval by that class;

(f) if approval of dissolution by some person or persons other than the members, the board, or the incorporators is required pursuant to [section 135(1)(c)], a statement that the approval was obtained; and

(g) if the corporation is a public benefit or religious corporation, that the notice to the attorney general required by [section 136(1)] has been given.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

Section 138. **Revocation of dissolution.** (1) A corporation may revoke its dissolution within 120 days of its effective date.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state, for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) if member or third person action was required to revoke the dissolution, the information required by [sections 137(1)(e) and (1)(f)].

(4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation may resume carrying on its activities as if dissolution had never occurred.

Section 139. **Effect of dissolution.** (1) A dissolved corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

(a) preserving and protecting its assets and minimizing its liabilities;

(b) discharging or making provision for discharging its liabilities and obligations;

(c) disposing of its properties that will not be distributed in kind;

(d) returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance in accordance with the condition;

(e) transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(f) if the corporation is a public benefit corporation or religious corporation and provision has not been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets:

(i) to one or more persons described in section 501(c)(3) of the Internal Revenue Code; or

(ii) if the dissolved corporation is not described in section 501(c)(3) of the Internal Revenue Code, to one or more public benefit corporations or religious corporations;

(g) if the corporation is a mutual benefit corporation and provision has not been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it does not have members, to those persons whom the corporation holds itself out as benefitting or serving; and

(h) doing every other act necessary to wind up and liquidate its assets and affairs.

(2) Dissolution of a corporation does not:

(a) transfer title to the corporation's property;

(b) subject its directors or officers to standards of conduct different from those prescribed in [sections 75 through 109];

(c) change quorum or voting requirements for its board or members; change provisions for selection, resignation, or removal of its directors or officers, or both; or change provisions for amending its bylaws;

(d) prevent commencement of a proceeding by or against the corporation in its corporate name;

(e) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(f) terminate the authority of the registered agent.

Section 140. **Known claims against dissolved corporation.** (1) A dissolved corporation shall dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved corporation by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Section 141. **Unknown claims against dissolved corporations.** (1) The dissolution of a corporation, including by the expiration of its term, does not take away or impair any remedy available to or against the corporation, its officers, directors, or members for any claim or right, whether or not the claim or right existed or accrued prior to the dissolution. Any action or proceeding by or against the corporation referred to in this subsection may be prosecuted or defended by the corporation in its corporate name. Members, directors, and officers may take corporate or other action as is appropriate to protect a remedy, right, or claim.

(2) A claim may be enforced under this section or [section 140]:

(a) against the dissolved corporation, to the extent of its undistributed assets; or

(b) if the assets have been distributed in liquidation, against a member of the dissolved corporation to the extent of the member's pro rata share of the claim or the corporate assets distributed to him in liquidation, whichever is less. However, a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

(3) Subsections (1) and (2) apply to a foreign corporation transacting business in this state, and its members, for any claims otherwise arising or accruing under Montana law.

Section 142. **Grounds for judicial dissolution.** (1) The district court may dissolve a corporation:

(a) in a proceeding by the attorney general if it is established that:

(i) the corporation obtained its articles of incorporation through fraud;

(ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(iii) the corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or

(iv) the corporation is a public benefit corporation and is no longer able to carry out its purposes;

(b) in a proceeding by 50 members or members holding 5% of the voting power, whichever is less, or by a director or any person specified in the articles, except as provided in the articles or bylaws of a religious corporation, if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs and the members, if any, are unable to breach the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have or would otherwise have expired;

(iv) the corporate assets are being misapplied or wasted; or

(v) the corporation is a public benefit corporation or religious corporation and is no longer able to carry out its purposes;

(c) in a proceeding by a creditor if it is established that:

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(d) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(2) Prior to dissolving a corporation, the court shall consider whether:

(a) there are reasonable alternatives to dissolution;

(b) dissolution is in the public interest, if the corporation is a public benefit corporation; and

(c) dissolution is the best way of protecting the interests of members if the corporation is a mutual benefit corporation.

Section 143. **Procedure for judicial dissolution.** (1) Venue for a proceeding by the attorney general to dissolve a corporation lies in the district court for the first judicial district. Venue for a proceeding brought by any other party named in [section 142] lies in the judicial district for the county where a corporation's principal office or, if the principal office is not located in this state, the county where its registered office is or was last located.

(2) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) In a proceeding brought to dissolve a corporation, a court may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

(4) A person other than the attorney general who brings an involuntary dissolution proceeding for a public benefit corporation or religious corporation shall give written notice of the proceeding to the attorney general who may intervene.

Section 144. **Receivership or custodianship.** (1) A court in a judicial proceeding brought to dissolve a public benefit corporation or mutual benefit corporation may appoint one or more receivers to wind up and liquidate the affairs of the corporation or one or more custodians to manage the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property, wherever located.

(2) The court may appoint, as a receiver or custodian, an individual authorized to transact business in this state or a domestic or foreign business or nonprofit corporation authorized to transact business in this state. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) the receiver:

(i) may, if authorized by the court, dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, subject to any trust and other restrictions that would be applicable to the corporation; and

(ii) may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all courts of this state; and

(b) the custodian may exercise all the powers of the corporation through or in place of its board of directors or officers to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a

receiver if doing so is in the best interests of the corporation, its members, and its creditors.

(5) From time to time during the receivership or custodianship, the court may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

Section 145. **Decree of dissolution.** (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in [section 142] exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with [section 139] and the notification of its claimants in accordance with [sections 140 and 141].

Section 146. **Deposit with state treasurer.** Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them must be reduced to cash, subject to known trust restrictions, and deposited with the state treasurer for safekeeping. However, in the state treasurer's discretion, property may be received and held in kind. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the state treasurer shall deliver to the creditor, claimant, member, or other person as his representative that amount or property.

Section 147. **Authority to transact business required.** (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) maintaining, defending, or settling any proceeding;

(b) holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) owning real or personal property:

(i) that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition; or

(ii) that does not produce income or is not used in the performance of a corporate function;

(j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or

(k) transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

Section 148. **Consequences of transacting business without authority.** (1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation, its successor, or its assignee until it determines whether the foreign corporation, its successor, or its assignee requires a certificate of authority. If it determines that a certificate is required, the court may further stay the proceeding until the foreign corporation, its successor, or its assignee obtains the certificate.

(4) A foreign corporation is liable for a civil penalty of $5 for each day, but not to exceed a total of $1,000 for each year, that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

(5) Notwithstanding the provisions of subsections (1) and (2), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

Section 149. **Application for certificate of authority.** (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of [section 152];

(b) the name of the state or country under whose law it is incorporated;

(c) the date of incorporation and period of duration;

(d) the street address and, if different, the mailing address of its principal office;

(e) the street address and, if different, the mailing address of its registered office in this state and the name of its registered agent at that office;

(f) the names and usual business or home addresses of its current directors and officers;

(g) whether the foreign corporation has members;

(h) whether the corporation, if it had been incorporated in this state, would be a public benefit corporation, mutual benefit corporation, or religious corporation; and

(i) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated.

Section 150. **Amended certificate of authority.** (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(a) its corporate name;

(b) the period of its duration;

(c) the state or country of its incorporation; or

(d) its designation as a public benefit corporation, mutual benefit corporation, or religious corporation.

(2) The requirements of [section 149] for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

Section 151. **Effect of certificate of authority.** (1) A certificate of authority authorizes the foreign corporation to which it is issued the right to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in [sections 1 through 168].

(2) A foreign corporation with a valid certificate of authority has the same rights and enjoys the same privileges as a domestic corporation of a similar character and, except as otherwise provided by [sections 1 through 168], is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of a similar character.

(3) [Sections 1 through 168] do not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Section 152. **Corporate name of foreign corporation.** (1) If the corporate name of a foreign corporation does not satisfy the requirements of [section 31], the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if:

(a) its real name is unavailable; and

(b) it delivers to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name, including a fictitious name, of a foreign corporation must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under [section 32 or 33] or 35-1-302 or 35-1-303;

(c) the fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

(d) the corporate name of a domestic corporation that has dissolved, but distinguishable only for a period of 120 days after the effective date of dissolution; and

(e) any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of [section 31], it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of [section 31] and obtains an amended certificate of authority under [section 150].

Section 153. **Registered office and registered agent of foreign corporation.** Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

(1) a registered office with the same address as that of its registered agent; and

(2) a registered agent who may be:

(a) an individual who resides in this state and whose office is identical with the registered office;

(b) a domestic business or nonprofit corporation whose office is identical with the registered office; or

(c) a foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

Section 154. **Change of registered office or registered agent of foreign corporation.** (1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

(a) the name of the foreign corporation;

(b) the street address and, if different, the mailing address of its current registered office;

(c) if the current registered office is to be changed, the street address and, if different, the mailing address of its new registered office;

(d) the name of its current registered agent;

(e) if the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent to the appointment, either on the statement or attached to it; and

(f) the fact that after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(2) If a registered agent changes the street address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement of change that complies with the requirements of subsection (1) and that states that the corporation has been notified of the change.

Section 155. **Resignation of registered agent of foreign corporation.** (1) The registered agent of a foreign corporation may resign as agent by signing and delivering to the secretary of state, for filing, the original and two copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if the office has not been discontinued. The secretary of state shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.

(3) The agency is terminated, and the registered office discontinued if so provided, 31 days after the date on which the statement was filed.

Section 156. **Service of process on foreign corporations.** Service of process on a foreign corporation must be effected upon the persons and in the manner provided for by the Montana Rules of Civil Procedure.

Section 157. **Withdrawal of foreign corporation.** (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) the fact that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) the fact that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on him under subsection (2)(c); and

(e) a commitment to notify the secretary of state, in the future, of any change in the mailing address.

Section 158. **Grounds for revocation.** (1) The secretary of state may commence a proceeding under [section 159] to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) the foreign corporation does not deliver the annual report to the secretary of state within 90 days after it is due;

(b) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by [sections 1 through 168] or other law;

(c) the foreign corporation is without a registered agent or registered office in this state for 90 days or more;

(d) the foreign corporation does not inform the secretary of state under [sections 154 or 155] that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued, within 90 days of the change, resignation, or discontinuance;

(e) an incorporator, director, officer, or agent of the foreign corporation signed a document that the person knew was false in any material respect, with the intent that the document be delivered to the secretary of state for filing; or

(f) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated, which certificate states that the foreign corporation has been dissolved or disappeared as the result of a merger.

(2) The attorney general may commence a proceeding under [section 159] to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) the corporation is designated as a foreign public benefit corporation and its corporation assets in this state are being misapplied or wasted; or

(c) the corporation is designated as a foreign public benefit corporation and it is no longer able to carry out its purpose.

Section 159. **Procedure for and effect of revocation.** (1) The secretary of state upon determining that one or more grounds exist under [section 158] for revocation of a certificate of authority shall serve the foreign corporation with written notice of that determination under [section 156].

(2) The attorney general, upon determining that one or more grounds exist under [section 158(2)] for revocation of a certificate of authority, shall request the secretary of state to serve, and the secretary of state shall serve, the foreign corporation with written notice of that determination under [section 156].

(3) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state or attorney general that each ground for revocation determined by the secretary of state or attorney general does not exist within 60 days after service of the notice is perfected under [section 156], the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under [section 156].

(4) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

Section 160. **Appeal from revocation.** (1) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court for the first judicial district within 30 days after the service of the certificate of revocation is perfected under [section 156]. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

Section 161. **Corporate records.** (1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by [section 90(4)].

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office or a location from which the records may be recovered within 2 business days:

(a) its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) its bylaws or restated bylaws and all amendments to them currently in effect;

(c) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(d) the minutes of all meetings of members and the records of all actions approved by the members for the past 3 years;

(e) the financial statements available to shareholders for the past 3 years under [section 166];

(f) a list of the names and business or home addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under [section 168].

Section 162. **Inspection of records by members.** (1) Subject to [section 163(3)] and subsection (5) of this section, a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in [section 161(5)] if the member gives the corporation written notice or a written demand at least 5 business days before the date on which the member wishes to inspect and copy.

(2) Subject to subsection (5), a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (3) and gives the corporation written notice at least 5 business days before the date on which the member wishes to inspect and copy:

(a) excerpts from any records required to be maintained under [section 161(1)], to the extent not subject to inspection under subsection (1);

(b) accounting records of the corporation; and

(c) subject to [section 165], the membership list.

(3) A member may inspect and copy the records identified in subsection (2) only if:

(a) the member's demand is made in good faith and for a proper purpose;

(b) the member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(c) the records are directly connected with this purpose.

(4) This section does not affect:

(a) the right of a member to inspect records under [section 66] or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independent of [sections 1 through 168], to compel the production of corporate records for examination.

(5) The articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.

Section 163. **Scope of inspection rights.** (1) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(2) The right to copy records under [section 162] includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a member's demand to inspect the record of members under [section 162(2)(c)] by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

Section 164. **Court-ordered inspection.** (1) If a corporation does not allow a member who complies with [section 162(1)] to inspect and copy any records required by that subsection to be available for inspection, the district court, for the judicial district of the county where the corporation's principal office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(2) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with [sections 162(2) and (3)] may apply to the district court, for the judicial district of the county where the corporation's principal office or, if the principal office is not located in this state, the county where its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

Section 165. **Limitations on use of membership list.** (1) Without consent of the board, a membership list or any part of it may not be obtained or used by a person for any purpose unrelated to a member's interest as a member.

(2) Without limiting the generality of the provisions of subsection (1), without the consent of the board a membership list or any part of it may not be:

(a) used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;

(b) used for any commercial purpose; or

(c) sold to or purchased by any person.

Section 166. **Financial statements for members.** Upon the written request of any member of the corporation, the corporation shall mail to the member its most recent financial statements showing in reasonable detail its assets and liabilities and the results of the operations.

Section 167. **Report of indemnification to members.** If a corporation indemnifies or advances expenses to a director under [sections 102 through 105] in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

Section 168. **Annual report for secretary of state.** (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report on a form prescribed and furnished by the secretary of state that sets forth:

(a) the name of the corporation and the state or country under whose law it is incorporated;

(b) the address of its registered office and the name of its registered agent at the office in this state;

(c) the address of its principal office;

(d) the names and business or residence addresses of its directors and principal officers;

(e) a brief description of the nature of its activities; and

(f) whether or not it has members.

(2) The information in the annual report must be current on the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed.

Section 169. Section 15-1-101, MCA, is amended to read:

"**15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to the raising of livestock, poultry, bees, and other species of domestic animals and wildlife in domestication or a captive environment, and the raising of field crops, fruit, and other animal and vegetable matter for food or fiber.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a ~~nonprofit~~ corporation as defined in ~~35-2-102~~ *[section 1]*, or used for the production of income, except that property described in subsection (ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as his stock in trade;

(E) all property described in 15-6-135; and

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(h) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(i) The term "livestock" means cattle, sheep, swine, goats, horses, mules, and asses.

(j) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(k) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(l) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(m) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(n) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(o) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(p) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(q) The term "weighted mean assessment ratio" means the total of the assessed values divided by the total of the selling prices of all area sales in the stratum.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Section 170. Section 33-17-211, MCA, is amended to read:

"**33-17-211. General qualifications — application for license.** (1) An individual applying for a license shall apply on a form specified by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state;

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which he applies to be licensed and is reasonably familiar with the provisions of this code which govern his operations as an insurance producer; and

(h) if applying for a license as to life or disability insurance:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state.

(2) A person acting as an insurance producer shall obtain a license. A person shall apply for a license on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer responsible for compliance by the person with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of incorporation under 35-1-203 or ~~35-2-203~~ *filed articles of incorporation under [section 23]*.

(3) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement. The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in its name alone. The fee for the license is the same as that required by 33-2-708 for the license of an insurance producer. The commissioner may, after a hearing with notice to the association, revoke the license if he finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(4) An insurance producer using an assumed business name shall register the name with the commissioner before using it."

Section 171. Section 35-6-104, MCA, is amended to read:

"**35-6-104. Involuntary dissolution — procedure.** (1) On or before April 1, August 1, and September 1 of each year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by causing such list to be posted in the state capitol for a period of at least 90 days and:

(a) by mailing a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) by publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the posting and mailing or publication of notice:

(a) the secretary of state will dissolve such defaulting corporations;

(b) such corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) such corporations will forfeit their rights to carry on business within the state.

(4) After 90 days following posting and mailing or publication of each notice, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2) of this section.

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation shall be held in trust by the directors of such corporation and 35-1-921 or ~~35-2-711~~ *[section 143]*, whichever is appropriate, is applicable to liquidate such property and assets if necessary."

Section 172. Section 35-6-201, MCA, is amended to read:

"**35-6-201. Reinstatement of dissolved corporation.** (1) The secretary of state may:

(a) reinstate any corporation which has been dissolved under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state one original and one copy of the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to 35-1-921 or ~~35-2-711~~ *[sections 140 and 141]*;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution."

Section 173. **Interim designation.** (1) Each domestic corporation not designated pursuant to [section 16] is designated as follows:

(a) a corporation that is organized primarily or exclusively for religious purposes is a religious corporation;

(b) a corporation that is not provided for under the provisions of subsection (1)(a) but that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation;

(c) a corporation that is not provided for under the provisions of subsection (1)(a) or (1)(b), but that is organized for a public or charitable purpose and that, upon dissolution, shall distribute its assets to a public benefit corporation, the United States, a state, or a person that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation; and

(d) a corporation that is not provided for under the provisions of subsection (1)(a), (1)(b), or (1)(c) is a mutual benefit corporation.

(2) Foreign corporations authorized to transact business in this state but not designated pursuant to [section 16] are designated as a public benefit corporation, mutual benefit corporation, or religious corporation in accordance with the provisions of subsection (1).

Section 174. **Repealer.** Sections 35-2-102 through 35-2-112, 35-2-201 through 35-2-211, 35-2-301 through 35-2-304, 35-2-401 through 35-2-413, 35-2-501 through 35-2-509, 35-2-601 through 35-2-607, 35-2-701 through 35-2-706, 35-2-711 through 35-2-719, 35-2-801 through 35-2-819, 35-2-901 through 35-2-903, 35-2-1001, 35-2-1002, 35-2-1101 through 35-2-1106, and 35-2-1201 through 35-2-1203, MCA, are repealed.

Section 175. **Codification.** (1) [Sections 1 through 168] are intended to be codified as an integral part of Title 35, and the provisions of Title 35 apply to [sections 1 through 168].

(2) Section 35-2-101 is intended to be renumbered and codified as an integral part of [sections 1 through 168].

Section 176. **Coordination.** If House Bill No. 552 is passed and approved and if it includes a section that repeals sections 35-1-302 and 35-1-303, then [section 152(2)(b) of this act] is amended to read:

"(b) a corporate name reserved or registered under [section 32 or 33] of [sections 1 through 168] or [section 26 or 27 of House Bill No. 552]."

Section 177. **Saving clause.** (1) Except as provided in subsection (2), the repeal of a statute by [this act] does not affect:

(a) the operation of the statute or any action taken under it before its repeal;

(b) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(c) any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;

(d) any proceeding, reorganization, or dissolution commenced under the statute before its repeal. The proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(e) any meeting of members or directors or any action by written consent that is noticed or taken before its repeal as a result of a meeting of members or directors or action by written consent.

(2) If a penalty or punishment imposed for violation of a statute repealed by [this act] is reduced by [this act], the penalty or punishment, if not already imposed, must be imposed in accordance with [this act].

Section 178. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 179. **Application to existing domestic corporations.** (1) [This act] applies to all domestic corporations in existence on January 1, 1992, that were incorporated under Title 35, chapter 2, or any predecessor statute.

(2) [This act] applies to each domestic corporation in existence on January 1, 1992, that was incorporated under Title 35, chapter 3, upon the filing by the corporation of an irrevocable election with the secretary of state by January 1, 1992, electing to have all the provisions of [this act] applied to it or electing to have all the provisions of [this act] applied to it to the extent not inconsistent with the law then governing it.

Section 180. **Application to qualified foreign corporations.** A foreign corporation authorized to transact business in this state on January 1, 1992, is subject to [this act] but is not required to obtain a new certificate of authority to transact business under [this act].

Section 181. **Termination.** [Section 16(3) and section 173] terminate January 1, 1996.

Section 182. **Effective date.** [This act] is effective January 1, 1992.

Approved April 10, 1991.

CHAPTER NO. 412

[HB 926]

AN ACT PROVIDING FOR VOLUNTARY FILING OF PERFORMANCE BONDS FOR PROJECTS AND ACTIVITIES AUTHORIZED BY WATER POLLUTION DISCHARGE PERMITS; AMENDING SECTIONS 75-5-401 AND 75-5-402, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the board of health and environmental sciences for the adoption of rules concerning the reclamation of sites disturbed by construction, modification, or operation of disposal systems for which a performance bond or other surety is voluntarily filed by a permit applicant or permittee pursuant to [section 3]. The board's rules should establish criteria that the department of health and environmental sciences shall apply in determining the requirements that are necessary for individual permittees to achieve acceptable site reclamation on a case-by-case basis and to prevent pollution of state waters. The board's rules should also establish procedures governing the release of bonds and other surety, including provisions for releasing a portion of a bond or other surety in situations in which acceptable reclamation and prevention of water pollution have been completed upon a portion of a site where a permitted pollutant discharge project has operated or a permitted activity has occurred.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-401, MCA, is amended to read:

"75-5-401. **Board rules for permits.** (1) The board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits.

(2) The rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the

permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department insures that such permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of disposal systems for which a bond is voluntarily filed by a permittee pursuant to [section 3], including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety."

Section 2. Section 75-5-402, MCA, is amended to read:

"**75-5-402. Duties of department.** The department shall:

(1) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes into state waters, consistently with rules made by the board;

(2) examine plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(3) clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged; *and*

(4) establish as conditions to the issuance of permits for which a performance bond or other surety is filed under [section 3] certain reclamation requirements sufficient to prevent pollution of state waters during and after operation of the project or activity for which a permit is issued."

Section 3. **Voluntary filing of performance bond — terms — hearing.** (1) A person who holds or has applied for a permit pursuant to 75-5-401 may voluntarily file a performance bond or other surety with the department for an amount sufficient to enable the state to reclaim the land disturbed by the project or activity authorized by the permit in accordance with all permit requirements and as needed to prevent pollution of state waters.

(2) If the department determines that the bonding level does not represent the present cost of reclaiming the disturbed land according to the reclamation requirements specified in the permit and the present cost of preventing pollution of state waters, the department shall notify the permittee and the permittee may modify the amount of the bond to accurately reflect the present cost.

(3) The department may not release all or any portion of a performance bond or other surety filed pursuant to this section until reclamation of the disturbed land has been completed to the satisfaction of the department and the department has determined that pollution of state waters has not occurred. The department may initiate bond forfeiture proceedings if the permittee fails to satisfactorily reclaim the disturbed land or prevent pollution of state waters.

(4) The department may not release a bond or other surety filed pursuant to this section until the public has been provided an opportunity for a hearing.

Section 4. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 75, chapter 5, part 4, and the provisions of Title 75, chapter 5, part 4, apply to [section 3].

Section 5. **Effective dates.** (1) [Section 3 and this section] are effective on passage and approval.

(2) [Sections 1, 2, and 4] are effective October 1, 1991.

Approved April 10, 1991.

CHAPTER NO. 413

[HB 404]

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE X, SECTION 11, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE STATE MAY TRANSFER PUBLIC LANDS OF THE STATE THAT ARE NOT SUBJECT TO RESTRICTION BY A GRANT FROM THE UNITED STATES TO A LOCAL GOVERNMENT FOR LESS THAN FULL MARKET VALUE AS PROVIDED BY GENERAL LAWS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article X, section 11, of The Constitution of the State of Montana is amended to read:

"**Section 11. Public land trust, disposition.** (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) ~~No~~ *Except as provided in subsection (4), no* such land or any estate or interest therein shall ever be disposed of except in pursuance of general

laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area. *Any public land that is not subject to the restrictions of a grant from the United States may be transferred to a political subdivision of the state for less than full market value in pursuance of general laws providing for such disposition."*

Section 2. **Effective date.** This amendment is effective on approval by the electorate.

Section 3. **Submission to electorate.** This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 1992 by printing on the ballot the full title of this act and the following:

☐ FOR allowing the state to transfer public land to local governments for less than full market value.

☐ AGAINST allowing the state to transfer public land to local governments for less than full market value.

CHAPTER NO. 414

[HB 301]

AN ACT REMOVING THE 1-YEAR RESIDENCY AND MONTANA CITIZENSHIP REQUIREMENTS FOR HIGHWAY PATROL OFFICER APPOINTMENT; REPEALING THE REQUIREMENT THAT HIGHWAY PATROL OFFICERS BE APPOINTED IN EQUAL NUMBERS FROM THE FIVE HIGHWAY DISTRICTS; AMENDING SECTION 44-1-401, MCA; REPEALING SECTION 44-1-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-1-401, MCA, is amended to read:

"**44-1-401. Qualifications of patrol officers.** Patrol officers shall possess the following qualifications:

(1) sound and active physical and mental condition;

(2) good moral character;

(3) residency in Montana ~~for at least 1 year immediately prior to appointment~~;

(4) having passed a satisfactory test in the operation of automobiles; *and*

(5) citizenship in the United States ~~and state of Montana~~."

Section 2. **Repealer.** Section 44-1-403, MCA, is repealed.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 15, 1991.

CHAPTER NO. 415

[HB 487]

AN ACT PROTECTING SHOOTING RANGE LOCATIONS; EXEMPTING SHOOTING RANGES FROM CERTAIN LAWS RELATING TO LITTER CONTROL, COMMUNITY DECAY, DISORDERLY CONDUCT, AND PUBLIC NUISANCE; AMENDING SECTIONS 7-5-2109, 7-5-2110, 45-8-101, AND 45-8-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Policy.** It is the policy of the state of Montana to provide for the health, safety, and welfare of the citizens of the state by promoting the safety and enjoyment of the shooting sports among the citizens of the state and by protecting the locations of and investment in shooting ranges for shotgun, archery, rifle, and pistol shooting.

Section 2. **Prohibitions.** (1) Standards adopted by a state agency or unit of local government to limit levels of noise that may occur in the outdoor atmosphere may not apply to shooting ranges.

(2) Standards adopted by a state agency or unit of local government promulgated pursuant to Title 75 and concerning pollution by lead, copper, or brass may not limit or prohibit the operation of a shooting range because of lead, copper, or brass deposition resulting from shooting activities.

Section 3. **Planning — effect on shooting ranges.** The laws of this state concerning planning, master plans, or comprehensive plans may not be construed to authorize an ordinance, resolution, or rule that would:

(1) prevent the operation of an existing shooting range as a nonconforming use;

(2) prohibit the establishment of new shooting ranges, but it may regulate the construction of shooting ranges to specified zones; or

(3) prevent the erection or construction of safety improvements on existing shooting ranges.

Section 4. **Zoning — effect on shooting ranges.** A planning district master plan, recommendation, resolution, rule, or zoning designation may not:

(1) prevent the operation of an existing shooting range as a nonconforming use;

(2) prohibit the establishment of new shooting ranges, but it may regulate the construction of shooting ranges to specified zones; or

(3) prevent the erection or construction of safety improvements on existing shooting ranges.

Section 5. **Closure of shooting ranges — limitations — relocation cost.** (1) Except as provided in subsection (2), an established shooting range may not be prevented from operation by a state agency, unit of local government, or court unless the range presents a clear and provable safety hazard to the adjacent population.

(2) If a pressing public need exists because of incompatibility with nearby population or land use, an established shooting range may be relocated by an agency of state government, unit of local government, or court, but only if all of the following conditions are met:

(a) pressing public need is documented through hearings, testimony, and a clear and precise statement of need by the agency, unit of local government, or court involved;

(b) the agency or unit of local government obtaining the closure pays the appraised cost of the land together with improvements to the operators of the shooting range. In return the shooting range operators shall relinquish their interest in the property to the agency or unit of local government obtaining the closure.

(3) If a shooting range presents a clear and provable safety hazard to adjacent population, the range may be suspended from operation if:

(a) reasonable notice and opportunity to respond are afforded the range operators; and

(b) reasonable opportunity is afforded the range operators to correct any safety defects.

Section 6. Section 7-5-2109, MCA, is amended to read:

"**7-5-2109. County control of litter.** (1) *(a)* The governing body of a county may regulate, control, and prohibit littering on any county road and on land within the county by the adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107. The ordinance may apply to portions of the county and may apply to persons other than the owners of the property on which littering occurs.

(b) The ordinance may not apply to lead, copper, or brass deposits directly resulting from shooting activities at a shooting range.

(2) The governing body of a county may establish a fine not to exceed $200 as a penalty for violation of the ordinance referred to in subsection (1). A violation of the ordinance may not be punishable by imprisonment."

Section 7. Section 7-5-2110, MCA, is amended to read:

"**7-5-2110. Community decay defined.** (1) In 7-5-2111, "community decay" means a public nuisance created by allowing rubble, debris, junk, or refuse to accumulate resulting in conditions that are injurious to health, indecent, offensive to the senses, or obstruct the free use of property so as to interfere with the comfortable enjoyment of life or property.

(2) "Community decay" as used in 7-5-2111 may not be construed or defined to apply to*:*

(a) normal farming, ranching, or other agricultural operations or to a farm, ranch, or other agricultural facility, and any appurtenances thereof, during the course of its normal operations*; or*

(b) normal activities at a shooting range."

Section 8. Section 45-8-101, MCA, is amended to read:

"**45-8-101. Disorderly conduct.** (1) A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:

(a) quarreling, challenging to fight, or fighting;

(b) making loud or unusual noises;

(c) using threatening, profane, or abusive language;

(d) discharging firearms, *except at a shooting range during established hours of operation*;

(e) rendering vehicular or pedestrian traffic impassable;

(f) rendering the free ingress or egress to public or private places impassable;

(g) disturbing or disrupting any lawful assembly or public meeting;

(h) transmitting a false report or warning of a fire or other catastrophe in such a place that its occurrence would endanger human life;

(i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or

(j) transmitting a false report or warning of an impending explosion in such a place that its occurrence would endanger human life.

(2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall be fined not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

(3) A person convicted of a violation of subsection (1)(j) shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both."

Section 9. Section 45-8-111, MCA, is amended to read:

"**45-8-111. Public nuisance.** (1) "Public nuisance" means:

(a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition which renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if he knowingly creates, conducts, or maintains a public nuisance.

(3) Any act which affects an entire community or neighborhood or any considerable number of persons (as specified in subsection (1)(a)) is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) No agricultural or farming operation, place, establishment, or facility or any of its appurtenances or the operation thereof is or becomes a public nuisance because of the normal operation thereof as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(5) Noises resulting from the shooting activities at a shooting range during established hours of operation are not considered a public nuisance.

~~(5)~~*(6)* A person convicted of maintaining a public nuisance shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. Each day of such conduct constitutes a separate offense."

Section 10. **Applicability.** [This act] applies to shooting ranges in operation on or after [the effective date of this act].

Section 11. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Effective date.** [This act] is effective on passage and approval.

Approved April 15, 1991.

CHAPTER NO. 416

[HB 543]

AN ACT CLARIFYING THAT THE ELIGIBILITY FOR THE CREDIT FOR DEPENDENT CARE ASSISTANCE APPLIES TO THE AMOUNT PAID OR INCURRED BY THE EMPLOYER THAT IS NOT PART OF A SALARY REDUCTION PLAN; INCREASING THE AMOUNT OF THE CREDIT TO 20 PERCENT; AMENDING SECTION 15-31-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-131, MCA, is amended to read:

"**15-31-131. Credit for dependent care assistance.** (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the taxable year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets the requirements of section 89(k) and 129(d)(2) through (6) of the Internal Revenue Code.

(2) (a) The amount of the credit allowed under subsection (1) is ~~15%~~ *20%* of the amount paid or incurred by the employer during the taxable year, but the credit may not exceed $1,250 of day-care assistance actually provided to or on behalf of the employee.

(b) For the purposes of this subsection, marital status must be determined under the rules of section 21(e)(3) and (4) of the Internal Revenue Code.

(c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is based, with respect to any dependent, must be based upon utilization and the value of the services provided.

(3) An amount paid or incurred during the taxable year of an employer in providing dependent care assistance to or on behalf of any employee does

not qualify for the credit allowed under subsection (1) if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code.

(4) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1)*:*

(a) ~~if~~ *to the extent* the amount is paid or incurred pursuant to a salary reduction plan*;* or

(b) if the amount is paid or incurred for services not performed within this state.

(5) If the credit allowed under subsection (1) is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at the time of filing the tax return.

(6) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code. For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-121.

(7) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise through the fifth year succeeding the tax year in which the credit was first allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

(8) If the taxpayer is an S corporation, as defined in section 1361 of the Internal Revenue Code, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

(9) For purposes of the credit allowed under subsection (1):

(a) The definitions and special rules contained in section 129(e) of the Internal Revenue Code apply to the extent applicable.

(b) "Employer" means an employer carrying on a business, trade, occupation, or profession in this state.

(c) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on January 1, 1989."

Section 2. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 15, 1991.

CHAPTER NO. 417

[HB 547]

AN ACT EXEMPTING CERTAIN NONPROFIT GROUPS AND STUDENT GROUPS FROM STORE LICENSE REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Exemptions.** A store that generates income used only for the purposes for which the operator is organized is not subject to the provisions of 15-57-102 if the store is operated by:

(1) an entity that is exempt from taxation under 15-31-102(1)(a) through (1)(g) and (1)(m); or

(2) an organization, supervised by faculty members or school administrators and consisting solely of students of an accredited school, the purpose of which is to raise funds for the students' educational or cultural benefit or lawful recreation.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 57, and the provisions of Title 15, chapter 57, apply to [section 1].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 15, 1991.

CHAPTER NO. 418

[HB 563]

AN ACT REVISING THE ELK LICENSE AND SPECIAL ELK PERMIT LANDOWNER PREFERENCE SYSTEM BY REQUIRING THAT A PERSON ISSUED A LICENSE OR PERMIT UNDER THE PREFERENCE SHALL OWN OR BE CONTRACTING TO PURCHASE THE LAND RATHER THAN THAT THE LAND BE HELD IN FEE TITLE; AND AMENDING SECTIONS 87-2-501 AND 87-2-705, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-501, MCA, is amended to read:

"**87-2-501. Class A-3, A-4, A-5, A-6, A-7—resident deer, elk, and bear licenses — special Class A-7 resident and nonresident license requirements and preference.** (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, or a nonresident who wishes to purchase a Class A-7 elk license only, who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the proper fee or fees, be entitled to purchase one each of the following licenses at the prescribed cost which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

(a) Class A-3, deer A tag, $9;

(b) Class A-4, deer B tag, $6;

(c) Class A-5, elk tag, $10;

(d) Class A-6, black or brown bear tag, $8;

(e) Class A-7, antlerless elk tag, $10.

(2) (a) The holder of a Class A-7 antlerless elk license is entitled to take antlerless elk in areas designated by the commission and at such times and upon such terms as set forth by the commission.

(b) No person may take more than one elk during any license year, and a person holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 license or nonresident elk tag. The use of Class A-7 antlerless elk licenses does not preclude the department's use of special elk permits.

(c) A nonresident shall hold a nonresident Class B-10 license as a prerequisite to application for a Class A-7 license.

(3) Subject to the limitation of subsection (5), a person who ~~holds fee title to~~ *owns or is contracting to purchase* 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where Class

A-7 licenses are awarded under this section shall be issued, upon application, a Class A-7 license.

(4) An applicant who receives a Class A-7 license under subsection (3) may designate that the license be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (3) may designate one of its shareholders to receive the license.

(5) Fifteen percent of the Class A-7 licenses available each year under this section in a hunting district must be available to landowners under subsection (3)."

Section 2. Section 87-2-705, MCA, is amended to read:

"**87-2-705. Drawing for special elk permits.** (1) In the event the number of valid applications for special elk permits for a hunting district exceeds the quota set by the department for the district, these permits shall be awarded by a drawing. The department shall provide for those persons making valid application for special elk permits a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to this section.

(2) Subject to the limitation of subsection (4), a person who ~~holds fee title to~~ *owns or is contracting to purchase* 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where elk permits are awarded under this section shall be issued, upon application, a permit to hunt elk in the hunting district under the terms and conditions of the permit.

(3) An applicant who receives a permit under subsection (2) may designate that the permit be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (2) may designate one of its shareholders to receive the permit.

(4) Fifteen percent of the special elk permits available each year under this section in a hunting district must be available to landowners under subsection (2).

(5) The department may promulgate the rules necessary to implement this section."

Approved April 15, 1991.

CHAPTER NO. 419

[HB 570]

AN ACT TO REVISE VARIOUS DRIVER LICENSING STATUTES TO PROVIDE EITHER AN EXAMINATION OR AN INVESTIGATION IN CASES OF DRIVER'S LICENSE REEXAMINATION; TO REQUIRE THAT COURT ABSTRACTS OR REPORTS OF CONVICTION RECEIVED BY THE DEPARTMENT NAMING INDIVIDUALS LICENSED IN ANOTHER JURISDICTION BE FORWARDED TO THE JURISDICTION OF LICENSURE WITHOUT ACTION AGAINST THE DRIVER'S LICENSE OR DRIVING PRIVILEGE; TO CLARIFY AND SIMPLIFY THE RESPONSIBILITY OF PERSONS SIGNING DRIVER'S LICENSE APPLICATIONS FOR MINORS; AND AMENDING SECTIONS 37-2-311, 61-5-108, 61-5-207, AND 61-5-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-2-311, MCA, is amended to read:

"**37-2-311. Report to department of justice by physician.** (1) Any physician who diagnoses a physical or mental condition that, in the physician's judgment, will significantly impair a person's ability to safely operate a motor vehicle may voluntarily report the person's name and other information relevant to his condition to the department of justice. The department, upon receiving the report, shall require the person so reported to be examined ~~in the manner~~ *or investigated as* provided for in ~~61-5-110 and~~ 61-5-207.

(2) (a) The physician's report may be introduced as evidence in any proceeding involving the granting, suspension, or revocation of the person's driver's license, *driving privilege, or commercial motor vehicle operator's endorsement* before the department or a court.

(b) The physician's report may not be utilized in a criminal proceeding or in a civil proceeding, other than as provided in this subsection, without the consent of the patient."

Section 2. Section 61-5-108, MCA, is amended to read:

"**61-5-108. Application of minors — *imputed liability.*** (1) The application of any person under the age of 18 years for an instruction permit or driver's license shall be signed and verified before a person authorized to administer oaths *or an employee of the department* by ~~both the father and mother~~ *a parent* of the applicant~~, if both are living and have custody of him, or by the surviving parent, or in the event neither parent is living or has custody, then by the person or guardian having such custody or by an employer of such minor, or in the event there is no guardian or employer then~~ *or, if none is available,* by some other responsible ~~person~~ *adult* who is willing to assume the obligation imposed under this chapter upon a person signing the application of a minor.

(2) Any negligence or willful misconduct of a minor under the age of 18 years when driving a motor vehicle upon a highway shall be imputed to a person who has signed the application of ~~such~~ *the* minor for a permit or license, which person shall be jointly and severally liable with ~~such~~ *the* minor for any damages caused by ~~such~~ *the* negligence or willful misconduct~~,~~ *unless a motor vehicle liability policy, as provided for in chapter 6 of this title, covering the minor is in effect, in which case there is no imputed liability as described in this section.* ~~except as otherwise provided in subsection (3) of this section.~~

~~(3) In the event a minor deposits or there is deposited upon his behalf proof of financial responsibility in respect to the operation of a motor vehicle owned by him, or if not the owner of a motor vehicle, then with respect to the operation of any motor vehicle, in form and in amounts as required under the motor vehicle financial responsibility laws of this state, then the department may accept the application of such minor when signed by one parent or the guardian of such minor, and while such proof is maintained such parent or guardian shall not be subject to the liability imposed under subsection (2) of this section.~~"

Section 3. Section 61-5-207, MCA, is amended to read:

"**61-5-207. Reexamination *or investigation* — when required.** The department, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed or to have a commercial vehicle operator's endorsement, may, *based on information received, investigate the licensee's record, physical or mental condition, or need for a license or,* upon written notice of at least 5 days to the licensee, require him to submit to an examination. Upon the conclusion of ~~such~~ *the investigation or* examination the department shall take action as may be appropriate *considering the facts reported or discovered* and may suspend or revoke the license and commercial vehicle operator's endorsement or just the commercial vehicle operator's endorsement of such person or permit him to retain such license~~,~~ or may issue a license subject to restrictions as permitted under 61-5-113. Refusal or neglect of the licensee to submit to such examination *or investigation* shall be ground for suspension or revocation of his license."

Section 4. Section 61-5-405, MCA, is amended to read:

"**61-5-405. Offenses furnishing ground for suspension or revocation of license — *return to licensing jurisdiction of abstracts of court records and reports of conviction.*** (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer specifically to 45-5-103, 45-5-104, 61-8-401, 45-2-101(21), and 61-7-103, respectively.

(2) In addition to convictions mentioned above the department, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303); and

(b) three convictions of reckless driving committed within a period of 12 months (61-8-301).

(3) Court abstracts or reports of conviction received by the department that name an individual licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not take action against the driver's license or driving privilege of the individual as may be required elsewhere in this title."

Approved April 15, 1991.

CHAPTER NO. 420

[HB 591]

AN ACT TO REQUIRE THAT A CONTRACT LET FOR A PROJECT COSTING MORE THAN $25,000 AND FINANCED IN WHOLE OR IN PART BY TAX-EXEMPT INDUSTRIAL REVENUE BONDS CONTAIN A PROVISION REQUIRING THE CONTRACTOR TO PAY THE STANDARD PREVAILING WAGE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Tax exempt project — prevailing wage required.** A contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt industrial revenue bonds must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 18, chapter 2, part 4, and the provisions of Title 18, chapter 2, part 4, apply to [section 1].

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved April 15, 1991.

CHAPTER NO. 421

[HB 594]

AN ACT ESTABLISHING THE FIRST WEEK OF MARCH AS AN OFFICIAL WEEK OF OBSERVANCE IN MONTANA OF THE RIGHT TO KEEP AND BEAR ARMS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Observance of right to keep and bear arms.** The week beginning the first Monday in March is an official week of observance to commemorate Montana's valued heritage of the right of each person to keep and bear arms in the defense of his home, person, or property or in aid of civil power. During this week, all Montanans are urged to reflect on their right to keep and bear arms and to celebrate this right in lawful ways.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 2, and the provisions of Title 1, chapter 1, part 2, apply to [section 1].

Approved April 15 1991.

CHAPTER NO. 422

[HB 638]

AN ACT REPEALING THE REGULATORY POWERS OF THE BOARD OF AERONAUTICS; AND REPEALING SECTIONS 67-3-421, 67-3-422, 67-3-423, 67-3-424, 67-3-425, 67-3-426, 67-3-427, 67-3-428, AND 67-3-429, MCA.

WHEREAS, the Airline Deregulation Act of 1978, Public Law 95-504, has preempted the Board of Aeronautics' regulation of air carriers.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 67-3-421, 67-3-422, 67-3-423, 67-3-424, 67-3-425, 67-3-426, 67-3-427, 67-3-428, and 67-3-429, MCA, are repealed.

Section 2. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 15, 1991.

CHAPTER NO. 423

[HB 659]

AN ACT TO PROVIDE LIMITED EXEMPTIONS FROM THE OFF-HIGHWAY DECAL REQUIREMENT OF SECTION 23-2-804, MCA, WHEN THE OFF-HIGHWAY VEHICLE IS OTHERWISE LICENSED UNDER SECTION 61-3-321, MCA, WHICH GOVERNS VEHICLE AND

LICENSE FEES; AND AMENDING SECTIONS 23-2-802 AND 23-2-804, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-802, MCA, is amended to read:

"**23-2-802. Exemptions.** The provisions of this part do not apply to*:*

(1) *an off-highway vehicle:*

~~(1)~~*(a)* owned or used by the United States or another state or an agency or political subdivision thereof;

~~(2)~~*(b)* registered in a country other than the United States, temporarily used within this state for not more than 30 days; or

~~(3)~~*(c)* registered in another state of the United States, temporarily used within this state for not more than 30 days~~.~~*; or*

(2) a licensed motorcycle or licensed quadricycle used for fishing and hiking access, camping, or picnicking on a visible two-track trail or road within 1 mile of a designated road."

Section 2. Section 23-2-804, MCA, is amended to read:

"**23-2-804. Decal required — fee — disposition.** (1) Except as provided in 23-2-802~~, no~~, *an* off-highway vehicle may *not* be operated by any person for *off-road* recreation on public lands in Montana unless there is displayed in a conspicuous place a decal, in a form prescribed by the department of justice and issued by the county treasurer, as visual proof that the following fees have been paid for the current year:

(a) (i) the fee in lieu of tax provided for in 23-2-803; and

(ii) the registration fee provided for in 23-2-817; or

(b) when the vehicle will be used as provided in this section, the registration and taxation fees for motorcycles and quadricycles subject to licensure under 61-3-321, as evidenced by presentation of an owner's certificate of registration and payment receipt; and

(c) the off-highway decal fee provided for in this section.

(2) The decal will be serially numbered and have the expiration date of December 31 of the appropriate year printed thereon.

(3) The off-highway decal fee is $5, which the county treasurer shall collect and transmit to the state treasurer, who shall deposit the money in an interest-bearing account in the state special revenue fund to the credit of the department of fish, wildlife, and parks. The decal fee and the interest and income to the account must be spent as follows:

(a) 40% must be used to enforce the provisions of this section; and

(b) 60% must be spent to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreation use except that:

(i) no money may be spent for this purpose before January 1, 1991; and

(ii) evaluation for development of a program plan must begin January 1, 1991."

Approved April 15, 1991.

CHAPTER NO. 424

[HB 690]

AN ACT REVISING THE LAW REGARDING CRUELTY TO ANIMALS BY ADDING CRUEL CONFINEMENT AND FAILURE TO PROVIDE LICENSED VETERINARY OR MEDICAL CARE AS PUNISHABLE OFFENSES; ADDING AN EXCEPTION FOR SANCTIONED ENDURANCE RACES, COMMONLY ACCEPTED AGRICULTURAL AND LIVESTOCK PRACTICES, AND FOR HUMANE DESTRUCTION OF AN ANIMAL FOR JUST CAUSE; ESTABLISHING A PENALTY FOR REPEAT OFFENSES; AND AMENDING SECTION 45-8-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-211, MCA, is amended to read:

"**45-8-211. Cruelty to animals** — *exception.* (1) A person commits the offense of cruelty to animals if without justification he knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring, or killing any animal;

(b) carrying *or confining* any animal in a cruel manner;

(c) failing to provide an animal in his custody with*:*

(i) proper food, drink, or shelter*; or*

(ii) in cases of immediate, obvious, serious illness or injury, licensed veterinary or other appropriate medical care;

(d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e) promoting, sponsoring, conducting, or participating in ~~a horse~~ *an animal* race of more than 2 miles, *except a sanctioned endurance race.*

(2) A person convicted of the offense of cruelty to animals shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed

6 months, or both. *A person convicted of a second or subsequent offense of cruelty to animals shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.* If ~~such~~ *the* person is the owner, he may be required to forfeit to the county in which he is convicted any animal affected. This provision does not affect the interest of any secured party or other person who has not participated in the offense.

(3) In addition to the sentence provided in subsection (2), the court may require the defendant to pay all reasonable costs incurred in providing necessary veterinary attention and treatment for any animal affected.

(4) Nothing in this section prohibits:

(a) a person from humanely destroying an animal for just cause; or

(b) the use of commonly accepted agricultural and livestock practices on livestock."

Approved April 15, 1991.

CHAPTER NO. 425

[HB 814]

AN ACT CLARIFYING THE LAW PROVIDING FOR THE DISPOSITION OF STATE-OWNED WATER PROJECTS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; ESTABLISHING A DATE FOR THE DEPARTMENT TO ATTEMPT TO DISPOSE OF ITS CANAL PROJECTS; INCREASING THE PERCENTAGE OF AFFECTED WATER USERS REQUIRED TO VETO A DEPARTMENT DECISION TO DISPOSE OF A PROJECT; AMENDING SECTIONS 85-1-211 AND 85-6-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-211, MCA, is amended to read:

"**85-1-211. Management of property — water contracts.** (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things which in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under such general rules and upon such terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of the works

authorized by this chapter, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change, alteration, or revision of those rates, prices, or charges as established by any contract entered into under this chapter except as provided by the contract.

(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of any property or facilities shall provide that, in the event of a failure or default in the payment of moneys specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations thereunder. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit any remedy provided by the contract or by law for the recovery of moneys due or which may become due under the contract.

(5) Subject to the approval of the board under 85-1-202, the department may sell, transfer to water user associations, abandon, or otherwise dispose of any rights-of-way, easements, properties, or interests or lease or rent the same or otherwise take and receive the income or profit and revenue therefrom without regard to other laws providing for the disposition of state property. Prior to the department's sale, transfer, or other disposition, a determination shall be made by the department as to the market value of the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise disposed of. The department's determination of market value shall consider all liens, encumbrances, and other limitations on the project properties or interests.

(6) (a) The department shall attempt to dispose of its canal projects by June 30, 1995. The canal projects to be disposed of include the:

(i) Columbus canal;

(ii) Delphia-Melstone canals;

(iii) Hysham pumping canals;

(iv) Livingston ditch;

(v) Florence canal;

(vi) Paradise canal;

(vii) Park Branch canal;

(viii) Sidney pumping canals;

(ix) South Side canal;

(x) Vigilante canal; and

(xi) West Bench canal.

(b) The department may dispose of a canal project by sale, transfer to a water users' association, abandonment, or other legal conveyance. If there is an existing water users' association on the canal project, the provisions of 85-6-109(5) must be complied with in the disposal of the canal project. The department shall give preference to existing water users' associations operating and maintaining the canal project.

(c) Upon the sale or transfer of a canal project, the department shall either cancel or write off from the accounts receivable carried on the books of the department a sum not to exceed any previous 1-year cost of operating and maintaining the canal project or make a payment not to exceed any previous 1-year cost of operating and maintaining the canal project. For a canal project not disposed of by June 30, 1995, the water users of the canal project are responsible for the department's administrative costs and the actual costs of operation and maintenance of the canal project.

(7) An employee or agent of the department authorized by the director may enter upon any land to carry out the purposes of this section, including but not limited to entry to make an inspection the department considers necessary of the canal project, entry to salvage or remove project property, and entry to make physical alterations to canal project property. The department shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to property."

Section 2. Section 85-6-109, MCA, is amended to read:

"**85-6-109. Operation of projects with water users' association.** (1) As used in this section, "department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33, and "association" means a water users' association.

(2) Whenever the department proposes a program of maintenance, repair, operation, or alteration of a project in excess of $25,000, the cost of which will be borne by an association pursuant to the terms of a water marketing contract, the association shall be informed of the program and given an opportunity to comment. The department shall notify the association of its decision. If the association believes the program to be unnecessary or excessive in cost, it may appeal the department decision to the board of natural resources and conservation as provided for in 85-1-212. The board shall notify the association of its decision. If the board's decision is adverse to the association, the association may file within 30 days of receipt of notice of the board's decision a complaint to review the board's decision in the district court in any county where all or part of the project works is located or in Lewis and Clark County.

(3) If a complaint is filed under subsection (2), the court shall hold a trial de novo on the question of necessity of the department program and the question of excessive costs. If the association prevails, the court may award costs to the association. The court may specify an acceptable program of maintenance, repair, operation, or alteration or may order the department and the association to develop a program, subject to court approval.

(4) Whenever a program of maintenance, repair, operation, or alteration is proposed, the department shall assist the association in attempting to secure sources of financing, including federal funds.

(5) Whenever the department proposes to abandon, sell, or otherwise dispose of a project which involves a water users' association, the department shall notify the association. Before the department may take further action to abandon, sell, or otherwise dispose of a project which involves a water users' association, the department must receive a petition approving the abandonment, sale, or disposition which is signed by stockholders of the association representing 66 2/3% or more of the issued and outstanding stock of the association. If, within 30 days of receipt of the final proposal of abandonment, sale, or other disposal, stockholders of the association representing ~~15%~~ *30%* or more of the issued and outstanding stock of the association file a petition of protest with the department, the project may not be abandoned, sold, or otherwise disposed of without the consent of the legislature."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 15, 1991.

CHAPTER NO. 426

[HB 875]

AN ACT TO REQUIRE REPRESENTATION OF ORGANIZED LABOR ON THE STATE EMPLOYEE GROUP BENEFITS ADVISORY COUNCIL; AND AMENDING SECTION 2-15-1016, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1016, MCA, is amended to read:

"**2-15-1016. State employee group benefits advisory council — composition.** (1) The department shall create a state employee group benefits advisory council under 2-15-122.

(2) The members of the advisory council ~~shall~~ *must* be selected from a diverse group in order to adequately represent the interests of state employees and retirees.

(3) ~~At least one~~ *One* member of the advisory council must be a retired state employee.

(4) Each labor organization, as defined in 39-31-103, representing more than 1,000 employees of the state of Montana is entitled to one representative on the advisory council."

Approved April 15, 1991.

CHAPTER NO. 427

[HB 893]

AN ACT REVISING THE LAW RELATING TO THE FILING OF THRESHERS' LIENS; REQUIRING A STATEMENT OF AGRICULTURAL LIEN TO BE FILED WITHIN 30 DAYS OF PERFORMANCE; PROVIDING THAT A COPY OF THE STATEMENT OF LIEN SENT BY CERTIFIED MAIL IS SUFFICIENT NOTICE TO PRIVATE PURCHASERS; AND AMENDING SECTION 71-3-802, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-802, MCA, is amended to read:

"**71-3-802. How lien obtained.** (1) A person ~~intending to avail himself of the benefits of this part~~ *entitled to a lien under 71-3-801* shall file with the office of the secretary of state a statement of agricultural lien, as provided in 71-3-125, within ~~10~~ *30* days after the last service was rendered or labor performed in the threshing of grain or other crops or the cutting and harvesting and threshing by the combined harvester and thresher~~, a notice that within 20 days a lien, as specified in 71-3-801, will be claimed~~.

(2) If the grain or other crops cut, harvested, and threshed are being hauled from the machine or combine direct to the elevator or to any other purchaser, the threshermen, swather, or owner of the combine desiring to claim a lien shall also serve written notices upon the elevatorman or other private purchaser that he will claim and file a lien upon the grain or other crops for his services or labor performed in threshing or combining and threshing the grain or crops. *A copy of the statement of agricultural lien mailed by certified mail is sufficient notice to the elevatorman or other private purchaser.*"

Approved April 15, 1991.

CHAPTER NO. 428

[HB 899]

AN ACT TO EXPAND THE DEFINITION OF TRAFFIC EDUCATION TO INCLUDE INSTRUCTION IN BICYCLE, PEDESTRIAN, AND SCHOOL BUS TRAFFIC LAWS AND THE SAFE OPERATION OF BICYCLES IN ORDER TO INCREASE PUBLIC AWARENESS OF MOTOR VEHICLE, PEDESTRIAN, AND SCHOOL BUS SAFETY WITH REGARD TO PROTECTING SCHOOL-AGE CHILDREN; AMENDING SECTION 20-7-501, MCA; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-501, MCA, is amended to read:

"**20-7-501. Definitions.** As used in this title, unless the context clearly indicates otherwise the following definitions apply:

(1) "Traffic education" means instruction in ~~the~~ motor vehicle, *bicycle, pedestrian, and school bus traffic* laws, in the acceptance of personal responsibility on the public highways, in the causes and consequences of traffic accidents, and in the skills necessary for the safe operation of *bicycles and* motor vehicles. *The instruction must be designed to improve public awareness of motor vehicle, pedestrian, and school bus safety with regard to protecting school-age children.*

(2) "Traffic education course" means a course of traffic education which has been approved by the superintendent of public instruction.

(3) "Teacher of traffic education" means an instructor approved by the superintendent of public instruction to teach traffic education.

(4) "Traffic education account" means the state treasury account in the state special revenue fund for the deposit and disbursement of state traffic education revenue."

Section 2. **Termination.** [This act] terminates October 1, 1993.

Approved April 15, 1991.

CHAPTER NO. 429

[SB 105]

AN ACT AMENDING THE FORMULA PERTAINING TO FEDERAL AND STATE MATCHING FUNDS FOR MEDICAL RESEARCH FACILITY CONSTRUCTION, EQUIPMENT, AND STARTUP OPERATING COSTS; EXTENDING THE TERMINATION DATE OF THE APPROPRIATION OF FUNDS FROM THE COAL SEVERANCE TAX PERMANENT FUND TO BE USED FOR THE MEDICAL RESEARCH FACILITY PROJECTS TO JUNE 30, 1993; AMENDING SECTION 90-3-901, MCA, AND SECTION 1, CHAPTER 634, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-3-901, MCA, is amended to read:

"**90-3-901. Medical research facility projects account — allocation of funds — goals and criteria — rulemaking.** (1) There is a medical research facility projects account in the state special revenue fund into which must be deposited the money appropriated in section 1, Chapter 634, Laws of 1989.

(2) Notwithstanding any provision of Title 90, chapter 3, the Montana science and technology development board may award grants of the money appropriated under section 1, Chapter 634, Laws of 1989, for the purposes described in that section.

(3) The board may award a grant to a medical research facility project if the project proposal meets the following goals:

(a) The project is designed to establish an advanced medical research facility that will be funded sufficiently to become an enduring research presence in the state.

(b) The project concentrates on fields of medical research that involve advanced technology applied to national medical concerns.

(c) The project is designed to recruit and retain in the state medical researchers of nationally recognized stature.

(4) The board, at a minimum, shall use the following criteria in awarding a medical research facility grant:

(a) State funds for construction, *equipment,* and startup operating costs must be matched on at least a ~~four-to-one~~ *2 1/2-to-1* federal-to-state matching basis with federal funds appropriated for the same purpose.

(b) The project proposal includes an effective construction and operating plan that provides a sound basis for ongoing operation of the facility.

(c) The personnel, equipment, and research operation of the facility are sufficient to earn and maintain a nationally recognized stature.

(5) The board may adopt rules to implement the purposes of section 1, Chapter 634, Laws of 1989, and this section."

Section 2. Section 1, Chapter 634, Laws of 1989, is amended to read:

"Section 1. **Appropriation.** There is appropriated from the income and earnings on the coal severance tax permanent fund that otherwise would be appropriated to the coal severance tax permanent fund under 17-5-704 the amount of $2 million to the medical research facility projects account established in [section 2] for the biennium ending June 30, ~~1991~~ *1993.* The money is to be used to match federally appropriated funds on at least a ~~four-to-one~~ *2 1/2-to-1* federal-to-state matching basis for construction, *equipment,* and startup operating costs for medical research facility projects in the state. The Montana science and technology development board shall administer the appropriation."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 15, 1991.

CHAPTER NO. 430

[SB 117]

AN ACT REMOVING THE STATUTORY LIMITS ON UNIVERSITY SECURITY GUARDS CARRYING FIREARMS; AND AMENDING SECTION 20-25-324, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-25-324, MCA, is amended to read:

"**20-25-324. Firearms.** Security guards who have successfully completed the basic course in law enforcement conducted by the Montana law enforcement academy may carry firearms in accordance with policies established by the board of regents~~:~~

~~(1) between 5 p.m. and 8 a.m.; and~~

~~(2) whenever guarding money or other valuables~~ *after consulting with the student body government at the unit of the university system affected by the regents' policy.*"

Approved April 15, 1991.

CHAPTER NO. 431

[SB 253]

AN ACT TO GENERALLY REVISE THE OPENCUT MINING ACT; PROHIBITING MINING OF PREVIOUSLY RECLAIMED LAND WITHOUT AN OPENCUT CONTRACT; AUTHORIZING THE DEPARTMENT OF STATE LANDS TO SPEND MONEY FOR RECLAMATION OF LAND AND REHABILITATION OF WATER AFFECTED BY OPENCUT MINING; AUTHORIZING ACCEPTANCE OF LETTERS OF CREDIT AS BOND; PROVIDING ADMINISTRATIVE PROCEDURES FOR AND APPEALS OF ASSESSMENT OF CIVIL PENALTIES; AND AMENDING SECTIONS 82-4-424, 82-4-431, 82-4-433, AND 82-4-441, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-424, MCA, is amended to read:

"**82-4-424. Receipt and expenditure of funds.** (1) The board may receive any federal funds, state funds, or any other funds for the reclamation of land affected by opencut mining. The board may cause the reclamation work to be done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons.

(2) Any funds or any public works programs available to the board shall be expended and used to reclaim and rehabilitate any lands that have been subject to opencut mining that have not been reclaimed and rehabilitated in accordance with the standards of this part.

(3) There is an opencut mining and reclamation account within the state special revenue fund established in 17-2-102. There must be deposited in the account all fees, fines, penalties, and other money that have been or will be paid under the provisions of this part. The money in the account is available to the department of state lands through appropriation and must be spent by the department for the reclamation and revegetation of land, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by opencut mining operations and for administration of this part. Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature."

Section 2. Section 82-4-431, MCA, is amended to read:

"**82-4-431. Contract for reclamation required.** (1) After March 16, 1973, no operator may conduct opencut-mining operations ~~which~~ *that* will result in the removal of 10,000 cubic yards or more of product or overburden *or that will result in the disturbance of land that was previously reclaimed pursuant to this part* until he has entered into a contract with the board for the reclamation of the land affected. An operator conducting a number of operations, each of which results in the removal of less than 10,000 cubic yards of product or overburden but which result in the removal of 10,000 cubic yards or more of product or overburden in the aggregate, is subject to the provisions of this part, except as provided in this section.

(2) (a) Except as provided in or conditioned under subsections (2)(b) and (2)(c), an operator who holds a contract for reclamation may operate an opencut mine without first securing an additional contract or an amendment to the existing contract or bond if the mine meets the following criteria:

(i) the total amount of material and overburden removed does not exceed 1,000 cubic yards; and

(ii) the operator notifies the department of state lands prior to beginning such operations and, within 30 days of notifying the department, submits a completed site information form, salvages and stockpiles all root-bearing soil materials, regrades the affected area to 3:1 or flatter slope and blends the reclaimed area into the adjacent topography, and during the first appropriate growing season replaces all topsoil and reseeds or revegetates as required by the department.

(b) The department may refuse to allow the operator to operate an opencut mine under subsection (2)(a) if, at the time of notification by the operator to the department, the operator has a pattern of violations or is in current violation of this part or rules adopted under this part or provisions of a contract for reclamation.

(c) The department may require an additional bond as a condition for the operation of an opencut mine under subsection (2)(a).

(3) Opencut mines described in subsection (2) may not be placed in flowing, ephemeral, or intermittent streams, in the bottom or head of a confined drainage, in an area where the operation will intercept ground water or intercept any slope that is naturally steeper than 3:1, or in any area where mining would be restricted by other laws."

Section 3. Section 82-4-433, MCA, is amended to read:

"**82-4-433. Bond.** (1) A bond required to be filed in this part by the operator shall be in such form as the board prescribes, payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part and all rules of the board. The bond shall be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety licensed to do business in the state of Montana, as surety. The bond shall be in an amount not to exceed the costs of restoration required by this part as determined by the board. The amount of the bond may not be less than $200 or more than $1,000 per acre unless the department determines, in writing, that the cost of restoration of the land exceeds $1,000 per acre. Upon such a determination, the bond amount must be set by the board at the cost of restoring the land.

(2) In lieu of the bond, the operator may deposit with the board cash, ~~and~~ government securities, *a letter of credit in a form acceptable to the department of state lands,* or a bond with property sureties in an amount equal to that of the required bond on conditions as above prescribed. In the discretion of the board, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities thereon as security, in which event no surety may be required. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this part. The bond or security remains in effect until the affected land has been reclaimed as provided under the contract and the reclamation has been approved and the bond or security has been released by the board. The bond or security shall cover only actual affected land and may be increased or reduced to cover only such acreages as remain unreclaimed.

(3) If the license of a surety upon a bond filed with the board pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice thereof from the board, shall substitute for that surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the board may suspend the contract of the operator to conduct operations upon the land described in the contract until the substitution has been made.

(4) The board shall cause the reclamation of any affected land with respect to which a bond has been forfeited.

(5) Whenever an operator has completed all of the requirements under the provisions of this part as to any affected land, he shall notify the board thereof. If the board releases the operator from further obligation regarding

such affected land, the penalty of the bond shall be reduced proportionately."

Section 4. Section 82-4-441, MCA, is amended to read:

"**82-4-441. Penalty — enforcement.** (1) A person who violates any of the provisions of this part or rules adopted thereunder or provisions of a contract for reclamation shall pay a civil penalty of not less than $100 or more than $1,000 for the violation and an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues following the service of notice of the violation, and the person may be enjoined from continuing such violation as provided in this section. ~~These penalties are recoverable in an action brought in the name of the state of Montana by the attorney general in the district court having jurisdiction of the defendant or by mutual agreement of the parties involved, in the district court of the first judicial district. Penalty money shall be credited to the general fund.~~

(2) ~~The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.~~

~~(3)~~ The civil penalties provided for in this section may be waived for a minor violation if it is determined that the violation does not represent potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department of state lands shall notify the person or operator of the violation. The person or operator is entitled, by filing a written request within 20 days of receipt of the notice of violation, to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be imposed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the board shall make findings of fact, issue a written decision as to the occurrence of the violation and the amount of penalty warranted, and order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, he shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits his right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or the district court of the county in which the opencut mine is located.

(4) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a contract made pursuant to this part in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or the district court of the county in which the opencut mine is located."

Approved April 15, 1991.

CHAPTER NO. 432

[SB 336]

AN ACT TO CLARIFY WHEN HEALTH CARE INFORMATION IN THE POSSESSION OF LOCAL HEALTH OFFICERS OR BOARDS OR THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES IS SUBJECT TO THE UNIFORM HEALTH CARE INFORMATION ACT, RATHER THAN THE GOVERNMENT HEALTH CARE INFORMATION ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Correlation with Uniform Health Care Information Act.** Health care information in the possession of a local board, local health officer, or the department because a health care provider employed by any of these entities provided health care to a patient, either individually or at a public health center or other publicly owned health care facility, is subject to the Uniform Health Care Information Act and not subject to this part.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 16, part 6, and the provisions of Title 50, chapter 16, part 6, apply to [section 1].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 15, 1991.

CHAPTER NO. 433

[SB 377]

AN ACT EXEMPTING UNDERGROUND STORAGE TANK INSTALLERS WHO ARE EMPLOYEES FROM CIVIL PENALTY PROVISIONS; AMENDING SECTION 75-11-223, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-223, MCA, is amended to read:

"**75-11-223. Civil penalties.** (1) Any person who violates any provision of this part, a rule adopted under this part, or an order of the department or the board is subject to a civil penalty not to exceed $10,000 per violation. *If an installer who is an employee is in violation, the employer of that installer is the entity that is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act.* Each day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy; or

(b) action under 75-11-224."

Section 2. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to proceedings beginning after March 31, 1990.

Approved April 15, 1991.

CHAPTER NO. 434

[SB 335]

AN ACT TO ESTABLISH INDUSTRIES PROGRAMS AT STATE YOUTH CORRECTIONAL FACILITIES; TO GRANT THE DEPARTMENT OF FAMILY SERVICES RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 2] grants the department of family services authority to adopt rules necessary for administration of the youth industries programs authorized in [section 1].

It is the intent of the legislature that the department adopt rules that may include but are not limited to rules on the subjects specified in [section 2].

In addition, it is intended that in adopting rules, the department examine the policies governing administration of state prison industries programs, and that the department design youth industries programs to provide training and rehabilitation of youth committed to state youth correctional facilities.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Youth industries programs.** The department of family services may:

(1) establish industries programs in state youth correctional facilities that:

(a) assist in the training and rehabilitation of residents at state youth correctional facilities; and

(b) provide the production or manufacture of products and the rendering of services that may be needed by:

(i) a department or agency of the state of Montana or a unit of local government;

(ii) an agency of the federal government; or

(iii) an office or agency of another state or a political subdivision of another state;

(2) contract with private industry for the sale of goods produced or manufactured at state youth correctional facilities; and

(3) fix the purchase price for goods and services available under the industries program established in subsection (1).

Section 2. **Rulemaking authority.** The department of family services may adopt rules necessary for administration of industries programs authorized in [section 1]. Rules adopted by the department may include rules regarding:

(1) requirements for participation of youth in industries programs;

(2) the type of training and experience to be provided to youth under these programs;

(3) the type of goods and services to be sold under the industries programs;

(4) contracts with private industry for the sale of goods produced or manufactured at state youth correctional facilities; and

(5) payment of wages to youth working in industries programs.

Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 53, chapter 30, part 2, and the provisions of Title 53, chapter 30, part 2, apply to [sections 1 and 2].

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved April 15, 1991.

CHAPTER NO. 435

[SB 386]

AN ACT CLARIFYING THAT A WATER RIGHT MAY BE TEMPORARILY CHANGED; AND AMENDING SECTION 85-2-404, MCA.

STATEMENT OF INTENT

It is the declared policy of the state in 85-1-101 that water resources be put to optimum beneficial use to secure maximum economic and social prosperity for its citizens. The legislature recognizes that water supplies are limited and vary from year to year. As water supplies become fully appropriated, the reallocation of some water may be necessary to meet changing economic and social needs.

The appropriate means of reallocating water among competing demands is with the voluntary approval of water right holders. With sufficient innovation and economic incentives, water can be reallocated voluntarily, without loss of appropriation rights, and to the profit of prior appropriators, through the temporary change of water rights in anticipation of periods of water scarcity. This legislation clarifies that these types of arrangements are allowed, except when other appropriators might be adversely affected. Thus, water can be reallocated for optimum beneficial use and the maximum economic and social prosperity of all Montana citizens.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Temporary changes in appropriation right.** (1) An appropriator may not make a temporary change in appropriation right for his use or another's use except with department approval in accordance with 85-2-402 and this section.

(2) A temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. Renewal of an authorization for a temporary change in appropriation right requires application to the department by the appropriator. Upon application, the department shall notify other appropriators potentially affected by the renewal and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropria-

tor, other than an appropriator described in subsection (7), is adversely affected.

(4) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department.

Section 2. Section 85-2-404, MCA, is amended to read:

"**85-2-404.** *(Temporary)* **Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there is a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of his appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The lease of an existing right pursuant to 85-2-436 ~~does~~ *or the temporary change pursuant to [section 1] does* not constitute an abandonment ~~by the lessor~~ or serve as evidence that could be used to establish an abandonment ~~by the lessor~~ of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been determined in accordance with part 2 of this chapter. *(Terminates June 30, 1993—sec. 11, Ch. 658, L. 1989.)*

85-2-404. *(Effective July 1, 1993)* **Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there shall be a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of his appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) A temporary change pursuant to [section 1] does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

~~(4)~~*(5)* Subsections (1) and (2) do not apply to existing rights until they have been determined in accordance with part 2 of this chapter."

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [section 1].

Approved April 15, 1991.

CHAPTER NO. 436

[HB 667]

AN ACT TO ALLOW THE BOARD OF MEDICAL EXAMINERS TO FUND ADDITIONAL STAFF, HIRED BY THE DEPARTMENT OF COMMERCE, THROUGH AN INCREASE IN THE LICENSE FEES PAID BY LICENSED PHYSICIANS; AMENDING SECTION 37-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the workload of the Board of Medical Examiners has increased significantly; and

WHEREAS, additional staff is necessary for the Board to address the increased caseload, serve Montana's physicians and the public, and fulfill its statutory mandates; and

WHEREAS, the Legislature feels it is appropriate to allow the Department of Commerce to hire additional staff and fund any new position through an increase in the license fees charged to licensed physicians by the Board.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-203, MCA, is amended to read:

"**37-3-203. Powers and duties.** The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter; the rules shall be fair, impartial, and nondiscriminatory;

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

(4) establish a program to assist and rehabilitate licensed physicians who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance; ~~and~~

(5) select an executive secretary to be hired by the department to:

(a) provide services to the board in connection with the board's duties under this chapter;

(b) assist in prosecution and matters of license discipline under this chapter; and

(c) administer the board's affairs; *and*

(6) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1991.

CHAPTER NO. 437

[HB 785]

AN ACT TO GENERALLY REVISE THE MONTANA HEALTH MAINTENANCE ORGANIZATION ACT; TO ELIMINATE THE REQUIREMENT FOR CERTIFICATION BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES BEFORE A CERTIFICATE OF AUTHORITY IS ISSUED TO A HEALTH MAINTENANCE ORGANIZATION; TO ELIMINATE OTHER REQUIREMENTS RELATING TO THE DEPARTMENT; AMENDING SECTIONS 33-31-102, 33-31-103, 33-31-201, 33-31-202, 33-31-212, 33-31-401, 33-31-402, 33-31-404, AND 33-31-405, MCA; REPEALING SECTION 33-31-104, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-31-102, MCA, is amended to read:

"**33-31-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction; and

(i) treatment for phenylketonuria. "Treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status.

(2) "Commissioner" means the commissioner of insurance of the state of Montana.

~~(3) "Department of health" means the department of health and environmental sciences provided for in 2-15-2101.~~

~~(4) "Director" means the director of the department of health and environmental sciences provided for in 2-15-2101.~~

~~(5)~~*(3)* "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

~~(6)~~*(4)* "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

~~(7)~~*(5)* "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

~~(8)~~*(6)* "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

~~(9)~~*(7)* "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers.

~~(10)~~*(8)* "Insurance producer" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

~~(11)~~*(9)* "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

~~(12)~~*(10)* "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

~~(13)~~*(11)* "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or nurse specialist as specifically listed in 37-8-202 who treats any illness or injury within the scope and limitations of his practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

~~(14)~~*(12)* "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 2. Section 33-31-103, MCA, is amended to read:

"**33-31-103. Rules.** ~~(1)~~ The commissioner may, after notice and hearing, make reasonable rules necessary to effectuate this chapter.

~~(2) The department of health may make reasonable rules necessary to effectuate this chapter.~~"

Section 3. Section 33-31-201, MCA, is amended to read:

"**33-31-201. Establishment of health maintenance organizations.** (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first obtains from the secretary of state a certificate of authority to transact business in this state as a foreign corporation under 35-1-1001.

(2) Each health maintenance organization operating in this state as of October 1, 1987, shall submit an application for a certificate of authority under subsection (3) within 30 days after the effective date of rules adopted by the commissioner ~~and the department of health~~ as provided in 33-31-103. Each such applicant may continue to operate in this state until the commissioner acts upon the application. If an application is denied under 33-31-202, the applicant must be treated as a health maintenance organization whose certificate of authority has been revoked.

(3) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

(a) be verified by an officer or authorized representative of the applicant;

(b) be in a form prescribed by the commissioner;

(c) contain:

(i) the applicant's name;

(ii) the location of the applicant's home office or principal office in the United States (if a foreign person);

(iii) the date of organization or incorporation;

(iv) the form of organization (including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors);

(v) the state or country of domicile; and

(vi) any additional information the commissioner may reasonably require; and

(d) set forth the following information or be accompanied by the following documents, as applicable:

(i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto, certified by the public officer with whom the originals were filed in the state or country of domicile;

(ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody thereof;

(iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation; and the partners or members in the case of a partnership or association;

(iv) a copy of any contract made or to be made between:

(A) any provider and the applicant; or

(B) any person listed in subsection (3)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

(v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

(A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;

(B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter.

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, his successors in office, and his authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;

(ix) a statement reasonably describing the geographic service area or areas to be served, by county, including:

(A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

(x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

(xi) a description of the complaint procedures to be used as required under 33-31-303;

~~(xii) a description of the procedures and programs to be implemented to meet the quality of health care requirements in 33-31-202;~~

~~(xiii)~~*(xii)* a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;

~~(xiv)~~*(xiii)* a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the commissioner in accordance with the filing provisions of 33-31-301(2); however, nothing in this subsection deprives the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract;

~~(xv)~~*(xiv)* a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

~~(xvi)~~*(xv)* a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

~~(xvii)~~*(xvi)* evidence that it can meet the requirement of 33-31-216(10); and

~~(xviii)~~*(xvii)* any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.

(4) Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection (3) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may make reasonable rules exempting from the filing requirements of this subsection those items he considers unnecessary.

(5) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications thereto. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

(6) Each health maintenance organization shall maintain, at its administrative office, and make available to the commissioner upon request executed copies of all provider contracts.

(7) The commissioner may make reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner."

Section 4. Section 33-31-202, MCA, is amended to read:

"33-31-202. Issuance of certificate of authority. ~~(1) Upon receipt of an application for issuance of a certificate of authority, the commissioner~~

~~shall transmit copies of the application and accompanying documents to the department of health. The department of health shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished, has:~~

~~(a) demonstrated the willingness and potential ability to assure that it will provide health care services in a manner assuring availability and accessibility of adequate personnel and facilities and enhancing availability, accessibility, and continuity of service;~~

~~(b) arrangements, established in accordance with the rules made by the department of health, for an ongoing quality assurance program concerning health care availability, accessibility, and continuity of service; and~~

~~(c) a procedure, established in accordance with rules of the department of health, to develop, compile, evaluate, and report statistics relating to the cost of its operations, the pattern of utilization of its services, the availability and accessibility of its services, and any other matters as may be reasonably required by the department of health.~~

~~(2) Within 60 days of receipt of the application from a health maintenance organization for issuance of a certificate of authority, the department of health shall certify to the commissioner that the proposed health maintenance organization meets the requirements of subsection (1) or shall, after notice and hearing, notify the commissioner that the health maintenance organization does not meet those requirements and specify in what respects it is deficient. The director may extend by not more than an additional 30 days the period within which he may certify to the commissioner that the proposed health maintenance organization meets or does not meet the requirements of subsection (1) by giving notice of the extension to the commissioner and the health maintenance organization before the expiration of the initial 60-day period.~~

~~(3)~~*(1)* The commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to 33-31-201 within 180 days ~~of receipt of the certification from the department of health~~ *after he receives the application.* The commissioner shall grant a certificate of authority upon payment of the application fee prescribed in 33-31-212 if the commissioner is satisfied that each of the following conditions is met:

(a) The persons responsible for the conduct of the applicant's affairs are competent and trustworthy.

~~(b) The department of health certifies, in accordance with subsection (2), that the health maintenance organization's proposed plan of operation meets the requirements of subsection (1).~~

~~(c)~~*(b)* The health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments.

~~(d)~~*(c)* The health maintenance organization is financially responsible and can reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may in his discretion consider:

(i) the financial soundness of the arrangements for health care services and the schedule of charges used in connection therewith;

(ii) the adequacy of working capital;

(iii) any agreement with an insurer, a health service corporation, a government, or any other organization for ensuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the health maintenance organization;

(iv) any agreement with providers for the provision of health care services;

(v) any deposit of cash or securities submitted in accordance with 33-31-216; and

(vi) any additional information as the commissioner may reasonably require.

~~(e)~~*(d)* The enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to 33-31-222.

~~(f)~~*(e)* Nothing in the proposed method of operation, as shown by the information submitted pursuant to 33-31-201 or by independent investigation, violates any provision of this chapter or rules adopted by the commissioner ~~or the department of health~~.

~~(g) Any deficiencies identified by the department of health have been corrected.~~

~~(4)~~*(2)* The commissioner may in his discretion deny a certificate of authority only if he complies with the requirements of 33-31-404."

Section 5. Section 33-31-212, MCA, is amended to read:

"**33-31-212. Fees.** (1) Each health maintenance organization shall pay to the commissioner the following fees:

(a) for filing an application for a certificate of authority or amendment thereto, $300;

(b) for filing an amendment to the organization documents that requires approval, $25;

(c) for filing each annual statement, $25;

(d) for annual continuation of certificate of authority, $300.

(2) All fees, miscellaneous charges, fines, penalties, and those amounts received pursuant to 33-31-211(3) and 33-31-405 collected by the commissioner pursuant to this chapter and the rules adopted thereunder must be deposited in the general fund.

~~(3) The director may assess fees necessary and adequate to cover the expenses of the director's functions under this chapter.~~"

Section 6. Section 33-31-401, MCA, is amended to read:

"**33-31-401. Examination.** (1) The commissioner may examine the affairs of a health maintenance organization as often as is reasonably necessary to protect the interests of the people of this state. The commissioner shall make an examination at least once every 3 years.

~~(2) The department of health may examine the availability, accessibility, and continuity of the health care services provided by any health maintenance organization and the providers with whom the health maintenance organization has contracts, agreements, or other arrangements as often as is reasonably necessary to protect the interests of the people of this state. The department of health shall make such an examination at least once every 3 years.~~

~~(3)~~*(2)* Each authorized health maintenance organization and provider shall submit its relevant books and records for the examinations and in every way facilitate the examinations. For the purpose of examination, the commissioner ~~and the department of health~~ may administer oaths to and examine the officers and insurance producers of the health maintenance organization and the principals of the providers concerning their business.

~~(4) (a) (i)~~*(3) (a)* Upon presentation of a detailed account of the charges and expenses of examinations by the commissioner, the health maintenance organization being examined shall pay to the examiner as necessarily incurred on account of the examination the actual travel expenses, a reasonable living-expense allowance, and a per diem, all at reasonable rates customary therefor and as established or adopted by the commissioner. The commissioner may present an account periodically during the course of the examination or at the termination of the examination as the commissioner considers proper. A person may not pay and an examiner may not accept any additional emolument on account of any examination.

~~(ii)~~*(b)* If a health maintenance organization fails to pay the charges and expenses as referred to in subsection ~~(4)(a)(i)~~ *(3)(a)*, the commissioner shall pay them out of the funds of the commissioner in the same manner as other disbursements of funds. The amount so paid must be a lien upon all of the person's assets and property in this state and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund.

~~(b) The expenses of examination conducted by the director under this section must be assessed against the health maintenance organization and remitted to the director.~~

~~(5)~~*(4)* In lieu of an examination, the commissioner ~~or the director~~ may accept the report of an examination made by the commissioner ~~or the director~~ of another state."

Section 7. Section 33-31-402, MCA, is amended to read:

"**33-31-402. Suspension or revocation of certificate of authority.** (1) The commissioner may in his discretion suspend or revoke any certificate of authority issued to a health maintenance organization under this chapter if he finds that any of the following conditions exist:

(a) The health maintenance organization is operating in contravention of its basic organizational document or in a manner contrary to that described in any other information submitted under 33-31-201 and provided that such operation adversely affects the health maintenance organization's ability to provide benefits and operate under the application approved by the commissioner, unless amendments to such submissions have been filed with and approved by the commissioner.

(b) The health maintenance organization issues evidences of coverage or uses a schedule of charges for health care services that do not comply with the requirements of 33-31-301.

(c) The health maintenance organization does not provide or arrange for basic health care services.

~~(d) The director, after notice and hearing, certifies to the commissioner that:~~

~~(i) the health maintenance organization does not meet the requirements of 33-31-202(1); or~~

~~(ii) the health maintenance organization is unable to fulfill its obligations to furnish health care services.~~

~~(e)~~*(d)* The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.

~~(f)~~*(e)* The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under 33-31-222.

~~(g)~~*(f)* The health maintenance organization has failed to implement the complaint system required by 33-31-303 to resolve valid complaints in a reasonable manner.

~~(h)~~*(g)* The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner.

~~(i)~~*(h)* The continued operation of the health maintenance organization would be hazardous to its enrollees.

~~(j)~~*(i)* The health maintenance organization has otherwise failed to substantially comply with this chapter.

(2) The commissioner may in his discretion suspend or revoke a certificate of authority only if he complies with the requirements of 33-31-404.

(3) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization may not, during the period of such suspension, enroll any additional enrollees except newborn infants or other newly acquired dependents of existing enrollees and may not engage in any advertising or solicitation.

(4) If the commissioner revokes the certificate of authority of a health maintenance organization, the health maintenance organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs and may not transact further business except as may be essential to the orderly conclusion of its affairs. It may not engage in further advertising or solicitation following the effective date of the order of revocation. The commissioner may by written order permit further operation of the health maintenance organization if he finds further operation to be in the best interest of enrollees to the extent that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage."

Section 8. Section 33-31-404, MCA, is amended to read:

"**33-31-404. Administrative procedures.** (1) When the commissioner has cause to believe that grounds for the denial of an application for a certificate of authority exist or that grounds for the suspension or revocation of a certificate of authority exist, he shall give written notice to the health maintenance organization ~~and the department of health~~ specifically stating the grounds for denial, suspension, or revocation and fixing a time of at least 30 days after the notice for a hearing on the matter.

(2) ~~The director or his designated representative may attend the hearing and may participate in the proceeding. The recommendations and findings of the director with respect to matters relating to the availability, accessibility, and continuity of health care services provided in connection with any decision regarding denial, suspension, or revocation of a certificate of authority must be conclusive and binding upon the commissioner.~~ After the hearing, or upon the failure of the health maintenance organization to appear at the hearing, the commissioner shall make written findings and act as he considers advisable. The commissioner shall mail the written findings to the health maintenance organization ~~and submit a copy to the director~~. The action of the commissioner ~~and the recommendations and findings of the director are~~ *is* subject to review by the district court having jurisdiction. The court may, in disposing of the issue before it, modify, affirm, or reverse the order of the commissioner in whole or in part.

(3) Where notice and hearing are required with regard to actions taken by the commissioner under this chapter, the requirements of 33-1-314 through 33-1-316 and Title 33, chapter 1, part 7, apply, except that the formal rules of pleading and evidence must be observed. To the extent that

33-1-314 through 33-1-316 and Title 33, chapter 1, part 7, do not address the notice and hearing requirements of this chapter, the provisions of Title 2, chapter 4, parts 6 and 7, apply.

~~(4) Where notice and hearing are required with regard to actions taken by the director under this chapter, the provisions of Title 2, chapter 4, parts 6 and 7, apply.~~"

Section 9. Section 33-31-405, MCA, is amended to read:

"**33-31-405. Penalties and enforcement.** (1) The commissioner may, in addition to suspension or revocation of a certificate of authority under 33-31-402, after notice and hearing, impose an administrative penalty in an amount not less than $500 or more than $10,000 if he gives reasonable notice in writing of the intent to levy the penalty and the health maintenance organization has a reasonable time within which to remedy the defect in its operations that gave rise to the penalty citation.

(2) If the commissioner ~~or the director~~ has cause to believe that a violation of this chapter has occurred or is threatened, the commissioner ~~or the director~~ may:

(a) give notice to the health maintenance organization and to the representatives or other persons who appear to be involved in the suspected violation;

(b) arrange a conference with the alleged violators or their authorized representatives to attempt to ascertain the facts relating to the suspected violation; and

(c) if it appears that a violation has occurred or is threatened, arrive at an adequate and effective means of correcting or preventing the violation.

(3) (a) The commissioner may issue an order directing a health maintenance organization or its representative to cease and desist from engaging in an act or practice in violation of this chapter.

(b) Within 15 days after service of the cease and desist order, the respondent may request a hearing to determine whether acts or practices in violation of this chapter have occurred. The hearing must be conducted pursuant to Title 2, chapter 4, part 6, and judicial review must be available as provided by Title 2, chapter 4, part 7.

(4) If a health maintenance organization violates a provision of this chapter and the commissioner elects not to issue a cease and desist order or if the respondent does not comply with a cease and desist order issued pursuant to subsection (3), the commissioner may institute a proceeding to obtain injunctive or other appropriate relief in the district court of Lewis and Clark County."

Section 10. **Repealer.** Section 33-31-104, MCA, is repealed.

Section 11. **Effective date.** [This act] is effective July 1, 1991.

Approved April 16, 1991.

CHAPTER NO. 438

[HB 849]

AN ACT PROVIDING FOR A REFERENDUM IN OCTOBER 1991 FOR MONTANA STUDENTS ENROLLED IN GRADES 7 THROUGH 12 TO DECIDE WHETHER RETAILERS SHOULD REFUSE TO SELL CIGARETTES AND TOBACCO TO PERSONS UNDER 18 YEARS OF AGE; PROVIDING FOR PROCEDURES AND SUPERVISION OF THE REFERENDUM BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION; PROVIDING FOR THE POSTING OF SIGNS BY RETAILERS WHO REFUSE TO SELL TOBACCO TO MINORS IN ACCORDANCE WITH THE REFERENDUM, IF APPROVED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Student cigarette tobacco referendum.** A referendum entitled the "Montana school tobacco referendum 1991", open to all Montana students enrolled in grades 7 through 12, must be held in the second week of October 1991 in a ballot form provided by the superintendent of public instruction. The referendum must be conducted as prescribed in this section.

(1) Students enrolled on the date of the referendum in grades 7 through 12 in each accredited public school and in each accredited nonpublic school whose principal notifies the superintendent of public instruction by September 20, 1991, of intent to participate may vote in the referendum.

(2) Not later than October 1, 1991, the superintendent of public instruction shall provide instructions for the referendum, as provided in this section, to each participating school that includes grades 7 through 12. The referendum must be conducted by secret ballot and be presented to students in school in the following ballot form:

☐ YES — I DO favor requesting that stores REFUSE to sell cigarettes and tobacco to persons under 18 years of age.

☐ NO — I DO NOT favor requesting that stores REFUSE to sell cigarettes and tobacco to persons under 18 years of age.

(3) Votes must be tabulated by the student governing body and the principal of each participating school. The principal shall transmit in writing the vote count for his school to the superintendent of public instruction not later than November 1, 1991, together with a statement by the

principal that the referendum was conducted fairly and the vote count is genuine to the best of his knowledge and belief.

(4) The superintendent of public instruction shall tabulate the total vote in the referendum from all participating schools not later than November 15, 1991. If the number of students voting in the referendum is at least 50% of the number of students enrolled in public school grades 7 through 12 on October 1, 1991, and if a majority of students voting voted for the referendum, the superintendent of public instruction shall certify to the director of the department of revenue that the referendum has been approved. Otherwise, the superintendent shall certify that the referendum has been rejected.

(5) Within 60 days of receiving certification from the superintendent of public instruction that the referendum has been approved, the department of revenue shall inform each retailer who sells cigarettes and tobacco that the referendum has been approved and ask retailers to post prominently a sign where cigarettes and tobacco are sold, stating: "Out of respect for the wishes of Montana junior and senior high school students as expressed in the Montana School Tobacco Referendum 1991, this store voluntarily agrees not to sell cigarettes and tobacco to persons under 18 years of age. Your cooperation with our Montana students' vote against tobacco sales to minors is appreciated."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1991.

CHAPTER NO. 439

[SB 120]

AN ACT TO REQUIRE THAT TRUSTEES OF A SCHOOL DISTRICT PROVIDE A NONTENURE TEACHER WITH A TRUE STATEMENT OF REASONS UPON TERMINATION; TO PROVIDE A NONTENURE TEACHER WITH A HEARING IF THE NONTENURE TEACHER BELIEVES THE REASONS ARE NOT TRUE; AMENDING SECTIONS 20-3-210 AND 20-4-206, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-210, MCA, is amended to read:

"**20-3-210. Controversy appeals and hearings.** (1) Except as provided under 20-3-211, the county superintendent shall hear and decide all matters of controversy arising in his county as a result of decisions of the trustees of a district in the county. When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction under the provisions for appeal of controversies in this title. Furthermore, he shall hear and decide all controversies arising under:

(a) section 20-5-304 or 20-5-311 relating to the approval of tuition applications; ~~or~~

(b) *section 20-4-206(4); or*

(c) any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.

(2) The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. He shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy which is made by the county superintendent shall be based upon the facts established at such hearing.

(3) The decision of the county superintendent may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction.

(4) Cost incurred by the office of the county superintendent shall be paid from the general fund budget of the county in which the controversy is initiated."

Section 2. Section 20-4-206, MCA, is amended to read:

"**20-4-206. Notification of nontenure teacher reelection — acceptance — termination and statement of reason.** (1) The trustees shall provide written notice by May 1 to all nontenure teachers who have been reelected. ~~Any~~ *A* nontenure teacher who does not receive *written* notice of reelection or termination ~~shall be~~ *is* automatically reelected for the ensuing school fiscal year.

(2) ~~Any~~ *A* nontenure teacher who receives notification of his reelection for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of ~~such~~ reelection within 20 days after the receipt of the notice of reelection. Failure to so notify the trustees within 20 days may be considered nonacceptance of the tendered position.

(3) When the trustees notify a nontenure teacher of termination, the teacher may within 10 days after receipt of ~~such~~ *the* notice make written request of the trustees for a statement in writing of the reasons for termination of employment. Within 10 days after receipt of the request, the

trustees shall furnish ~~such statement~~ to the teacher *a true statement of reasons for termination.*

(4) If a nontenure teacher believes the reasons provided by the trustees are not true, the teacher may request in writing within 10 days of receipt of the statement of reasons that the county superintendent hold a hearing in accordance with 20-3-210 to determine whether the reasons are true. A hearing must be scheduled within 10 days and held within 45 days after receipt of the request, except that the period may be extended upon agreement between the trustees and the teacher. The burden of proof that the reasons are not true rests with the teacher, and the showing must be demonstrated by clear and convincing evidence.

(5) If, after a hearing, the county superintendent determines that the reasons are not true, the county superintendent shall order the trustees to offer the teacher a contract for the ensuing school fiscal year.

(6) The provisions of this section do not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed.

~~(4) The provisions of this section shall not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed.~~"

Section 3. **Effective date.** [This act] is effective October 1, 1991.

Section 4. **Applicability.** [This act] does not apply to nontenure teachers who are considered temporary or substitute teachers.

Approved April 16, 1991.

CHAPTER NO. 440

[SB 123]

AN ACT PROVIDING THAT PROCEEDS IN THE NOXIOUS WEED MANAGEMENT TRUST FUND MAY BE GRANTED TO THE AGRICULTURAL EXPERIMENT STATION AND THE COOPERATIVE EXTENSION SERVICE FOR RESEARCH, EVALUATION, AND EDUCATION ON CROP WEED MANAGEMENT; REQUIRING ANNUAL REPORTS ON WEED CONTROL RESEARCH; AMENDING SECTIONS 80-7-508 AND 80-7-814, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-814, MCA, is amended to read:

"**80-7-814. Administration and expenditure of funds.** (1) Money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches $2,500,000, except as provided by 80-7-815 in case of a noxious weed emergency. Once this amount is accumulated, any interest or revenue generated by the trust fund and by other funding measures provided by this part must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section, so long as the principal of the trust fund remains at least $2,500,000.

(2) The department may expend funds under this section through grants or contracts to communities, weed control districts, or other entities it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program with a levy in an amount not less than 1.6 mills or an equivalent amount from another source or by an amount of not less than $100,000 for first class counties, as defined in 7-1-2111.

(3) The department may expend funds without the restrictions specified in subsection (2) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. Such expenditures must be on a cost-share basis with such organizations.

(b) cost-share noxious weed management programs with local weed control districts;

(c) special grants to local weed control districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) costs of collecting the surcharge imposed by 80-7-812, not to exceed 3% of the total surcharge proceeds;

(e) administrative expenses incurred by the noxious weed management advisory council; ~~and~~

(f) any project recommended by the noxious weed management advisory council, if the department determines the project will significantly contribute to the management of noxious weeds within the state*; and*

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(4) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

~~(4)~~*(5)* In making ~~such~~ expenditures *under subsections (2) and (3),* the department must give preference to weed control districts and community groups.

~~(5)~~*(6)* If the noxious weed management trust fund is terminated by law, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose."

Section 2. Section 80-7-508, MCA, is amended to read:

"**80-7-508. Duties of the cooperative extension service.** *(1)* The cooperative extension service within the department of education shall conduct investigations pertaining to insects and other arthropods affecting plants and animals. When an injurious infestation of an insect or other arthropod occurs in any part of the state, the authorized employees of the cooperative extension service shall go to the scene of the infestation, shall determine the extent and seriousness of the infestation, and make public the best remedies to be employed.

(2) The cooperative extension service shall cooperate with the agricultural experiment station in providing annual reports required under 80-7-814(4)."

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved April 16, 1991.

CHAPTER NO. 441

[SB 236]

AN ACT REVISING THE URBAN RENEWAL LAWS; CHANGING THE PERIOD OF THE ANNUAL REPORT; PROVIDING FOR CERTAIN REDEVELOPMENT ACTIVITIES TO BE UNDERTAKEN IN ACCORDANCE WITH A DEVELOPMENT AGREEMENT; REVISING THE TERMINATION OF TAX INCREMENT FINANCING; PROVIDING FOR THE REDUCTION IN TAX INCREMENT DISTRIBUTIONS UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 7-15-4237, 7-15-4258, 7-15-4286, AND 7-15-4292, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4237, MCA, is amended to read:

"**7-15-4237. Annual report.** (1) An agency authorized to transact business and exercise powers under this part and part 43 shall file with the local governing body, on or before ~~March 31~~ *September 30* of each year, a report of its activities for the preceding ~~calendar~~ *fiscal* year.

(2) The report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of ~~such calendar~~ *the fiscal* year.

(3) At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency."

Section 2. Section 7-15-4258, MCA, is amended to read:

"**7-15-4258. Acquisition and administration of real and personal property.** (1) Every municipality shall have power to:

(a) acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain, or otherwise any real property and such personal property as may be necessary for the administration of the provisions contained in this part and part 43, together with any improvements thereon;

(b) hold, improve, clear, or prepare for redevelopment any such property;

(c) dispose of any real *or personal* property;

(d) insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; *and*

(e) enter into a development agreement with the owner of real property within an urban renewal area and undertake activities, including the acquisition, removal, or demolition of structures, improvements, or personal property located on the real property, to prepare the property for redevelopment.

(2) A development agreement entered into in accordance with subsection (1)(e) must contain provisions obligating the owner to redevelop the real property for a specified use consistent with the urban renewal plan and offering recourse to the municipality if the redevelopment is not completed as determined by the local governing body. The development agreement may not constitute the acquisition of an interest in real property by the municipality within the meaning of 7-15-4262 or 7-15-4263.

~~(2)~~*(3)* However, no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality in the exercise of such functions with respect to an urban renewal project.

~~(3)~~*(4)* A municipality shall not acquire real property for an urban renewal project *or enter into a development agreement, as provided in subsection (1)(e),* unless the local governing body has approved the urban renewal project plan in accordance with 7-15-4216(2) and 7-15-4217."

Section 3. Section 7-15-4292, MCA, is amended to read:

"7-15-4292. Termination of tax increment financing — *exception — reduction in tax increment distribution.* (1) The tax increment provision shall terminate upon the later of:

(a) the ~~10th~~ *15th* year following its adoption or, if the tax increment provision was adopted prior to January 1, 1980, upon the ~~12th~~ *17th* year following adoption; or

(b) the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest thereon.

(2) Any amounts remaining in the special fund or any reserve fund after termination of the tax increment provision shall be distributed among the various taxing bodies in proportion to their property tax revenues from the district.

(3) After termination of the tax increment provision, all taxes shall be levied upon the actual taxable value of the taxable property in the urban renewal area or the industrial district and shall be paid into the funds of the respective taxing bodies.

(4) ~~No bonds with~~ *Bonds secured in whole or in part by a* tax increment ~~provisions for the repayment thereof~~ *provision* may *not* be issued ~~subsequent to~~ *after* the ~~10th~~ *15th* anniversary of tax increment provisions adopted after January 1, 1980, and the ~~12th~~ *17th* anniversary of tax increment provisions adopted prior to January 1, 1980. *However, if bonds secured by a tax increment provision are outstanding on the applicable anniversary, additional bonds secured by the tax increment provision may be issued if the final maturity date of the bonds is not later than the final maturity date of any bonds then outstanding and secured by the tax increment provision.*

(5) (a) If a municipality issues bonds secured in whole or in part by a tax increment provision after the 10th year following a tax increment provision adopted after January 1, 1980, or after the 12th year following a tax increment provision adopted before January 1, 1980, it is not entitled to the full distribution provided in 20-9-360(2).

(b) The state treasurer shall reduce the distribution to the municipality in each fiscal year after the fiscal year in which the bonds referred to in subsection (5)(a) are issued by an amount equal to the increased taxable value of the project property multiplied by the total number of mills levied and assessed for school district purposes against the property in the previous calendar year. The department of revenue shall certify to the state treasurer by September 1 of each year the increased taxable value of the project property.

(c) If the municipality issues more than one bond series after January 1, 1991, the distribution to the municipality as provided in 20-9-360(2) is reduced, as determined in subsection (5)(b), by the sum of the amounts of each bond issue.

(6) For the purposes of subsection (5):

(a) "project property" is the value of property within an urban renewal area affected by an urban renewal project to be financed in whole or in part from the proceeds of the bonds issued pursuant to subsection (5)(a), certified by the municipality to the department of revenue at the time the bonds are issued and identified by a tax identification number. Property is affected by an urban renewal project if the property:

(i) is to be acquired or improved as part of the urban renewal project;

(ii) is located on property that is to be acquired or improved as part of the urban renewal project;

(iii) is contiguous to or located on property contiguous to, property referred to in subsection (6)(a)(i) or (6)(a)(ii), including adjacent property separated by a road, stream, street, or railroad; or

(iv) is included in an agreement between a person and the municipality in connection with the urban renewal project for the issuance of the bonds and if under the agreement, the person undertakes to develop or redevelop the property; and

(b) "increased taxable value" means the difference between the taxable value of the project property for the current fiscal year and the taxable value of the project property for the fiscal year in which the bonds were issued."

Section 4. Section 7-15-4286, MCA, is amended to read:

"**7-15-4286. Procedure to determine and disburse tax increment.** (1) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision shall be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area or industrial district and the base taxable value of all taxable property located within the urban renewal area or industrial district. The mill rate so determined shall be levied against the sum of the actual taxable value of all taxable property located within as well as outside the urban renewal area or industrial district.

(2) (a) The tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the urban renewal area or industrial district, *except for the university system mills levied and assessed against property as defined in 7-15-4292(6)(a),* shall be paid into a special fund held by the treasurer of the municipality and used as provided in 7-15-4282 through 7-15-4292.

(b) The balance of the taxes collected in each year shall be paid to each of the taxing bodies as otherwise provided by law."

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1991.

CHAPTER NO. 442

[SB 269]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO GENERAL RELIEF MEDICAL ASSISTANCE; TO LIMIT ELIGIBILITY FOR GENERAL RELIEF MEDICAL ASSISTANCE TO PERSONS WHO ARE CHRONICALLY ILL, HAVE AN ACUTE MEDICAL NEED, ARE CHILDREN LESS THAN 18 YEARS OF AGE, OR REQUIRE MEDICAL SERVICES IN ORDER TO OBTAIN OR RETAIN EMPLOYMENT; TO LIMIT GENERAL RELIEF MEDICAL ASSISTANCE TO THOSE SERVICES MEDICALLY NECESSARY TO TREAT CERTAIN SERIOUS MEDICAL CONDITIONS; TO AUTHORIZE A MANAGED-CARE SYSTEM; AMENDING SECTIONS 53-3-109, 53-3-206, AND 53-3-310, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-3-109, MCA, is amended to read:

"**53-3-109. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Acute medical need" means an illness, injury, or other serious medical condition that:

(a) demands urgent medical attention; and

(b) is expected to last less than 12 months if treated.

~~(1)~~*(2)* "Basic necessities" means food, shelter, utilities, and personal needs.

~~(2)~~*(3)* "Children" means minor and adult children who reside in the same household with their parents. The term includes both adoptive and natural children.

(4) "Chronic illness" or "chronically ill" means the condition of a person who is diagnosed as having an illness, injury, or physical or mental impairment that:

(a) is expected to last for a continuous period of at least 12 months; and

(b) would be considered a disability under 42 U.S.C. 1382(c) if evaluated under criteria used to determine eligibility for the federal supplemental security income program.

~~(3)~~*(5)* "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

~~(4)~~*(6)* "Employable" means the condition of a person who is not unemployable. A person who is employable is transitionally needy and is not eligible for general relief for basic necessities except as provided in 53-3-215.

~~(5)~~*(7)* "General relief" or "general relief assistance" means a program of public assistance for basic necessities and medical needs for those persons determined to be eligible for such assistance.

~~(6)~~*(8)* "Household" means:

(a) a collective body of persons consisting of spouses or parents and their children who reside together in the same residence; or

(b) all other persons who by choice or necessity are mutually dependent upon each other for basic necessities and who reside in the same residence.

~~(7)~~*(9)* "Income" means the value of all property of any nature, earned, unearned, or in-kind, including benefits, that is reasonably certain to be received or is actually received during the month by members of a household.

~~(8)~~*(10)* "Lump-sum income" means a nonrecurring source of income received in a single payment by a household during any eligibility period, including but not limited to proceeds from a lawsuit, insurance settlement, inheritance, lump-sum retirement, veterans' or unemployment benefits; benefits received under the federal Social Security Act; prizes; and tax refunds.

~~(9)~~*(11)* "Presumptive income" means the amount of financial assistance that a person would have received under the aid to families with dependent children program, as provided for in Title 53, chapter 4, part 2, if the person had not been determined ineligible due to receipt of lump-sum income, overpayment, fraud, or failure or refusal to comply with requirements for continued participation in the program.

~~(10)~~*(12)* "Resource" means all real and personal property retained after the calendar month of its receipt and which the household or a member of the household has a legal right to sell or liquidate.

~~(11)~~*(13)* "Secure facility" means any facility in which a person may be lawfully held against his will by federal, state, or local authorities.

~~(12)~~*(14)* "Serious barrier to employment" means a limitation in obtaining employment that results from:

(a) a lack of work skills, experience, or training necessary to secure employment;

(b) the failure to attain a high school education or its equivalent; or

(c) illiteracy.

~~(13)~~*(15)* "Serious medical condition" means a mental or physical condition~~, including pregnancy,~~ that causes a serious health risk to a person and for which treatment is medically necessary. Diagnosis and determination of necessary treatment must be made by a licensed medical practitioner, and the department may confirm ~~it~~ *the diagnosis* through an expert medical review. Necessary treatment includes ~~prenatal~~ *essential medical* care and ~~such other elective treatments as~~ ~~determined by department rule~~ *other services that the department determines, by rule,* to be medically necessary. *A serious medical condition is limited to chronic illness, an acute medical need, or a medical condition that requires services in order for a person to obtain or retain employment.*

~~(14)~~*(16)* (a) "Unemployable" means the condition of a person who:

(i) is at least 55 years of age and has a limited ability to obtain or retain suitable employment because of advanced age;

(ii) has a serious physical, emotional, or mental handicap that prevents him from being employed in any substantial, gainful employment; or

(iii) suffers from a permanent or temporary illness, injury, or incapacity that prevents the person from working in any substantial, gainful employment.

(b) A person who is unemployable is chronically needy and must be provided general relief as provided in 53-3-215."

Section 2. Section 53-3-206, MCA, is amended to read:

"53-3-206. **Eligibility for general relief medical assistance.** (1) In order to be ~~considered~~ ~~for eligibility~~ *eligible* for general relief medical assistance, a person must ~~be found to~~ have a serious medical condition *and must:*

(a) be chronically ill;

(b) have an acute medical need;

(c) be a child less than 18 years of age; or

(d) require medical services in order to obtain or retain employment.

(2) A person described in subsection (1)(d) is eligible for general relief medical assistance only if:

(a) the person is participating in a job search, training, and workfare program established under 53-3-304; or

(b) an assessment by the department has determined that medical services are necessary in order for the person to obtain or retain employment. The department may require that the assessment be part of an individual case plan developed and intended to lead to employment.

~~(2)~~*(3)* Eligibility for general relief medical assistance must be determined as provided in 53-3-205 and this section. ~~A~~ *In order to receive payment* *for medical services, a* person ~~with a serious medical condition~~ must apply for general relief medical assistance prior to the provision of medical services or within 90 days of the date the medical service is first provided. Eligibility is determined as of the date medical service is first provided.

~~(3)~~*(4)* All persons who reside in the same residence and are either married to each other or are the parents or children of other persons living in the same residence are considered to be one household for purposes of determining general relief medical assistance.

~~(4)~~*(5)* All individual or household resources must be used to offset medical obligations except those resources excluded in 53-3-205(7) or used to offset nonmedical general relief payments during the same period.

~~(5)~~*(6)* A household is ineligible to receive general relief medical assistance if the household is ineligible for medicaid as a result of overpayment, fraud, or failure or refusal to comply with requirements for continued participation in the medicaid program.

~~(6)~~*(7)* To determine eligibility for county general relief medical assistance, a county welfare board may promulgate rules to establish the circumstances under which persons are unable to pay for their medical aid and hospitalization. However, no household with an income exceeding 300% of the amount set forth in 53-3-205(2) is eligible for such medical assistance.

~~(7)~~*(8)* In a county with state-assumed welfare services, a person is not eligible for medical services if the household in which he resides has an average monthly income after consideration of the earned income disregard provided for in 53-3-205(3), reasonably certain to be received in a 12-month period beginning with the month the medical service was provided, in excess of the amount established by the department by rule. The department shall establish the amount, taking into account the size of the household and the estimated number of eligible households. The amount must be 150% of the amount established in 53-3-205(2).

~~(8)~~*(9)* Notwithstanding the other provisions of this section, in a county with state-assumed welfare services, a person whose eligibility for general relief assistance is terminated because of earned income from employment may continue to receive general relief medical assistance for 1 month, *subject to the limitations in the scope of services provided in 53-3-310.*"

Section 3. Section 53-3-310, MCA, is amended to read:

"**53-3-310. Scope of general relief medical assistance — *limitations.*** (1) General relief medical assistance is limited to those services ~~determined~~ *medically* necessary to treat a person's serious medical condition. Assistance may not exceed the scope or duration *of similar services* provided under the *Montana* medicaid program pursuant to Title 53, chapter 6, part 1, and rules adopted by the department to administer the program.

(2) General relief medical assistance in a county without state-assumed welfare services must, within the limitations of subsection (1), be provided in amounts determined by the county welfare board.

(3) General relief medical assistance in counties with state-assumed welfare services must, within the limitations of subsection (1), be provided in amounts not to exceed payments under the medicaid program. Services must be limited to the least costly method of alleviating the serious medical condition.

(4) General relief medical assistance is limited to covered medical needs not met by other services or benefits available to the person. Available services or benefits include but are not limited to health and accident insurance, veterans' benefits, industrial accident benefits, medicare and medicaid benefits, and other liable third parties.

(5) A person who is chronically ill may receive general relief medical assistance for services limited to treatment of a serious medical condition related to chronic illness.

(6) A person who has an acute medical need but who is not chronically ill may receive general relief medical assistance but only for services necessary to treat a serious medical condition that requires immediate medical attention to alleviate a serious health risk.

(7) A child less than 18 years of age may receive the same scope and duration of services as provided under the Montana medicaid program provided for in Title 53, chapter 6.

(8) A person who requires medical services in order to obtain or retain employment may receive services similar to those provided under the Montana medicaid program but only for the duration of need.

(9) Except as provided in subsection (7), nothing in this chapter may be construed to require the same scope of medical services as provided under the Montana medicaid program."

Section 4. **Managed care.** (1) The department, in its discretion, may develop managed-care systems for general relief medical assistance recipients.

(2) A managed-care system is a program organized to serve the medical needs of persons in an efficient and cost-effective manner by managing the receipt of medical services for a geographical or otherwise defined population of recipients through primary physicians and other health care providers.

(3) The department may require recipients to participate in a managed-care system.

(4) Recipients who are required by the department to participate in a managed-care system shall participate as required in order to remain eligible for general relief medical assistance.

(5) The department may require the participation of recipients in managed-care systems based upon geographical, financial, social, medical, and other factors as the department may determine are relevant to the development and efficient management of managed-care systems.

Section 5. **Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 53, chapter 3, part 3, and the provisions of Title 53, chapter 3, part 3, apply to [section 4].

Section 6. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Effective date.** [This act] is effective July 1, 1991.

Approved April 16, 1991.

CHAPTER NO. 443

[SB 277]

AN ACT TO MODIFY THE MEMBERSHIP OF THE DEVELOPMENTAL DISABILITIES PLANNING AND ADVISORY COUNCIL; AND AMENDING SECTION 2-15-2204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2204, MCA, is amended to read:

"**2-15-2204. Developmental disabilities planning and advisory council.** (1) The governor shall appoint a developmental disabilities planning and advisory council in accordance with the provisions of this section.

(2) The council is composed of ~~22~~ *at least 24 but no more than 26* members and consists of the following:

(a) the directors of the departments of social and rehabilitation services, health and environmental sciences, ~~and~~ institutions, *and family services* or their designees;

(b) the superintendent of public instruction or a designee;

(c) ~~one~~ *two* recognized ~~private professional~~ *professionals, one each* in ~~each discipline~~ *the disciplines* of medicine~~,~~ *and* law~~, psychology, social work, and special education~~;

(d) ~~two members~~ *one member* of the state senate;

(e) ~~two members~~ *one member* of the state house of representatives;

(f) ~~four consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities; and~~ *seven persons each of whom has a developmental disability or who is an immediate family member or guardian of a person with a developmental disability;*

(g) one member of each of the five regional councils provided for in 53-20-207, who ~~shall also be consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities~~ *has a developmental disability or is an immediate family member or guardian of a person with a developmental disability;*

(h) the director of the university-affiliated or satellite program on developmental disabilities, created pursuant to 42 U.S.C. 6031, or a designee of the director;

(i) the director of the state protection and advocacy system, created pursuant to 42 U.S.C. 6012, or a designee of the director; and

(j) a representative of a statewide developmental disabilities service provider organization whose member agencies provide direct services to persons with developmental disabilities.

(3) (a) Each member or his designee who serves on the council pursuant to subsection (2)(a), ~~or~~ (2)(b), *(2)(h), or (2)(i)* ~~of this section~~ shall serve for a term concurrent with his respective term as a director or the superintendent of public instruction, as the case may be. Upon his removal from office, his or his designee's term as a member of the council is automatically terminated and his successor in office or his successor's designee is automatically a member of the council.

(b) Each member who serves on the council pursuant to subsection (2)(d) or (2)(e) ~~of this section~~ shall be appointed or reappointed annually by the governor.

(c) Eight of the members serving on the council pursuant to subsection (2)(c), (2)(f), ~~or~~ (2)(g), *(2)(j), or (3)(d)* ~~of this section~~ shall be appointed by the governor to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining ~~six~~ members serving on the council *pursuant to subsection (2)(c), (2)(f), (2)(g), (2)(j), or (3)(d)* shall be appointed by the governor to serve for terms ending on January 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.

(d) Representatives named to the council pursuant to this section, in addition to fulfilling the requirements listed in subsections (2)(a) through (2)(j), may also be selected to represent the following areas: psychology, social work, special education, and minority groups, including Native Americans with developmental disabilities. A minimum of one member of the council shall represent each of these areas. In the event that the persons listed in subsections (2)(a) through (2)(j) do not represent all of the areas of psychology, social work, special education, and minority groups, including Native

Americans with developmental disabilities, up to two representatives may be added to the membership of the council to represent not more than two of these groups.

(4) The council is allocated to the department for administrative purposes only and, unless inconsistent with the provisions of this section and 53-20-206, the provisions of 2-15-121 apply."

Approved April 16, 1991.

CHAPTER NO. 444

[SB 287]

AN ACT TO RECOGNIZE RESPONSIBILITIES AND RIGHTS OF A PARENT WHO PROVIDES A HOME SCHOOL AND RIGHTS OF A CHILD IN HOME SCHOOL.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Responsibilities and rights of parent who provides home school — rights of child in home school.** Subject to the provisions of 20-5-109, a parent has the authority to instruct his child, stepchild, or ward in a home school and is solely responsible for:

(1) the educational philosophy of the home school;

(2) the selection of instructional materials, curriculum, and textbooks;

(3) the time, place, and method of instruction; and

(4) the evaluation of the home school instruction.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, and the provisions of Title 20 apply to [section 1].

Approved April 16, 1991.

CHAPTER NO. 445

[SB 310]

AN ACT ALLOWING CONTRACT PHYSICIANS AT URBAN INDIAN CLINICS TO DISPENSE DRUGS; AND AMENDING SECTION 37-2-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-2-104, MCA, is amended to read:

"**37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions.** (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) Nothing in this section prohibits:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged oral contraceptives by a registered nurse employed by a family planning clinic under contract with the department of health and environmental sciences if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy*;*

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353b."

Approved April 16, 1991.

CHAPTER NO. 446

[SB 311]

AN ACT REVISING THE LAW REGARDING THE LICENSURE AND PRACTICE OF PHYSICIAN ASSISTANTS-CERTIFIED; CLARIFYING METHODS AVAILABLE TO THE BOARD OF MEDICAL EXAMINERS

FOR DISCIPLINING A SUPERVISING PHYSICIAN OR A PHYSICIAN ASSISTANT-CERTIFIED; ELIMINATING THE TIME RESTRICTION ON LOCUM TENENS PRACTICE; REQUIRING THE BOARD TO DEVELOP RULES REGARDING PHYSICIAN ASSISTANT STUDENTS; AMENDING SECTIONS 37-20-104, 37-20-202, AND 37-20-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is necessary for this bill because 37-20-202(5) requires the board of medical examiners to develop rules pertinent to the training of physician assistant students in Montana. It is intended that the rules address the kind and amount of supervision required for physician assistant students and other aspects of student training the board considers pertinent.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-20-104, MCA, is amended to read:

"**37-20-104. Penalty — enforcement.** (1) Any person who employs a physician assistant-certified or holds himself out to be a physician assistant-certified without the approval of the Montana state board of medical examiners is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) In addition to seeking any criminal penalty available under this section, the board may ~~withdraw its approval of any utilization plan previously approved which is applicable to~~, *in the manner set out in subsection (3) and after notice and opportunity for hearing, discipline* any supervising physician or physician assistant-certified who:

(a) acts in violation of this section;

(b) obtained the approval of the board by fraud;

(c) acts in a manner contrary to the terms of the utilization plan; or

(d) violates any of the applicable provisions of this chapter or rules of the board adopted thereunder.

(3) If the board finds that the supervising physician or the physician assistant-certified has violated any provision of subsection (2), the board may:

(a) revoke his license or approval, as applicable;

(b) suspend his right to practice for a period not to exceed 1 year;

(c) suspend its judgment of revocation on terms and conditions determined by the board;

(d) place him on probation;

(e) impose a fine, not to exceed $500 for each violation; or

(f) take other action it considers proper.

~~(3)~~*(4)* The board may enforce the provisions of this section by the remedy of injunction."

Section 2. Section 37-20-301, MCA, is amended to read:

"**37-20-301. Utilization plan required — contents — approval.** (1) A physician, office, firm, state institution, or professional service corporation may not employ or make use of the services of a physician assistant-certified in the practice of medicine, as defined in 37-3-102, and a physician assistant-certified may not be employed or practice as a physician assistant-certified unless the physician assistant-certified:

(a) is supervised by a licensed physician;

(b) has been approved by the Montana state board of medical examiners; and

(c) has received board approval of a physician assistant-certified utilization plan.

(2) A physician assistant-certified utilization plan must set forth in detail the following information:

(a) the name and qualifications of the supervising physician, as provided in 37-20-101, and the name and approval number of the physician assistant-certified;

(b) the nature and location of the physician's medical practice;

(c) the duties to be delegated to the physician assistant-certified and the location in which those duties are to be performed;

(d) the name and qualifications of a second physician meeting the requirements of 37-20-101 to serve in the place of the supervising physician in the event that the supervising physician is unable to supervise the physician assistant-certified temporarily;

(e) necessary guidelines describing the intended availability of the supervising or alternate physician for consultation by the physician assistant-certified; and

(f) other information the board may consider necessary.

(3) The board shall approve the utilization plan if it finds that the duties to be delegated to the physician assistant-certified are:

(a) assigned by the supervising physician;

(b) within the scope of the training, knowledge, experience, and practice of the supervisory physician; and

(c) within the scope of the training, knowledge, education, and experience of the physician assistant-certified.

(4) A supervising physician and a physician assistant-certified may submit a new or additional utilization plan to the board for approval without reestablishing the criteria set out in 37-20-402, as long as the information requirements of subsection (2) have been met and the appropriate fee provided for in 37-20-302(1) has been paid.

(5) A utilization plan may provide that a physician assistant-certified be allowed to furnish services on a locum tenens basis at a location other than the physician assistant-certified's primary place of practice ~~for a period not to exceed 30 calendar days~~. A locum tenens utilization plan may be approved by a single board member."

Section 3. Section 37-20-202, MCA, is amended to read:

"**37-20-202. Adoption of rules.** The board of medical examiners shall adopt administrative rules to implement the provisions of this chapter that:

(1) address the issues of supervision and direction limitations and requirements;

(2) address the issue of protocols for interaction of medical personnel with differing responsibilities;

(3) specify that a physician may not utilize more than one physician assistant-certified unless he can demonstrate to the board the ability to supervise more than one assistant adequately;

(4) address other considerations pertinent to the approval of physician assistant-certified utilization plans and locum tenens utilization plans, and the health care needs of the public;

(5) address physician assistant training in Montana."

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1991.

CHAPTER NO. 447

[SB 330]

AN ACT AUTHORIZING THE EXECUTIVE SECRETARY OF THE BOARD OF HORSERACING, SUBJECT TO BOARD OF HORSERACING RULES, TO PRESCRIBE THE DUTIES AND SALARY OF INDIVIDUALS EMPLOYED AS STATE STEWARDS AT AUTHORIZED MONTANA RACE MEETS; EXEMPTING STATE STEWARDS FROM THE STATE COMPENSATION AND PAY PLAN; AMENDING SECTIONS 2-18-103 AND 23-4-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-4-106, MCA, is amended to read:

"**23-4-106. Executive secretary — powers and duties — staff — prohibition on racing activities.** (1) The department shall appoint an executive secretary for the board.

(2) The executive secretary, in accordance with rules adopted by the board and provisions of this chapter, shall:

(a) supervise race meets and activities of racing officials;

(b) hire all state racing officials for the department;

(c) inspect race facilities; ~~and~~

(d) prescribe the duties and salary of state stewards; and

~~(d)~~*(e)* perform other duties as directed by the board.

(3) The executive secretary may, subject to the approval of the board, hire staff to assist him in performing his duties.

(4) The executive secretary, a member of his staff, and any member of the executive secretary's or a staff member's immediate family are prohibited from owning, training, or having any interest in a racehorse or mule running on a Montana track or having any financial interest in any Montana racing association. No racing official hired by the department or approved by the board may wager at a race meet at which he presides."

Section 2. Section 2-18-103, MCA, is amended to read:

"**2-18-103. Officers and employees excepted.** Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief deputy;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of institutions or family services;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation;

(13) assistant director for security of the Montana state lottery;

(14) executive director and senior investment officer of the Montana board of science and technology development; ~~and~~

(15) executive director and employees of the state compensation mutual insurance fund*; and*

(16) state racing stewards employed by the executive secretary of the Montana board of horseracing."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1991.

CHAPTER NO. 448

[HB 62]

AN ACT AUTHORIZING THE REQUIREMENT OF PARTICULAR TIRES, CHAINS, OR TRACTION EQUIPMENT FOR VEHICLES ON A DESIGNATED DANGEROUS OR UNSAFE HIGHWAY; PROVIDING A PENALTY; AND AMENDING SECTION 61-9-406, MCA.

STATEMENT OF INTENT

A statement of intent is necessary for this bill because it amends 61-9-406 by adding subsection (5) that allows the department of highways to recommend or require the use of chains or other approved traction devices under certain conditions in conformance with rules authorized in subsection (6) to be established by the department of justice. It is the intent of the legislature that the recommendations or requirements of the department of highways or the rules established by the department of justice not require the installation of chains or approved traction devices on the driver wheels of more than one axle of a vehicle.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-406, MCA, is amended to read:

"**61-9-406. Restrictions as to tire equipment —** ***particular tires, chains, or traction equipment.*** (1) A solid rubber tire on a vehicle ~~shall~~ *must* have rubber on its entire traction surface at least 1 inch thick above the edge of the flange of the entire periphery.

(2) A person may not operate or move on a highway a motor vehicle, trailer, or semitrailer having a metal tire in contact with the roadway.

(3) A tire on a vehicle moved on a highway may not have on its periphery a block, stud, flange, cleat, or spike, or other protuberance of a material other than rubber ~~which~~ *that* projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery with tires having protuberances ~~which~~ *that* will not injure the highway. It is also permissible to use tire chains of reasonable proportions or pneumatic tires, the traction surfaces of which have been embedded with material, such as wood, wire, plastic or metal, ~~which~~ *that* may not protrude more than one-sixteenth of an inch beyond the tire tread *or that are clearly marked by the manufacturer on the sidewall "all season m&s" (or "all season mud and snow")*, upon a vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. The use of pneumatic tires embedded as provided in this section is permitted only between October 1 and May 31 of each year, except that one of those tires may be used for a spare in case of tire failure. School buses equipped with such embedded pneumatic tires may operate from August 15 through the following June 15.

(4) The department of highways and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of farm tractors or other farm machinery~~,~~ or of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks, the operation of which upon the highway would otherwise be prohibited under this section.

(5) If the department of highways determines at any time that dangerous or unsafe conditions on a highway require particular tires, tire chains, or traction equipment for vehicles in addition to or beyond the ordinary pneumatic rubber tires, the department may establish the following recommendations or requirements with respect to the use of the equipment for all vehicles using the highway:

(a) chains or other approved traction devices recommended for driver wheels;

(b) chains or other approved traction devices required for driver wheels; or

(c) chains required for driver wheels.

(6) Equipment required by subsection (5)(b) or (5)(c) must conform to rules established by the department of justice.

(7) The department of highways shall place and maintain signs and other traffic-control devices on a highway designated under subsection (5) that indicate the tire, tire chain, or traction equipment recommendation or requirement determined for vehicles. The signs or traffic-control devices may not prohibit the use of pneumatic tires embedded as provided in subsection (3) between October 1 and May 31 of each year, but when the department of highways determines that chains are required and that no other traction equipment will suffice, the requirement is applicable to tires on driver wheels of one axle of a vehicle, including embedded tires. The signs or traffic-control devices may differentiate in recommendations or requirements for four-wheel-drive vehicles in gear."

Section 2. **Penalty.** (1) A person violating the provisions of 61-9-406(5) through (7) is guilty of the nonmoving offense of failure to use chains or approved traction devices when required and upon conviction shall be punished by a fine of $25, and no jail sentence may be imposed. Bond for this offense shall be $25.

(2) A violation of 61-9-406(5) through (7) is not a misdemeanor subject to 45-2-101, 61-9-511, 61-9-512, or 61-9-519.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 61, chapter 9, part 5, and the provisions of Title 61, chapter 9, part 5, apply to [section 2].

Approved April 16, 1991.

CHAPTER NO. 449

[HB 133]

AN ACT REVISING THE REQUIREMENTS THAT CERTAIN VEHICLES STOP AT RAILROAD GRADE CROSSINGS BY CLARIFYING THAT A RAILROAD GRADE CROSSING SIGNAL IS NOT A TRAFFIC-CONTROL SIGNAL; DELETING THE PROVISION FOR STREET-RAILWAY GRADE CROSSINGS IN BUSINESS OR RESIDENCE DISTRICTS; AND AMENDING SECTION 61-8-349, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-349, MCA, is amended to read:

"61-8-349. Certain vehicles to stop at all railroad grade crossings. (1) ~~All persons~~ *A person* driving a motor ~~vehicles~~ *vehicle* upon ~~the~~ *a* public ~~highways~~ *highway* of this state outside of corporate limits of incorporated cities or towns where the view is obscure or when a moving train is within sight or hearing shall bring ~~said~~ *the* vehicle to a full stop not less than 10 or more than 100 feet from ~~where said~~ *the intersection of the* highway ~~intersects~~ *and the* railroad tracks ~~within this state~~, before crossing the ~~same~~ *railroad tracks*, at all crossings where a flagman or a mechanical device is not maintained to warn the traveling public of approaching trains or cars.

(2) (a) ~~The~~ *Except as provided in subsection (2)(b), the* driver of ~~any~~ *a* motor vehicle carrying *seven or more* passengers for hire, ~~or of any~~ *a* school bus *with or without passengers*, or ~~of any~~ *a* vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop ~~such~~ *the* vehicle within 50 feet but not less than 15 feet from the nearest rail of ~~such~~ *the* railroad and while ~~so~~ stopped shall open the door (in the case of a school bus) and shall listen and look in both directions along ~~such~~ *the* track for ~~any~~ *an* approaching train~~;~~ and for signals indicating the approach of a train~~, except as hereinafter provided,~~ and ~~shall~~ *may* not proceed until he can do so safely. After stopping as required ~~herein~~ *in this section* and upon proceeding when it is safe to do so, the driver of ~~any said~~ *a* vehicle shall cross only in ~~such~~ *a* gear of the vehicle that ~~there will be no necessity for~~ *requires no* changing gears while traversing ~~such crossings~~ *the crossing.* ~~and the~~ *The* driver ~~shall~~ *may* not shift gears while crossing the track or tracks.

(b) ~~No~~ *A* stop ~~need be made~~ *is not required* at ~~any such~~ *a* crossing where a police officer, ~~or~~ highway patrol officer, or traffic-control signal directs traffic to proceed.

~~(c) This subsection (2) shall not apply at street railway grade crossings within a business or residence district.~~

(3) As used in this section, "traffic-control signal" does not include a railroad grade crossing signal."

Approved April 16, 1991.

CHAPTER NO. 450

[HB 150]

AN ACT TO ALLOW FOR REREGISTRATION OF MOTOR HOMES AND TRAVEL TRAILERS BY MAIL; TO ALLOW APPLICATION TO THE COUNTY TREASURER FOR CAMPER DECALS BY MAIL; AND AMENDING SECTIONS 61-3-525, 61-3-526, AND 61-3-535, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-525, MCA, is amended to read:

"**61-3-525. Annual application for decals.** Application may be made to the ~~department of revenue or~~ county treasurer for the issuance of camper decals annually when the motor vehicle to which the camper is customarily attached is registered. *If the vehicle to which the camper is customarily attached may be reregistered by mail, application for the camper decals may also be made by mail in the manner provided in 61-3-535."*

Section 2. Section 61-3-526, MCA, is amended to read:

"**61-3-526. Registration of motor homes and travel trailers — ~~July 1 registration date~~ *reregistration by mail allowed.*** (1) All registrations of motor homes and travel trailers expire annually on April 30. Application for registration or reregistration must be made to the county treasurer not later than June 15. *Reregistration may be made by mail in the manner provided in 61-3-535.* If the ownership of a motor home or travel trailer is transferred during the registration year, it must be reregistered and relicensed as provided by statute.

(2) The owner of a motor home or travel trailer registered under the provisions of this section is entitled to operate such vehicle between May 1 and June 15 without displaying the registration certificate of the current registration year if the owner, during that period, displays upon the motor home or travel trailer the number plates, plate, or decal assigned thereto for the previous registration year."

Section 3. Section 61-3-535, MCA, is amended to read:

"**61-3-535. Vehicle reregistration by mail — reregistration notice by mail.** (1) The department shall permit the reregistration of light vehicles and other vehicles subject to tax under 61-3-504(2), *the reregistration of motor homes and travel trailers, and the application for camper decals* with the county treasurer by mail at the option of the owner ~~of the vehicle~~. The option to reregister by mail need only be made available for vehicles, *motor homes, and travel trailers* registered at the close of the expiring registration period in the name of the applicant for reregistration.

(2) *In the case of light vehicles, the* ~~The~~ form to be returned to the county treasurer by the applicant, with the appropriate tax and fees, is to contain a statement, to be subscribed to by the applicant, stating compliance with the financial liability requirements of 61-6-301.

(3) The procedure implemented by the department to permit reregistration *or camper decal application* by mail shall provide for a written reminder notice by mail to ~~a light vehicle~~ *a light vehicle* owner of the requirement to reregister ~~his vehicle~~ *his vehicle* with the county treasurer *or to apply for the annual camper decal.*

(4) The department shall adopt rules to implement the mail reregistration *and decal application* procedure."

Approved April 16, 1991.

CHAPTER NO. 451

[HB 176]

AN ACT INCREASING THE FEE FOR OBTAINING CERTIFIED COPIES OF BIRTH AND DEATH CERTIFICATES AND FOR FILING CERTAIN INSTRUMENTS REQUIRED BY LAW TO BE FILED WITH THE COUNTY CLERK; AMENDING SECTION 7-4-2631, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2631, MCA, is amended to read:

"**7-4-2631. Fees of county clerk.** (1) Except as provided in 7-4-2632, the county clerks must charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, $6;

(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, $3; and

(ii) for each additional mining claim included in it, 50 cents;

(c) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, ~~$2~~ *$5*;

(d) for filing of subdivision and townsite plats, $5 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(e) for filing certificates of surveys and amendments thereto, $5 plus 50 cents per tract or lot;

(f) for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, $2;

(g) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(h) for administering an oath with certificate and seal, no charge;

(i) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(j) for filing, indexing, or other services provided for by 30-9-401 through 30-9-407, the fees prescribed under those sections;

(k) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, $3;

(l) for filing a copy of notarial commission and issuing a certificate of official character of such notary public, $2;

(m) for each certified copy of a birth certificate ~~or a death certificate, $3;~~, *$5, and for each certified copy of a death certificate, $3;*

(n) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.

(2) State agencies submitting documents to be put of record shall pay the fees provided for in this section. If a state agency or political subdivision has requested an account with the county clerk, any applicable fees must be paid on a periodic basis."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved April 16, 1991.

CHAPTER NO. 452

[HB 303]

AN ACT PROVIDING THAT IT IS LAWFUL FOR A TELEPHONE COMPANY TO RELEASE IN GOOD FAITH TO PERSONNEL OF EMERGENCY COMMUNICATIONS SYSTEMS INFORMATION NOT IN THE PUBLIC RECORD, INCLUDING BUT NOT LIMITED TO UNPUBLISHED OR UNLISTED TELEPHONE NUMBERS; PROVIDING IMMUNITY TO LOCAL EXCHANGE TELEPHONE COMPANIES WITH LESS THAN 15,000 SUBSCRIBERS THAT PROVIDE EMERGENCY COMMUNICATIONS SYSTEMS AND RELATED SERVICES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in order to further the purposes of Title 10, chapter 4, MCA, and to encourage the development of emergency telephone systems, the Legislature finds that telephone companies and telecommunications providers should be granted immunity when they provide emergency communications systems and related services and that they may lawfully provide to emergency communications systems information not in the public record, including but not limited to unpublished or unlisted telephone numbers, if the information is provided in good faith.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Emergency communications systems — lawful release of information.** (1) It is lawful for a telephone company or telecommunications provider to release in good faith to personnel of emergency communications systems information not in the public record, including but not limited to unpublished or unlisted telephone numbers, provided that the subscriber information is released only in response to an emergency call involving an immediate threat to personal safety or property.

(2) A local exchange telephone company with less than 15,000 subscribers that provides emergency communications systems and related services and its employees and agents are not liable in tort to any person for damages alleged to have been caused by the design, development, installation, maintenance, or provision of emergency communications systems or related services unless the acts or omissions of the entities or persons constitute gross negligence or willful or wanton misconduct. This subsection does not provide immunity from liability in a products liability action.

(3) For the purposes of this section, "subscribers" means persons, partnerships, corporations, or other entities acquiring telecommunications services from a telecommunications provider. There is one subscriber for each billed line of a telecommunications provider.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [section 1].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1991.

CHAPTER NO. 453

[HB 325]

AN ACT TO REVISE THE LAWS RELATING TO HOSPITAL DISTRICTS; TO EXPAND THE DEFINITION OF HOSPITAL FACILITIES TO INCLUDE HEALTH CARE FACILITIES; TO PROVIDE EDUCATION INCENTIVES FOR PERSONS IN EXCHANGE FOR PROVIDING SERVICES TO HOSPITAL DISTRICTS; AND AMENDING SECTIONS 7-34-2101, 7-34-2102, AND 7-34-2122, MCA.

STATEMENT OF INTENT

A statement of intent has been prepared for this bill to clarify the provisions of this bill that authorize the board of trustees of a hospital district to provide educational benefits to qualified individuals.

It is the intent of the legislature that, in providing educational benefits, the board of trustees follow current procedures established in the district bylaws governing decisions of the board in order to ensure:

(1) a fair assessment of the qualifications and financial need of individuals applying for educational benefits; and

(2) the equitable distribution of funds available for educational benefits offered by the hospital district.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-34-2101, MCA, is amended to read:

"**7-34-2101. Purpose of part.** The purpose of this part is to authorize the establishment of public hospital districts which shall have power to supply hospital facilities and services *and health care facilities and services* to residents of ~~such~~ districts and, as herein authorized, to others."

Section 2. Section 7-34-2102, MCA, is amended to read:

"**7-34-2102. Definition.** As used in this part, unless the context requires otherwise, "hospital facilities" means a hospital or a hospital-related facility, including out-patient facilities, public health centers, rehabilitation facilities, long-term care facilities, ~~and~~ infirmaries, *and health care facilities, all as defined in 50-5-101.*"

Section 3. Section 7-34-2122, MCA, is amended to read:

"**7-34-2122. Powers of district.** A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance, and administration of such hospital facilities as its board of trustees shall deem necessary and expedient. Without limitation on the foregoing general grant of powers, a hospital district, acting by its board of trustees, may:

(1) employ nursing, administrative, and other personnel, legal counsel, engineers, architects, accountants, and other qualified persons, who may be paid for their services by monthly salaries, hourly wages, and pension benefits or by such fees as may be agreed upon;

(2) cause reports, plans, studies, and recommendations to be prepared;

(3) lease, purchase, and contract for the purchase of real and personal property by option, contract for deed, conditional sales contract, or otherwise and acquire real or personal property by gift;

(4) lease or construct, equip, and furnish necessary buildings and grounds and maintain the same;

(5) adopt, by resolution, rules for the operation and administration of any and all hospital facilities under its control and for the admission of persons thereto;

(6) impose by resolution and collect charges for all services and facilities provided and made available by it;

(7) levy taxes as hereinafter prescribed;

(8) borrow money and issue bonds as hereinafter prescribed;

(9) procure insurance against liability of the district or its officers and employees, or both, for torts committed within the scope of their official duties, whether governmental or proprietary, and against damage to or destruction of any of its facilities, equipment, or other property;

(10) sell or lease any of its facilities or equipment as may be deemed expedient;

(11) cause audits to be made of its accounts, books, vouchers, and funds by competent public accountants~~.~~;

(12) provide educational benefits to qualified individuals, including the payment of tuition, room and board, educational materials, and stipends and the repayment of student loans in return for an agreement by those persons to provide services to the district."

Approved April 16, 1991.

CHAPTER NO. 454

[HB 596]

AN ACT PROHIBITING DISCRIMINATION IN PUBLIC ACCOMMODATIONS AND HOUSING ON THE BASIS OF MARITAL STATUS; AND AMENDING SECTIONS 49-2-304 AND 49-2-305, MCA.

WHEREAS, Article II, section 4, of the Montana Constitution prohibits discrimination by the state or any person, firm, corporation, or institution against any person on account of social condition; and

WHEREAS, the Legislature has previously defined social condition to include marital status; and

WHEREAS, an individual may be subjected to discrimination because of marital status in the enjoyment of public accommodations and access to housing.

THEREFORE, it is appropriate for the Legislature to prohibit such discrimination.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-2-304, MCA, is amended to read:

"**49-2-304. Discrimination in public accommodations.** (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, *marital status,* race, age, physical or mental handicap, creed, religion, color, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, *marital status,* age, physical or mental handicap, color, or national origin.

(2) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for a licensee under Title 16, chapter 4, to exclude from its membership or from its services, goods, facilities, advantages, privileges, or accommodations any individual on the grounds of race, color, religion, creed, sex, *marital status,* age, physical or mental handicap, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

(3) Nothing in this section prohibits public accommodations from giving or providing special benefits, incentives, discounts, or promotions for the benefit of individuals based on age."

Section 2. Section 49-2-305, MCA, is amended to read:

"**49-2-305. Discrimination in housing — exemptions.** (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, *marital status,* race, creed, religion, color, age, familial status, physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, *marital status,* race, creed, religion, age, familial status, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make a written or oral inquiry or record of the sex, *marital status,* race, creed, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent the housing accommodation or property; or

(d) to refuse to negotiate for a sale or to make a housing accommodation or property unavailable because of sex, *marital status*, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin.

(2) A private residence designed for single-family occupancy in which sleeping space is rented to guests and in which the landlord also resides is excluded from the provisions of subsection (1).

(3) It is also an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have such a preference, limitation, or discrimination.

(4) The prohibitions of this section against discrimination because of age and familial status do not extend to housing for older persons. "Housing for older persons" means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. 3605(b)(2)(C) and (3) and 24 C.F.R. 100.304, as those sections read on October 1, 1989.

(5) The prohibitions of this section against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his residence.

(6) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person."

Approved April 16, 1991.

CHAPTER NO. 455

[HB 613]

AN ACT ESTABLISHING THE THIRD WEEK OF SEPTEMBER AS AN OFFICIAL WEEK OF OBSERVANCE OF MONTANA'S HUNTING HERITAGE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Official observance of Montana's hunting heritage.** The week beginning the third Monday in September is an official week of observance in Montana to commemorate this state's valued heritage of hunting game animals. During this week, all Montanans are urged to:

(1) reflect on hunting as an expression of our culture and heritage;

(2) acknowledge that it is our community of sportsmen, sportswomen, and hunters who have made the greatest contributions to the establishment of current game animal populations; and

(3) celebrate this culture and heritage in all lawful ways.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 2, and the provisions of Title 1, chapter 1, part 2, apply to [section 1].

Approved April 16, 1991.

CHAPTER NO. 456

[HB 646]

AN ACT ALLOWING ADDITIONAL PARKING PRIVILEGE DISPLAY CARDS TO BE ISSUED TO A HANDICAPPED PERSON WHO OWNS MORE THAN ONE MOTOR VEHICLE; AND AMENDING SECTION 49-4-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-4-304, MCA, is amended to read:

"**49-4-304. Special license plate or card to be provided and displayed — *additional cards allowed for owners of more than one vehicle.*** (1) The department of justice shall provide a special license plate under 61-3-445 or a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate ~~shall~~ *must* be affixed to the vehicle according to 61-3-301, or the card ~~shall~~ *must* be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the handicapped person in a vehicle other than the one to which his special license plate is affixed.

(2) Subject to the provisions of 49-4-301 through 49-4-305, a person who is eligible to receive a special parking permit and who owns more than one motor vehicle may request and the department of justice shall provide to him additional cards described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person.

~~(2)~~*(3)* Upon application under 49-4-303, a handicapped person who does not hold a driver's license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the handicapped person is being conveyed when the parking privilege is being used.

~~(3)~~*(4)* The card must bear a representation of a wheelchair as the symbol of a handicapped person."

Approved April 16, 1991.

CHAPTER NO. 457

[HB 877]

AN ACT TO REMOVE THE REQUIREMENT THAT VOTER APPROVAL FOR AN ECONOMIC DEVELOPMENT LEVY MUST HAVE OCCURRED PRIOR TO DECEMBER 31, 1990, FOR THE LEVY TO BE EXEMPT FROM THE PROPERTY TAX LIMITATIONS OF TITLE 15, CHAPTER 10, PART 4, MCA; AMENDING SECTION 90-5-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-5-112, MCA, is amended to read:

"**90-5-112. Economic development levy.** (1) Upon an affirmative vote of a majority of the qualified voters voting in a city, county, or town on the question of whether the governing body may levy a tax for economic development, the governing body of that city, county, or town is authorized to levy in any one election up to 1 mill upon the taxable value of all the property in the county, city, or town subject to taxation for the purpose of economic development for a period not to exceed 5 years.

(2) Funds derived from this levy may be used for purchasing land for industrial parks, constructing buildings to house manufacturing and processing operations, conducting preliminary feasibility studies, promoting economic development opportunities in a particular area, and other activities generally associated with economic development. These funds may not be used to directly assist an industry's operations by loan or grant or to pay the salary or salary supplements of government employees.

(3) The governing body of the county, city, or town may use the funds derived from this levy to contract with local development companies and other associations or organizations capable of implementing the economic development function.

(4) The authorization to levy up to 1 mill for the purpose of economic development, as provided in subsection (1), is not subject to the provisions

of Title 15, chapter 10, part 4~~, if voter authorization for the levy occurred prior to December 31, 1990~~."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1991.

CHAPTER NO. 458

[HB 953]

AN ACT REQUIRING THE DEPARTMENT OF COMMERCE TO CONDUCT ANNUAL INSPECTIONS OF ESTABLISHMENTS LICENSED BY THE BOARD OF COSMETOLOGISTS; PROVIDING AN APPROPRIATION; AMENDING SECTION 37-31-312, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-31-312, MCA, is amended to read:

"**37-31-312. Inspection.** (1) The department shall appoint one or more inspectors, each of whom shall devote his time to inspecting beauty parlors and performing other duties as the department, *in cooperation with the board,* may direct. The inspectors may enter a beauty parlor, manicuring shop, booth, school of cosmetology, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, any cosmetological establishment or manicuring shop must pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a cosmetological establishment or manicuring shop, upon payment of the initial inspection fee, a temporary permit authorizing the cosmetological establishment or manicuring shop to operate for a period of not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The ~~board~~ *department* shall *cause an inspector, appointed as provided in subsection (1), to* conduct an annual inspection of each cosmetological establishment and manicuring shop in the state."

Section 2. **Appropriation.** Supplemental to funds for this purpose provided in any other act, there is appropriated to the department of commerce, for the purpose stated in 37-31-312(4), from the fees deposited as provided in 37-31-324:

(1) $37,583, consisting of $21,689 for personal services, $14,828 for operations, and $1,066 for equipment, for the fiscal year ending June 30, 1992; and

(2) $36,997 consisting of $22,130 for personal services and $14,867 for operations, for the fiscal year ending June 30, 1993.

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved April 16, 1991.

CHAPTER NO. 459

[SB 10]

AN ACT AUTHORIZING RURAL FIRE DISTRICTS TO SELL BONDS TO PROVIDE FUNDS FOR THE PURCHASE AND MAINTENANCE OF FIRE AND EMERGENCY RESPONSE EQUIPMENT AND FACILITIES; ESTABLISHING RESPONSIBILITY FOR BONDED INDEBTEDNESS IF MUNICIPAL ANNEXATION OCCURS; AND AMENDING SECTION 7-33-2109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2109, MCA, is amended to read:

"**7-33-2109. Tax levy** ***and bonds*** **authorized.** *(1)* At the time of the annual levy of taxes, the board of county commissioners may levy a special tax upon all property within ~~such districts~~ *a rural fire district* for the purpose of buying or maintaining fire protection facilities and apparatus, *including emergency response apparatus,* for ~~such districts~~ *the district* or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of ~~such~~ *the* city, town, or private fire service for the purpose of furnishing fire protection service to property within ~~such~~ *the* district. ~~Such~~ *The* tax must be collected as are other taxes.

(2) In addition to the levy authorized in subsection (1), a rural fire district may borrow money by the issuance of bonds to provide funds for the payment of all or part of the cost of buying or maintaining fire protection facilities and apparatus, including emergency response apparatus, for the district.

(3) The amount of the bonds issued pursuant to subsection (2) and outstanding at any time may not exceed 18% of the taxable value of the property in the district as ascertained by the most recent assessment for state and county taxes prior to issuance of the bonds.

(4) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and

limitations prescribed for the issuance of bonds by counties under Title 7, chapter 7, part 22."

Section 2. **Annexation of rural fire district property by municipality — responsibility for bonded indebtedness.** (1) If a municipality annexes property from a rural fire district, the annexed property is liable for any bonded indebtedness of the rural fire district existing as of the date of annexation to the same extent as it would have been liable if not withdrawn.

(2) A municipality may:

(a) offset the municipal mills levied on the annexed property by the mills levied on the property for bonded indebtedness; or

(b) annually appropriate funds to the rural fire district in an amount equal to the mills levied on the annexed property for bonded indebtedness.

Approved April 17, 1991.

CHAPTER NO. 460

[SB 391]

AN ACT TO PROVIDE INCREASED MANAGEMENT OF THE COST AND DELIVERY OF MEDICAL SERVICES UNDER THE MEDICAID AND GENERAL RELIEF MEDICAL ASSISTANCE PROGRAMS; TO AUTHORIZE MANAGED-CARE SYSTEMS FOR THE MEDICAID AND GENERAL RELIEF MEDICAL ASSISTANCE PROGRAMS; TO AUTHORIZE CASE MANAGEMENT SERVICES UNDER THE MEDICAID PROGRAM; TO GRANT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AUTHORITY TO ADOPT RULES; AMENDING SECTIONS 53-6-101 AND 53-6-113, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants the department of social and rehabilitation services authority to adopt rules for the administration of medicaid managed-care systems.

It is the intent of the legislature that the department may adopt rules concerning:

(1) participation in managed care;

(2) selection and qualifications for providers of managed care; and

(3) standards for the provision of managed care.

It is also intended that rules adopted by the department comply with federal regulations governing administration of the medicaid program.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Medicaid managed care.** (1) The department of social and rehabilitation services, in its discretion, may develop managed-care systems for medicaid recipients.

(2) A managed-care system is a program organized to serve the medical needs of medicaid recipients in an efficient and cost-effective manner by managing the receipt of medical services for a geographical or otherwise defined population of recipients through appropriate health care professionals.

(3) The provision of medicaid services through managed-care systems is not subject to the limitations provided in 53-6-101, 53-6-103, and 53-6-104.

Section 2. **Participation requirements.** (1) The department of social and rehabilitation services may require medicaid recipients to participate in a managed-care system.

(2) Recipients who are required by the department to participate in a managed-care system shall participate as required in order to remain eligible for medicaid.

(3) The department may require the participation of medicaid recipients in managed-care systems based upon geographical, financial, social, medical, and other factors as the department may determine are relevant to the development and efficient management of managed-care systems.

Section 3. Section 53-6-101, MCA, is amended to read:

"53-6-101. Montana medicaid program — authorization of services. (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of social and rehabilitation services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) services provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(i) health services provided under a physician's orders by a public health department; and

(j) hospice care as defined in 42 U.S.C. 1396d(o).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23, if funds are specifically appropriated for the inclusion of these services in the Montana medicaid program;

(m) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g); and

~~(n)~~*(o)* any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(5) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(6) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost effective.

(7) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

(8) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(9) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(10) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted thereunder. *(Subsection (2)(j) terminates June 30, 1991—sec. 4, Ch. 633, L. 1989; Subsection (3)(m) terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)*"

Section 4. Section 53-6-113, MCA, is amended to read:

"**53-6-113. Department to adopt rules.** (1) The department of social and rehabilitation services shall adopt appropriate rules necessary for the administration of the Montana medicaid program as provided for in this part and as may be required by federal laws and regulations governing state participation in medicaid under Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as amended.

(2) The department shall adopt rules as are necessary to further define for the purposes of this part the services provided under 53-6-101 and to provide that services utilized are medically necessary and that these services are the most efficient and cost effective available. The rules may establish the amount, scope, and duration of services provided under the Montana medicaid program, including the items and components constituting the services.

(3) The department shall establish by rule the rates for reimbursement of services provided under this part. The department may in its discretion set such rates of reimbursement as it determines necessary for the purposes

of the program. In establishing rates of reimbursement, the department may consider but is not limited to:

(a) the availability of appropriated funds;

(b) the actual cost of services;

(c) the quality of services;

(d) the professional knowledge and skills necessary for the delivery of services; and

(e) the availability of services.

(4) The department shall specify by rule those professionals who may deliver or direct the delivery of particular services.

(5) The department may provide by rule for payment by a recipient of a portion of the reimbursements established by the department for services provided under this part.

(6) The department may adopt rules consistent with this part to govern eligibility for the Montana medicaid program. Rules may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, family responsibilities, residency, application, termination, definition of terms, and confidentiality of applicant and recipient information.

(7) The department may adopt rules limiting eligibility based on criteria more restrictive than that provided in 53-6-131 if required by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

(8) The department may adopt rules necessary for the administration of medicaid managed-care systems. Rules to be adopted may include but are not limited to rules concerning:

(a) participation in managed care;

(b) selection and qualifications for providers of managed care; and

(c) standards for the provision of managed care."

Section 5. **Managed care.** (1) The department, in its discretion, may develop managed-care systems for general relief medical assistance recipients.

(2) A managed-care system is a program organized to serve the medical needs of recipients in an efficient and cost-effective manner by managing the receipt of medical services for a geographical or otherwise defined population of recipients through primary physicians and other health care providers.

(3) The department may require recipients to participate in a managed-care system.

(4) Recipients who are required by the department to participate in a managed-care system shall participate as required in order to remain eligible for general relief medical assistance.

(5) The department may require the participation of recipients in managed-care systems based upon geographical, financial, social, medical, and other factors as the department may determine are relevant to the development and efficient management of managed-care systems.

Section 6. **Codification instruction.** (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [sections 1 and 2].

(2) [Section 5] is intended to be codified as an integral part of Title 53, chapter 3, part 3, and the provisions of Title 53, chapter 3, part 3, apply to [section 5].

Section 7. **Coordination instruction.** (1) If House Bill No. 103 is passed and approved and if it includes a section amending 53-6-101, then the section in House Bill No. 103 amending 53-6-101 is void, and [section 3 of this bill] amending 53-6-101 which reads "case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g)" should read "case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill, but limited to services provided in crisis intervention programs".

(2) If Senate Bill No. 369 is passed and approved and if it includes a section authorizing the department of social and rehabilitation services to develop managed-care systems for general relief medical assistance recipients, then [section 5 of this bill] is void.

Section 8. **Effective date.** [This act] is effective July 1, 1991.

Approved April 17, 1991.

CHAPTER NO. 461

[SB 400]

AN ACT IMPOSING ABSOLUTE LIABILITY ON THE OWNER OR FORMER OWNER OF SOLID WASTE DISPOSED OF IN VIOLATION OF STATE LAW; IMPOSING A CIVIL PENALTY FOR PERSONS FOUND ABSOLUTELY LIABLE; CLARIFYING THE PROHIBITION AGAINST DUMPING SOLID WASTE ON PUBLIC PROPERTY; AND AMENDING SECTIONS 75-10-212 AND 75-10-233, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-212, MCA, is amended to read:

"75-10-212. Disposal in unauthorized area prohibited — exception. (1) No person may dispose of solid waste except as permitted under this part.

(2) It shall be unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

(a) in or upon any highway, road, street, or alley of this state;

(b) in or upon any public ~~recreational~~ property, highway, street, or alley under the control of the state of Montana or any political subdivision thereof or any officer or agent or department thereof;

(c) within 200 yards of such public highway, road, street, or alley or public ~~recreational~~ property;

(d) on privately owned property where hunting, fishing, or other recreation is permitted, provided this subsection shall not apply to the owner, his agents, or those disposing of debris or refuse with the owner's consent.

(3) Any person in violation of this section is absolutely liable, as provided in 45-2-104, and is subject to the civil penalties provided in 75-10-233."

Section 2. Section 75-10-233, MCA, is amended to read:

"75-10-233. Dumping penalty — enforcement. *(1)* ~~Any~~ *A* person found guilty of a violation of ~~75-10-212(2)~~ *75-10-212* shall be fined in the sum not exceeding $100 or imprisoned in the county jail for a period not exceeding 30 days or be punished by both ~~such~~ fine and imprisonment, in the discretion of the court.

(2) A person found absolutely liable under 75-10-212 is subject to a civil penalty not to exceed $5,000.

(3) The provisions of ~~75-10-212(2)~~ *75-10-212* shall be enforced by all highway patrol officers, sheriffs, policemen, and all other enforcement agencies and officers of the state of Montana. In addition, game wardens ~~shall~~ have the right to enforce the provisions of ~~75-10-212(2)~~ *75-10-212* on public ~~recreational~~ property and on private property where public recreation is permitted."

Approved April 17, 1991.

CHAPTER NO. 462

[HB 144]

AN ACT REQUIRING AGENCIES OF STATE GOVERNMENT TO TAKE ALL REASONABLE STEPS TO ENSURE THAT GASOHOL IS USED IN STATE VEHICLES; REQUIRING RECORDS TO BE KEPT ON THE USE OF GASOHOL; AND REQUIRING REVIEW OF THE RECORDS BY THE LEGISLATIVE AUDITOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. **State vehicles to use gasohol — definition — record of purchase required — audit.** (1) Each department, agency, institution, office, board, and commission of the executive, legislative, and judicial branches of state government and each state institution of higher education owning or operating a motor vehicle capable of burning gasohol shall take all reasonable steps to ensure that the operators of those vehicles use gasohol in the vehicles if gasohol is reasonably and commercially available within the operating area of the vehicle and is priced competitively with the motor vehicle fuel otherwise used by the vehicle.

(2) For purposes of this section, "gasohol" means all products commonly or commercially known or sold as gasohol and used for the purpose of effectively and efficiently operating internal combustion engines, consisting of not less than 10% anhydrous ethanol produced from agricultural products, including wood or wood products.

(3) An entity subject to the requirements of subsection (1) shall require that each purchase of gasohol by the operator of a motor vehicle using gasohol is reported to that entity by the motor vehicle operator.

(4) An entity subject to the requirements of subsection (1) may not take any disciplinary, judicial, administrative, or other adverse action against the operator of a motor vehicle for failing to purchase gasohol for the operation of the motor vehicle.

(5) An entity subject to the requirements of subsection (1) shall retain for the period of time required by law the record of the purchase of gasohol used. The purchase records must be reviewed by the legislative auditor during every financial audit of the entity.

Approved April 17, 1991.

CHAPTER NO. 463

[HB 209]

AN ACT PROVIDING THAT A SECURITY INTEREST IN A MOTOR VEHICLE, BOAT, SNOWMOBILE, OR OFF-HIGHWAY VEHICLE IS PERFECTED ON THE DATE THE LIEN NOTICE IS DELIVERED TO THE COUNTY TREASURER; AND AMENDING SECTIONS 23-2-508, 23-2-611, 23-2-811, AND 61-3-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-103, MCA, is amended to read:

"**61-3-103. Filing of security interests, *perfection*, rights, procedure, fees.** (1) No security interest in a motor vehicle shall be valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, on a form approved by the department, that shows a security interest has been created, has been ~~filed with the department~~ *perfected* as provided in this section. The department shall not file any security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess such motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under the provisions of 61-4-101, must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected ~~by filing~~ under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." No other information regarding such additional security interests need be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter shall be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) ~~The filing of a~~ *A* security interest or other lien, as ~~herein~~ provided *in this section,* ~~perfects a security interest which has attached at the time the certificate of ownership noting such interest is issued~~ *is perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection.* ~~Issuance of a certificate of ownership~~ *Perfection under this section* constitutes constructive notice to subsequent purchasers or encumbrancers, from the ~~time of filing~~ *date of delivery of the lien notice to the county treasurer,* of the existence of the security interest.

(6) Security interests or other lien filings that do not require transfer of ownership are perfected when received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

~~(6)~~*(7)* Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 shall be applicable except that deposits must be made with the department.

~~(7)~~*(8)* A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment shall be required to pay the department the sum of $1 for each day thereafter that he fails to file such satisfaction.

~~(8)~~*(9)* Upon receipt of any liens, or notice of liens dependent on possession, or attachments, etc., against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any thereof a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and/or attaching creditor.

~~(9)~~*(10)* It shall not be necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

~~(10)~~*(11)* A fee of $4 must be paid to the department to file any security interest or other lien against a motor vehicle. The $4 fee shall include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering such satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department, or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504."

Section 2. Section 23-2-508, MCA, is amended to read:

"**23-2-508. Certificate of ownership — filing of security interests.** (1) Except as provided in subsection (9), a motorboat or sailboat 12 feet in length or longer may not be operated upon the waters of the state unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a motorboat or sailboat 12 feet in length or longer shall apply for a certificate of ownership and a certificate of number with the county treasurer of the county in which the owner resides, upon forms furnished by the department of justice. The forms must require the following information:

(a) name of the owner;

(b) residence of the owner, by town or county;

(c) business or home address of the owner;

(d) name and address of any lienholder;

(e) amount due under any contract or lien;

(f) name of the manufacturer;

(g) model number or name;

(h) identification number;

(i) name and address of the dealer or other person from whom acquired, if known; and

(j) such other information as the department of justice may require.

(3) The application is to be accompanied by documentation of ownership, such as an invoice, bill of sale, foreign title, official certificate of boat number, fee in lieu of tax receipt, or a certificate of ownership of a trailer purchased with the motorboat or sailboat. An applicant who fails to provide such proof of ownership shall provide a certified statement describing how the motorboat or sailboat 12 feet in length or longer was acquired, from whom acquired if known, and other information requested by the department of justice.

(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to motorboats or sailboats 12 feet in length or longer that are

purchased as new and unused vessels or that were operated when the provisions of this part were not in force and effect.

(5) Any motorboat or sailboat 12 feet in length or longer that does not have a manufacturer's or other identifying number thereon must be assigned an identification number by the department of fish, wildlife, and parks. A fee of $1 must be paid to the department for an assignment of number.

(6) Upon completion of the application, the county treasurer shall issue to the applicant two copies of the certificate of number application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application for a certificate of ownership to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office, and shall furnish the applicant a certificate of ownership containing that information in the application considered necessary by the department and a permanent boat number. The certificate of ownership need not be renewed annually and is valid as long as the person holding it owns the vessel.

(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(8) Upon application for a certificate of ownership, a fee of $5 must be paid to the county treasurer, $3.50 of which must be forwarded by the county treasurer to the department of justice and deposited in the general fund.

(9) A person who, on July 1, 1988, is the owner of a motorboat or sailboat 12 feet in length or longer with a valid certificate of number issued by the state is not required to file an application for a certificate of ownership for the motorboat or sailboat unless he transfers a part of his interest in the motorboat or sailboat or he renews the certificate of number for the motorboat or sailboat.

(10) A security interest in a boat is not valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been ~~filed with the department of justice~~ *perfected* as provided in this section. The lien notice must be filed on a form approved by the department [of justice]. The department of justice may not file a security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the boat encumbered. If the lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete boat description, the amount of the lien, and the signature of the debtor. The department of justice shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department of justice shall mail a statement certifying the filing of a

security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county where the boat is to be registered. The owner of a boat is the person entitled to operate and possess the boat.

(11) A security interest in a boat held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(12) Whenever a security interest or lien is filed against a boat that is subject to two security interests previously perfected ~~by filing~~ under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This boat is subject to additional security interest on file with the Department of Justice." No other information regarding the additional security interests need be endorsed on the certificate.

(13) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

(14) ~~The filing of a~~ *A* security interest or other lien as ~~herein~~ provided *in this section* ~~perfects a security interest that has attached at the time the certificate of ownership noting the interest is issued~~ *is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection.* ~~Issuance of a certificate of ownership~~ *Perfection under this section* constitutes constructive notice to subsequent purchasers or encumbrancers, from the ~~time of filing~~ *date of delivery of the lien notice to the county treasurer,* of the existence of the security interest.

(15) Upon default under a chattel mortgage or conditional sales contract covering a boat, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a boat all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(16) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that he fails to file the satisfaction.

(17) Upon receipt of any liens, notice of liens dependent on possession, or attachments against the record of any boat registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(18) It is not necessary to refile with the department of justice any instruments on file in the office of any county clerk and recorder on October 1, 1989.

(19) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a boat. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of any security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the general fund in accordance with 15-1-504."

Section 3. Section 23-2-611, MCA, is amended to read:

"**23-2-611. Certificate of ownership — filing of security interests.** (1) A snowmobile may not be operated upon any public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a snowmobile shall apply for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. The forms must require the following information:

(a) name of the owner;

(b) residence of the owner, by town and county;

(c) business or home mail address of the owner;

(d) name and address of any lienholder;

(e) amount due under any contract or lien;

(f) name of the manufacturer;

(g) model number or name;

(h) identification number; and

(i) name and address of the dealer or other person from whom acquired.

(3) The application must be signed by at least one owner or by a properly authorized officer or representative of the owner.

(4) If a certificate of ownership has previously been issued under the provisions of 23-2-601 through 23-2-644, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and

unused machines or that were operated when the provisions of 23-2-601 through 23-2-644 were not in force and effect.

(5) Upon completion of the application, on forms furnished by the department of justice, the county treasurer shall issue to the applicant two copies of the application, one of which shall be marked "file copy". The treasurer shall forward one copy and the original application to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership, which shall contain that information in the application considered necessary by the department of justice, and a permanent ownership number. The certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of $5 shall be paid to the county treasurer, $3.50 of which shall be forwarded by the county treasurer to the department of justice and deposited in the general fund.

(8) A security interest in a snowmobile is not valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been ~~filed with the department of justice~~ *perfected* as provided in this section. The lien notice must be filed on a form approved by the department {of justice}. The department of justice may not file a security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the snowmobile encumbered. If the lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete snowmobile description, the amount of the lien, and the signature of the debtor. The department of justice shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county where the snowmobile is to be registered. The owner of a snowmobile is the person entitled to operate and possess the snowmobile.

(9) A security interest in a snowmobile held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(10) Whenever a security interest or lien is filed against a snowmobile that is subject to two security interests previously perfected ~~by filing~~ under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This snowmobile is subject to additional security interest on file with the Department of Justice". No other information regarding the additional security interests need be endorsed on the certificate.

(11) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

(12) ~~The filing of a~~ *A* security interest or other lien as ~~herein~~ provided *in this section* ~~perfects a security interest that has attached at the time the certificate of ownership noting the interest is issued~~ *is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection.* ~~Issuance of a certificate of ownership~~ *Perfection under this section* constitutes constructive notice to subsequent purchasers or encumbrancers, from the ~~time of filing~~ *date of delivery of the lien notice to the county treasurer*, of the existence of the security interest.

(13) Upon default under a chattel mortgage or conditional sales contract covering a snowmobile, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a snowmobile all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(14) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that he fails to file the satisfaction.

(15) Upon receipt of any liens, notice of liens dependent on possession, or attachments against the record of any snowmobile registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(16) It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.

(17) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a snowmobile. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face

of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the general fund in accordance with 15-1-504."

Section 4. Section 23-2-811, MCA, is amended to read:

"23-2-811. Certificate of ownership — procedure — fee — *filing security interest*. (1) No off-highway vehicle may be operated upon any public lands, trails, easements, lakes, rivers, or streams unless a certificate of ownership has first been obtained from the department of justice.

(2) The owner of an off-highway vehicle shall apply for a certificate of ownership to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The form must include:

(a) the name of the owner;

(b) the residence of the owner, by town and county;

(c) the business address or home mailing address of the owner;

(d) the name and address of any lienholder;

(e) the amount due under any contract, mortgage, or lien;

(f) the name of the manufacturer;

(g) the model number or name;

(h) the identification number; and

(i) the name and address of the dealer or other person from whom the off-highway vehicle was acquired.

(3) The application must be signed by at least one owner or by a properly authorized agent of the owner.

(4) The application for a new certificate of ownership must be accompanied by the immediately previous certificate. This subsection does not apply to off-highway vehicles that are purchased as new and unused machines or that were operated before January 1, 1990.

(5) (a) After the owner completes the application form, the county treasurer shall issue to the applicant two copies of the completed application, with one marked "file copy", and shall forward one copy and the original application to the department of justice. The department of justice shall enter the information contained in the application upon the corresponding records of its office and shall send the applicant a certificate of ownership containing a permanent ownership number and information from the application considered necessary by the department of justice.

(b) The certificate of ownership is not required to be renewed annually and is valid as long as the person holding it owns the off-highway vehicle.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of ~~$4~~ *$5* must be paid to the county treasurer, of which:

(a) ~~$3~~ *$3.50* must be forwarded to the department of justice for deposit in the general fund; and

(b) ~~$1~~ *$1.50* must be retained by the county treasurer for the cost of administering this section.

(8) A security interest in an off-highway vehicle is not valid against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been perfected as provided in this section on a form approved by the department of justice. The department of justice may not file a security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the encumbered off-highway vehicle. If the lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, a complete description of the off-highway vehicle, the amount of the lien, and the signature of the debtor. The department of justice shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate. However, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county where the vehicle is to be registered. The owner of an off-highway vehicle is the person entitled to operate and possess the vehicle.

(9) A security interest in an off-highway vehicle held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(10) Whenever a security interest or lien is filed against an off-highway vehicle that is subject to two or more security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership: "Notice. This off-highway vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(11) Satisfaction or statements of release filed with the department of justice under this section must be retained for a period of 8 years from the date of receipt, after which they may be destroyed.

(12) A security interest or other lien is perfected as provided in this section on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(13) Upon default under a chattel mortgage or conditional sales contract covering an off-highway vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In the case of attachment of an off-highway vehicle, the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(14) A conditional sales vendor, chattel mortgagee, or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sale contract within 15 days after receiving final payment shall pay to the department of justice the sum of $1 for each day after the expiration of the 15-day period that he fails to file the satisfaction.

(15) Upon receipt of any liens, notices of liens dependent on possession, or attachments against the record of an off-highway vehicle in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice of the lien, showing the date of execution of the lien and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(16) It is not necessary to refile with the department of justice instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(17) A fee of $4 must be paid to the department of justice to file a security interest or other lien against an off-highway vehicle. The $4 fee includes and covers the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504."

Approved April 17, 1991.

CHAPTER NO. 464

[HB 228]

AN ACT ALLOWING AN EMERGENCY RESPONDER TO RECOVER FROM THE RESPONSIBLE PARTY COSTS DIRECTLY RELATED TO A HAZARDOUS MATERIAL INCIDENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 and 2], the following definitions apply:

(1) "Emergency responder" means a public safety agency or a private entity acting under a request from or authority granted by a government agency, including law enforcement, firefighting, ambulance or medical, and civil defense, that provides services in an emergency situation.

(2) "Hazardous material incident" means a release involving a hazardous or deleterious substance that endangers property, public health, or public safety.

Section 2. **Recovery of costs.** An emergency responder has the right to recover from the responsible party the emergency responder's full costs directly related to a hazardous material incident.

Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [sections 1 and 2].

Approved April 17, 1991.

CHAPTER NO. 465

[HB 251]

AN ACT EXTENDING THE LIFE OF THE JOINT SELECT COMMITTEE ON WORKERS' COMPENSATION; PROVIDING AN APPROPRIATION; AMENDING SECTION 10, CHAPTER 12, SPECIAL LAWS OF JUNE 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, during the 1989-90 interim, the Joint Select Committee on Workers' Compensation, established under Chapter 12, Special Laws of June 1989, monitored the functions of the state workers' compensation system; and

WHEREAS, uncertainties continue to exist about the magnitude of the unfunded liability of Compensation Plan No. 3, the state fund, and about the ability of legislation enacted in 1987 and 1989 to remedy the long-term problems of Compensation Plan No. 3; and

WHEREAS, it appears that it would benefit the employers and the employees of Montana if the activities of the Joint Select Committee on Workers' Compensation were continued through the biennium ending June 30, 1993.

THEREFORE, the Legislature of the State of Montana finds it necessary to extend the life of the Joint Select Committee on Workers' Compensation and to provide a supporting appropriation.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Provision of professional actuarial consulting services.** The joint select committee on workers' compensation may consult with a professional actuary in determining the liability for claims for injuries resulting from accidents that occurred before July 1, 1990, on an annual basis following the close of the fiscal year ending June 30, 1991.

Section 2. **Appropriation.** There is appropriated from the workers' compensation tax account, established in 39-71-2504, to the legislative council for the biennium ending June 30, 1993, the sum of $70,000 to be used by the joint select committee on workers' compensation to provide professional actuarial consulting services and conduct the study required by Chapter 12, Special Laws of June 1989.

Section 3. Section 10, Chapter 12, Special Laws of June 1989, is amended to read:

"Section 10. **Termination.** [This act] terminates July 1, ~~1991~~ *1993*."

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 17, 1991.

CHAPTER NO. 466

[HB 292]

AN ACT REQUIRING A GOVERNMENTAL ENTITY THAT IS PARTY TO A COURT ACTION TO PREPAY CERTAIN FEES; AND AMENDING SECTION 25-10-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-10-405, MCA, is amended to read:

"**25-10-405. Governmental entities not required to prepay fees *— exceptions.*** The state, a county, a municipality, or any subdivision thereof or any officer when prosecuting or defending an action on behalf of the state, a county, a municipality, or a subdivision thereof is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action, except the fee under 25-1-201(1)(p) for filing a motion for substitution of a judge *and all fees for photocopies, postage and handling, authentications, and record searches.*"

Approved April 17, 1991.

CHAPTER NO. 467

[HB 338]

AN ACT AMENDING THE LAWS RELATING TO TAX CREDIT FOR THE PURCHASE AND INSTALLATION OF LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICES; INCREASING THE ALTERNATIVE ENERGY TAX CREDIT FOR CERTAIN TAXPAYERS; REDEFINING A LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICE; EXTENDING THE DATE FOR CERTAIN TAXPAYERS FOR WHICH THE ALTERNATIVE ENERGY TAX CREDIT MAY BE TAKEN TO DECEMBER 31, 1995; REDEFINING THE TAX-EXEMPT STATUS OF LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICES; REDEFINING THE INVESTMENTS THAT QUALIFY FOR VENTURE CAPITAL AND OTHER INCENTIVES FOR BUSINESSES INVOLVED WITH NONFOSSIL FORMS OF ENERGY GENERATION TO INCLUDE LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICES; AMENDING SECTIONS 15-6-201, 15-32-102, 15-32-201, AND 90-8-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it is anticipated that rulemaking proceedings will be required for implementation.

Montana currently has nine communities that exceed the state and federal ambient air quality standards for particulate matter smaller than 10 microns in diameter (PM-10) and two communities that exceed carbon monoxide standards. Several other communities have PM-10 concentrations approaching the ambient standards.

It is the intention of the legislature that the tax credit available for the cost of purchasing and installing a low emission wood or biomass combustion device be restricted to only the most efficient devices available on the market. While replacing older wood stoves with newer low-emission wood stoves may reduce ambient levels of PM-10, carbon monoxide, and other pollutants, the legislature finds that the current tax incentives do not encourage the improvements in efficiency and reductions in pollutants that will be required in the future to improve air quality.

While it restricts the availability of these tax incentives, the legislature finds it appropriate to increase the amount of the incentive available for those devices that qualify. This action is intended to stimulate the availability of the more efficient devices and further promote their use. Changes are also being made, as appropriate, to preserve the application of other incentives to the installation and production of these devices.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"**15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts, except, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) provided the tools are owned by the taxpayer, the first $15,000 or less of market value of tools that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment; and

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105.

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation *or low emission wood or biomass combustion devices,* as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 2. Section 15-32-102, MCA, is amended to read:

"**15-32-102. Definitions.** As used in this part, the following definitions apply:

(1) "Building" means a single or multiple dwelling, including a mobile home, or a building used for commercial, industrial, or agricultural purposes, which is enclosed with walls and a roof.

(2) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

(3) "Energy conservation purpose" means one or more of the following results of an investment: reducing the waste or dissipation of energy or reducing the amount of energy required to accomplish a given quantity of work.

(4) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

(5) "Low emission wood or biomass combustion device" means ~~a stove or furnace or a catalytic converter added to a stove or furnace which~~ *a noncatalytic stove or furnace that:* ~~burns~~

(a) (i) is specifically designed to burn wood *pellets* or other nonfossil biomass *pellets;* and

(ii) ~~which~~ has ~~an~~ *a particulate* emission rate of less than ~~6~~ *4.1* grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of health and environmental sciences pursuant to 15-32-203*; or*

(iii) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard method for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances, as adopted by the department of health and environmental sciences pursuant to 15-32-203; or

(b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of health and environmental sciences pursuant to 15-32-203.

(6) "Recognized nonfossil forms of energy generation" means:

(a) a system for the utilization of solar energy including passive solar systems, wind, solid wastes, or the decomposition of organic wastes for capturing energy or converting energy sources into usable sources;

(b) a system for the production of electric power from solid wood wastes; *or*

(c) ~~a low emission wood or biomass combustion device; or~~

~~(d)~~ a small system for the utilization of water power by means of an impoundment not over 20 acres in surface area."

Section 3. Section 15-32-201, MCA, is amended to read:

"**15-32-201. Amount of credit — to whom available.** *(1)* A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, in such taxpayer's principal dwelling prior to January 1, 1993, or who acquires title to a dwelling prior to January 1, 1993, that is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this part has never been claimed, is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of such system, including installation costs, less grants received or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first $1,000 and 2 1/2% of the next $3,000 of the cost of such system, including installation costs, less grants received, against the income tax liability imposed against such taxpayer pursuant to chapter 30.

(2) A resident individual taxpayer who completes installation of an energy system using a low emission wood or biomass combustion device, as defined in 15-32-102(5)(a), in the taxpayer's principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 20% of the first $1,000 and 10% of the next $3,000 of the cost of the system, including the installation costs, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30.

(3) A resident individual taxpayer who completes installation of an energy system that uses a low emission wood or biomass combustion device, as defined in 15-32-102(5)(b), in the taxpayer's principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of the system, including the installation costs, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30."

Section 4. Section 90-8-104, MCA, is amended to read:

"**90-8-104. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments provided for in 2-15-1808.

(2) "Capital base" means equity capital raised by a certified Montana capital company for which tax credits were claimed under this chapter.

(3) "Certified Montana capital company" means:

(a) a development credit corporation created pursuant to Title 32, chapter 4; or

(b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the board.

(4) "Montana business" means a business which is located or principally based within Montana.

(5) "Qualified investment" means:

(a) a debt or equity financing of a Montana business that meets both of the following criteria:

(i) the business is engaged in one or more of the following activities:

(A) manufacturing;

(B) agricultural, fishery, or forestry production and processing;

(C) mineral production and processing, except for conventional oil and gas exploration;

(D) recognized nonfossil forms of energy generation *or the manufacture of low emission wood or biomass combustion devices* as defined in 15-32-102;

(E) transportation;

(F) research and development of products or processes associated with any of the activities enumerated in (A) through (E) above;

(G) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts;

(H) any activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services outside Montana; and

(I) tourism; and

(ii) the business is a small business as defined in rules adopted by the board; or

(b) a debt or equity financing of a business outside Montana if such investment is likely to produce a qualified investment in Montana, as long as such investment does not exceed 25% of the capital base of the capital company.

(6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202."

Section 5. **Applicability.** [This act] applies to taxable years beginning after December 31, 1991, and before January 1, 1996.

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved April 17, 1991.

CHAPTER NO. 468

[HB 377]

AN ACT ESTABLISHING A CERTIFICATION AND LICENSING PROCESS FOR MEGALANDFILLS; PROVIDING FOR CONTRACTS FOR INFORMATION; REQUIRING THE SUBMISSION OF LONG-RANGE PLANS; REQUIRING A CERTIFICATE OF SITE ACCEPTABILITY; SPECIFYING ENVIRONMENTAL FACTORS TO BE EVALUATED; REQUIRING A FILING FEE; PROVIDING A CONTESTED CASE HEARINGS PROCESS; SPECIFYING DECISIONMAKING CRITERIA; REQUIRING A LICENSE; REQUIRING MONITORING; PROVIDING FOR ENFORCEMENT BY RESIDENTS; PROVIDING A MECHANISM

TO RECOVER DAMAGES FOR CONTAMINATION OF A DRINKING WATER SUPPLY; PROVIDING FOR JUDICIAL REVIEW; PROVIDING PENALTIES FOR VIOLATIONS; PROVIDING A SURETY BOND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants rulemaking authority to the board of health and environmental sciences and to the department of health and environmental sciences. It is the intent of the legislature that these regulations be designed to protect the public health, safety, and welfare and the environment.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 36] may be cited as the "Montana Megalandfill Siting Act".

Section 2. **Purpose.** (1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environment from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(2) The construction of solid waste facilities that dispose of over 200,000 tons of waste a year (megalandfills) may be necessary to meet increasing state and national needs for solid waste disposal capacity. However, due to the volume of waste processed, megalandfills may adversely affect the environment, surrounding communities, and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of megalandfills will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a megalandfill may not be constructed or operated within this state without a certificate of site acceptability pursuant to [section 11] and a license to operate acquired pursuant to [section 26] and 75-10-221.

Section 3. **Definitions.** As used in [sections 1 through 36], the following definitions apply:

(1) "Application" means an application for a certificate and license submitted in accordance with [sections 11 through 28] and the rules adopted under [sections 11 through 28].

(2) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(3) "Certificate" means the certificate of site acceptability issued by the board under [section 11] that is required for siting a megalandfill.

(4) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site, except that the term does not mean changes for securing geological data, including necessary borings to ascertain subsurface conditions;

(b) the modification or upgrading of an existing solid waste disposal facility into a megalandfill, except that the term does not pertain to maintenance or repair of an existing facility.

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any water, including ground waters.

(7) "Megalandfill" or "facility" means any new or existing solid waste landfill facility that accepts more than 200,000 tons a year of solid waste or any ash monofill that accepts 35,000 tons or more a year of solid waste incinerator ash, either fly ash or bottom ash.

(8) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(9) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; wood products or wood byproducts; and inert materials.

(b) "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

(10) "Solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste. The term does not include land application units, surface impoundments, injection wells, or waste piles.

Section 4. **Adoption of rules by board.** The board may adopt rules implementing the certification provisions of [sections 1 through 36], including rules regarding the filing and contents of the application, proof of service and notice requirements, environmental factors to be evaluated, filing fee, hearings process, and other components of the certificate and certification process that the board considers necessary.

Section 5. **Adoption of rules by department.** The department may adopt rules implementing the licensing provisions of [sections 1 through 36], including rules regarding the contents of the application, monitoring, and other components of the license and licensing process that the department considers necessary.

Section 6. **Contracts for information.** (1) The department may contract with a potential applicant under [sections 1 through 36] in advance of the filing of a formal application for the development of information or the provision of services by the department required under [sections 1 through 36].

(2) Payments made to the department under a contract must be credited against the fee payable under [section 16].

Section 7. **Grants, gifts, and funds.** The department may receive grants, gifts, and other funds from any public or private source to assist in its activities under [sections 1 through 36].

Section 8. **Money to solid waste management account.** All fees, taxes, fines, and penalties collected under [sections 1 through 36], except those collected by a justice's court, must be deposited in the solid waste management account as provided in 75-10-117 for use by the department in carrying out its functions and responsibilities related to solid waste management.

Section 9. **Annual long-range plan submitted — contents — available to public.** (1) A person may not file an application for a certificate of site acceptability required by [section 11] unless the megalandfill has been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department.

(2) The annual long-range plan must be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the person for which construction is projected during the ensuing 2 years, as well as those facilities to be closed during the planning period;

(b) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(c) projections of the demand for the service rendered by the person and an explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(d) additional information that the department by rule or the department on its own initiative or upon the advice of interested state agencies requests in order to carry out the purposes of [sections 1 through 36].

(3) The plan must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)(a) is proposed

to be located and must be made available to the public by the department. The applicant shall give public notice throughout the state by publishing at least once a week for 2 consecutive weeks a summary of the proposed plan in newspapers of general circulation. The plan must also be filed with the environmental quality council, the department of highways, the department of state lands, the department of fish, wildlife, and parks, the department of commerce, and the department of natural resources and conservation. Interested persons may obtain a copy of the plan by written request and payment to the department of the costs of copying the plan.

Section 10. **Study of included facilities.** If a person identifies a proposed facility in its long-range plan, submitted pursuant to [section 9], as one on which construction is proposed within the 2-year period following submission of the plan, the department shall begin to examine and evaluate the proposed site to determine whether construction of the proposed facility would unduly impair the environmental, social, and economic values described in [section 15]. The study may be continued until a person files an application for a certificate under [section 11]. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate and a license.

Section 11. **Certificate required.** (1) A person may not construct a megalandfill in the state without first applying for and obtaining a certificate of site acceptability from the board.

(2) A certificate may only be issued pursuant to [sections 11 through 25].

Section 12. **Certificate transferable.** A certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms, conditions, and modifications contained in [sections 1 through 36].

Section 13. **Application — filing and contents — proof of service and notice.** (1) (a) An applicant shall file with the department an application for a certificate under [section 11] in a form the board requires, containing the following information:

(i) a description of the proposed location and of the facility to be built;

(ii) a summary of any studies that have been made of the environmental, social, and economic impacts of the facility;

(iii) a description of at least three reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(iv) baseline data for the primary and reasonable alternate locations;

(v) at the applicant's option, an environmental study plan to satisfy the requirements of [sections 1 through 36]; and

(vi) other information that the applicant considers relevant or that the board by order or rule may require or that the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, each county commissioner, city or county planning board, and solid waste district, and each federal agency charged with the duty of protecting the environment or of planning land use located in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of fish, wildlife, and parks;

(c) department of state lands;

(d) department of commerce;

(e) department of highways; and

(f) department of natural resources and conservation.

(3) An application must be accompanied by proof that public notice was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located by publication of a summary of the application in newspapers of general circulation that will substantially inform those persons of the application.

Section 14. **Supplemental material — amendments.** (1) An application for an amendment of an application or a certificate must be in a form and contain information as the board by rule or the department by order prescribes. Notice of an amendment must be given as provided in [section 13(3) and (4)].

(2) An application may be amended by an applicant any time prior to the report made by the department under [section 17]. If the proposed amendment prevents the department from carrying out its duties and responsibilities under [sections 1 through 36], the department may require additional filing fees as the department determines necessary or may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide details with respect to an item described in the original application. This supplemental material may be submitted without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required is conclusive.

Section 15. **Environmental, social, and economic factors evaluated during certification.** In evaluating applications for a certificate of site acceptability, the department shall give consideration to the following list of factors and regulations, where applicable, and may by rule add to the factors enumerated in this section:

(1) siting criteria for municipal solid waste landfills consistent with federal requirements as described in 40 CFR part 258;

(2) siting criteria described under the Montana Solid Waste Management Act, Title 75, chapter 10, part 2, and rules adopted under that part;

(3) the Montana solid waste management plan;

(4) solid waste disposal needs, including:

(a) availability and desirability of alternative methods of solid waste disposal in lieu of the proposed facility;

(b) promotional activities of the applicant that may have given rise to the need for the facility;

(c) social changes resulting from the facility, including protection of public health and environmental quality; and

(d) integrated waste management activities that could reduce the need for additional solid waste disposal capacity;

(5) land use impacts, including:

(a) the area of land required and its ultimate use;

(b) consistency with state and regional solid waste plans;

(c) consistency with existing and projected nearby land use;

(d) alternative uses of the site;

(e) the impact on the population already in the area and the population attracted by construction or operation of the facility;

(f) the impact of availability of solid waste disposal at the facility on growth patterns and population dispersal;

(g) construction materials and practices, including quality control and quality assurance plans to be followed during construction of all phases of the proposed facility;

(h) scenic impacts;

(i) the effects on natural systems, wildlife, and plant life;

(j) the impacts on important historic, architectural, archaeological, and cultural areas and features;

(k) the impacts on public facilities and accommodations;

(l) opportunities for joint use with solid waste disposal-intensive industries; and

(m) the economic impact on the local area, local government infrastructure, and existing industry;

(6) water resources impacts, including:

(a) hydrologic studies of the adequacy of water supply and the impact of the facility on streamflow, lakes, and reservoirs;

(b) hydrologic studies of the impact of the facility on ground water, including vadose zone studies describing the potential for leachate to migrate from the facility to ground water;

(c) an inventory of effluents, including physical, chemical, and biological characteristics;

(d) hydrologic studies of effects of effluents on receiving waters;

(e) the effect of the facility on water quality;

(f) the facility's projected water uses;

(g) the effects on plant and animal life, including algae, macroinvertebrates, and fish population;

(h) effects on unique or otherwise significant ecosystems, such as wetlands; and

(i) ground water, vadose zone, and methane gas monitoring systems and programs;

(7) characteristics of solid wastes that will be disposed of at the facility, including:

(a) the rate of solid waste disposal;

(b) the solid waste handling practices proposed to be used;

(c) the present and expected future physical and chemical characteristics of the solid waste; and

(d) inspection practices for preventing the illegal dumping of hazardous waste into the facility;

(8) transportation practices, including:

(a) route and mode of transporting waste;

(b) environmental, social, and economic impacts of transportation facilities; and

(c) transfer facilities.

Section 16. **Filing fee — accountability — refund — use.** (1) (a) The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application for a certificate. The filing fee must be deposited in the solid waste management account for the use of the department in administering [sections 1 through 36]. The initial filing fee may not exceed the following scale based upon the megalandfill's projected annual tonnage of waste:

(i) a base fee of $40,000; plus

(ii) 20 cents per ton for every ton of waste over 200,000 tons.

(b) The department may allow a credit against the fee payable under this section for the applicant's costs of developing information or providing services required under [sections 1 through 36] or required for preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, part 1, or the National Environmental Policy Act, 42 U.S.C. 4321, et seq. The applicant may submit the information or a description of the services performed to the department, together with an accounting of the expenses incurred in preparing the information or performing the services. The department shall evaluate the applicability, validity, and usefulness of the data or services and determine the expenses that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that the amount to be credited is necessary to carry out its responsibilities under [sections 1 through 36].

(2) (a) The department may contract with an applicant after the filing of a formal application for the development of information or the provision of services required under [sections 1 through 36]. The contract may continue an agreement entered into pursuant to [section 6]. Payments made to the department under a contract must be credited against the fee payable under this section. The revenue derived from the filing fee must be sufficient to enable the department and the board to carry out their responsibilities under [sections 1 through 36]. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The department and applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department; however, an installment may not exceed 20% of the total filing fee provided for in subsection (1).

(3) The applicant is entitled to an accounting of money spent and to a refund with interest at the rate of 6% a year of the portion of the filing fee not spent by the department in carrying out its responsibilities under [sections 1 through 36]. A refund must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(4) The revenue derived from the filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out other responsibilities of the department and the board under [sections 1 through 36].

Section 17. **Study, evaluation, and report on proposed facility.** (1) After receipt of an application, the department shall within 90 days notify the applicant in writing that:

(a) the application is accepted as complete; or

(b) the application is not complete and list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with [sections 9 through 17], the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in [section 24]. The department shall use, to the extent it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Within 1 year following acceptance of a complete application for a facility, the department shall make a report to the board that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, Title 75, chapter 1, if applicable.

Section 18. **Voiding of application.** An application may be voided by the department for:

(1) any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;

(2) failure to file an application in substantially the form and content required by [section 13] and the rules adopted under [section 13]; or

(3) failure to deposit the filing fee as provided in [section 16].

Section 19. **Hearing date — location — department to act as staff.** (1) Upon receipt of the department's report submitted under [section 17], the board shall set a date for a hearing to begin not more than 120 days after receipt of the report. A certification hearing must be conducted by the board in Helena or in the county seat of the county in which the facility or the greatest portion of the facility is to be located.

(2) Except as provided in [section 21], the department shall act as the staff for the board throughout the decisionmaking process and the board may request that the department present testimony or cross-examine witnesses as the board considers necessary and appropriate.

Section 20. **Certificate amendments.** (1) Within 30 days after notice of an amendment to a certificate is given as provided in [section 14], including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in a material increase in any environmental, social, and economic impacts caused by the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate. If the department determines that the proposed change would result in a material increase in any environmental impact caused by the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After the hearing, the board shall grant, deny, or modify the amendment with conditions it considers appropriate.

(2) In cases where the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall grant the amendment either as applied for or upon terms or conditions as the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If the department or the board, under subsection (4), determines that a hearing is required because the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility and a hearing is required because the department's determination is appealed to the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing evidence that the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate.

Section 21. **Hearing examiner — restrictions — duties.** (1) The board shall appoint a hearing examiner to conduct certification proceedings under [sections 1 through 36]. The hearing examiner may not be a member of the board or an employee of the department or the board. A hearing examiner must be appointed within 20 days after the department's report has been filed with the board.

(2) A prehearing conference must be held, following notice, within 60 days after the department's report has been filed with the board.

(3) The prehearing conference must be organized and supervised by the hearing examiner.

(4) The prehearing conference must be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties all direct testimony that they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on must be submitted and served at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery that must be completed before the commencement of the hearing upon good cause shown and under other conditions as the hearing examiner prescribes.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing will proceed, setting forth those criteria listed in [section 24] as to which no issue of fact or law has been raised and that are conclusively presumed and are not subject to further proof except for good cause shown, and any other special rules to expedite the hearing that the hearing examiner adopts with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this section shall ensure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed.

Section 22. **Parties to certification proceeding — waiver — statement of intent to participate.** (1) The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion, order, certification, or permit by the board under [sections 1 through 36] may include as active parties:

(a) the applicant;

(b) each political entity, unit of local government, and government agency entitled to receive service of a copy of the application under [section 13];

(c) a person entitled to receive service of a copy of the application under [section 13];

(d) a nonprofit organization formed in whole or in part to:

(i) promote conservation or natural beauty;

(ii) protect the environment, personal health, or other biological values;

(iii) preserve historical sites;

(iv) promote consumer interests;

(v) represent commercial and industrial groups; or

(vi) promote the orderly development of the areas in which the facility is to be located; and

(e) any other interested person who establishes an interest in the proceeding.

(2) The department must be an active party in any certification proceeding in which the department recommends denial of all or a portion of a facility.

(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in subsections (1)(b) through (1)(e).

(4) A party waives the right to be a party if the party does not participate in the hearing before the board.

(5) Each unit of local government entitled to receive service of a copy of the application under [section 13] shall file with the board a statement showing whether the unit of local government intends to participate in the certification proceeding. If the unit of local government does not intend to participate, it shall list in this statement its reasons for failing to do so. This statement of intent must be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government.

Section 23. **Record of hearing — procedure — rules of evidence — burden of proof.** (1) Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, that any party wishes the board to consider or that the board itself expects to use or rely upon must be made a part of the record.

(2) A record must be made of the hearing and of all testimony taken.

(3) In a certification proceeding held under [section 19], the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of [section 24] are met.

(4) All proceedings under [sections 19 through 23] are governed by the procedures set forth in [sections 19 through 23], the procedural rules adopted by the board, and the Montana Rules of Evidence unless one or more rules of evidence are waived by the hearing examiner upon a showing of good cause by one or more of the parties to the hearing. No other rules of procedure or evidence apply except that the contested case procedures of the Montana Administrative Procedure Act apply if not in conflict with the procedures set forth in [sections 19 through 23] or the procedural rules adopted by the board.

Section 24. **Decision of board — findings necessary for certification.** (1) Within 90 days after submission of the recommended decision by the department, the board shall make complete findings, issue an opinion, and render a final decision upon the record, either granting or denying the application for a certificate as filed or granting it upon terms, conditions, or modifications of the siting of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it finds and determines:

(a) the nature of the probable environmental impact;

(b) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(c) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;

(d) that the facility will serve the public interest;

(e) any impacts of the facility according to each of the criteria listed in [section 15];

(f) the solid waste disposal needs listed in [section 15(4)]; and

(g) that the applicant has fully mitigated the loss of wildlife habitat, either through onsite or offsite habitat improvements.

(3) In determining that the facility will serve the public interest, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b);

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety; and

(e) any other factors that it considers relevant.

Section 25. **Conditions imposed.** If the board determines that the location of all or a part of the proposed megalandfill should be modified, it may condition its certificate upon the modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

Section 26. **License required.** (1) A person may not commence to construct a megalandfill in the state without first applying for and obtaining a license pursuant to 75-10-221. The licensing process must be concurrent with the certification process required in [sections 11 through 25].

(2) The department shall make the decision to grant or deny the license within 30 days of the certification decision, as provided in [section 24].

(3) Once a license has been issued, a megalandfill may not be constructed, operated, or maintained except in conformity with the license and any terms, conditions, and modifications contained in the license.

Section 27. **License transferable.** A license may be transferred, subject to the approval of the department, to a person who agrees to comply with the terms, conditions, and modifications contained in [sections 1 through 36].

Section 28. **Opinion issued with decision — contents.** (1) In rendering a decision on an application for a license for a megalandfill, the department shall issue an opinion stating its reasons for the action taken.

(2) In addition to the requirements of 75-10-221, any license issued by the department shall include the following:

(a) an environmental evaluation statement related to the megalandfill being certified. The statement must include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects that cannot be avoided by issuance of the license;

(iii) problems and objections raised by other federal and state agencies and interested groups; and

(iv) alternatives to the proposed facility;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified megalandfill site between the time of certification and completion of construction; and

(d) a statement signed by the applicant showing agreement to comply with the requirements of [sections 1 through 36] and the conditions of the certificate.

Section 29. **Monitoring.** The department shall monitor the operations of all certificated facilities to ensure continuing compliance with [sections 1 through 36] and with certificates issued under [section 11] and to discover and prevent noncompliance with [sections 1 through 36] or certificates issued under [section 11].

Section 30. **Revocation or suspension of license.** A license may be revoked or suspended by the department following notice and an opportunity for a hearing before the department for:

(1) any material false statement in the application or in accompanying statements or studies required of the applicant if a true statement would have warranted the department's refusal to grant a license;

(2) failure to comply with the terms or conditions of the certificate; or

(3) violation of any provision of [sections 1 through 36], rules adopted under [sections 1 through 36], or orders of the department.

Section 31. **Enforcement by residents.** (1) A person with knowledge that a requirement of [sections 1 through 36] or a rule adopted under [sections 1 through 36] is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that states the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the statements subjects the person to the penalties prescribed for a violation of 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the person may bring an action of mandamus in the district court of the first judicial district of Montana. If the court finds that a requirement of [sections 1 through 36] or a rule adopted under [sections 1 through 36] is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform those duties. If he fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

Section 32. **Action to recover damages to water supply.** An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedy provided in this section does not exclude the use of any other remedy that may be available under the laws of the state.

Section 33. **Judicial review of department and board of health decisions.** (1) An applicant aggrieved by the final decision of the board on an application for a certificate or the final decision of the department on an application for a license may obtain judicial review of that decision by filing a petition in district court.

(2) The judicial review procedure is the same as that for contested cases under Title 2, chapter 4, part 7.

(3) This section does not prohibit the department from holding a hearing on all matters that are not the subject of a pending appeal by the applicant under subsection (1).

Section 34. **Penalties for violation — civil action by attorney general.** (1) (a) A person who commences to construct or operate a megalandfill without obtaining a certificate required under [section 11] and a license required under [section 26], who constructs, operates, or maintains a facility other than in compliance with the certificate or violates any other provision of [sections 1 through 36] or any rule or order adopted under [sections 1 through 36], or who knowingly submits false information in any report, long-range plan, or application required by [sections 1 through 36] is liable for a civil penalty as provided in subsection (2).

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of the first judicial district of Montana.

(2) A person who knowingly violates the provisions of subsection (1) shall be fined not more than $25,000 for each violation or be imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in subsection (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of [sections 1 through 36], it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to enforce [sections 1 through 36] or a certificate issued under [section 11]. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order must be granted without bond.

(4) The department shall also enforce [sections 1 through 36] and may bring legal actions to accomplish the enforcement through its own legal counsel.

(5) All fines and penalties collected must be deposited in the solid waste management account for the use of the department in administering [sections 1 through 36].

Section 35. **Order not stayed by appeal — stay or suspension by court — limitations.** An appeal from a department order does not automatically stay or suspend the operation of the order. The court may, upon motion by a party, stay or suspend, in whole or in part, the operation of the department's order on terms the court considers just. The court's action must be in accordance with the practice of courts exercising equity jurisdiction, subject to the following limitations:

(1) A stay may not be granted without notice to the parties and an opportunity to be heard by the court.

(2) A department order may not be stayed or suspended without finding that irreparable damage would otherwise result to the party seeking the stay or suspension, and a stay or suspension must specify the nature of the damage.

Section 36. **Surety bond.** If an order of the department is stayed or suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning for review answer for all damages caused by the delay in enforcing the order of the department. The cost of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon final resolution of an appeal, the party does not forfeit bond and is not responsible for damages caused by delay.

Section 37. **Codification instruction.** [Sections 1 through 36] are intended to be codified as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [sections 1 through 36].

Section 38. **Effective date.** [This act] is effective on passage and approval.

Approved April 17, 1991.

CHAPTER NO. 469

[HB 405]

AN ACT PROVIDING THAT BENEFITS PAYABLE BY HEALTH SERVICE CORPORATIONS ARE SUBJECT TO THE PHYSICIAN, NURSE, PHYSICAL THERAPIST, OCCUPATIONAL THERAPIST, CHIROPRACTOR, DENTIST, AND HOSPITAL LIEN ACT; AMENDING SECTIONS 71-3-1113 AND 71-3-1118, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-1113, MCA, is amended to read:

"**71-3-1113. Definitions.** As used in this part, the following definitions apply:

(1) "Beneficiary" means a person entitled to insurance benefits.

(2) "Insurance" means a contract whereby a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable contingencies. *The term "insurer" includes a health service corporation.*

(3) "Person" means an individual, a corporation, an organization, or other legal entity."

Section 2. Section 71-3-1118, MCA, is amended to read:

"**71-3-1118. Applicability.** (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act or the Occupational Disease Act of Montana.

(2) This part applies to all payments awarded for medical, therapy, chiropractic, dentistry, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under a policy of life insurance or group life insurance~~,~~; a contract of disability insurance, *except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital;* or an annuity contract or to pension benefits payable under a qualified pension plan."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Section 4. **Termination.** [This act] terminates [2 years after the effective date of this act].

Approved April 17, 1991.

CHAPTER NO. 470

[HB 618]

AN ACT CONFORMING THE PROCEDURE FOR AN APPEAL OF A CRIMINAL DECISION FROM A JUSTICE'S OR CITY COURT TO THE APPEAL OF A CIVIL DECISION; CLARIFYING THE DUTY TO FILE THE APPEAL AND TO TRANSMIT THE APPEAL RECORD; PROVID-

ING FOR A FINE FOR FAILURE TO TRANSMIT THE APPEAL RECORD; AND AMENDING SECTION 46-17-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-17-311, MCA, is amended to read:

"**46-17-311. Appeal.** (1) Except as provided in 46-17-203, all cases on appeal from justices' or city courts must be tried anew in the district court and may be tried before a jury of six selected in the same manner as a trial jury in a civil action, except that the total number of jurors drawn shall be at least six plus the total number of peremptory challenges.

(2) A party may appeal to the district court by ~~giving~~ *filing a* written notice of ~~his intention to~~ appeal within 10 days after judgment *with the justice's court or city court that entered the judgment,* except that the state may only appeal in the cases provided for in 46-20-103.

(3) ~~Within 30 days,~~ *Upon the filing of a notice of appeal, the justice of the peace or city court judge shall transmit* the entire record of the ~~justice's or city court~~ proceedings ~~must be transferred~~ to the district court ~~or the appeal must be dismissed. It is the duty of the appellant to perfect the appeal~~ *within 10 days. The justice of the peace or city court judge may be compelled by the district court, by an order entered upon motion, to transmit the record and may be fined for neglect or refusal to transmit the record."*

Section 2. **Coordination instruction.** If Senate Bill No. 51 is passed and approved and if Senate Bill No. 51 contains a section amending 46-17-311, then [this act] is void.

Approved April 17, 1991.

CHAPTER NO. 471

[HB 751]

AN ACT TO PROVIDE FOR SUSPENSION OF THE DRIVER'S LICENSE OF A PERSON UNDER 21 YEARS OF AGE WHO ALTERS A DRIVER'S LICENSE OR IDENTIFICATION CARD TO OBTAIN ALCOHOL; TO PROVIDE FOR SUSPENSION OF THE DRIVER'S LICENSE OF A PERSON WHO AUTHORIZES ANOTHER TO USE HIS DRIVER'S LICENSE OR IDENTIFICATION CARD TO OBTAIN ALCOHOL; AND AMENDING SECTIONS 61-5-206 AND 61-5-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-206, MCA, is amended to read:

"**61-5-206. Authority of department to suspend license or driving privilege or issue probationary license.** (1) The department is hereby authorized to suspend the driver's license, including the commercial vehicle operator's endorsement, or driving privilege of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(a) has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;

(b) has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(c) is an habitually reckless or negligent driver of a motor vehicle;

(d) is incompetent to drive a motor vehicle;

(e) has committed or permitted an unlawful or fraudulent use of such license as specified in 61-5-302;

(f) has committed an offense in another state which if committed in this state would be grounds for suspension or revocation; ~~or~~

(g) has falsified his date of birth on his application for a driver's license~~.~~;

(h) is under 21 years of age and has altered his or another's driver's license or identification card to obtain alcohol; or

(i) has authorized another to use his driver's license or identification card to obtain alcohol.

(2) However, the department may, in its discretion and in lieu of such suspension of license or driving privilege, issue a probationary license to a driver, without preliminary hearing, upon a showing by its records or other sufficient evidence that the licensee's driving record is such as would authorize suspension as provided in subsection (1) hereof. Upon issuance of a probationary license the licensee shall be subject to the restrictions set forth thereon. The licensee's driving privilege may be suspended upon conviction or forfeiture of bail not vacated of any traffic violation during the period of such probation. The licensee shall surrender to the department all driver licenses theretofore issued to him before such probationary license shall be issued. His refusal or neglect to surrender such licenses upon demand shall be ground for suspending all such licenses. Probationary licenses may be issued for a period not to exceed 12 months.

(3) Upon suspending the license of any person or upon placing such person on probation, as hereinbefore in this section authorized, the department shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed 20 days after receipt of such request in the county wherein the licensee resides unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the department through its duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee.

Upon such hearing the department shall either rescind its order of suspension or probation, or, good cause appearing therefor, may affirm, reduce, or extend the period of probation or suspension of such license."

Section 2. Section 61-5-302, MCA, is amended to read:

"61-5-302. Unlawful use of license *or identification card*. It is a misdemeanor for any person to:

(1) display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious, or altered driver's license *or identification card*;

(2) lend his driver's license *or identification card* to any other person or knowingly permit its use by another;

(3) display or represent as one's own any driver's license *or identification card* not issued to him;

(4) fail or refuse to surrender to the department upon its lawful demand any driver's license *or identification card* which has been suspended, revoked, or canceled;

(5) use a false or fictitious name in any application for a driver's license, ~~or~~ commercial vehicle operator's endorsement, *or identification card* or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application; or

(6) permit any unlawful use of a driver's license *or identification card* issued to him."

Approved April 17, 1991.

CHAPTER NO. 472

[HB 776]

AN ACT PROVIDING THAT THE CONTENTS OF A STORAGE UNIT MAY BE SOLD WHEN THE OWNER OF THE CONTENTS DEFAULTS IN PAYING RENTAL FEES ON THE STORAGE UNIT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Default in payment of storage space rental fees — notice — sale of contents.** (1) A person who rents storage space to another may sell at public auction the contents of the storage space if the owner of the contents is more than 30 days in default in paying rental fees on the space.

(2) At the expiration of the period of default provided for in subsection (1), the person renting the storage space shall send written notice by

certified mail to the last-known address of the owner of the contents that he has 30 days from the date of the certified letter to pay the past due rental fees and to claim the contents of the storage space or the contents will be sold at public auction. The notice must contain the date, time, and place of the auction if the past due rental fees are not paid. If the certified notice is returned undelivered, notice must be given as provided in Rule 4 of the Montana Rules of Civil Procedure.

(3) Prior to an auction provided for in subsection (1), notice of the date, time, place, terms, and description of the property must be published in a newspaper in the county in which the property to be sold is located. The notice must be published once a week for 2 weeks prior to the day of the sale. If there is no newspaper published in the county in which the property to be sold is located, then the notice may be published in a newspaper of general circulation in the county.

(4) (a) Proceeds of the auction must first be applied to the costs of the sale, then to the unpaid storage rental fees, and the excess, if any, must be paid to the owner. If the owner or the person entitled to the proceeds cannot be located, the proceeds escheat to the state as provided in Title 72, chapter 14.

(b) All sales under this section vest title to the property sold in the purchaser of the property.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 70, chapter 6, and the provisions of Title 70, chapter 6, apply to [section 1].

Approved April 17, 1991.

CHAPTER NO. 473

[HB 847]

AN ACT EXEMPTING SENIOR CITIZEN CENTERS FROM CERTAIN LAWS GOVERNING LIVE CARD GAMES AND LIVE BINGO GAMES; AND AMENDING SECTIONS 23-5-112 AND 23-5-177, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-112, MCA, is amended to read:

"**23-5-112. Definitions.** Unless the context requires otherwise, the following definitions apply to parts 1 through 6 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 6 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. No more than 75 numbers may be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover a previously designated arrangement of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table*:*

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator*; or*

(b) operated by a senior citizen center.

(7) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(8) "Department" means the department of justice.

(9) "Distributor" means a person who:

(a) purchases or obtains from another person equipment of any kind for use in gambling activities; and

(b) sells, leases, or otherwise furnishes the equipment to another person for use in public.

(10) "Gambling" or "gambling activity" means risking money, credit, deposit, check, property, or any other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(11) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(12) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(13) "Gross proceeds" means gross revenue received less prizes paid out.

(14) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department.

(15) "Illegal gambling enterprise" means a gambling enterprise that violates a statute or a rule of the department.

(16) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

(17) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

(18) "License" means an operator's, dealer's, or manufacturer-distributor's license issued to a person by the department.

(19) "Licensee" means a person who has received a license from the department.

(20) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator *or in a senior citizen center.*

(21) "Lottery" or "gift enterprise" means a scheme, by whatever name known, for the disposal or distribution of property by chance among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance. However, "gift enterprise" does not mean:

(a) lotteries authorized under part 10 of this chapter; or

(b) cash or merchandise attendance prizes or premiums that the county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos.

(22) "Manufacturer" means a person who assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device.

(23) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public, a gambling device or gambling enterprise authorized under parts 1 through 6 of this chapter.

(24) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 6 of this chapter.

(25) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(26) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(27) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access; or

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization.

(28) "Raffle" means a gift enterprise in which each participant buys a chance or chances to win a prize.

(29) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of family services.

~~(29)~~*(30)* "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner. This definition does not apply to video gambling machines authorized under part 6 of this chapter.

~~(30)~~*(31)* "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 2. **Exemption from certain sections.** A senior citizen center is exempt from 23-5-306, 23-5-308, and 23-5-309 if the center:

(1) limits participation in live card games to its members and members' guests;

(2) limits live card game activities to its main premises or place of operation; and

(3) does not operate live card games in a predominantly commercial manner.

Section 3. **Exemption from certain sections.** A senior citizen center is exempt from 23-5-407 and 23-5-409 with respect to live bingo games if the center:

(1) limits participation in live bingo games to its members and members' guests;

(2) limits live bingo games to its main premises or place of operation; and

(3) does not operate live bingo games in a predominantly commercial manner.

Section 4. Section 23-5-177, MCA, is amended to read:

"**23-5-177. Operator of gambling establishment — license — fee.** (1) It is a misdemeanor for a person who is not licensed by the department as an operator to make available to the public for play a gambling device or gambling enterprise *for which a permit must be obtained from the department.*

(2) An operator's license must include the following information:

(a) a description of the premises upon which the gambling will take place;

(b) the operator's name;

(c) a description of each gambling device or card game table ~~licensed~~ *for which a permit has been issued* to the operator by the department for play upon the premises, including the type of game and ~~license number or decal~~ *permit* number for each ~~licensed~~ game; and

(d) any other relevant information determined necessary by the department.

(3) The operator's license must be issued annually along with all other ~~licenses~~ *permits* for gambling devices or games ~~licensed~~ *issued* to the operator.

(4) The operator's license must be updated each time a gambling device or card game table ~~license~~ *permit* is newly issued or the device or game is removed from the premises.

(5) The department may not charge a fee for the issuance of an operator's license.

(6) The operator's license must be prominently displayed upon the premises for which it is issued."

Section 5. **Codification instruction.** (1) [Section 2] is intended to be codified as an integral part of Title 23, chapter 5, part 3, and the provisions of Title 23, chapter 5, part 3, apply to [section 2].

(2) [Section 3] is intended to be codified as an integral part of Title 23, chapter 5, part 4, and the provisions of Title 23, chapter 5, part 4, apply to [section 3].

Approved April 17, 1991.

CHAPTER NO. 474

[HB 947]

AN ACT TO ESTABLISH A MINIMUM PROPERTY TAX PAYMENT FOR PROPERTY TAXES DUE; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Minimum tax payment — limitation of appeal.** (1) If the taxes and special assessments due for the current year shown in the written notice sent to the taxpayer as required in 15-16-101(2) are less than $5, the county treasurer shall notify the taxpayer that a minimum tax of $5 is imposed and due. The $5 tax is imposed for purposes of defraying administrative expenses incurred in administering the tax.

(2) The notification of the $5 minimum tax required by subsection (1) must be made in the notice required in 15-16-101(2).

(3) The minimum tax imposed by this section is not affected by the limitation on property taxes contained in Title 15, chapter 10, part 4.

Section 2. **Limitation of applicability.** The minimum tax imposed by [section 1] is not affected by the provisions of this part.

Section 3. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 16, and the provisions of Title 15 apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 10, part 4, and the provisions of Title 15, chapter 10, apply to [section 2].

Section 4. **Applicability.** [This act] applies to taxable year 1992, beginning January 1, 1992, and to all taxable years thereafter.

Approved April 17, 1991.

CHAPTER NO. 475

[HB 353]

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 8, OF THE MONTANA CONSTITUTION TO GENERALLY REVISE THE LAW RELATING TO THE SELECTION OF SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES; TO REQUIRE THAT ELECTION, CONFIRMATION, AND RETENTION OF JUSTICES OR JUDGES MUST BE AS PROVIDED BY LAW; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VII, section 8, of The Constitution of the State of Montana is amended to read:

"**Section 8. Selection.** (1) *Supreme court justices and district court judges shall be elected by the qualified electors as provided by law.*

(2) ~~The~~ *For any vacancy in the office of supreme court justice or district court judge, the* governor shall ~~nominate~~ *appoint* a replacement from nominees selected in the manner provided by law ~~for any vacancy in the office of supreme court justice or district court judge~~. If the governor fails to ~~nominate~~ *appoint* within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the ~~nomination~~ *appointment from the same nominees within thirty days of the governor's failure to appoint. Appointments made under this subsection shall be subject to confirmation by the senate, as provided by law.* ~~Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.~~

~~(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.~~

~~(3) If an incumbent does not run, there shall be an election for the office.~~ *If the appointee is not confirmed, the office shall be vacant and a replacement shall be made under the procedures provided for in this section. The appointee shall serve until the election for the office as provided by law and until a successor is elected and qualified. The person elected or retained at the election shall serve until the expiration of the term for which his predecessor was elected. No appointee, whether confirmed or unconfirmed, shall serve past the term of his predecessor without standing for election.*

(3) If an incumbent files for election and there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow the voters of the state or district to approve or reject him. If an incumbent is rejected, the vacancy in the office for which the election was held shall be filled as provided in subsection (2)."

Section 2. **Effective date.** This amendment is effective on approval by the electorate.

Section 3. **Submission to electorate.** This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 1992 by printing on the ballot the full title of this act and the following:

☐ FOR amending the constitution to mandate the election of justices and judges as provided by law.

☐ AGAINST amending the constitution to mandate the election of justices and judges as provided by law.

CHAPTER NO. 476

[HB 37]

AN ACT TO EXTEND FOR 2 YEARS THE PROVISION THAT PREVENTS THE DEPARTMENT OF HIGHWAYS AND LOCAL AUTHORITIES FROM RESTRICTING THE OPERATION OF VEHICLES CARRYING PERISHABLE SEED POTATOES ON A PUBLIC HIGHWAY IF CERTAIN CONDITIONS ARE MET; TO REQUIRE THAT A PERMIT BE OBTAINED; AMENDING SECTION 61-10-128, MCA, AND SECTION 1, CHAPTER 237, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

It is the intent of the legislature to allow the department of highways to require vehicles transporting perishable seed potatoes on restricted roads to be routed to the nearest road that is not restricted, even if the routing is not the shortest route to the destination.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-128, MCA, is amended to read:

"61-10-128. *(Temporary)* **When authorities may restrict right to use roadway.** (1) Neither the department nor a local authority may alter the limitations provided in 61-10-101 through 61-10-110 or substitute other limitations or requirements, except as provided in this section.

(2) The department of highways by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions

on the weight and speed of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department of highways or the authority which enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order or ordinance or resolution is not effective until the signs are erected. The department, or the authority by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles, or impose limitations on their weight on designated highways, subject to the provisions of subsection (3). These prohibitions and limitations shall be designated by appropriate signs placed on the highways.

(3) Neither the department nor a local authority may prohibit the operation of or impose a restriction on the weight of a vehicle loaded with perishable ~~agricultural seeds~~ *seed potatoes* that is traveling on a public highway if:

(a) the vehicle is being operated within its legal licensed gross vehicle weight; ~~and~~

(b) a permit has been issued under 61-10-107(3), regardless of the vehicle's gross weight, specifying the route from point of loading to the nearest nonrestricted road; and

~~(b)~~*(c)* the driver has in his possession a federal-state inspection certificate issued for the load.

(4) A permit issued under subsection (3) may be revoked for violating any condition of the permit.

61-10-128. *(Effective July 1, 1991)* **When authorities may restrict right to use roadway.** (1) A local authority may not alter the limitations provided in 61-10-101 through 61-10-110 or substitute other limitations or requirements, except as provided in this section.

(2) The department of highways by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight and speed of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department of highways or the authority which enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order or ordinance or resolution is not effective until the signs are erected. The department, or the authority by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles, or impose limitations on their weight on designated highways.

These prohibitions and limitations shall be designated by appropriate signs placed on the highways."

Section 2. Section 1, Chapter 237, Laws of 1989, is amended to read:

"Section 1. Section 4, Chapter 468, Laws of 1987, is amended to read:

"Section 4. **Termination.** This act terminates June 30, ~~1991~~ *1993*.""

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 20, 1991.

CHAPTER NO. 477

[HB 110]

AN ACT AMENDING THE LAW RELATING TO THE REGULATION OF BLOOD AND URINE TESTING; ALLOWING BLOOD AND URINE TESTING OF EMPLOYEES AND JOB APPLICANTS IN JOBS INVOLVING THE INTRASTATE COMMERCIAL TRANSPORTATION OF PERSONS AND COMMODITIES; ALLOWING THE RELEASE OF TEST RESULTS AS REQUIRED BY LAW; DEFINING "INTRASTATE" AND "COMMERCIAL MOTOR CARRIER"; AMENDING SECTION 39-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-2-304, MCA, is amended to read:

"39-2-304. Lie detector tests prohibited — regulation of blood and urine testing. (1) ~~No~~ *A* person, firm, corporation, or other business entity or representative thereof ~~shall~~ *may not* require:

(a) as a condition for employment or continuation of employment, any person to take a polygraph test or any form of a mechanical lie detector test;

(b) as a condition for employment, any person to submit to a blood or urine test, except for employment in*:*

(i) hazardous work environments ~~or in~~*;*

(ii) jobs the primary responsibility of which is security, public safety, or fiduciary responsibility; *or*

(iii) jobs involving the intrastate commercial transportation of persons or commodities by a commercial motor carrier or an employee subject to driver qualification requirements; and

(c) as a condition for continuation of employment, any employee to submit to a blood or urine test unless the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use, *except that drug testing may be conducted at an employee's regular biennial physical for employment in jobs involving the intrastate commercial motor carrier transportation of persons or commodities.*

(2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other business entity or its representative shall adopt ~~a~~ *the* written testing procedure *that is provided in 49 CFR, part 40,* and make it available to all persons subject to testing. ~~A testing procedure must provide for the:~~

~~(a) collection of a blood or urine specimen in a manner that minimizes invasion of personal privacy while ensuring the integrity of the collection process;~~

~~(b) collection of a quantity of specimen sufficient to ensure the administration of several tests;~~

~~(c) collection, storage, and transportation of the specimen in tamper-proof containers;~~

~~(d) adoption of chain-of-custody documentation procedures identifying how the specimen was handled and tested;~~

~~(e) verification of test results by two or more different testing procedures before judging a test positive; and~~

~~(f) prohibition of the release of test results, except as authorized by the person tested or as required by a court of law.~~

(3) The person, firm, corporation, or other business entity or its representative shall provide a copy of drug or alcohol test results to the person tested and provide him the opportunity, at the expense of the person requiring the test, to obtain a confirmatory test of the blood or urine by an independent laboratory selected by the person tested. The person tested must be given the opportunity to rebut or explain the results of either test or both tests.

(4) Adverse action may not be taken against a person tested under subsections (1)(b), (1)(c), (2), and (3) if the person tested presents a reasonable explanation or medical opinion indicating that the results of the test were not caused by alcohol consumption or illegal drug use.

(5) A person who violates this section is guilty of a misdemeanor.

(6) As used in this section:

(a) "commercial motor carrier" has the meaning provided in 69-12-101; and

(b) "intrastate" means commerce or trade that is begun, carried on, and completed wholly in this state."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Coordination instruction.** If Senate Bill No. 31 is passed and approved and if it includes a section that amends 39-2-304, then 39-2-304 as it appears in [this act] is amended by adding a new subsection (6) that reads:

"(6) Intrastate commercial motor carriers involved in the transportation of persons or commodities are exempt from the provisions of [subsections (2) through (4) of 39-2-304 as they appear in Senate Bill No. 31] and are exempt from [sections 2 through 4 and 6 of Senate Bill No. 31]. Prior to the administration of a drug or alcohol test, an intrastate commercial motor carrier involved in the transportation of persons or commodities shall adopt the written testing procedure that is provided in 49 CFR, part 40, and make it available to all persons subject to testing."

Approved April 20, 1991.

CHAPTER NO. 478

[HB 159]

AN ACT TO ALLOW A PERSON WHO LOSES A COMPETITIVE BID ON A CONSTRUCTION CONTRACT TO MAINTAIN AN ACTION FOR DAMAGES AGAINST A SUCCESSFUL BIDDER WHO FAILS TO PAY STANDARD PREVAILING WAGES OR UNEMPLOYMENT INSURANCE OR TO CARRY WORKERS' COMPENSATION INSURANCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Action against successful bidder — failure to pay standard prevailing wages or unemployment insurance or to carry workers' compensation insurance.** A person who loses a competitive bid on a construction contract may maintain an action for damages against a successful bidder if the successful bidder does not pay standard prevailing wages on a contract where payment of the standard prevailing wage rate is required by Title 18, chapter 2, part 4, does not contribute to the state unemployment insurance fund, as required by 39-51-1103, or does not pay workers' compensation premiums, as required by 39-71-401. If the bids are sealed or for any other reason kept confidential, the person who solicited the bids shall, on request by a bidder who indicates an intent to sue under this section, inform the bidder of the identity of the next lowest valid bidder after the successful bidder. Upon proof that payment by the successful bidder of standard prevailing wages, workers' compensation premiums, and contributions to the state unemployment insurance fund for the job would have increased the successful bidder's bid amount in excess of the plaintiff's bid, the plaintiff may recover damages. The measure of damages is the same as provided in 27-1-311, except that the total amount assessed against the successful bidder by all litigants may not exceed 10% of the successful bidder's bid.

Approved April 20, 1991.

CHAPTER NO. 479

[HB 162]

AN ACT REQUIRING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO ESTABLISH MINIMUM STANDARDS FOR THE CONTROL AND DISPOSAL OF SEWAGE FROM PRIVATE AND PUBLIC BUILDINGS; REQUIRING LOCAL BOARDS OF HEALTH TO ADOPT REGULATIONS THAT ARE NO LESS STRINGENT THAN STATE STANDARDS FOR THE CONTROL AND DISPOSAL OF SEWAGE FROM PRIVATE AND PUBLIC BUILDINGS; PROVIDING FOR APPEAL OF A LOCAL VARIANCE DECISION TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTIONS 50-2-116 AND 75-5-305, MCA; AND PROVIDING AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the board of health and environmental sciences concerning rulemaking to establish minimum standards for the design, installation, and maintenance of new septic and sewage disposal systems that are connected to individual private and public buildings. The rules must include a procedure for the consideration of requests for variances from the minimum standards and for a variance to be granted if warranted, as determined by local boards of health. The rules must also provide a procedure for persons to appeal a local board of health's decision on a variance to the department of health and environmental sciences. Following the adoption of minimum state standards, local boards of health shall adopt regulations for new septic and sewage disposal systems that are no less stringent than the state standards. Local governments are not required to regulate septic and sewage disposal systems that the department of health and environmental sciences reviews and regulates under the requirements of Title 75, chapter 6, pertaining to public water supply systems, or the requirements of Title 76, chapter 4, pertaining to subdivisions.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-305, MCA, is amended to read:

"**75-5-305. Adoption of requirements for treatment of wastes —** ***variance procedure — appeals.*** *(1)* The board may establish minimum requirements for the treatment of wastes.

(2) The board shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116(1)(i) may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the board's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."

Section 2. Section 50-2-116, MCA, is amended to read:

"**50-2-116. Powers and duties of local boards.** (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or *the* equivalent and *with* appropriate experience, as determined by the department, and *shall* fix his salary;

(b) elect a chairman and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth ~~which~~ *that* cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) adopt necessary regulations that are no less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of health and environmental sciences and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things ~~which~~ *that* are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places ~~which~~ *that* are infected with communicable diseases;

(e) require and provide means for disinfecting places ~~which~~ *that* are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all or a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary ~~regulations and~~ fees *to administer regulations* for the control and disposal of sewage from private and public buildings ~~not currently connected to any municipal system~~ (fees ~~shall~~ *must* be deposited with the county treasurer);

(k) adopt rules ~~which~~ *that* do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth ~~which~~ *that* might cause disease or adversely affect public health;

(iii) on sanitation in public buildings ~~which~~ *that* affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations ~~which~~ *that* might endanger human lives; and

(v) ~~for the control and disposal of sewage from private and public buildings and~~ for the maintenance of *sewage* treatment systems ~~which~~ *that* do not discharge an effluent directly into state waters and ~~which~~ *that* are not required to have an operating permit as required by rules adopted under 75-5-401."

Section 3. **Applicability.** [This act] applies to proceedings begun after October 1, 1991.

Approved April 20, 1991.

CHAPTER NO. 480

[HB 187]

AN ACT REQUIRING THAT INVESTMENT INCOME EARNED OR REALIZED BY CERTAIN WORKERS' COMPENSATION INSURERS BE CONSIDERED WHEN DETERMINING PREMIUM RATES; DEFINING "CONSTRUCTION INDUSTRY"; REQUIRING A METHOD OF COMPUTING WORKERS' COMPENSATION PREMIUM RATES FOR THE CONSTRUCTION INDUSTRY THAT DOES NOT IMPOSE A HIGHER PREMIUM SOLELY BECAUSE OF AN EMPLOYER'S HIGHER RATE OF WAGES; AMENDING SECTIONS 33-16-1004, 39-71-116, 39-71-402, 39-71-426, 39-71-721, 39-71-723, 39-72-102, AND 39-73-108, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-16-1004, MCA, is amended to read:

"**33-16-1004. Rates — considerations — methods — standards.** All rates ~~shall~~ *must* be made in accordance with the following provisions:

(1) Due consideration ~~shall~~ *must* be given to*:*

(a) past and prospective loss experience within and outside this state~~, to~~*;*

(b) catastrophe hazards, if any~~, to~~*;*

(c) a reasonable margin for underwriting profit and contingencies~~, to~~*;*

(d) dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers~~, to~~*;*

(e) past and prospective expenses, both countrywide and those specially applicable to this state~~,~~*;*

(f) investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this state; and ~~to~~

(g) all other relevant factors within and outside this state.

(2) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any insurer or group with respect to any kind of insurance or with respect to any subdivision or combination ~~thereof~~ *of insurance* for which subdivision or combination separate expense provisions are applicable.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates on individual risks in accordance with rating plans ~~which~~ *that*

establish standards for measuring variations in hazards or expense provisions, or both. ~~Such~~ *The* standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(4) Rates ~~shall~~ *may* not be excessive, inadequate, or unfairly discriminatory.

(5) Except to the extent necessary to meet the provisions of subsections (1) through (3), uniformity among insurers in any matter within the scope of this section is neither required nor prohibited."

Section 2. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to*:*

(a) the investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury ~~(however, such a parent is a beneficiary only when~~ *if* no beneficiary, as defined in subsections (3)(a) through (3)(d) ~~of this section~~, exists~~)~~; and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury ~~(however, such a brother or sister is a beneficiary~~ *but* only until the age of 18 years and only when no beneficiary, as defined in subsections (3)(a) through (3)(e) ~~of this section~~, exists~~)~~.

(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(6) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salesmen, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

~~(6)~~*(7)* "Days" means calendar days, unless otherwise specified.

~~(7)~~*(8)* "Department" means the department of labor and industry.

~~(8)~~*(9)* "Fiscal year" means the period of time between July 1 and the succeeding June 30.

~~(9)~~*(10)* "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

~~(10)~~*(11)* "Invalid" means one who is physically or mentally incapacitated.

~~(11)~~*(12)* "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

~~(12)~~*(13)* "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(13)~~*(14)* "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(14)~~*(15)* "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

~~(15)~~*(16)* "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

~~(16)~~*(17)* The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

~~(17)~~*(18)* The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

~~(18)~~*(19)* "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

~~(19)~~*(20)* "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(20)~~*(21)* "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

~~(21)~~*(22)* "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

~~(22)~~*(23)* "Year", unless otherwise specified, means calendar year."

Section 3. **Premium rates for construction industry — filing required.** (1) With respect to each classification of risk in the construction industry under plan No. 2, the rating organization described in 33-16-1005 shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This

method must use a credit scale with the starting point set at the Montana average weekly wage as reported by the department.

(3) The rating organization shall file a revenue neutral plan for new and renewed policies by July 1, 1992, for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

(4) The state compensation mutual insurance fund, plan No. 3, shall adopt the plan filed by the rating organization or adopt a credit scale plan that meets the requirements of this section.

Section 4. Section 39-71-402, MCA, is amended to read:

"**39-71-402. Extraterritorial application and reciprocity —** ***exception.*** (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this chapter shall apply to such worker as though he were injured within this state.

(2) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this chapter shall not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of such other state which applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

(5) The provisions of this section do not apply to the construction industry as defined in 39-71-116."

Section 5. Section 39-71-426, MCA, is amended to read:

"**39-71-426. Reciprocal agreements with Canadian provinces —** ***exception.*** *(1)* Subject to the conditions provided in 39-71-427 *and subsection (2) of this section,* the governor may enter into agreements with duly authorized representatives of any Canadian province, granting reciprocal application of the workers' compensation laws of this state to Montana employers and workers if they are temporarily engaged in work in that province.

(2) Subsection (1) does not apply to the construction industry as defined in 39-71-116."

Section 6. Section 39-71-721, MCA, is amended to read:

"**39-71-721. Compensation for injury causing death — limitation.** (1) (a) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover such payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116~~(2)(a)~~*(3)(a)* through ~~(2)(d)~~ *(3)(d)*, weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in 39-71-116~~(2)(e)~~*(3)(e)* and ~~(2)(f)~~ *(3)(f)*, weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary as defined in 39-71-116~~(2)~~, a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116~~(2)(b)~~*(3)(b)* through ~~(2)(d)~~ *(3)(d)*.

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116~~(2)~~.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of $299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be $149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death."

Section 7. Section 39-71-723, MCA, is amended to read:

"**39-71-723. How compensation to be divided among beneficiaries.** Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases where beneficiaries are a surviving spouse and stepchildren of such spouse, the compensation shall be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in subsections ~~(2)(e)~~ *(3)(e)* and ~~(2)(f)~~ *(3)(f)* of 39-71-116, where there is more than one, shall be divided equitably among them, and the question of dependency and amount thereof shall be a question of fact for determination by the department."

Section 8. Section 39-72-102, MCA, is amended to read:

"**39-72-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116.

(2) "Child" is as defined in 39-71-116.

(3) "Department" means the department of labor and industry.

(4) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "permanent partial disability".

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Independent contractor" is as defined in 39-71-120.

(8) "Insurer" is as defined in 39-71-116.

(9) "Invalid" is as defined in 39-71-116.

(10) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in the course and scope of employment and caused by events occurring on more than a single day or

work shift. The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

(11) "Order" is as defined in 39-71-116.

(12) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing the characteristic x-ray pattern, and by other variable clinical manifestations.

(14) "Wages" is as defined in 39-71-123.

(15) "Year" is as defined in 39-71-116~~(8) and 39-71-116(22)~~."

Section 9. Section 39-73-108, MCA, is amended to read:

"**39-73-108. Payment of benefits where person entitled is in institution.** If any person who is entitled to benefits under this chapter shall be an inmate in any Montana state institution, benefits shall not be paid to him but shall be paid his beneficiary, if any, as defined in 39-71-116~~(2)~~."

Section 10. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, part 22, and the provisions of Title 39, chapter 71, part 22, apply to [section 3].

Section 11. **Coordination instruction.** The definition of "construction industry" in [section 2(6) of this act] is intended to coordinate with the definitions of "construction industry" in House Bills No. 204 and 342.

Section 12. **Effective date.** [This act] is effective July 1, 1992.

Approved April 20, 1991.

CHAPTER NO. 481

[HB 192]

AN ACT TO INCLUDE THE TRANSPORTATION OF LOGS AS A REGULATED COMMODITY UNDER THE LAWS RELATED TO MOTOR CARRIERS; TO ESTABLISH A NEW CLASS E MOTOR CARRIER CLASSIFICATION FOR TRANSPORTING LOGS; PROVIDING QUALIFICATIONS FOR CERTIFICATION OF CLASS E MOTOR CARRIERS; PROVIDING FOR CLASS E MOTOR CARRIER CONTRACT PROVISIONS AND CONTRACT FORMS; AMENDING SECTIONS 69-12-101, 69-12-102, 69-12-201, 69-12-205, 69-12-301, 69-12-321, 69-12-322, 69-12-407, AND 69-12-611, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-101, MCA, is amended to read:

"**69-12-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Between fixed termini" or "over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route.

(2) "Certificate" means the certificate of public convenience and necessity issued under this chapter.

(3) "Compensation" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers under 69-12-421.

(4) "Corporation" means a corporation, company, association, or joint-stock association.

(5) "For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(6) "Log" means a fallen or felled tree, delimbed and cut to length for transportation to a point for storage or processing.

~~(6)~~*(7)* "Motor carrier" means a person or corporation, or its lessees, trustees, or receivers appointed by any court, operating motor vehicles upon any public highway in this state for the transportation of persons or property for hire on a commercial basis, either as a common carrier or under private contract, agreement, charter, or undertaking. The term includes any motor carrier serving the public in the business of transportation of ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter.

~~(7)~~*(8)* "Motor vehicle" includes vehicles or machines, motor trucks, tractors, or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state.

~~(8)~~*(9)* "Person" means an individual, firm, or partnership.

~~(9)~~*(10)* "Public highway" means a public street, road, highway, or way in this state.

~~(10)~~*(11)* "Railroad" means the movement of cars on rails, regardless of the motive power used."

Section 2. Section 69-12-102, MCA, is amended to read:

"**69-12-102. Scope of chapter — exemptions.** (1) This chapter does not affect:

(a) motor vehicles used in carrying property consisting of agricultural commodities *other than logs* (not including manufactured products ~~thereof~~ *of agricultural commodities*) if the motor vehicles are not used in carrying other property or passengers for compensation;

(b) the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities which are sponsored or supervised by school authorities;

(c) the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees, supplies, and materials in construction and production is concerned;

(d) the transportation of property by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas thereof, as determined by the commission;

(e) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles;

(g) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(h) ambulances;

(i) the transportation of pit run or processed sand and gravel, concrete mix, aggregate, plant mix asphalt pavement, aggregate mix, dirt, rock, material from demolished buildings and structures, used paving materials, used concrete, broken concrete, riprap, and other forms and types of materials transported solely for the purpose of excavation or fill;

(j) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also on his way to or from his place of employment;

(k) the transportation of property by motor carrier as part of a continuous movement if such property, prior or subsequent to such part of a continuous movement, has been or will be transported by an air carrier;

(l) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2; or

(ii) municipal bus service pursuant to Title 7, chapter 14, part 44;

(m) armored motor vehicles used exclusively for the transportation of coins, currency, silver bullion, gold bullion, and other precious metals, precious stones, valuable paintings, and other items of unusual value requiring special handling and security; or

(n) the transportation of a commodity under an agreement between a motor carrier and an office or agency of the United States government.

(2) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Section 3. Section 69-12-201, MCA, is amended to read:

"**69-12-201. Supervision and regulation of motor carriers.** (1) The commission ~~is hereby vested with~~ *has the* power and authority and it is ~~hereby made~~ its duty to:

(a) supervise and regulate every motor carrier in this state;

(b) fix, alter, regulate, and determine specific, just, reasonable, equal, nondiscriminatory, and sufficient rates, fares, charges, and classifications for Class A and Class B motor carriers;

(c) regulate the properties, facilities, operations, accounts, service, practices, and affairs of all motor carriers;

(d) require the filing of annual and other reports, tariffs, schedules, or other data by such motor carriers;

(e) supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public.

(2) The commission ~~shall have power and authority~~ *may,* by general order or otherwise, ~~to~~ prescribe rules in conformity with this chapter and applicable to any and all motor carriers.

(3) The commission ~~also~~ may fix and determine reasonable maximum or minimum rates for the operations of any Class C motor carrier when ~~the same~~ *rates* are required for the best interests of public transportation.

(4) The commission may fix and determine reasonable maximum or minimum rates for the operations of any Class E motor carrier operating under contract when rates are required for the best interests of public transportation."

Section 4. Section 69-12-205, MCA, is amended to read:

"**69-12-205. Rules to reflect differences between carrier classes.** All rules in relation to schedules, service, tariffs, rates, facilities, accounts, and reports ~~shall~~ *must* have due regard for the differences existing between Class A, Class B, Class C, ~~and~~ Class D, *and Class E* motor carriers, as ~~herein~~ defined *in this chapter*, and ~~shall~~ *must* be just, fair, and reasonable to the ~~said~~ classes of motor carriers in their relations to each other and to the public. In fixing the tariff or rates to be charged by Class A and Class B motor carriers for the carrying of persons ~~and/or~~ *or* property, *or both*, the commission shall take into consideration the kind and character of service to be performed, the public necessity ~~therefor~~ *of the service*, and the effect of ~~such~~ *the* tariff and rates upon other transportation agencies, if any, and shall, as far as possible, avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier."

Section 5. Section 69-12-301, MCA, is amended to read:

"**69-12-301. Classification of motor carriers.** (1) Motor carriers are ~~hereby~~ divided into ~~four~~ *five* classes to be known as:

(a) Class A motor carriers;

(b) Class B motor carriers;

(c) Class C motor carriers;

(d) Class D motor carriers~~.~~*; and*

(e) Class E motor carriers.

(2) Class A motor carriers ~~shall embrace~~ *include* all motor carriers operating between fixed termini or over a regular route and under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

(3) Class B motor carriers ~~shall embrace~~ *include* all motor carriers operating under regular rates or charges based upon either station-to-station rates or upon a mileage rate or scale and not between fixed termini or over a regular route.

(4) Class C motor carriers ~~shall embrace~~ *include* all motor carriers operating motor vehicles for distributing, delivering, or collecting wares, merchandise, or commodities or transporting persons, where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement, or undertaking.

(5) Class D motor carriers ~~embraces~~ *include* all motor carriers operating motor vehicles transporting (including pickup and disposal) ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter.

(6) Class E motor carriers include all motor carriers operating motor vehicles transporting logs if the renumeration is fixed in and transportation services are furnished under a written contract or agreement."

Section 6. **Class E motor carrier certificate.** (1) Class E motor carriers shall conduct operations pursuant to a certificate of public convenience and necessity issued by the commission authorizing the transportation of logs. Class E motor carriers, when applying for new or additional authority, shall file an application with the commission in accordance with the requirements of this chapter and the rules of the commission.

(2) A motor carrier may not possess a Class E motor carrier certificate or operate as a Class E motor carrier unless the motor carrier actually engages in the transportation of logs on a regular basis as part of the motor carrier's usual business operation.

Section 7. **Contracts for transportation of logs by Class E motor carriers — determination of rates — penalty.** (1) A person or corporation proposing to contract with a Class E motor carrier for the intrastate transportation of logs shall at the time of the initial contact regarding a specific job inform the carrier of the time of payment and of any special conditions connected with the job. Before the carrier picks up the load, the information required under subsection (2) must be furnished in writing to the carrier on a form developed by the commission or on a form containing the same information provided by the person proposing the contract.

(2) The commission shall by rule prescribe the provisions it determines are necessary for Class E motor carrier contracts, including but not limited to the rate to be charged and its method of calculation, the time and method of payment, any special conditions of loading or routes demanded by the shippers, and the time of performance.

(3) A person, corporation, or motor carrier violating this section or a provision of a contract described in this section is subject to a civil penalty, to be collected and deposited in the general fund by the commission after notice and hearing, in an amount not less than $25 or more than $500 for the first violation and not less than $25 or more than $1,000 for each subsequent violation.

Section 8. **Form for contracts for transportation of logs.** The commission shall develop a form that may be used by persons contracting with Class E motor carriers as provided in [section 7]. The form must include space for noting the rate and time of payment and for listing any special conditions that may be included in the contract. The commission shall make the forms available to persons proposing to contract with a Class E motor carrier.

Section 9. **Class E motor carrier certificates for existing log transportation businesses.** For the period between October 1, 1991, and October 1, 1992, a person or corporation engaged in the business of transporting logs in Montana at any time between April 1, 1990, and October 1, 1991, is not subject to [section 6(1)] and must be granted a statewide Class E motor carrier certificate upon applying to the commission and submitting proof that the person was engaged in transporting logs between April 1, 1990, and October 1, 1991. The commission shall develop and make available the necessary forms.

Section 10. **Transportation of logs under Class E authority only.** A Class A, Class B, Class C, or Class D motor carrier may not transport logs without first obtaining Class E authority.

Section 11. Section 69-12-321, MCA, is amended to read:

"**69-12-321. Hearing on application for motor carrier certificate.** (1) Upon the filing of ~~such~~ *an* application by a Class A, Class B, Class C, ~~or~~ Class D, *or Class E* motor carrier, except a Class C motor carrier authorized to operate under the terms of a contract as provided in 69-12-324, or upon the filing of a request for a transfer of authority, the commission shall give notice ~~thereof~~ *of the filing of the application* to any interested party. The commission shall fix a time and place for *a* hearing ~~thereon~~ *on the application* whenever a protest or a request for a hearing is received. The hearing ~~is to~~ *must* be set for a date not later than 60 days after receipt of a protest or a hearing request by the commission. Whenever no protests or hearing requests are received, the commission may act on the application without a hearing as prescribed by commission rules.

(2) ~~Any~~ *A* motor carrier referred to in 69-12-322, the department of highways, the governing board or boards of any ~~such~~ county, town, or city into or through which the route or service as proposed may extend, and any person or corporation concerned are ~~hereby declared to be~~ interested parties to the proceedings and may offer testimony for or against the granting of the certificate.

(3) The contracting parties referred to in 69-12-313(4) must appear and offer testimony in support of the applicant.

(4) However, an application by a Class A, Class B, Class C, ~~or~~ Class D, *or Class E* motor carrier for a certificate may be disallowed without a public hearing ~~thereon~~ when it appears from the records of the commission that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the commission that public convenience and necessity do not require the proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over the route or in the territory and affecting transportation facilities ~~therein~~ have materially changed since ~~said~~ *the previous* public investigation and finding and that public convenience and necessity ~~do~~ now require the motor carrier operation."

Section 12. Section 69-12-322, MCA, is amended to read:

"**69-12-322. Notice of hearing.** (1) Whenever a hearing is scheduled, whether as a result of a protest or request or upon the commission's own motion, the commission shall cause a copy of the petition and notice of hearing ~~thereon~~ to be served upon an officer or owner of any motor carrier that in the opinion of the commission might be affected by the granting of ~~any such~~ *the* certificate and shall notify any other affected party at least 10 days before the date of hearing.

(2) Notice of ~~such~~ *the* hearing ~~shall~~ *must* be published:

(a) in the legal advertising section of a local newspaper or newspapers ~~deemed~~ *determined* by the commission to have a circulation sufficient to reach the consuming public in the area under consideration for applications for Class C *or Class E* authority and geographically limited Class B authority; and

(b) in appropriate newspapers ~~deemed~~ *determined* by the commission to have sufficient statewide circulation in the case of applications for Class A authority and geographically broad contemplated Class B authority."

Section 13. Section 69-12-407, MCA, is amended to read:

"**69-12-407. Records and reports.** (1) All records, books, accounts, and files of every Class A, Class B, Class C, ~~and~~ Class D, *and Class E* motor carrier in this state, so far as ~~the same shall~~ *they* relate to the business of transportation conducted by ~~such~~ *the* motor carrier, ~~shall~~ *must* at all times be subject to examination by the commission or by any authorized agent or employee of the commission. The commission shall prescribe a uniform system of accounts and uniform reports covering the operations of ~~such~~ Class A, Class B, Class C, ~~and~~ Class D, *and Class E* motor carriers, and every motor carrier authorized to operate ~~as such~~ in accordance with the provisions of this chapter shall keep its records, books, and accounts according to ~~such~~ *the* uniform system, insofar as possible.

(2) Before April 1 of each year, unless this deadline has been extended for good cause by the commission, every motor carrier authorized to engage in ~~such~~ business shall file with the commission a report, under oath, on a form prescribed and furnished by the commission. Those carriers filing an annual report with the interstate commerce commission shall, in addition to filing the report prescribed by the public service commission, submit to the public service commission a copy of the annual report filed with the interstate commerce commission. In addition to ~~such~~ annual reports every motor carrier shall prepare and file with the commission, at the time or times and in the form to be prescribed by the commission, annual reports, special reports, and statements giving to the commission ~~such~~ information ~~as~~ it ~~shall require~~ *requires* in order to perform its duties under this chapter.

(3) In addition to other reporting requirements, the commission shall require the holder of a Class D motor carrier certificate to provide sufficient information to show that the carrier is entitled to possess the Class D motor carrier certificate under the requirements of 69-12-314.

(4) In addition to other reporting requirements, the commission shall require the holder of a Class E motor carrier certificate to demonstrate that the carrier is entitled to possess the Class E motor certificate under the requirements of [section 6]."

Section 14. Section 69-12-611, MCA, is amended to read:

"**69-12-611. Leasing of power equipment.** (1) All Class A, *Class* B, *Class* C, ~~and~~ *Class* D, *and Class E motor* carriers subject to the jurisdiction of the commission may lease power equipment for the purpose of performing transportation movements within the state. The leasing of ~~such~~ power units must be in writing.

(2) All leases must contain:

(a) the full names and addresses of negotiating parties;

(b) a complete description of each vehicle involved;

(c) *a* provision that the sole possession, responsibility, control, and direction of each vehicle resides with the lessee for the entire term of the lease;

(d) *a* provision that the lessee assumes full responsibility for all regulatory fees;

(e) *the* amount of compensation to be paid for use of the vehicle while under the lease and the method by which ~~such~~ *the* compensation is determined;

(f) the renewal conditions of the lease, if any; and

(g) the term length of the lease.

(3) A copy of the lease must be maintained in each leased vehicle at all times. Each *leased* power unit ~~so leased~~ must display in a conspicuous place on both sides of ~~such~~ *the* vehicle the identity and address of the lessor and lessee and the certificate number under which the power unit is operating.

(4) The leasing of power units by an authorized carrier to a noncertificated carrier is prohibited."

Section 15. **Codification instruction.** [Sections 6 through 10] are intended to be codified as an integral part of Title 69, chapter 12, part 3, and the provisions of Title 69, chapter 12, part 3, apply to [sections 6 through 10].

Section 16. **Effective dates — termination.** (1) [Sections 1 and 3 through 16] are effective on passage and approval.

(2) [Section 2] is effective January 1, 1992.

(3) [Section 9] terminates October 1, 1992.

Approved April 20, 1991.

CHAPTER NO. 482

[HB 195]

AN ACT REQUIRING CERTAIN ELECTION MATERIALS TO INCLUDE A CANDIDATE'S PARTY AFFILIATION; AND AMENDING SECTION 13-35-225, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-35-225, MCA, is amended to read:

"**13-35-225. Election materials not to be anonymous.** (1) Whenever ~~any~~ *a* person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, ~~such~~ *the* communication ~~shall~~ *must* clearly and conspicuously state the name and address of the printer, if printed commercially, and the name and address of the person who made or financed the expenditure for the communication~~;~~, including~~,~~ in the case of a political committee, the name and address of the treasurer. *Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.*

(2) If ~~any~~ *a* document or other article of advertising is too small for the requirements of subsection (1) to be conveniently included, the person financing the communication shall file a copy of the article with the commissioner, together with the required information, prior to its public distribution.

(3) If information required in subsection (1) is inadvertently omitted or not printed, upon discovering the omission, the person financing the communication shall file notification of the omission with the commissioner within 5 days and make every reasonable effort to bring the material into compliance with subsection (1)."

Approved April 20, 1991.

CHAPTER NO. 483

[HB 239]

AN ACT TO CREATE THE INFECTIOUS WASTE MANAGEMENT ACT; TO ESTABLISH MANAGEMENT STANDARDS FOR THE STORAGE, TRANSPORTATION, TREATMENT, AND DISPOSAL OF INFECTIOUS WASTE; AND TO GRANT PROFESSIONAL AND OCCUPATIONAL

BOARDS RULEMAKING AUTHORITY AND THE AUTHORITY TO IMPOSE ANNUAL FEES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6] grants rulemaking authority to the department of health and environmental sciences and to professional licensing boards. It is the intent of the legislature that these regulations be designed to protect the public health, safety, and welfare and the environment and that they be developed in consideration of the needs of Montana's medical service community and with the best current technical information.

It is also the intent of the legislature that [sections 1 through 6] be implemented with minimum fiscal impact. The department and professional licensing boards shall ensure compliance with [sections 1 through 6] through the course of normal inspections, the existing licensing process, and the investigation of complaints. The department and professional licensing boards may impose and adjust annual fees commensurate with the costs of regulation and inspection.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 6] may be cited as the "Infectious Waste Management Act".

Section 2. **Purpose.** The purpose of [sections 1 through 6] is to protect the public health, safety, and welfare of the citizens of Montana by developing and implementing infectious waste management policies that are reasonable, cost-effective, aesthetically pleasing, and environmentally acceptable.

Section 3. **Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Department" means the department of health and environmental sciences established in 2-15-2101.

(2) "Generator" means an individual, firm, facility, or company that produces infectious waste.

(3) "Infectious" means capable of producing disease. To be infectious, the following four factors simultaneously must be present:

(a) virulence, which is the ability of microorganisms to cause disease;

(b) dose, which is microorganisms in a quantity sufficient to cause infection;

(c) portal of entry, which is an opening or route of access into a human body; and

(d) host susceptibility, which means the host's natural resistance is incapable of preventing infection.

(4) "Infectious waste" means waste capable of producing infectious disease. Infectious waste includes but is not limited to:

(a) cultures and stocks of infectious agents and associated biologicals;

(b) human pathological waste, including tissues, organs, and body parts removed during surgery or an autopsy;

(c) free-flowing waste human blood and products of blood, including serum, plasma, and other blood components and items soaked or saturated with blood; and

(d) sharps that have been used in patient care, medical research, or industrial laboratories.

(5) "Sharps" means any discarded health care article that may cause punctures or cuts, including but not limited to needles, scalpel blades, and broken glass that may be contaminated with blood.

(6) "Steam sterilization" means a treatment method for infectious waste utilizing saturated steam within a pressure vessel (known as a steam sterilizer, autoclave, or retort) at a time, for a period of time, and at a temperature sufficient to kill infectious agents within the waste.

(7) "Storage" means the actual or intended containment of wastes on either a temporary basis or a long-term basis.

(8) "Transportation" means the movement of infectious waste from the point of generation to any intermediate points or to the point of ultimate treatment or disposal.

(9) "Treatment" means the application of a method, technique, or process, including incineration, designed to render infectious waste sterile.

Section 4. **Prohibition.** A person may not treat, store, transport, or dispose of infectious waste in a manner not authorized under the provisions of [sections 1 through 6] or rules adopted under the provisions of [sections 1 through 6].

Section 5. **Management standards — procedures for storage, transportation, treatment, and disposal.** (1) Infectious waste must be separated from ordinary waste at the point of origin and stored until the waste is rendered noninfectious in separate, distinct containers with biohazard warning labels in compliance with the following procedures:

(a) Sharps must be contained for storage, transportation, treatment, and subsequent disposal in leakproof, rigid, puncture-resistant containers that must be taped closed or capped securely to prevent loss of contents.

(b) Infectious waste other than sharps must be contained in moisture-proof disposable containers or bags of a strength sufficient to prevent ripping, tearing, or bursting under normal conditions of use. The bags must be securely tied to prevent leakage or expulsion of solid or liquid wastes during storage, handling, and transportation.

(2) To inhibit the spread of infectious agents, infectious waste must be stored prior to treatment in a secured area that prevents access by unauthorized personnel and must be clearly marked or labeled as infectious.

(3) Handling of infectious waste must be done in a manner to prevent compaction or other mechanical manipulation that might cause the release of infectious agents.

(4) (a) Treatment and disposal of infectious waste must be accomplished through the following methods:

(i) incineration with complete combustion that reduces infectious waste to carbonized or mineralized ash;

(ii) steam sterilization that renders infectious waste noninfectious; or

(iii) sterilization by standard chemical techniques or by any scientifically proven techniques approved by state and federal authorities.

(b) Liquid or semisolid infectious waste may be discharged into a sewer system that provides secondary treatment or into a primary treatment sewage system if waste is first sterilized by chemical treatment. A subsurface disposal system installed and operated in accordance with state or local sanitary regulations is, for the purpose of this subsection (b), a sewer system providing secondary treatment.

(c) Fetal remains or recognizable body parts other than teeth must be disposed of by incineration or interment.

(5) If infectious waste has been rendered noninfectious by one of the methods listed in subsection (4) and is no longer biologically hazardous, it may be mixed with and disposed of with ordinary waste in the following manner:

(a) Steam-sterilized waste must be labeled identifying it as such with heat sensitive tape or bagged in marked autoclavable bags.

(b) Chemically treated waste or waste otherwise treated under subsection (4)(a)(iii) must be appropriately labeled.

(6) Infectious waste may be transported by the generator, a municipal solid waste service, or a regulated commercial hauler to an offsite treatment facility if the waste is confined in a leakproof, noncompacting, fully enclosed vehicle compartment.

(7) (a) Infectious waste that has been treated by one of the methods in subsection (4) may be disposed of in a properly operated landfill licensed under 75-10-221.

(b) Untreated infectious waste may be disposed of at a licensed, properly operated landfill until April 1, 1993, if it is buried in a separate area without compaction and with minimum disturbance.

(8) An employee who handles or manages infectious waste must receive training provided by the employer that is adequate to ensure safe performance of duties.

(9) Generators and transporters of infectious waste shall develop a contingency plan to handle spills and equipment failure.

Section 6. **Licensing and regulation — rulemaking authority.** (1) A board or department of the state that licenses a profession, occupation, or health care facility that generates infectious waste shall require each licensee to comply with [sections 1 through 6] as a condition of licensure. The board or department shall adopt rules to implement [sections 1 through 6] and may impose and adjust annual fees commensurate with the costs of regulation.

(2) A profession, occupation, or health care facility that generates or transports infectious waste or that operates treatment, storage, or disposal facilities regulated by [sections 1 through 6] that is not already licensed by a board or department under subsection (1) must obtain a permit annually from the department. The department shall adopt rules to implement [sections 1 through 6] and may establish an annual fee commensurate with the costs of regulation. Fees collected under the provisions of [sections 1 through 6] must be deposited in the solid waste management account established in 75-10-117.

Approved April 16, 1991.

CHAPTER NO. 484

[HB 252]

AN ACT REVISING THE CONSTRUCTION LIEN LAW; ALLOWING 45 DAYS TO GIVE NOTICE OF THE RIGHT TO CLAIM A CONSTRUCTION LIEN TO A REGULATED LENDER PROVIDING FUNDS FOR SERVICES OR MATERIALS; PROVIDING AN EXCEPTION; AMENDING SECTIONS 71-3-531 AND 71-3-532, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-531, MCA, is amended to read:

"**71-3-531. Notice of right to claim a lien required — exceptions.** (1) The following are not required to give notice of a right to claim a lien as required by this section:

(a) a person who furnishes services or materials directly to the owner at his request;

(b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;

(c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and

(d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of his right to claim a lien to the contracting owner in order to claim a lien.

(3) ~~This~~ *Except as provided in subsection (4), this* notice must be given no later than 20 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 20-day period before the date on which notice is given.

(4) Where payment for services or materials furnished pursuant to a real estate improvement contract, excluding a contract on an owner-occupied residence, is made by or on behalf of the contracting party from funds provided by a regulated lender and secured by an interest, lien, mortgage, or encumbrance for the purpose of paying the particular real estate improvement being liened, the notice required by this section must be given no later than 45 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 45-day period before the date on which notice is given.

~~(4)~~*(5)* The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to him. Notice by certified mail is effective on the date the notice is mailed. *If the notice is delivered, written acknowledgement of receipt must be obtained from the owner. A person may not claim a construction lien unless he has complied with this subsection.*

~~(5)~~*(6)* (a) A person who may claim a lien shall also file with the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by 71-3-532. This copy must be filed no later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner.

(b) The notice filed with the clerk and recorder for the purpose of public notice is effective for 1 year from the date of filing. ~~Such~~ *The* notice lapses upon the expiration of the 1-year period unless the person who may claim a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice lapses. The clerk and recorder may remove the notice from the public record when it lapses.

(c) The continuation statement must include:

(i) the clerk and recorder's file number of the notice;

(ii) the date on which the notice originally was filed; and

(iii) the name of the person to whom the original notice was given.

(d) If a notice of a right to claim a lien is required under this section, a person may not claim a construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or an unexpired continuation notice filed with the clerk and recorder at the time he files his lien.

~~(6)~~*(7)* At the request of any subcontractor or material supplier who may claim a lien through him, a person shall furnish to the requestor within 5 business days:

(a) a description ~~of~~ *sufficient to identify* the real estate being improved~~,~~ ~~sufficient to identify it~~; and

(b) the name and address of the contracting owner."

Section 2. Section 71-3-532, MCA, is amended to read:

"**71-3-532. Content of notice of right to claim a lien.** (1) The notice of the right to claim a lien must be in writing and state that it is a notice of a right to claim a lien against real estate for services or materials furnished in connection with improvement of the real estate.

(2) The notice must contain a description sufficient to identify the real estate against which the lien may be claimed.

(3) The notice must contain the following information and be in substantially the following form:

NOTICE OF THE RIGHT TO CLAIM A LIEN

WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

To: .... Date of mailing: ....
(Owner)
....
(Owner's address)

This is to inform you that .... has begun to provide .... (description of services or materials) ordered by .... for improvements to property you own. The property is located at ....

A lien may be claimed for all services and materials furnished to you~~,~~ if this notice is given to you within 20 days after the date on which the services or materials described are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 20-day period before the date on which the notice is given. *However, if a regulated lender has provided the funds for the services or materials described in this notice, the notice may be given 45 days after the date the services or materials are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 45-day period before the date the notice is given.*

Even if you or your mortgage lender have made full payment to the contractor who ordered these services or materials, your property may still be subject to a lien unless the subcontractor or material supplier providing this notice is paid. THIS IS NOT A LIEN. It is a notice sent to you for your protection in compliance with the construction lien laws of the state of Montana.

This notice has been sent to you by:

NAME:	IF YOU HAVE ANY QUESTIONS
ADDRESS:	ABOUT THIS NOTICE, PLEASE
TELEPHONE:	CALL US

IMPORTANT INFORMATION ON REVERSE SIDE

IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Montana's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with services or materials are required to give you a notice of the right to *claim a* lien to let you know what they have provided.

WAYS TO PROTECT YOURSELF ARE:

— RECOGNIZE that this notice of delivery of services or materials may result in a lien against your property unless all those supplying a notice of the right to lien have been paid.

— LEARN more about the construction lien laws and the meaning of this notice by contacting an attorney or the firm sending this notice.

— WHEN PAYING your contractor for services or materials, you may make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to *claim a* lien.

— OBTAIN EVIDENCE that all firms from whom you have received a notice of the right to *claim a* lien have been paid or have waived the right to claim a lien against your property.

— CONSULT an attorney, a professional escrow company, or your mortgage lender."

Section 3. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 20, 1991.

CHAPTER NO. 485

[HB 256]

AN ACT TO CHANGE THE CRITERIA FOR QUALIFYING WAGES USED TO DETERMINE ELIGIBILITY FOR UNEMPLOYMENT INSURANCE BENEFITS; TO CHANGE THE FORMULA USED TO CALCULATE THE AMOUNT OF WEEKLY UNEMPLOYMENT INSURANCE BENEFITS; AMENDING SECTIONS 39-51-2105, 39-51-2201, AND 39-51-2204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2105, MCA, is amended to read:

"**39-51-2105. Qualifying wages.** ~~(1)~~ To qualify for benefits, an individual must have ~~had at least 20 weeks of work with an average of $50 per week in subject~~ *been paid total wages for* employment in the base period~~.~~ *in an amount:*

(1) not less than 1 1/2 times the wages earned in the calendar quarter in which wages were the highest during the base period; however, the total wages in the base period must be equal to or greater than 7% of the average annual wage described in 39-51-2201; or

(2) ~~On and after July 5, 1987, to qualify for benefits, an individual's total base period wages must be~~ equal to or greater than ~~7%~~ *50%* of the average annual wage ~~as~~ described in 39-51-2201~~(2)~~. ~~To qualify for benefits, an individual's total base period wages must be $1,000 or more.~~"

Section 2. Section 39-51-2201, MCA, is amended to read:

"**39-51-2201. Weekly benefit amount — determination of average weekly wage.** (1) For claims filed before July 7, 1985, an eligible individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 50%. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, such amount shall not be less than the minimum or more than the maximum weekly benefit amount. For claims effective July 7, 1985, and ~~after~~ *filed before July 7, 1991*, an individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 49%. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, such amount shall not be less than the minimum or more than the maximum weekly benefit amount.

(2) For claims filed on or after July 7, 1991, an individual's weekly benefit amount must be an amount equal to 1% of the total base period wages or equal to 1.9% of the total wages paid in the 2 calendar quarters in which wages were the highest during the base period. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, the amount may not be less than the minimum or more than the maximum weekly benefit amount.

~~(2)~~*(3)* On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained *is the average annual wage. The average annual wage* ~~shall be~~ divided by 52 ~~and the average weekly wage~~, rounded to the nearest cent, ~~thus determined~~ *is the average weekly wage.* Sixty percent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year, except that the maximum weekly benefit amount for benefit years commencing on or after July 1, 1984, through January 3, 1987, is the amount calculated under this subsection after January 1, 1984, and on or before May 31, 1984. Such maximum weekly benefit amount, if not a multiple of $1, shall be computed to the nearest lower full dollar amount.

~~(3)~~*(4)* The minimum weekly benefit amount shall be 15% of the average weekly wage. The minimum weekly benefit amount, if not a multiple of $1, shall be computed to the nearest lower full dollar amount."

Section 3. Section 39-51-2204, MCA, is amended to read:

"**39-51-2204. Maximum benefit amount.** Any otherwise eligible individual is entitled during the individual's benefit year to a total amount of benefits equal to the individual's weekly benefit amount, as calculated according to 39-51-2201~~(1)~~, times the number of full weeks of benefit entitlement appearing in the following table in the line which includes the individual's ratio of total base period earnings to the highest quarter of earnings in the base period:

Ratio of Total Base Period Earnings to High Quarter		Full Weeks of Benefits
At Least	But Less Than	
1.00	1.25	8
1.25	1.50	10
1.50	1.75	12
1.75	2.00	14
2.00	2.25	16
2.25	2.50	18
2.50	2.75	20
2.75	3.00	22
3.00	3.25	24
3.25	—	26"

Section 4. **Effective date.** [This act] is effective July 7, 1991.

Approved April 20, 1991.

CHAPTER NO. 486

[HB 261]

AN ACT PROHIBITING A BUSINESS FROM DISCRIMINATING IN THE PRICE CHARGED TO DIFFERENT PURCHASERS OF COMMODITIES OF LIKE GRADE AND QUALITY; PROVIDING A METHOD OF ENFORCEMENT; PROVIDING REMEDIES FOR PRICE DISCRIMINATION; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Discrimination in price.** (1) It is unlawful for a business to discriminate, directly or indirectly, in the price charged to different purchasers of commodities of like grade and quality if the effect of the discrimination upon other businesses or customers is to substantially lessen competition, to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any business that grants or knowingly receives the benefit of the discrimination.

(2) This section does not prohibit:

(a) price differentials that make due allowance for the costs of manufacture, sale, or delivery resulting from the differing methods or quantities in which the commodities are sold or delivered to the purchasers;

(b) businesses engaged in selling commodities from selecting their own customers in bona fide transactions and not in restraint of trade; or

(c) price changes from time to time made in response to changing conditions affecting the market for, or the marketability of, the commodities, including but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasoned goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(3) It is unlawful for a business to discriminate in favor of one purchaser against another purchaser of a processed or unprocessed commodity bought for resale by contracting to furnish, by furnishing, or by contributing to the furnishing of any service or facility connected with the processing, handling, sale, or offering for sale of the commodity purchased upon terms not accorded to all purchasers on proportionally equal terms.

(4) It is unlawful for a business to knowingly induce or receive a discrimination in price that is prohibited by this section.

(5) This section does not apply to industry members regulated by Title 16, chapters 1 through 6.

Section 2. **Return of net earnings or surplus of cooperative association — exemption of nonprofit institution from price discrimination provision.** (1) [Section 1] may not be construed to prevent a cooperative association from returning to its members, producers, or consumers, in proportion to their purchases or sales from, to, or through the association, all or any part of the net earnings or surplus resulting from its trading operations.

(2) [Section 1] does not apply to the purchase of supplies for its own use by a school, college, university, public library, church, hospital, or charitable institution not operated for profit.

Section 3. **Federal interpretation.** It is the intent of the legislature that in construing [sections 1 and 2], due consideration and weight be given to the interpretations of the federal trade commission and the federal courts relating to the provisions of the federal Robinson-Patman Anti-Discrimination Act regarding discrimination in price that are codified in 15 U.S.C. 13(b) and (c).

Section 4. **Burden of rebutting prima facie case of discrimination.** (1) In a proceeding for a violation of [section 1], if proof is made that there has been discrimination in price, the burden of rebutting the prima facie case by showing justification is upon the person charged with a violation of [section 1].

(2) A seller may rebut the prima facie case by showing that a lower price to a purchaser was made in good faith to meet an equally low price of a competitor.

Section 5. **Recovery on illegal contracts forbidden.** A contract, express or implied, made by a person in violation of the provisions of [section 1] is an illegal contract, and no recovery may be had on the contract.

Section 6. **Injunctions — damages — production of evidence.** (1) A person who is injured by a violation of [section 1] may maintain an action to enjoin a continuance of an act in violation of [section 1] and to recover damages. A court, upon finding that the defendant is violating or has violated the provisions of [section 1], shall enjoin the defendant from continuing the violation. It is not necessary to allege or prove actual damages to the plaintiff.

(2) In addition to injunctive relief, the plaintiff may recover from the defendant three times the amount of actual damages sustained plus attorney fees and costs of suit.

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition, the books and records of a defendant may be brought into court and introduced into evidence by reference. Information so obtained may not be used against the defendant as a basis for a misdemeanor prosecution for a violation of [section 1].

Section 7. **Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 6].

Section 8. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 9. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Applicability.** The provisions of [this act] apply to any contract for the sale or purchase of a commodity entered into on or after [the effective date of this act].

Approved April 20, 1991.

CHAPTER NO. 487

[HB 271]

AN ACT ALLOWING THE PUBLIC SERVICE COMMISSION TO REQUIRE A REAR-END TELEMETRY SYSTEM ON CERTAIN RAILROAD TRAINS; PROVIDING AN EXEMPTION FOR A CABOOSE-EQUIPPED TRAIN; AND AMENDING SECTION 69-14-116, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-14-116, MCA, is amended to read:

"69-14-116. General protection of health and safety on railroads ***— rear-end telemetry systems — exemption for a caboose-equipped train.*** (1) The commission ~~shall have~~ *has* full authority:

(a) after notice and hearing, to make and enforce rules providing for the installation on and equipment of trains, cars, or engines with safety appliances and providing for sanitation and adequate shelter as it affects the health of all railroad employees, including but not limited to trainmen, enginemen, yardmen, maintenance-of-way employees, highway crossing watchmen, and clerical, platform, freight house, and express employees; and

(b) to inspect the ~~same~~ *safety appliances, sanitation facilities, and shelters* and enforce regulations with regard ~~thereto~~ *to the provisions of subsection (1)(a).*

(2) (a) Except as provided in subsection (4), the commission shall require a railroad operating trains in Montana to install a rear-end train telemetry system on all trains operating within mountain grade territory as geographically defined and designated by mile posts in the railroad's official timetable and operating rules on file with the commission.

(b) As used in this section, "telemetry system" means a radio transmitter and receiver system with one device placed on the last car of a train and a second device placed in the cab of the controlling locomotive. The second device must be visible to the locomotive engineer and capable of indicating through electronic communication with the device located on the last car of the train the following:

(i) brake pipe pressure at the rear of the train, in increments of 1 pound per square inch;

(ii) rear car movement;

(iii) operation or nonoperation of the rear marker light;

(iv) remaining battery life powering the telemetry system;

(v) interruption of the communication link between the device located on the last car of the train and the device located in the cab of the controlling locomotive; and

(vi) total distance travelled in feet by the locomotive to which the device is attached.

(c) A train operating in the area defined under this subsection (2) may not depart a crew change point or its local point of origin unless the train is equipped with the telemetry system required under the rules established pursuant to this section.

(d) Telemetry systems installed on a train in conformity with rules made under this section must be equipped so that an emergency application of brakes of the train can be initiated by activation of the device placed on the last car at the rear end of the train.

(e) Disciplinary action or other adverse administrative or employment action may not be instituted against a person who reports a violation of this subsection (2) or who acts to enforce the provisions of this subsection (2).

~~(2)~~*(3)* ~~Such~~ *The* inspection, rules, and regulations ~~to~~ *required under subsections (1) and (2) must* be ~~from time to time coextensive with the requirements of and in conformity to the provisions of the acts of congress and rules and regulations of the interstate commerce commission and the department of transportation, as then effective~~ *compatible with any federal provisions and may not create an undue burden on interstate commerce.*

(4) The commission may not require the installation and use of a telemetry system as described in this section on a train equipped with a caboose that:

(a) meets the requirements of Montana law;

(b) is placed as the last car of the train; and

(c) is occupied by a member of the train crew."

Section 2. **Coordination instruction.** If Senate Bill No. 220 is passed and approved and if it includes a section that amends 69-14-116(1)(a) and (1)(b), then the language in [section 1 of this act], amending 69-14-116(1)(a) and (1)(b), must read as follows:

"(1) The commission has full authority:

(a) after notice and hearing, to adopt and enforce rules providing for the installation on and equipment of trains, cars or engines with safety appliances and providing for sanitation and adequate shelter as it affects the health of all railroad employees; and

(b) to conduct inspections necessary to implement subsection (1)(a)."

Section 3. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 20, 1991.

CHAPTER NO. 488

[HB 300]

AN ACT ELIMINATING SALES OF STATE LAND ON AN INSTALLMENT BASIS; AUTHORIZING THE BOARD OF INVESTMENTS TO PURCHASE CONTRACTS FOR DEED AND MORTGAGES ON STATE

CABINSITES; REQUIRING CASH SALES; AND AMENDING SECTION 77-2-329, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-329, MCA, is amended to read:

"**77-2-329. Terms of payment.** (1) Every purchaser of state land shall pay on the day of sale that portion of the purchase price as he may desire, but in no case less than 10% of the total sales price. In case the balance on the purchase price is not an exact multiple of $25, then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of $25.

(2) ~~The balance of the purchase price shall draw interest at the rate set by the board, but in no instance shall the rate be less than 5% per year, payable annually, and the balance of the purchase price itself shall be payable through a period of 33 years on the amortization plan. This plan is defined as being that plan under which part of the principal is required to be paid each time interest becomes due and payable and under which this part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full. However, the amount of the last installment may vary from the other installments to the extent resulting from disregarding fractional cents in the previous installments. The balance of the purchase price on town and city lots shall be payable on the amortization plan through a period of 20 years, but the board may at any time fix a shorter period than 20 years for the payment of the balance on town and city lots. Different periods of time may be established for different towns and cities as the best interests of the state demand. The board shall annually review the interest rate prior to December 31 of each year and may review the interest rate at any time the board determines such review is necessary. The interest rate fixed by the board applies to all contracts entered into until the board fixes a different interest rate.~~ *The purchaser shall pay the balance of the purchase price within 30 days. The department may extend this deadline up to 30 additional days for good cause.*"

Section 2. **Investment of state cabinsite sales.** The board of investments may purchase from approved lenders contracts for deed or mortgages for cabinsites on state trust land for the trust and legacy fund.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 17, chapter 6, part 2, and the provisions of Title 17, chapter 6, part 2, apply to [section 2].

Approved April 20, 1991.

CHAPTER NO. 489

[HB 328]

AN ACT ADOPTING THE STATE SINGLE AUDIT ACT; GENERALLY REVISING AND CLARIFYING THE LAW RELATING TO AUDITS OF LOCAL GOVERNMENT ENTITIES; REQUIRING COMPLIANCE WITH GOVERNMENT AUDITING STANDARDS; AUTHORIZING THE CHARGING OF FEES COMMENSURATE WITH COSTS FOR STATE AUDIT SERVICES; AUTHORIZING AN INTERFUND LOAN FROM THE GENERAL FUND; AMENDING SECTIONS 2-7-501, 2-7-502, 2-7-503, 2-7-504, 2-7-505, 2-7-506, 2-7-507, 2-7-508, 2-7-511, 2-7-512, 2-7-513, 2-7-514, 2-7-515, 2-7-516, 2-7-517, 2-7-518, 2-7-521, 3-5-902, 7-6-2352, 7-6-4113, 19-11-204, 19-11-205, 20-9-203, 20-9-213, AND 20-10-202, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-501, MCA, is amended to read:

"**2-7-501. Definition.** Unless the context requires otherwise, in this part, *the following definitions apply:*

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1866.

(3) ~~"department"~~ *"Department"* means the department of commerce.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of schedules that reflect a current financial position and the operating results for the 1-year reporting period.

(6) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a licensed accountant who meets the standards in subsection (6)(a).

(7) (a) "Local government entity" means a county, city, district, or public corporation that:

(i) has the power to raise revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed control districts;

(ix) drainage districts;

(x) fire department relief associations;

(xi) fire districts;

(xii) hospital districts;

(xiii) incorporated cities or towns;

(xiv) irrigation districts;

(xv) mosquito districts;

(xvi) municipal housing authority districts;

(xvii) port authorities;

(xviii) refuse disposal districts;

(xix) rural improvement districts;

(xx) school districts including a district's extracurricular funds;

(xxi) soil conservation districts;

(xxii) special education or other cooperatives;

(xxiii) television districts;

(xxiv) urban transportation districts;

(xxv) volunteer fire departments; and

(xxvi) water conservancy districts.

(8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances."

Section 2. Section 2-7-502, MCA, is amended to read:

"**2-7-502.** ~~**Audit**~~ ***Short title*** **— purpose.** *(1) This part may be cited as the "State of Montana Single Audit Act".*

(2) The ~~purpose~~ *purposes* of ~~the audit of the affairs of the governmental entities as set forth in~~ this part ~~shall be~~ *are* to*:*

(a) improve the financial management of local government entities with respect to federal, state, and local financial assistance;

(b) establish uniform requirements for financial reports and audits of local government entities;

(c) ~~insure~~ *ensure* constituent interests by determining that compliance with all appropriate statutes and regulations is accomplished~~,~~*;*

(d) ensure that the financial condition and operations of the *local government* entities are reasonably conducted and reported~~,~~*;*

(e) ensure that the stewardship of ~~such~~ *local government* entities is conducted in ~~such~~ a manner ~~as~~ to preserve and protect the public trust~~,~~*;* ~~and to~~

(f) ensure that local government entities accomplish, with economy and efficiency, the duties and responsibilities of the entities in accordance with the legal requirements imposed and the desires of the public*; and*

(g) promote the efficient and effective use of audit resources."

Section 3. Section 2-7-503, MCA, is amended to read:

"**2-7-503.** *(Temporary)* ~~**Audits**~~ ***Financial reports and audits*** **of local** ~~**governmental**~~ ***government*** **entities.** (1) The ~~department shall audit the affairs of all:~~

~~(a) counties;~~

~~(b) incorporated cities and towns having a population of more than 300 in the most recent census taken under the direction of congress;~~

~~(c) first and second class school districts and third class school districts that maintain a high school;~~

~~(d) school district extracurricular funds for pupil functions;~~

~~(e) irrigation districts, except as provided in subsection (7);~~

~~(f) conservancy districts;~~

~~(g) fire districts and volunteer fire departments in unincorporated areas, towns, and villages supported by a mill levy, except as provided in subsection (6);~~

~~(h) fire department relief associations, except as provided in subsection (6); and~~

~~(i) cemetery districts.~~

~~(2) Each audit shall be made every 2 years and shall cover the immediately preceding 2 fiscal years of the governmental~~ *governing body or managing or executive officer of a local government* entity, ~~unless annual audits are requested by the governmental entity~~ *other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed within 4 months of the end of the reporting period. The local government entity shall submit the financial report to the department for review.*

~~(3) Each audit shall be initiated not later than 24 months from the close of the fiscal year for which the audit is conducted.~~

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenues or financial assistance in the period covered by the financial report in excess of $200,000 or federal financial assistance in excess of $25,000 shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that is required of a local government under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

~~(4)~~*(5)* In addition to the audits required by this section, the department may at any time conduct *or contract for* a special audit *or review* of the affairs of any ~~governmental~~ *local government* entity referred to in this part. *The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.*

~~(5)~~*(6)* The fee for the special audit ~~shall~~ *or review must* be a charge based upon the costs incurred by the department in ~~the conduct of such~~ *relation to the* special audit *or review*. The audit fee ~~shall~~ *must* be paid by the ~~governmental~~ *local government* entity to the state treasurer and deposited in the enterprise fund to the credit of the department.

~~(6) (a) Except as provided in subsection (6)(c), the department may not audit:~~

~~(i) a fire district which has an annual budget of less than $20,000 and in which fire protection is provided solely by a fire company composed only of volunteer firefighters organized under Title 7, chapter 33; or~~

~~(ii) a fire department relief association organized under Title 19, chapter 11, which has annual receipts, including earnings on invested funds, of less than $20,000, except for audits as provided under 19-11-206.~~

~~(b) Such fire district shall annually file with the board of county commissioners of the county in which the majority of the district is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer of the fire company designated by the fire district trustees.~~

~~(c) The board of county commissioners may require an annual audit to be conducted by the department if it considers such audit to be in the public interest.~~

~~(d) Such fire department relief association shall annually file with the municipality in which the fire department relief association is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer designated by the fire department relief association trustees. The municipality may require an annual audit to be conducted by the department if it considers such audit to be in the public interest.~~

~~(7) (a) Except as provided in subsection (7)(c), the department may not audit an irrigation district with annual expenditures of less than $30,000, excluding the payment of principal and interest on federal loans.~~

~~(b) Such irrigation district shall annually file with the clerk of the district court in the county in which the irrigation district is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer designated by the irrigation district trustees.~~

~~(c) The district court may require an annual audit to be conducted by the department if it considers such audit to be in the public interest.~~

~~(8) (a) Except as provided in subsection (8)(c), the department may not audit a cemetery district with annual expenditures of less than $25,000, excluding the payment of principal and interest on federal loans.~~

~~(b) Such cemetery district shall annually file with the clerk of the district court in the county in which the cemetery district is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer designated by the cemetery district trustees.~~

~~(c) The board of county commissioners may require an annual audit to be conducted by the department if it considers such audit to be in the public interest.~~ *(Terminates June 30, 1991—sec. 6, Ch. 140, L. 1989.)*

2-7-503. *(Effective July 1, 1991)* ~~**Audits**~~ ***Financial reports and audits*** **of local** ~~**governmental**~~ ***government*** **entities.** (1) The ~~department shall audit the affairs of all:~~

~~(a) counties;~~

~~(b) incorporated cities and towns having a population of more than 300 in the most recent census taken under the direction of congress;~~

~~(c) first- and second-class school districts and third-class school districts that maintain a high school;~~

~~(d) school district extracurricular funds for pupil functions;~~

~~(e) irrigation districts, except as provided in subsection (7);~~

~~(f) conservancy districts;~~

~~(g) fire districts and volunteer fire departments in unincorporated areas, towns, and villages supported by a mill levy, except as provided in subsection (6); and~~

~~(h) fire department relief associations, except as provided in subsection (6).~~

~~(2) Each audit shall be made every 2 years and shall cover the immediately preceding 2 fiscal years of the governmental~~ *governing body or managing or executive officer of a local government* entity, ~~unless annual audits are requested by the governmental entity~~ *other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed within 4* *months of the end of the reporting period. The local government entity shall submit the financial report to the department for review.*

~~(3) Each audit shall be initiated not later than 24 months from the close of the fiscal year for which the audit is conducted.~~

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenues or financial assistance in the period covered by the financial report in excess of $200,000 or federal financial assistance in excess of $25,000 shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

~~(4)~~*(5)* In addition to the audits required by this section, the department may at any time conduct *or contract for* a special audit *or review* of the affairs of any ~~governmental~~ *local government* entity referred to in this part. *The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.*

~~(5)~~*(6)* The fee for the special audit ~~shall~~ *or review must* be a charge based upon the costs incurred by the department in ~~the conduct of such~~ *relation to the* special audit *or review*. The audit fee ~~shall~~ *must* be paid by the ~~governmental~~ *local government* entity to the state treasurer and deposited in the enterprise fund to the credit of the department.

~~(6) (a) Except as provided in subsection (6)(c), the department may not audit:~~

~~(i) a fire district which has an annual budget of less than $20,000 and in which fire protection is provided solely by a fire company composed only of volunteer firefighters organized under Title 7, chapter 33; or~~

~~(ii) a fire department relief association organized under Title 19, chapter 11, which has annual receipts, including earnings on invested funds, of less than $20,000, except for audits as provided under 19-11-206.~~

~~(b) Such fire district shall annually file with the board of county commissioners of the county in which the majority of the district is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer of the fire company designated by the fire district trustees.~~

~~(c) The board of county commissioners may require an annual audit to be conducted by the department if it considers such audit to be in the public interest.~~

~~(d) Such fire department relief association shall annually file with the municipality in which the fire department relief association is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer designated by the fire department relief association trustees. The municipality may require an annual audit to be conducted by the department if it considers such audit to be in the public interest.~~

~~(7) (a) Except as provided in subsection (7)(c), the department may not audit an irrigation district with annual expenditures of less than $30,000, excluding the payment of principal and interest on federal loans.~~

~~(b) Such irrigation district shall annually file with the clerk of the district court in the county in which the irrigation district is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer designated by the irrigation district trustees.~~

~~(c) The district court may require an annual audit to be conducted by the department if it considers such audit to be in the public interest.~~"

Section 4. Section 2-7-504, MCA, is amended to read:

"**2-7-504. Accounting methods.** Unless otherwise required by law, the department shall prescribe *by rule* the general methods and details of accounting for the receipt and disbursement of all money belonging to ~~governmental~~ *local government* entities ~~referred to in this part~~ and shall establish in those offices general methods and details of accounting. All ~~governmental~~ *local government* entity officers shall conform with the *accounting* standards prescribed by the department."

Section 5. Section 2-7-505, MCA, is amended to read:

"**2-7-505. Audit scope and standards.** (1) Each audit ~~shall~~ *must* be a comprehensive audit of the affairs of the ~~governmental~~ *local government* entity~~, including comment on the balance sheet, results of operations, compliance with state statutes and regulations, recommendations for improvement,~~ and ~~any other comments deemed pertinent by the auditor,~~

~~including his expression of opinion as to the adequacy of the financial presentations.~~

~~(2) Each such audit required shall~~ *must* be made in accordance with ~~generally accepted governmental~~ auditing standards *and in accordance with federal regulations adopted by the department by rule.*

(2) The department, with cooperation from state agencies, shall prepare a local government compliance supplement that contains state and federal regulations applicable to local government entities."

Section 6. Section 2-7-506, MCA, is amended to read:

"**2-7-506. Audit by independent ~~accountant or~~ auditor.** (1) ~~In lieu of the audits required of the department, the~~ *The* department may~~, with the consent of or at the request of the respective governmental entities, contract out such~~ *prepare and maintain a roster of independent auditors authorized to conduct* audits ~~with a public accountant or firm of public accountants who are licensed under the laws of Montana~~ *of local government entities. The roster must be available to local government entities subject to the reporting requirements of 2-7-503.* ~~The duration of such an audit contract must be set forth in the contract and may not exceed 3 years but the contract may be extended an additional 2 years upon the request of the governmental entity.~~

(2) The department, *in consultation with the board,* shall ~~establish~~ *adopt* rules governing the ~~administration of the contracts between the department, the independent accountant/auditor, and the governmental entities. These rules shall include but not be limited to~~:

(a) ~~establishment of~~ criteria for the selection of the independent ~~accountant/auditor~~ *auditor;*

(b) ~~contract form and content~~ *procedures and qualifications for placing applicants on the roster;* ~~and~~

(c) ~~standards of audit and reporting~~ *procedures for reviewing the qualifications of independent auditors on the roster to justify their continuance on the roster; and*

(d) fees payable to the department for application for placement on the roster.

(3) An audit made by an independent auditor must be pursuant to a contract entered into by the governing body or managing or executive officer of the local government. The department must be a party to the contract and the contract may not be executed until it is signed by the department. All contracts for conducting audits must be in a form prescribed or approved by the department.

(4) The department shall notify the local government entity of a required audit, the date the report is due, and the requirement that the local government entity, the independent auditor, and the department must be parties to the contract.

(5) If a local government entity fails to present a signed contract to the department for approval within 90 days of receipt of the audit notice, the department shall designate an independent auditor to perform the audit. The costs incurred by the department in arranging the audit must be paid by the local government entity to the department in the manner of other claims against the local government entity."

Section 7. Section 2-7-507, MCA, is amended to read:

"**2-7-507. Duty of officers to aid in audit.** The officers and employees of the ~~governmental~~ *local government* entities referred to in this part shall ~~afford~~ *provide* all reasonable facilities for the ~~department's~~ audit and shall furnish *all* information to the ~~department under oath in a manner prescribed by the department~~ *independent auditor necessary for the conduct of the audit."*

Section 8. Section 2-7-508, MCA, is amended to read:

"**2-7-508. Power to examine books and papers.** The ~~department~~ *independent auditor* may examine any books, papers, accounts, and documents in the office or possession of any ~~governmental~~ *local government* entity ~~referred to in this part~~ ~~and may send for persons or papers and examine under oath any person concerning them.~~"

Section 9. Section 2-7-511, MCA, is amended to read:

"**2-7-511. Access to public accounts — suspension of officer in case of discrepancy.** (1) The ~~department~~ *independent auditor* may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts ~~it~~ *the independent auditor* is examining under law.

(2) If an officer of any county, city, town, school, or other ~~governmental~~ *local government* entity ~~referred to in this part~~ refuses to ~~accord the department~~ *provide the independent auditor* access during an audit of the officer's accounts to his cash, bank accounts, or any of the papers, vouchers, or records of his office or if the ~~department~~ *independent auditor* finds a shortage of cash, the ~~department~~ *independent auditor* shall immediately file a preliminary report showing the refusal of that officer or the existence of the shortage and the approximate amount of the shortage with the respective county, city, or town attorney and the governing body of the ~~governmental~~ *local government* entity.

(3) Upon filing of the statement, the officer *of the local government entity* shall ~~immediately~~ *after notice and the opportunity for a hearing* be suspended from the duties and emoluments of his office and the governing body of ~~such governmental~~ *the local government* entity shall appoint some qualified person to the office pending completion of the audit.

(4) Upon the completion of the audit by the ~~department~~ *independent auditor*, if a shortage of cash existed in the accounts of the officer, the ~~department~~ *independent auditor* shall ~~file with~~ *notify* the governing body of the ~~governmental~~ *local government* entity ~~a final report~~ of the ~~audit, showing the~~ shortage. ~~The governing body shall, within 10 days after the~~

~~filing of the department's final report of the audit, set a date and time for a formal hearing to test the accuracy of the final report of the audit and give notice of the hearing to the officer.~~

(5) If the governing body finds that a shortage exists and that the officer suspended is, by act or omission, responsible for the shortage, the officer's right to the office is forfeited and the report of the audit shall be referred to the county attorney."

Section 10. Section 2-7-512, MCA, is amended to read:

"**2-7-512. Exit review conference.** Upon completion of ~~the field work of~~ each audit, the ~~in-charge~~ *independent* auditor is required to hold with the appropriate officials an exit review conference in which the audit results ~~shall~~ *must* be discussed."

Section 11. Section 2-7-513, MCA, is amended to read:

"**2-7-513. Content of audit report *and financial report*.** *(1)* The audit reports shall ~~contain but are not limited to the following:~~

~~(1) financial statements that conform with the generally accepted governmental accounting principles and which, insofar as possible, present the financial position and results of financial operations for each fund of the governmental entity;~~

~~(2) an expression of opinion regarding the financial statements, taken as a whole, or an assertion to the effect that an opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor should be stated.~~

~~(3) a statement that previously noted deficiencies or recommendations contained in previous audit reports have been acted upon by adoption as recommended, adoption with modification, or rejection; and~~

~~(4) disclosure of any lack of compliance with state statutes or regulations, as well as any operating deficiencies or recommendations for improvement~~ *comply with the reporting requirements of government auditing standards issued by the U.S. comptroller general and federal regulations adopted by department rule.*

(2) The department shall prescribe general methods and details of accounting for the financial report for local government entities other than schools. The financial report must be submitted in a form required by the department. The superintendent of public instruction shall prescribe the general methods and details of accounting for financial reports for schools."

Section 12. Section 2-7-514, MCA, is amended to read:

"**2-7-514.** *(Temporary)* **~~Issuance and filing~~ *Filing* of audit report *and financial report*.** (1) ~~Within 120 days after the completion of the field work, the department shall issue~~ *Completed* audit reports ~~as follows:~~

~~(a) county audit reports to county commissioners, the county clerk and recorder, and the county attorney;~~

~~(b) city or town audit reports to the city or town governing body, the city or town chief financial officer, the city or town chief executive, and the city or town attorney;~~

~~(c) school district audit reports to the trustees, the county superintendent of schools, the~~ *must be filed with the department. Completed financial reports must be filed with the department as provided in 2-7-503(1). The* state superintendent of public instruction~~, the county attorney, and the clerk of the school district;~~

~~(d) school district extracurricular fund audit reports to the trustees, the county superintendent of schools, the state superintendent of public instruction, the county attorney, and the fund administrator;~~

~~(e) fire district or volunteer fire department audit reports to the trustees, the county attorney, and the clerk and recorder of the county in which the fire district or fire department is located;~~

~~(f) conservancy district audit reports to the board of directors, the department of natural resources and conservation, the district court, and the county attorney(s);~~

~~(g) fire department relief association audit reports to the trustees, the city or town attorney, and the respective city or town clerk;~~

~~(h) irrigation district audit reports to the board of commissioners, the district court, and the county attorney(s); and~~

~~(i) cemetery district audit reports to the board of cemetery trustees, the district court, and the county attorney~~ *shall file with the department a list of school districts subject to audit under 2-7-503(3). The list must be filed with the department within 6 months after the close of the fiscal year.*

(2) At the time the financial report is filed or, in the case of a school district, when the audit report is filed with the department, the local government entity shall pay to the department a filing fee. The department shall charge a filing fee to any local government entity required to have an audit under [section 3], which fee must be based upon the costs incurred by the department in the administration of this part. The filing fees for school districts required by this section must be paid by the superintendent of public instruction from the funds appropriated for state equalization aid as defined in 20-9-343. The department shall adopt the fee schedule by rule based upon the local government entities' revenue amounts.

~~(2)~~*(3)* ~~All~~ *Copies of the completed* audit *and financial* reports ~~issued by~~ *must be made available by* the department *and the local government entity* ~~are to be maintained on file at an appropriate location and open to~~ *for* public inspection *during regular office hours. (Terminates June 30, 1991—sec. 6, Ch. 140, L. 1989.)*

2-7-514. *(Effective July 1, 1991)* ~~**Issuance and filing**~~ ***Filing*** **of audit report** ***and financial report.*** (1) ~~Within 120 days after the completion of the field work, the department shall issue~~ *Completed* audit reports ~~as follows:~~

~~(a) county audit reports to county commissioners, the county clerk and recorder, and the county attorney;~~

~~(b) city or town audit reports to the city or town governing body, the city or town chief financial officer, the city or town chief executive, and the city or town attorney;~~

~~(c) school district audit reports to the trustees, the county superintendent of schools, the~~ *must be filed with the department. Completed financial reports must be filed with the department as provided in 2-7-503(1). The* state superintendent of public instruction~~, the county attorney, and the clerk of the school district;~~

~~(d) school district extracurricular fund audit reports to the trustees, the county superintendent of schools, the state superintendent of public instruction, the county attorney, and the fund administrator;~~

~~(e) fire district or volunteer fire department audit reports to the trustees, the county attorney, and the clerk and recorder of the county in which the fire district or fire department is located;~~

~~(f) conservancy district audit reports to the board of directors, the department of natural resources and conservation, the district court, and the county attorney(s);~~

~~(g) fire department relief association audit reports to the trustees, the city or town attorney, and the respective city or town clerk; and~~

~~(h) irrigation district audit reports to the board of commissioners, the district court, and the county attorney(s)~~ *shall file with the department a list of school districts subject to audit under 2-7-503(3). The list must be filed with the department within 6 months after the close of the fiscal year.*

(2) At the time the financial report is filed or, in the case of a school district, when the audit report is filed with the department, the local government entity shall pay to the department a filing fee. The department shall charge a filing fee to any local government entity required to have an audit under [section 3], which fee must be based upon the costs incurred by the department in the administration of this part. Notwithstanding the provisions of 20-9-343, the filing fees for school districts required by this section must be paid by the superintendent of public instruction from the state equalization aid account. The department shall adopt the fee schedule by rule based upon the local government entities' revenue amounts.

~~(2)~~*(3)* ~~All~~ *Copies of the completed* audit *and financial* reports ~~issued by~~ *must be made available by* the department *and the local government entity* ~~are to be maintained on file at an appropriate location and open to~~ *for* public inspection *during regular office hours.*

(4) The department is authorized under this part to charge a surcharge on the filing fee to generate the necessary revenue to repay the general fund loan over a 5-year period."

Section 13. Section 2-7-515, MCA, is amended to read:

"**2-7-515. Actions by governing bodies.** (1) Upon receipt of the audit report, the governing bodies of each audited *local government* entity shall review the contents and within 30 days shall notify the department in writing as to what action they plan to take on any deficiencies or recommendations contained in the audit report. If no deficiencies or recommendations appear in the audit report, notification ~~shall~~ *is* not ~~be~~ required.

(2) Notification to the department shall include a statement by the governing bodies that noted deficiencies or recommendations for improvement have been acted upon by adoption as recommended, adoption with modification, or rejection.

(3) The local government entity shall adopt measures to correct the report findings and submit a copy of the corrective action plan to the department and, if the local government entity is a school district, shall also send a copy to the superintendent of public instruction. The department shall notify the entity of the acceptance of the corrective measures. If the department and the local government entity fail to agree, a conference between the parties must be held. Failure to resolve findings or implement corrective measures shall result in the withholding of financial assistance in accordance with rules adopted by the department pending resolution or compliance.

~~(3)~~*(4)* In cases where a violation of law or nonperformance of duty is found on the part of an officer, employee, or board, the officer, employee, or board must be proceeded against by the attorney general or county, city, or town attorney as provided by law. The county, city, or town attorney shall report to the department within 30 days after receiving the audit report from the department the proceedings instituted or to be instituted relating to the violations of law and nonperformance of duty. If the county, city, or town attorney fails or refuses to prosecute the case, the department may ~~employ an~~ *refer the case to the* attorney *general* to prosecute the case at the expense of the ~~respective governmental~~ *local government* entity."

Section 14. Section 2-7-516, MCA, is amended to read:

"**2-7-516. Audit fees.** *(1) The compensation to the independent auditor for conducting an audit must be agreed upon by the governing body or managing or executive officer of the local government entity and the independent auditor and must be paid in the manner that other claims against the local government entity are paid.*

~~(1)~~*(2)* The ~~department shall charge~~ *compensation for an* audit ~~fees based upon the costs incurred~~ *conducted* by the department ~~in the administration of this part.~~

~~(2) All audit fees herein provided shall~~ *must* be paid by the ~~governmental~~ *local government* entity to the state treasurer and *be* deposited in an enterprise fund to the credit of the department.

~~(3) The department may submit a bill to the governmental entity based upon the estimated percentage of completion of any audit. The governmental entity must make payment within 60 days of receiving a bill.~~"

Section 15. Section 2-7-517, MCA, is amended to read:

"**2-7-517. Penalty.** *(1) When a local government entity has failed to file a report as required by 2-7-503(1), unless an extension has been granted by the department for good cause shown, or to make the payment required by 2-7-514(2) within 60 days, the department may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty as adopted by rule. Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section must be released and paid to the local government entity.*

(2) When a ~~governmental~~ *local government* entity has failed to make payment as required by 2-7-516*(1)* within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the ~~governmental~~ *local government* entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment ~~shall~~ *must* be released and paid to the ~~governmental~~ *local government* entity."

Section 16. Section 2-7-518, MCA, is amended to read:

"**2-7-518. Deposit of ~~audit~~ fees.** All ~~audit~~ fees received from ~~governmental~~ *local government* entities after June 30, 1981, shall be deposited in the enterprise fund to the credit of the department of commerce for administration of Title 2, chapter 7, part 5."

Section 17. Section 2-7-521, MCA, is amended to read:

"**2-7-521.** *(Temporary)* **Publication.** (1) (a) ~~Except as provided in subsection (3), after~~ *After* the expiration of the 30-day period provided for in 2-7-515(1), the ~~department~~ *local government entity* shall send a copy of ~~the general comments section of~~ each audit report to a newspaper of general circulation *in the area of the local government entity*. However, ~~the general comments section of~~ each county audit report must be sent to the official newspaper of the county.

(b) For an audit report of a ~~local government entity provided for in 2-7-503(1)(a) or (1)(b)~~ *county or an incorporated city or town*, the ~~department~~ *county, city, or town* shall send to the appropriate newspaper a copy of a summary of significant findings regarding the audit report. The summary, which may not exceed 800 words, must be prepared by the ~~auditing agency or firm~~ *independent auditor* and contain a statement indicating that it is only a summary and is not intended to be used as an audit report.

(2) For an audit report of a ~~local government entity provided for in 2-7-503(1)(a) or (1)(b)~~ *county or incorporated city or town,* a newspaper is required to publish only:

(a) the summary of significant findings provided for in subsection (1)(b); and

(b) a statement to the effect that the audit report is on file in its entirety and open to public inspection.

(3) For an audit report of a local government entity ~~provided for in 2-7-503(1)(c) through (1)(i)~~ *other than a county or incorporated city or town,* the newspaper is required to publish only the statement provided for in subsection (2)(b) and a statement providing that the audited *local* government entity will send a copy of the audit report to any interested person upon request. ~~A copy of the audit report must be sent to the newspaper publishing the statements.~~

(4) Publication costs must be borne by the audited ~~governmental~~ *local government* entity. *(Terminates June 30, 1991—sec. 6, Ch. 140, L. 1989.)*

2-7-521. *(Effective July 1, 1991)* **Publication.** (1) (a) ~~Except as provided in subsection (3), after~~ *After* the expiration of the 30-day period provided for in 2-7-515(1), the ~~department~~ *local government entity* shall send a copy of ~~the general comments section of~~ each audit report to a newspaper of general circulation *in the area of the local government entity.* However, ~~the general comments section of~~ each county audit report must be sent to the official newspaper of the county.

(b) For an audit report of a ~~local government entity provided for in 2-7-503(1)(a) or (1)(b)~~ *county or an incorporated city or town,* the ~~department~~ *county, city, or town* shall send to the appropriate newspaper a copy of a summary of significant findings regarding the audit report. The summary, which may not exceed 800 words, must be prepared by the ~~auditing agency or firm~~ *independent auditor* and contain a statement indicating that it is only a summary and is not intended to be used as an audit report.

(2) For an audit report of a ~~local government entity provided for in 2-7-503(1)(a) or (1)(b)~~ *county or incorporated city or town,* a newspaper is required to publish only:

(a) the summary of significant findings provided for in subsection (1)(b); and

(b) a statement to the effect that the audit report is on file in its entirety and open to public inspection.

(3) For an audit report of a local government entity ~~provided for in 2-7-503(1)(c) through (1)(h)~~ *other than a county or incorporated city or town,* the newspaper is required to publish only the statement provided for in subsection (2)(b) and a statement providing that the audited *local* government entity will send a copy of the audit report to any interested person

upon request. ~~A copy of the audit report must be sent to the newspaper publishing the statements.~~

(4) Publication costs must be borne by the audited ~~governmental~~ *local government* entity."

Section 18. **Report review.** (1) The department shall determine whether the provisions of this part have been complied with by the independent auditor.

(2) Upon receipt of the audit report from the local government entity the department shall review the report. If the department determines the reporting requirements have not been met, the department shall notify the local government entity and the independent auditor submitting the report of the significant issues of noncompliance. The notification must include issuance of a statement of deficiencies by the department. The department shall allow the independent auditor 60 days to correct the identified deficiencies.

(3) If the corrections are not made within 60 days of the department's notice, the department shall notify the local government entity that the report has not been received. Failure to submit a report shall result in the withholding of payment of the audit fee pending resolution of the identified deficiencies or receipt of a corrected report.

(4) Upon review of the report, if the department determines the independent auditor has issued a report that fails to meet the auditing standards referred to in 2-7-513 or contains false or misleading information, the department shall notify the board.

(5) The department shall review the audit report findings and the response of the governing body or executive or managing officer of the local government entity submitted under 2-7-515. When the findings concern financial assistance, the department shall notify the state agency that is responsible for disbursing the state or federal funding.

(6) The department must have access in its office to the working papers of the independent auditor.

Section 19. Section 3-5-902, MCA, is amended to read:

"3-5-902. Fiscal administration for payment of court expenses. The department of commerce shall:

(1) establish procedures for disbursement of funds for payment of district court expenses listed in 3-5-901, including prorating of those funds if they are insufficient to cover all expenses listed in 3-5-901; *and*

(2) develop a uniform accounting system *in accordance with 2-7-504* for use by the counties in reporting court expenses at a detailed level for budgeting and auditing purposes~~; and~~

~~(3) provide for annual auditing of district court expenses to assure normal operations and consistency in reporting of expenditures.~~"

Section 20. Section 7-6-2352, MCA, is amended to read:

"**7-6-2352. State grants to district courts — rules.** (1) The department of commerce shall make grants, to the extent funds are available after expenses provided for in 3-5-901 are funded, to the governing body of a county for the district courts for assistance, as provided in this section.

(2) The governing body of a county may apply to the department of commerce for a grant by filing a written request on forms provided by the department by July 20 for the previous fiscal year unless the department grants a time extension upon request of the county. In its request for a grant, a county must certify that:

(a) all expenditures from the district court fund have been lawfully made;

(b) no transfers from the district court fund have been or will be made to any other fund; and

(c) no expenditures have been made from the district court fund that are not specifically authorized by 7-6-2511 and 7-6-2351.

(3) To the extent funds are available, the department of commerce shall award a grant if the county's district court expenditures for the previous fiscal year exceeded the sum of:

(a) the product of the maximum mill levy authorized by law for district court purposes, whether or not assessed, multiplied by the previous year's taxable valuation of the county; and

(b) all revenues, except district court grants, required by law to be deposited in the district court fund for the previous fiscal year.

(4) Eligible court expenditures for grant purposes include all costs of the county associated with the operation and maintenance of the district court, from whatever fund paid, except costs for building and capital items and library maintenance, replacement, and acquisition.

(5) The department of commerce shall notify each eligible county as soon as possible of its intention to award a grant to that county and the amount of the award.

(6) The grant received by the county shall be placed in the district court fund.

(7) ~~After all grants are awarded, the department of commerce shall audit each approved grant request. The department shall charge each county receiving a grant an audit fee in the same amount as the costs incurred in conducting the audit.~~

~~(8)~~ If ~~the~~ *an* audit ~~of a grant recipient~~ *conducted pursuant to 2-7-503* discloses that the recipient received a grant in excess of the amount for which it was eligible, the recipient shall repay the excess to the department of commerce. The department shall redistribute any repaid excess amounts to the other counties that received grants from the appropriation from which the overpayment was made, on the same basis as the original awards. No county is eligible for a district court grant if it owes the department a refund of a prior year's overpayment.

~~(9)~~*(8)* The department of commerce shall prescribe rules and forms necessary to effectively administer this section. The department may require a county to provide any information considered necessary for the administration of the program."

Section 21. Section 7-6-4113, MCA, is amended to read:

"**7-6-4113. Filing of annual financial statement.** (1) The city or town clerk must, within 120 days following the close of each fiscal year, transmit one copy of the statement to the department of commerce and must present the other copy to the city or town council or commission.

(2) If a city or town clerk fails to file a copy of the statement with the department within the time specified, the department, without delay, shall examine the books, records, and accounts of the city or town. The department shall make from its examination a statement of the financial condition of the city or town for the preceding fiscal year in the manner it should have been made by the city or town clerk. The examination shall be considered a special audit under the provisions of subsections ~~(4) and~~ (5) *and (6)* of 2-7-503, and all of the provisions of subsections ~~(4) and~~ (5) *and (6)* of 2-7-503 apply to it."

Section 22. Section 19-11-204, MCA, is amended to read:

"**19-11-204. ~~Audit~~ *Review* and report by board of trustees.** The board of trustees of the association shall ~~audit~~ *review* the accounts of the association at least every 6 months and shall report the condition of them at the next regular meeting of the association."

Section 23. Section 19-11-205, MCA, is amended to read:

"**19-11-205. Annual report of secretary and treasurer to association and state auditor.** The secretary and treasurer of the association shall annually prepare a ~~detailed~~ report of its receipts and expenditures for the preceding year *in accordance with 2-7-503,* showing to whom and for what purposes money has been expended. They shall file the report with the association, *the department of commerce,* and ~~a duplicate of it with~~ the state auditor. ~~No money~~ *Money* may *not* be paid to the treasurer of the association until the report is filed."

Section 24. Section 20-9-203, MCA, is amended to read:

"**20-9-203. Examination of district accounting records.** ~~(1)~~ The accounting records of all first-, ~~and second-class school districts~~ *second-,* and third-class school districts ~~that maintain a high school shall~~ *must* be audited in accordance with 2-7-503. *The trustees of the district shall file a copy of the completed audit report with the department of commerce, the superintendent of public instruction, and the county superintendent.*

~~(2) Annually and at such other times as directed by the board of county commissioners or trustees, the county auditor or the county treasurer if there is no county auditor shall audit the accounting records of each third-class district that does not maintain a high school. Such district shall deliver all accounting records to the auditing county official no later than July 15 for the audit of the financial activity of the last completed school fiscal year. The auditing county official shall examine the accounting records, prepare an audit report, and:~~

~~(a) return the accounting records to the district no later than August 15;~~

~~(b) send a copy of the audit report to the chairman of the trustees; and~~

~~(c) file copies of the audit report with the superintendent of public instruction, the county superintendent, and the county clerk and recorder.~~"

Section 25. Section 20-9-213, MCA, is amended to read:

"**20-9-213. Duties of trustees.** The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of the district. No person other than the trustees acting as a governing board may expend money of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school money for each fund maintained by the district in accordance with generally accepted accounting principles and the rules prescribed by the superintendent of public instruction. The record of the accounting must be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district money and cause warrants to be issued for the payment of lawful obligations;

(3) issue warrants on any budgeted fund in anticipation of budgeted revenues, except that the expenditures may not exceed the amount budgeted for the fund;

(4) invest any money of the district, whenever in the judgment of the trustees the investment would be advantageous to the district, by directing the county treasurer to invest any money of the district in direct obligations of the United States government; in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC, FSLIC, or NCUA located in the state; or in a repurchase agreement as authorized in 7-6-213. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds must be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer is not subject to ratable distribution laws and must be done in accordance with the directive from the board of trustees. A district may invest money under the state unified investment program established in Title 17, chapter 6.

(5) cause the district to record every transaction in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly report the receipt, use, and disposition of all money and property for which the district is accountable;

(6) report annually to the county superintendent, not later than August 1, the financial activities of each fund maintained by the district during the last completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts must be submitted to the county superintendent of each county in which part of the joint district is situated.

(7) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(8) cause the accounting records of the district to be audited ~~biennially~~ as required by 2-7-503; and

(9) perform, in the manner permitted by law, other fiscal duties that are in the best interests of the district."

Section 26. Section 20-10-202, MCA, is amended to read:

"**20-10-202. Records, reports, *and* reviews~~, and audits~~.** (1) The superintendent of public instruction shall prescribe regulations for keeping the financial and commodity records and making reports on school food services operated by a district. The financial records ~~shall always~~ *must* be available for inspection and audit by federal and state officials authorized by law or contract to perform audits and ~~shall~~ be preserved for ~~such~~ *the* period of time, not to exceed 5 years, ~~as~~ the superintendent of public instruction may prescribe.

(2) The superintendent of public instruction shall conduct or cause to be conducted the ~~audits,~~ inspections~~,~~ and administrative reviews of the financial records and the operation of school food services."

Section 27. **Estimate of cost savings.** The governor shall include in his proposed budget submitted to the 53rd legislature an estimate of cost savings to state agencies resulting from the implementation of [this act].

Section 28. **Interfund loan from the general fund.** Costs incurred by the department of commerce during fiscal year ending June 30, 1992, in adopting rules to implement [this act] and in preparing for the implementation of [this act], up to the approved appropriation for this purpose, are to be funded by an interfund loan from the general fund that must be repaid over a 5-year period from the revenues from the filing fees provided for in [this act].

Section 29. **Codification instruction.** [Section 18] is intended to be codified as an integral part of Title 2, chapter 7, part 5, and the provisions of Title 2, chapter 7, part 5, apply to [section 18].

Section 30. **Effective date — applicability.** (1) Except as provided in (2), [this act] is effective July 1, 1992, and applies to the fiscal year ending June 30, 1992.

(2) The department of commerce may adopt rules to implement [this act] to become effective July 1, 1992.

Section 31. **Termination date.** Section 2-7-514(4), as added in [section 12], terminates June 30, 1997.

Approved April 20, 1991.

CHAPTER NO. 490

[HB 336]

AN ACT REVISING THE STATE WAGE PROTECTION LAWS; REQUIRING AN EMPLOYER TO PAY A PENALTY TO AN EMPLOYEE FOR FAILURE TO PAY WAGES DUE; REQUIRING AN EMPLOYER TO PAY THE EMPLOYEE ANNUALIZED INTEREST ON UNPAID WAGES; AUTHORIZING THE DEPARTMENT TO ENTER A DEFAULT ORDER IN A WAGE CLAIM AND TO ENFORCE THE DEFAULT ORDER; ESTABLISHING A PRIORITY FOR BOND PAYMENT UNDER THE RESTAURANT, BAR, AND TAVERN WAGE PROTECTION ACT; PROHIBITING BOND PAYMENT TO THE STATE COMPENSATION MUTUAL INSURANCE FUND; AMENDING SECTIONS 39-3-206, 39-3-208, 39-3-212, 39-3-216, 39-3-604, AND 39-3-605, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-206, MCA, is amended to read:

"**39-3-206. Penalty for failure to pay wages at times specified in law.** ~~Any~~ *(1) An* employer, as ~~such employer is~~ defined in this part, who fails to pay any of his employees as provided in this part or violates any other provision of this part ~~shall be~~ *is* guilty of a misdemeanor. A penalty ~~shall~~ *must* also be assessed against and paid by ~~such~~ *the* employer ~~and become due such employee as follows: a sum equivalent to the fixed amount of~~ *to the employee in an amount* ~~5%~~ *not to exceed 100%* of the wages due and unpaid ~~shall be assessed for each day, except Sundays and legal holidays, upon which such failure continues after the day upon which such wages were due,~~. ~~except that such failure shall not be deemed to continue more than 20 days after the date such wages were due.~~

(2) The employer shall also pay the employee annualized interest on the unpaid wages from the date the wages were due. The interest must be calculated by the department and compounded annually, but the annualized rate may not be less than 2 percentage points a year above the prime rate of major New York banks on the date of settlement.

(3) Nothing in this section may be construed to relieve an employer from the requirement to pay an employee the full amount of wages due, including interest, if the employer is found in violation of this part."

Section 2. Section 39-3-208, MCA, is amended to read:

"**39-3-208. Contracts in violation of part void.** Any contract or agreement made between any person, partnership, or corporation and any party in his or its employ the provisions of which violate, evade, or circumvent this part is unlawful and void, but ~~such~~ *the* employee may sue to recover his wages earned, together with the ~~5%~~ penalty *and interest* specified in 39-3-206 or separately to recover the penalty *and interest* if the wages have been paid."

Section 3. Section 39-3-212, MCA, is amended to read:

"**39-3-212. Court enforcement of administrative decision.** A *department default order, a* decision of the hearings officer, if the decision is not appealed to the board, or a decision of the board, if judicial review is not sought, may be enforced by application by the commissioner to a district court for an order or judgment enforcing the decision. The commissioner shall apply to the district court where the employer has its principal place of business or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the administrative decision."

Section 4. Section 39-3-216, MCA, is amended to read:

"**39-3-216. Hearing.** *(1) If the department determines that a wage claim exists and the employer does not appeal the determination, the department may enter a default order against the employer for the amount of wages due and owing. The department may enforce the default order pursuant to 39-3-212.*

~~(1)~~*(2)* When the department determines that a wage claim exists and if it fails to settle the claim with the parties, it shall cause the matter to be brought to a hearing before a department hearings officer. The hearing must be conducted according to contested case procedures under Title 2, chapter 4, part 6, except that the hearings officer is not bound by statutory or common-law rules of evidence.

~~(2)~~*(3)* The decision of the hearings officer is final unless further review is initiated pursuant to 39-3-217 within 15 days after the decision is mailed to each party's last-known address. The period may be extended by the board for good cause."

Section 5. Section 39-3-604, MCA, is amended to read:

"**39-3-604. Bond to be filed — bond requirements — *payment — exception.*** (1) Except as provided in 39-3-605 and subsection (4) ~~of this section~~, a person operating a business as a restaurant, bar, or tavern is required to file a bond equal to at least double the amount of the projected semimonthly payroll with the commissioner. The bond ~~shall at all times~~ *must* be kept in full force and effect, and any cancellation or revocation of the bond or withdrawal of the sureties from the bond is grounds for enjoining the operation of business, as provided for in 39-3-607, until a new bond of like tenure and effect is filed and approved.

(2) The bond required by subsection (1) ~~of this section~~ must be filed with the commissioner. The state of Montana must be named as the obligee, with good and sufficient sureties to be approved by the attorney general.

(3) The bond must ~~be conditioned to~~ assure that the employees who perform labor or other personal services are guaranteed their wages ~~in the event~~ *if* the person ceases operation of the business for any reason and is unable to pay the wages due and owing the employees and ~~to~~ *must* assure payment due the department as a result of payroll taxes.

(4) The bond must first be used to pay wages due and owing employees, then to pay payroll taxes due the department. The bond may not be used to pay an amount due the state compensation mutual insurance fund established in 39-71-2313.

~~(4)~~*(5)* Except as provided in 39-3-605(2), this section does not apply to any person who has operated the same restaurant, bar, or tavern continuously since October 1, 1980."

Section 6. Section 39-3-605, MCA, is amended to read:

"**39-3-605. Waiver of bond — new or additional bond — exemption.** (1) After 3 years of compliance with this part, the commissioner shall waive the provisions of 39-3-604 for any person showing compliance with the applicable provisions of the Fair Labor Standards Act and all the applicable laws administered by the department.

(2) Notwithstanding 39-3-604~~(4)~~*(5)* and subsection (1) of this section, the commissioner may require a person operating a restaurant, bar, or tavern, including a person who has been in business since October 1, 1980, or for over 3 years, to file a new bond or a bond of a greater amount than double the semimonthly payroll whenever the person operating a restaurant, bar, or tavern defaults on the payment of wages~~,~~ *or* payroll taxes~~, or workers' compensation premiums~~.

(3) A person who owns and operates a restaurant, bar, or tavern is exempt from the provisions of 39-3-604 to the extent that 39-3-604 would otherwise require filing of a bond based on the payroll and wages attributable to members of the immediate family of the person who owns and operates the restaurant, bar, or tavern."

Section 7. **Effective date.** [This act] is effective July 1, 1991.

Section 8. **Applicability.** [This act] applies to all wage claims filed with the department of labor and industry on or after July 1, 1991.

Approved April 20, 1991.

CHAPTER NO. 491

[HB 359]

AN ACT PROHIBITING THE OPERATION OF MOTOR VEHICLES OR OFF-HIGHWAY VEHICLES BELOW THE ORDINARY HIGH-WATER MARK ON CERTAIN STATE OR FEDERAL LANDS; AND PROVIDING EXCEPTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Operation of motor vehicle or off-highway vehicle below high-water mark on certain state or federal lands prohibited — exceptions.** (1) Except as provided in subsections (2) and (3), a person may not operate a motor vehicle, as defined in 61-1-102, or an off-highway vehicle, as defined in 23-2-801, below the ordinary high-water mark, as defined in 23-2-301, of class I or class II waters, as defined in 23-2-301, that occur on state or federal lands or below the ordinary high-water mark of class I waters flowing through private lands, within that portion of the streambed that is covered with water.

(2) A motor vehicle or an off-highway vehicle may be operated below the ordinary high-water mark on state or federal lands on an established road or trail that enters or crosses a stream, but the stream crossing must be by the shortest practical or designated route to the road or trail on the opposite bank.

(3) The prohibition in subsection (1) does not apply to:

(a) off-highway or motor vehicle use that occurs on state or federal land that is designated for off-highway or motor vehicle use below the ordinary high-water mark if the use is in accordance with the requirements of the authorization;

(b) off-highway or motor vehicle use conducted on state or federal land pursuant to and in accordance with a specific written authorization from the appropriate land management agency for that use below the ordinary high-water mark; and

(c) operation of an off-highway vehicle by a nonambulatory person who is using the vehicle for recreational use, as defined in 23-2-301, as long as operation of the vehicle is prudent and minimizes destruction.

(4) The state may authorize the use of a motor vehicle or off-highway vehicle on state property below the ordinary high-water mark only when the state has determined that the use will have a minimal impact on the streambed and on the fish and wildlife ecology of the stream or river. Federal land management agencies are requested to apply the same criteria when authorizing use of federal land.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [section 1].

Approved April 20, 1991.

CHAPTER NO. 492

[HB 417]

AN ACT TO PROHIBIT ACTIVITIES DESIGNED TO FURTHER CIVIL DISORDER; PROHIBITING CERTAIN TRAINING INVOLVING TECHNIQUES CAPABLE OF INJURING PERSONS OR PROPERTY; PROVIDING PENALTIES FOR VIOLATIONS; AND PROVIDING EXEMPTIONS FOR CERTAIN LAWFUL ACTIVITIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The legislature recognizes every citizen's constitutional right to express beliefs on any subject, to associate with others who share similar beliefs, and to keep or bear arms in defense of home, person, or property. [Sections 1 through 3] are not intended to interfere with the exercise of rights protected by the United States constitution or the state constitution. The legislature finds that conspiracies and training activities in the furtherance of unlawful acts of violence against persons or property are not constitutionally protected, pose a threat to public order and safety, and are subject to criminal penalties.

Section 2. **Definitions.** As used in [sections 1 through 3], unless the context requires otherwise, the following definitions apply:

(1) "Civil disorder" means a public disturbance involving unlawful acts of violence by a group of two or more persons that causes an immediate danger of or results in injury to the property or person of any other individual.

(2) "Governmental military force" means:

(a) the national guard as defined in 10 U.S.C. 101;

(b) the organized militia of a state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia not included in the definition of the national guard; and

(c) the armed forces of the United States.

(3) "Law enforcement agency" means a department of public safety, a police department, a sheriff's department, the highway patrol, or a governmental unit of one or more persons employed by the state or federal government or a political subdivision of the state or federal government, for the purpose of detecting and preventing crime and enforcing laws or

ordinances, whose employees are authorized to make arrests for crimes while acting in the scope of their authority.

(4) "Peace officer" has the meaning given in 45-2-101.

Section 3. **Prohibited activities — penalties — exceptions.** (1) A person is guilty of a crime if, with one or more other persons, he purposely or knowingly assembles for the purpose of training in, instructing in the use of, or practicing with any technique or means capable of causing property damage, bodily injury, or death, with the purpose of employing the training, instruction, or practice in a civil disorder.

(2) A person convicted of violating the provisions of subsection (1) is guilty of a felony and shall be imprisoned in the state prison for a period not to exceed 10 years or be fined not to exceed $50,000, or both.

(3) Subsection (1) does not prohibit:

(a) an act protected pursuant to Article II of the Montana constitution;

(b) an act of a governmental military force;

(c) an act of a peace officer performed in the lawful performance of the officer's duties;

(d) an authorized activity of the department of fish, wildlife, and parks; the department of institutions; a law enforcement agency; or the law enforcement academy;

(e) training in nonviolent civil disobedience techniques;

(f) lawful self-defense or defense of others or an activity intended to teach or practice self-defense or self-defense techniques; or

(g) a facility, program, or lawful activity related to firearms instruction or training intended to teach the safe handling and use of firearms or activities or sports related to recreational use or possession of firearms.

(4) [Sections 1 through 3] do not apply to an employer or employees involved in a labor dispute.

Section 4. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 19, 1991.

CHAPTER NO. 493

[HB 418]

AN ACT CLARIFYING THAT ALL MONEY COLLECTED UNDER TITLE 37, CHAPTER 43, MCA, MUST BE RESERVED FOR USE BY THE BOARD OF WATER WELL CONTRACTORS; CLARIFYING THAT THE BOARD MAY EXPEND FUNDS FROM BONDS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Earmarked money for board expenses — expenditure of funds from bonds.** (1) All money collected under this chapter must be deposited in the state special revenue fund and may be used only for the purpose of paying expenses of the board. Except for funds received from bonds in subsection (2), the money must be appropriated by the legislature before it may be expended by the board. Income and interest from investment of the money in the state special revenue fund that is collected under this chapter must be credited to the board.

(2) The board may accept and expend all funds received from bonds required by 37-43-306. The funds must be used to remedy defects in water wells, to compensate for damages caused by violations of this chapter or the rules of the board, or to pay any administrative costs incurred by the board under 37-43-311. These funds are statutorily appropriated as provided in 17-7-502.

Section 2. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604;

20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; ~~and~~ section 13, House Bill No. 861, Laws of 1985*; and [section 1]*.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 43, and the provisions of Title 37, chapter 43, apply to [section 1].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 20, 1991.

CHAPTER NO. 494

[HB 419]

AN ACT DELETING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION MAIL CLAIM GRANTS AND DENIALS BY CERTIFIED MAIL; AMENDING SECTION 2-9-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-301, MCA, is amended to read:

"2-9-301. Filing of claims against state and political subdivisions — disposition by state agency as prerequisite. (1) All claims against the state arising under the provisions of parts 1 through 3 of this chapter must be presented in writing to the department of administration.

(2) A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district court unless the claimant has first presented the claim to the department of administration and the department has finally denied the claim. The department must grant or deny the claim in

writing ~~sent by certified mail~~ within 120 days after the claim is presented to the department. The failure of the department to make final disposition of a claim within 120 days after it is presented to the department must be considered a final denial of the claim for purposes of this subsection. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled for 120 days. The provisions of this subsection do not apply to claims that may be asserted under Title 25, chapter 20, by third-party complaint, cross-claim, or counterclaim.

(3) All claims against a political subdivision arising under the provisions of parts 1 through 3 shall be presented to and filed with the clerk or secretary of the political subdivision."

Section 2. **Effective date — applicability.** [This act] is effective on passage and approval and applies to all claims submitted on or after [the effective date of this act].

Approved April 20, 1991.

CHAPTER NO. 495

[HB 431]

AN ACT TO INCREASE THE FEES FOR TEACHER AND SPECIALIST CERTIFICATION AND FOR EMERGENCY AUTHORIZATION OF EMPLOYMENT WITH A SCHOOL DISTRICT; TO STATUTORILY APPROPRIATE PART OF THE REVENUE FROM THE FEES FOR USE BY THE CERTIFICATION STANDARDS AND PRACTICES ADVISORY COUNCIL FOR RESEARCH IN ACCORDANCE WITH ITS DUTIES; AMENDING SECTIONS 17-7-502, 20-4-109, AND 20-4-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; *20-4-109;* 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 2. Section 20-4-109, MCA, is amended to read:

"**20-4-109. Fees for teacher and specialist certificates.** (1) ~~Each~~ *A* person applying for the issuance or renewal of a teacher or specialist certificate shall pay a fee not to exceed ~~$5~~ *$6* for each school fiscal year that the certificate ~~will be~~ *is* valid. In addition to this fee, ~~each~~ *a* person who has never held any class of Montana teacher or specialist certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee of ~~$5~~ *$6.* The fees must be paid to the superintendent of public instruction~~,~~ who shall deposit the fees with the state treasurer *to the credit of the state special revenue fund account, created in subsection (2), to be used* in the following manner:

(a) $3 ~~to the credit of the state special revenue fund created in subsection (2)~~ *for expenses of the certification standards and practices advisory council created in 2-15-1522;*

(b) ~~$2 to the general fund~~ *$3 to the board of public education to be used by the certification standards and practices advisory council for research in accordance with the duties of the council provided for in 20-4-133.*

(2) There is an account in the state special revenue fund. Money from fees for teacher or specialist certificates required in subsection (1) must be deposited in the account. The money in the account ~~must be used for expenses of~~ *to be used for the purposes of subsection (1)(b) is statutorily appropriated, as provided in 17-7-502, to the board of public education for use by* the certification standards and practices advisory council ~~created in 2-15-1522~~."

Section 3. Section 20-4-111, MCA, is amended to read:

"**20-4-111. Emergency authorization of employment.** (1) ~~Any~~ *A* district may request from the superintendent of public instruction an emergency authorization of employment for a person who is not the holder of a valid teacher or specialist certificate as an instructor of pupils when ~~such~~ *the* district cannot secure the services of a person holding a valid certificate. The person ~~shall~~ *must* have previously held a valid teacher or specialist certificate or shall meet the standards of preparation prescribed by the policies of the board of public education for and during ~~such~~ *an* emergency. ~~Such emergency~~ *Emergency* authorization of employment ~~shall~~ *must* indicate:

(a) the district to which ~~such~~ *the* authorization is issued;

(b) the person whom the district is authorized to employ;

(c) the endorsement for elementary or secondary instruction and the specific subject fields for which authorization to employ ~~such~~ *the* person is given; and

(d) the school fiscal year for which ~~such~~ *the* emergency authorization of employment is given.

(2) Emergency authorization of employment of a person ~~shall be~~ *is* valid for the school fiscal year identified on ~~such~~ *the* authorization and may be renewed in accordance with the board of public education policies. A fee not to exceed ~~$5~~ *$6* and, if no teacher or specialist certificate or emergency authorization of employment has ever been issued for ~~such~~ *the* person, a filing fee of ~~$5 shall~~ *$6 must* be paid for the issuance of an emergency authorization of employment. The superintendent of public instruction shall deposit the fees with the state treasurer to the credit of the general fund.

(3) Emergency authorization of employment of a person may be revoked for good cause in accordance with the provisions of 20-4-110."

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved April 20, 1991.

CHAPTER NO. 496

[HB 446]

AN ACT TO REQUIRE THAT IF THE PROPERTY AT A TAX-DEED AUCTION IS PURCHASED BY THE DELINQUENT TAXPAYER, THE MINIMUM PURCHASE PRICE MUST COVER ALL COSTS, DELINQUENCIES, INTEREST, AND PENALTIES; AMENDING SECTION 7-8-2301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2301, MCA, is amended to read:

"**7-8-2301. Auction sale of county tax-deed land.** (1) Whenever the county acquires land by tax deed, it is the duty of the board of county commissioners, within 6 months after acquiring title, to make and enter an order for sale of the lands at public auction at the front door of the courthouse.

(2) A sale may not be made for a price less than the fair market value of the land, as determined and fixed by the board prior to making the order of sale. In determining fair market value, the board shall subtract the amount of outstanding assessments that are a lien on the land from the unencumbered value of the land, but the minimum sale price for a parcel of land may not be less than $10.

(3) If no bids are received at a sale of tax-deed land, the board shall order another auction sale of the land under this part within 6 months and may, if required by the circumstances, redetermine the fair market value of the land under subsection (2).

(4) If no bid is received at the sale conducted under subsection (3), the board may dispose of the land as provided in 7-8-2218.

(5) Notwithstanding the amount of the fair market value fixed by the board prior to the auction, if the successful sale bidder is the delinquent taxpayer or his successor in interest, his agent, or a member of his immediate family, the purchase price may not be less than the amount necessary to pay, in full, all county costs of conducting the sale, delinquent taxes, assessments, and all interest and penalties."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 20, 1991.

CHAPTER NO. 497

[HB 470]

AN ACT TO PROVIDE FOR PROTECTION OF TEACHER TENURE RIGHTS AND FOR A HIRING PREFERENCE FOR EMPLOYEES WHENEVER DISTRICTS CONSOLIDATE OR JOIN THROUGH ANNEXATION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Tenure protected — hiring preference for employees.** (1) Whenever two or more school districts consolidate or join through annexation to organize into a single district in the manner provided for in

Title 20, chapter 6, a principal, teacher, or other certified employee of the school districts who has a right of tenure under Montana law must be given absolute preference in hiring for the first school fiscal year for any vacant position with the consolidated or enlarged district for which the employee is qualified with the required certification endorsements. Upon acceptance of a position, the certified employee continues to have tenure in the consolidated or enlarged district and the board of trustees of the consolidated or enlarged school district in which the person will perform duties shall recognize and give effect to the right of tenure.

(2) A noncertified, nonprobationary employee of a school district that consolidates or joins another district through annexation must be given preference in hiring for the first school fiscal year for any vacant position with the consolidated or enlarged district for which the employee has substantially equal qualifications and, upon acceptance of a position, may not be given probationary status.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 6, and the provisions of Title 20, chapter 6, apply to [section 1].

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved April 19, 1991.

CHAPTER NO. 498

[HB 472]

AN ACT CLARIFYING THAT THE LOBBYING DISCLOSURE LAW DOES NOT REQUIRE AN INDIVIDUAL TO BE A CITIZEN; CLARIFYING THE DEFINITIONS RELATING TO LOBBYING; REVISING LOBBYING REPORTING DATES; AND AMENDING SECTIONS 5-7-101, 5-7-102, 5-7-103, 5-7-208, AND 5-7-212, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-7-101, MCA, is amended to read:

"**5-7-101. Purposes of chapter — applicability.** (1) The purposes of this chapter are to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices, to provide for the licensing of lobbyists and the suspension or revocation of the licenses, to require elected officials to make public their business, financial, and occupational interests, and to require disclosure of the amounts of money spent for lobbying.

(2) Nothing in this chapter subjects ~~any citizen~~ *an individual* lobbying on his own behalf to any reporting requirements nor deprives ~~any such~~

~~citizen~~ *an individual* of the constitutional right to communicate with public officials."

Section 2. Section 5-7-102, MCA, is amended to read:

"**5-7-102. Definitions.** The following definitions apply in this chapter:

(1) "Individual" means a human being.

(2) "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision ~~thereof~~ *of state or local government*, or other organization or group of persons.

(3) "Public official" means ~~any~~ *an* individual, elected or appointed, acting in his official capacity for the state government.~~, but~~ *The term* does not include those acting in a judicial or quasi-judicial capacity or performing ministerial acts.

(4) "Lobbying" ~~includes~~ *means*:

(a) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members ~~thereof~~ *of the legislature* by ~~any~~ *a* person other than a member of the legislature or a public official ~~acting in his official capacity~~; and

(b) the practice of promoting or opposing official action by any public official ~~in the event the person engaged in such practice expends $1,000 per calendar year or more exclusive of personal travel and living expenses~~.

(5) (a) "Lobbyist" means ~~any~~ *a* person who engages in the practice of lobbying for hire.

(b) "Lobbyist" does not include:

(i) ~~any~~ *an* individual ~~citizen~~ acting solely on his own behalf; or

(ii) ~~any~~ *an* individual working for the same principal as a licensed lobbyist~~, such~~ *if the* individual ~~having no~~ *does not have* personal contact involving lobbying with ~~any~~ *a* public official on behalf of his principal.

(c) Nothing in this section deprives ~~any citizen~~ *an individual* not lobbying for hire of the constitutional right to communicate with public officials.

(6) "Lobbying for hire" includes activities of ~~any~~ *the* officers, agents, attorneys, or employees of ~~any~~ *a* principal who are paid, reimbursed, or retained by ~~such~~ *the* principal and whose duties include lobbying. ~~When~~ *If* an individual is reimbursed only for his personal living and travel expenses, which together ~~do not exceed~~ *are less than* $1,000 per calendar year, that individual ~~shall~~ *is* not ~~be~~ considered to be lobbying for hire.

(7) "Unprofessional conduct" means:

(a) ~~a violation of~~ *violating* any of the provisions of this chapter;

(b) instigating action by ~~any~~ *a* public official for the purpose of obtaining employment ~~in opposition thereto~~;

(c) attempting to influence the action of ~~any~~ *a* public official on ~~any~~ *a* measure pending or to be proposed by:

(i) ~~promise of~~ *promising* financial support; or

(ii) making public any unsubstantiated charges of improper conduct on the part of ~~any other~~ *a* lobbyist, ~~any~~ *a* principal, or ~~any~~ *a* legislator; *or*

(d) attempting to knowingly deceive ~~any~~ *a* public official with regard to the pertinent facts of an official matter or ~~attempt~~ *attempting* to knowingly misrepresent pertinent facts of an official matter to ~~any~~ *a* public official.

(8) "Principal" means ~~any~~ *a* person who ~~makes payments in excess of $1,000 per calendar year to engage~~ *employs* a lobbyist.

(9) "Docket" means the register ~~and reports~~ of lobbyists and principals maintained by the commissioner pursuant to 5-7-201.

(10) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value.

(11) "Payment to influence official action" means any of the following types of payment:

(a) direct or indirect payment to a lobbyist by a principal, *such* as salary, fee, compensation, or reimbursement for expenses, excluding personal living expenses; *or*

(b) payment in support of or assistance to a lobbyist or *a* lobbying ~~activities~~ *activity*, including~~,~~ but not limited to~~,~~ the direct payment of expenses incurred at the request or suggestion of the lobbyist.

(12) "Business" means:

(a) ~~any~~ *a* holding or interest whose fair market value is greater than $1,000, in ~~any~~ *a* corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed ~~individual~~ *person*, holding company, joint stock company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit organizations; and

(b) present or past employment from which benefits, including retirement allowances, are received.

(13) "Commissioner" means the commissioner of political practices.

(14) "Elected official" means a public official holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including~~,~~ but not limited to legislators, public service commissioners, and

district court judges. The term "official-elect" ~~shall~~ also ~~apply only~~ *applies* to ~~such~~ *the* offices."

Section 3. Section 5-7-103, MCA, is amended to read:

"**5-7-103. Licenses — fees — eligibility.** (1) Any adult of good moral character ~~who is a citizen of the United States and~~ who is otherwise qualified under this chapter may be licensed as a lobbyist. The commissioner shall provide a license application form. The application form may be obtained in the office of the commissioner and filed therein. Upon approval of the application and receipt of the license fee of $10 by the commissioner, a license shall be issued which entitles the licensee to practice lobbying on behalf of one or more enumerated principals. Each license shall expire on December 31 of each even-numbered year or may be terminated at the request of the lobbyist.

(2) No application may be disapproved without affording the applicant a hearing. The hearing shall be held and the decision entered within 10 days of the date of the filing of the application.

(3) The fines and license fees collected under this chapter shall be deposited in the state treasury."

Section 4. Section 5-7-208, MCA, is amended to read:

"**5-7-208. Principals to file ~~accountings~~ *reports*.** (1) A principal subject to this chapter shall file with the commissioner ~~an accounting~~ *a report* of payments made for the purpose of lobbying.

(2) If ~~such~~ payments are made solely to influence legislative action, ~~such accounting shall~~ *a report must* be made:

(a) ~~before~~ *by* February ~~16th~~ *15th* of any year the legislature is in session and ~~shall~~ *must* include all payments made in that calendar year prior to February 1;

(b) ~~before~~ *by* the ~~16th~~ *15th* day of the calendar month following ~~any~~ *a* calendar month in which the principal spent $5,000 or more and ~~shall~~ *must* include all payments made during the prior calendar month; and

(c) ~~within 60~~ *no later than 30* days following adjournment of ~~such~~ *a legislative* session and ~~shall~~ *must* include all payments made during ~~such~~ *the* session, except as ~~has~~ previously ~~been~~ reported.

(3) If ~~such~~ payments are made to influence any other official action by a public official or made to influence ~~such~~ other action and legislative action, ~~such accounting shall~~ *a report must* be made:

(a) ~~before~~ *by* February ~~16th~~ *15th* of the calendar year following ~~such~~ *the* payments and ~~shall~~ *must* include all payments made during the prior calendar year; and

(b) ~~before~~ *by* the ~~16th~~ *15th* day of the calendar month following ~~any~~ *a* calendar month in which the principal spent $5,000 or more and ~~shall~~ *must* include all payments made during the prior calendar month.

(4) If no ~~such~~ payments are made during the reporting periods provided in subsections (2)(a), (2)(c), and (3)(a) above, the principal shall file a report stating ~~such~~ *that fact.*

(5) Each ~~accounting~~ *report* filed under this section ~~shall~~ *must*:

(a) list all payments for lobbying in each of the following categories:

(i) printing;

(ii) advertising, including production costs;

(iii) postage;

(iv) travel expenses;

(v) salaries and fees, including allowances, rewards, and contingency fees;

(vi) entertainment, including all foods and refreshments;

(vii) telephone and telegraph; and

(viii) other office expenses;

(b) itemize, identifying the payee and the beneficiary:

(i) each separate payment conferring $25 or more benefit to any public official when the payment was made for the purpose of lobbying; and

(ii) each separate payment conferring $100 or more benefit to more than one public official, regardless of individual benefit when the payment was made for the purpose of lobbying, except that in regard to a dinner or other function to which all senators or all representatives have been invited, the beneficiary may be listed as all members of that group without listing separately each person who attended;

(c) list each contribution and membership fee which amounts to $250 or more when aggregated over the period of 1 calendar year paid to the principal for the purpose of lobbying, with the full address of each payer and the issue area, if any, for which ~~such~~ *the* payment was earmarked;

(d) list each official action *on* which the principal or his agents exerted a major effort to support, oppose, or modify, together with a statement of the principal's position for or against ~~such~~ *the* action; and

(e) be kept by the commissioner for a period of 10 years."

Section 5. Section 5-7-212, MCA, is amended to read:

"**5-7-212. Audit of final ~~accounting~~ statements.** (1) The commissioner shall examine and may audit the ~~accountings~~ *reports* filed under

5-7-208 and shall investigate any irregularities and report any apparent violations of this chapter to the attorneys having authority to prosecute. The lobbyist is required to provide and the principal is required to obtain and keep for a period of 7 years from the date of filing all records supporting the ~~accountings~~ *reports* filed under 5-7-208.

(2) All ~~such~~ records *under subsection (1)* ~~shall~~ *must* be open to inspection on request of the commissioner or an attorney having authority to prosecute violations of this chapter. The commissioner and ~~such~~ *the* attorneys are given the power to:

(a) subpoena and compel attendance;

(b) issue enforceable civil investigative demands;

(c) take evidence; and

(d) require the production of any books, correspondence, memoranda, bank account statements, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of this chapter."

Approved April 20, 1991.

CHAPTER NO. 499

[HB 538]

AN ACT REGULATING THE PRICE OF RETAIL MOTOR FUEL AT WHOLESALE AND RETAIL LEVELS; PROVIDING FOR PENALTIES AND REMEDIES FOR SALES IN VIOLATION OF ESTABLISHED PRICES; PROHIBITING UNFAIR PRACTICES IN THE SALE OF RETAIL MOTOR FUEL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 6] may be cited as the "Montana Retail Motor Fuel Marketing Act".

Section 2. **Purpose.** The legislature recognizes that independent and small dealers and distributors of retail motor fuel are vital to a healthy, competitive marketplace and are unable to survive financially in competition with subsidized, below-cost pricing at the retail level by dealers and distributors who have other sources of income. The legislature believes that subsidized, below-cost pricing is a predatory practice that is not conducive to fair trade. The legislature finds that below-cost pricing laws are effective in protecting independent and small retailers and wholesalers in other jurisdictions from subsidized pricing, which is inherently unfair and destructive, reduces competition in the motor fuel marketing industry, and is a form of predatory pricing. The purpose of [sections 1 through 6] is to prevent and eliminate predatory pricing of retail motor fuel.

Section 3. **Definitions.** As used in [sections 1 through 6], unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" means a person who, other than through a franchise or marketing agreement, controls, is controlled by, or is under common control with any other person.

(2) "Cost of doing business", in the absence of proof of lesser cost, means 1% of the delivered cost of motor fuel for wholesale sales and 6% of the delivered cost of motor fuel for retail sales and in other cases includes all costs incurred in the conduct of business, including but not limited to:

(a) labor, including salaries of executives and officers;

(b) rent that is not less than the fair market value based on current use;

(c) interest on borrowed capital;

(d) depreciation;

(e) selling cost;

(f) maintenance of equipment;

(g) losses due to breakage or damage;

(h) credit card fees or other charges;

(i) credit losses; and

(j) all licenses, taxes, insurance, and advertising.

(3) "Customary discount for cash" means an allowance, whether part of a larger discount or not, made to a wholesaler or retailer when a person pays for motor fuel within a limited or specified time.

(4) "Delivered cost of motor fuel" means:

(a) for a distributor or retailer, the lower of the most recent cost of motor fuel to the distributor or retailer or the lowest replacement cost of motor fuel to the distributor or retailer within 5 days prior to the date of sale, in the quantity last purchased, whether within or before the 5-day period, less all trade discounts except customary discounts for cash plus transportation costs and any taxes that may be required by law if not already included in the invoice cost; or

(b) for a refiner, that refiner's posted rack price to the wholesale class of trade at the terminal used by the refiner to obtain the motor fuel, plus transportation costs and any taxes that may be required by law. If the refiner does not regularly sell to the wholesale class of trade at the terminal or does not post a terminal price, the refiner may use as its rack price the posted price of any other refiner at a terminal within the general trade area that has products readily available for sale to the wholesale class of trade.

(5) "Distributor" means a person engaged in the purchase of motor fuel for resale to a retail motor fuel outlet.

(6) "Motor fuel" means gasoline, as defined in 15-70-201, alcohol blended with gasoline to produce gasohol, and special fuel as defined in 15-70-301.

(7) "Person" means an individual, a sole proprietorship, a partnership, a corporation, any other form of business entity, or any individual acting on behalf of any of them.

(8) "Posted rack price" means the f.o.b. terminal price for a particular motor fuel that a refiner, producer, or person offers for sale or transfer to itself or any related or unrelated person.

(9) "Refiner" means a person engaged in the production or refining of motor fuel, whether the production or refining occurs in this state or elsewhere, and includes any affiliate of the person.

(10) "Retailer" means a person engaged in the business of selling motor fuel at a retail motor fuel outlet.

(11) "Retail motor fuel outlet" means a place of business where motor fuel is sold and delivered into the tanks of motor vehicles regardless of whether the income from the selling and delivery of the fuel is the primary source of revenue of that business.

(12) "Sale" means a transfer, gift, sale, offer for sale, or advertisement for sale in any manner or by any means of motor fuel, including a transfer of motor fuel by a person to himself or to his affiliate.

(13) "Transfer price" means the price used by a person to transfer motor fuel to himself or to an affiliate for resale at a retail motor fuel outlet.

(14) "Transportation cost" means the actual cost of transportation of motor fuel or, in the absence of proof of actual cost, the common carrier rates fixed by the public service commission for the immediate market area concerned.

(15) "Wholesaler" means a person engaged in the business of making sales at wholesale to a retail motor fuel outlet.

Section 4. **Below-cost sale prohibited.** (1) A wholesaler may not sell motor fuel to a retail motor fuel outlet at less than the delivered cost of the motor fuel plus the cost of doing business if the effect is to injure or destroy competition or substantially lessen competition.

(2) A retailer may not sell motor fuel at less than the delivered cost of the motor fuel plus the cost of doing business if the effect is to injure or destroy competition or substantially lessen competition.

(3) A wholesaler may not sell or transfer motor fuel to itself or an affiliate for resale at a retail outlet at a transfer price lower than the price the wholesaler charges another retail motor fuel outlet that purchases a like quantity within the same competitive area if the effect is to injure or destroy competition or substantially lessen competition.

(4) The provisions of [sections 1 through 6] do not apply to a sale at wholesale or a sale at retail made:

(a) in an isolated transaction not in the usual course of business;

(b) if motor fuels are advertised, offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in the motor fuel and the advertising, offer to sell, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or to be sold;

(c) if the motor fuel is advertised, offered for sale, or sold as imperfect or damaged and the advertising, offer of sale, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or sold;

(d) if motor fuel is sold upon the final liquidation of a business; or

(e) if motor fuel is advertised, offered for sale, or sold by a fiduciary or other officer under the order or direction of a court.

(5) Notice required under this section is not sufficient unless the subject of the sale is kept separate from other stocks and is clearly and legibly marked with the reason for the sale and any advertisement of the goods indicates the same facts and the quantity to be sold.

(6) A wholesaler or retailer may advertise, offer to sell, or sell motor fuel at a price made in good faith to meet the price of a competitor who is selling the same or a similar product of like grade and quality. The price of motor fuel advertised, offered for sale, or sold under the exceptions in subsection (4) may not be considered the price of a competitor and may not be used as a basis for establishing prices below cost, and the price established at a bankruptcy sale may not be considered the price of a competitor under the provisions of this section.

(7) If a wholesaler sells motor fuel to another wholesaler, the former is not required to include in his selling price to the latter the cost of doing business as defined in [section 3], but the latter wholesaler, upon resale to a retailer, is subject to the provisions of this section.

Section 5. **Voidance of existing contracts.** A contract, express or implied, made by a person in violation of a provision of [sections 1 through 6] is void and no recovery may be had on the contract.

Section 6. **Penalty — disposition — relief.** (1) A violation of [section 4] is an unfair trade practice.

(2) Upon presentation by an offended party of evidence of a violation of [section 4], the department of justice or a county attorney shall issue to the

suspected retailer or wholesaler a demand by certified mail to cease the violation. If the violation is not corrected within 24 hours after the suspected retailer or wholesaler receives the notification, the department or the county attorney may bring an action to enjoin the violation.

(3) Upon conviction, a retailer or wholesaler is subject to a civil penalty of not more than $1,000 a day for each day that the violation occurs, is liable for attorney fees, and is subject to injunctive relief.

(4) The department of justice or a county attorney may bring an action for a violation of [section 4]. If the action is brought by:

(a) the department of justice, one-half of the amount of the penalty must be deposited in the general fund of the county where the action was brought and the remainder in the state general fund; or

(b) a county attorney, the entire amount of the penalty must be deposited in the general fund of the county where the action was brought.

(5) An action under this section must be commenced in the county where the motor fuel is sold.

(6) A person injured as a result of an act or practice that violates [section 4] may bring a civil action for appropriate relief, including an action for declaratory judgment, injunctive relief, and actual damages.

Section 7. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 8. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. **Effective date — termination.** [This act] is effective on passage and approval and terminates July 1, 1993.

Approved April 19, 1991.

CHAPTER NO. 500

[HB 557]

AN ACT TO PROVIDE THAT A DISABLED VETERAN HAS THE OPTION OF RECEIVING HANDICAPPED LICENSE PLATES, PERSONALIZED LICENSE PLATES, OR, IF HE WAS A PRISONER OF WAR, PRISONER OF WAR LICENSE PLATES; AMENDING SECTIONS 61-3-444, 61-3-451, 61-3-453, AND 61-3-455, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-444, MCA, is amended to read:

"**61-3-444. Special license plates — ex-prisoner of war.** *(1)* A motor vehicle owner and resident of this state who is a veteran of the armed services of the United States and was captured and held prisoner by a military force of a foreign nation, documented by his service record, upon written application on the form prescribed by the department, must be issued license plates inscribed with the words "ex-prisoner of war", or such abbreviation as the department considers appropriate, and three or four consecutive numbers.

(2) A motor vehicle owner who meets the criteria in subsection (1) and who also meets the criteria in 61-3-451(1) must receive the plates provided for in subsection (1) upon payment of a fee of $5."

Section 2. Section 61-3-451, MCA, is amended to read:

"**61-3-451. Special license plates — disabled veterans.** (1) ~~Any~~ *A* person who is a veteran of the armed services of the United States and 100% disabled because of an injury ~~which~~ *that* has been determined by the veterans administration to be service connected and who is a resident of the state of Montana and who is the owner of a passenger automobile or of a truck up to and including ~~three-quarter~~ *1* ton GVW-rated capacity ~~shall~~ *must* be provided with specially inscribed license plates upon payment of a fee of $5 for ~~such~~ *the* automobile or truck and upon proof of 100% service-connected disability.

(2) The department of justice shall assign to each veteran qualified under subsection (1) who applies according to the rules of the department a registration designation bearing the letters and character "DV-" followed by three or four consecutive numbers, and the department shall issue to the disabled veteran two special license plates bearing the inscription assigned to him *or, at the option of the disabled veteran, special license plates as provided in 61-3-445*.

(3) The special license plates may be reregistered or renewed upon payment of the fees required in subsection (1) and compliance with the rules of the department."

Section 3. Section 61-3-453, MCA, is amended to read:

"**61-3-453. Disabled veterans' plates limited to one automobile or truck — *personalized plates*.** *(1)* ~~No~~ *A* disabled veteran is *not* entitled to special license plates for disabled veterans under 61-3-451 for more than one passenger automobile or one truck up to and including ~~three-quarter~~ *1* ton GVW-rated capacity.

(2) Upon submitting the application provided for in 61-3-405 and payment of the $25 fee provided for in 61-3-406, a disabled veteran must receive personalized disabled veteran license plates."

Section 4. Section 61-3-455, MCA, is amended to read:

"**61-3-455. Violation a misdemeanor.** ~~Any~~ *A* person who violates 61-3-452 or 61-3-453 or who knowingly and wrongfully attempts to secure ~~free~~ license plates under 61-3-451 shall be guilty of a misdemeanor and punished by a fine of not less than $100 or imprisonment for not more than 30 days, or both."

Section 5. **Coordination instruction.** If Senate Bill No. 191, including amendments incorporating into 61-3-332 provisions allowing a disabled veteran the option of receiving a handicapped license plate or, if qualified, an ex-prisoner of war license plate, is passed and approved:

(1) [sections 1 and 2 of this act] are void; and

(2) in 61-3-455, the code commissioner shall change "61-3-451" to "61-3-332".

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved April 20, 1991.

CHAPTER NO. 501

[HB 576]

AN ACT REVISING THE LAW REGARDING THE TRANSPLANTATION OR INTRODUCTION OF WILDLIFE BY REQUIRING AN ENVIRONMENTAL REVIEW PRIOR TO TRANSPLANTATION OR INTRODUCTION OF A FISH SPECIES IN MONTANA; INCREASING THE PENALTY FOR THE ILLEGAL IMPORTATION, INTRODUCTION, OR TRANSPLANTATION OF FISH; AND AMENDING SECTIONS 87-5-711 AND 87-5-721, MCA.

WHEREAS, illegal importation, introduction, or transplantation of fish species can be extremely harmful to the management of the state's fisheries, especially the fisheries of sensitive and valuable native species; and

WHEREAS, illegal importation, introduction, and transplantation of fish species, when done knowingly and purposely, should be dealt with by law enforcement officials to their fullest capabilities; and

WHEREAS, the Legislature encourages the Department of Fish, Wildlife, and Parks to focus law enforcement efforts on apprehending persons who commit such criminal acts, including providing for public awareness of these crimes and providing rewards for citizen assistance in solving these crimes through the Department of Fish, Wildlife, and Parks' TIP-MONT program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-5-711, MCA, is amended to read:

"**87-5-711. Control of importation for introduction and transplantation or introduction of wildlife.** *(1)* Except as otherwise provided, the importation for introduction or the transplantation or introduction of any wildlife is prohibited unless the commission determines, based upon scientific investigation and after public hearing, that a species of wildlife poses no threat of harm to native wildlife and plants or to agricultural production and that the transplantation or introduction of a species has significant public benefits.

(2) With regard to the transplantation or introduction of a fish species not previously legally transplanted to a specific water body within the state or not previously legally introduced to the state, the requirement for scientific investigation in subsection (1) may be satisfied only by completion of an environmental review conforming to the provisions of Title 75, chapter 1, part 2."

Section 2. Section 87-5-721, MCA, is amended to read:

"**87-5-721. Penalty — license and permit revocation and denial.** *(1)* ~~A~~ *Except as provided in subsection (2), a* person who violates a provision of this part is guilty of a misdemeanor punishable as provided in 87-1-102, and the department, upon conviction of the person, shall revoke any license or permit issued by it under this title to the person and deny any application by the person for a license or permit under this title for a period not to exceed 2 years from the date of the conviction.

(2) A person who intentionally imports, introduces, or transplants fish in violation of this part:

(a) is guilty of a misdemeanor punishable by a fine of not less than $500 and may be fined up to the amount necessary to eliminate or mitigate the effects of the violation; and

(b) upon conviction or forfeiture of bond or bail, shall forfeit from the date of conviction or forfeiture any current hunting, fishing, or trapping license issued under this title and the privilege to hunt, fish, or trap in this state for not less than 24 months. If the time necessary to eliminate or mitigate the effects of the violation exceeds 24 months, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for more than 24 months. If the effects of the violation cannot be eliminated or mitigated, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for the lifetime of that person."

Approved April 20, 1991.

CHAPTER NO. 502

[HB 668]

AN ACT TO ALLOW SUSPENSION OF A DRIVER'S LICENSE FOR A PERSON UNDER 18 YEARS OF AGE CONVICTED OF MULTIPLE OFFENSES OF POSSESSION OF AN INTOXICATING SUBSTANCE; AND AMENDING SECTION 45-5-624, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-624, MCA, is amended to read:

"**45-5-624. Unlawful possession of an intoxicating substance — interference with sentence or court order.** (1) (a) A person under the age of 19 years commits the offense of possession of an intoxicating substance if he knowingly consumes or has in his possession an intoxicating substance. The person need not be consuming or in possession of the intoxicating substance at the time of his arrest to violate this subsection.

(b) A person under the age of 21 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except as provided in 16-6-305 and except that he does not commit the offense if he consumes or gains possession of the beverage because it was lawfully supplied to him under 16-6-305 or when in the course of his employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall~~:~~

~~(a)~~ if the person:

~~(i)~~*(a)* is less than 18 years of age, be fined not to exceed $50~~;~~ *and:*

(i) have his driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(ii) be ordered to perform community service;

(iii) have his driver's license suspended if convicted of a second or subsequent offense under this section; or

(iv) be sentenced to any combination of the penalties provided for in subsections (2)(a)(i) through (2)(a)(iii); or

~~(ii)~~*(b)* is 18 years *of age* or older, be fined an amount not to exceed $50 for a first offense, $100 for a second offense, and $200 for a third offense~~;~~ ~~for a fourth or subsequent offense a person may~~ *or* be fined an amount not to exceed $300 or be imprisoned in the county jail for a term not to exceed 6 months, or both~~;~~, *for a fourth or subsequent offense* and:

~~(b)~~*(i)* be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, all costs of his participation in a community-based substance abuse information course;

~~(c)~~*(ii)* have his driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he was driving or otherwise in actual physical control of a motor vehicle when the offense occurred; ~~or~~

(iii) be ordered to perform community service; or

~~(d)~~*(iv)* be sentenced to any combination of ~~these~~ *the* penalties *provided for in subsections (2)(b)(i) through (2)(b)(iii).*

(3) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when he failed to comply must be transferred to the youth court. If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If proceedings for violation of subsection (1) or for failure to comply with a sentence are held in the youth court, the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

(4) A person commits the offense of interference with a sentence or court order if he purposely or knowingly causes his child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both."

Section 2. **Coordination instruction.** If Senate Bill No. 398 is passed and approved and if it includes an amendment to 45-5-624 and if [this act] is passed and approved, then Senate Bill No. 398 is void.

Approved April 20, 1991.

CHAPTER NO. 503

[HB 739]

AN ACT REVISING THE LAW RELATING TO REDEMPTION OF REAL PROPERTY; CHANGING THE RATE OF INTEREST THAT ACCRUES ON REDEMPTION; PROVIDING FOR RECOVERY OF REASONABLE REPAIR AND MAINTENANCE EXPENSES PAID BY A PURCHASER AT A SHERIFF'S SALE; AND AMENDING SECTIONS 25-13-802, 25-13-803, 25-13-804, 25-13-805, AND 25-13-822, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-13-802, MCA, is amended to read:

"**25-13-802. Time for redemption — amount to be paid.** The judgment debtor or redemptioner may redeem the property from the purchaser any time within 1 year after the sale on paying the purchaser:

(1) the amount of his purchase with ~~1/2 of 1% per month thereon in addition~~ *interest at a rate established by the judgment in the action that led to the execution sale,* up to the time of redemption;

(2) the amount of any assessment or taxes which the purchaser may have paid thereon after purchase and interest on such amount; ~~and~~

(3) the amount of any repairs, maintenance expenses, or other expenditures that the purchaser may reasonably have made after purchase for the maintenance of the property, with interest on the amounts from the date of expenditure; and

~~(3)~~*(4)* if the purchaser ~~be~~ *is* also a creditor having a prior lien to that of the redemptioner other than the judgment under which such purchase was made, the amount of such lien with interest."

Section 2. Section 25-13-803, MCA, is amended to read:

"**25-13-803. Subsequent redemptions — when permitted, amount paid.** (1) If property be so redeemed by a redemptioner, another redemptioner may, within 60 days after the last redemption, again redeem it from the last redemptioner on paying the sum on such last redemption with interest thereon at the rate ~~of 1/2 of 1% per month in addition~~ *established by the judgment in the action that led to the execution sale,* the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him with like interest on such amount, and the amount of any liens held by the said last redemptioner prior to his own, with interest; but the judgment under which the property was so sold need not be so paid as a lien. The property may be again, and as often as any redemptioner is so disposed, redeemed from any previous redemptioner, within 60 days after the last redemption, on paying the sum paid on the last previous redemption with interest thereon at the rate ~~of 1/2 of 1% per month~~ *established by the judgment in the action that led to the execution sale,* the amount of any assessment or taxes which the last previous redemptioner paid after the redemption by him with like interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with like interest.

(2) If the judgment debtor or the judgment debtor's spouse redeem, the judgment debtor or the spouse must make the same payments as are required to effect a redemption by a redemptioner."

Section 3. Section 25-13-804, MCA, is amended to read:

"**25-13-804. Redemption by stockholder or corporation.** (1) If a stockholder of a corporation redeems, the corporation, within 1 year after the date of sale, may redeem by paying to the redemptioner or the sheriff for his benefit the amount paid to effect the redemption, with interest thereon at the rate ~~of 1/2 of 1% per month~~ *established by the judgment in the action that led to the execution sale* from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the redemptioner, with like interest thereon.

(2) When a stockholder redeems, any other stockholder or stockholders may, at any time after such redemption and within 60 days after the expiration of 1 year from the date of sale, contribute to the redemption by paying to the redeeming stockholder or depositing with the sheriff for his benefit a sum which bears the same proportion to the amount necessary to redeem which the number of shares owned by such contributing stockholder or stockholders bears to the number of shares of such corporation outstanding, with interest on such sum from the date of redemption until the date of contribution at the rate ~~of 1/2 of 1% per month~~ *established by the judgment in the action that led to the execution sale*, together with a like proportion of the taxes or assessments paid by such redeeming stockholder, with like interest thereon; and if the corporation does not redeem the property within the time and in the manner and form as aforesaid, the said redeeming and contributing stockholders shall be entitled to receive a sheriff's deed for such property so redeemed and shall succeed to the said property as tenants in common in such proportions, respectively, as they shall respectively pay or contribute to such redemption as aforesaid. The redeeming or contributing stockholder shall, in all cases when applying to redeem or contribute as aforesaid, present an affidavit setting forth the number of shares of stock owned by him and, to the best of his knowledge, the number of shares of stock of the corporation outstanding."

Section 4. Section 25-13-805, MCA, is amended to read:

"**25-13-805. Redemption by debtor from spouse.** If the spouse of a judgment debtor redeem, the judgment debtor, within 1 year after the date of sale, may redeem by paying the spouse or the spouse's successors in interest or the sheriff for the benefit of the spouse or the successors in interest of the spouse the amount paid to effect the redemption, with interest thereon at the rate ~~of 1/2 of 1% per month~~ *established by the judgment in the action that led to the execution sale* from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the spouse or the successors in interest of the spouse, with like interest thereon."

Section 5. Section 25-13-822, MCA, is amended to read:

"**25-13-822. Rents and profits during redemption period, accounting.** (1) The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, are entitled to receive from the tenant in possession the rents of the property sold or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser or his or their assigns from the property thus sold preceding such redemption, the amount of such rents and profits shall be a credit upon the redemption money to be paid. *Any payments made under 25-13-802(2) and (3) must be subtracted from the credit for rents and profits.*

(2) If the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor or his assigns a written and verified statement of the amount of such rents and profits thus received, the period for redemption is extended 5 days after such sworn statement is given by such purchaser or his assigns to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of 1 month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may bring an action in any court of competent jurisdiction to compel an accounting and disclosure of such rents and profits, and until 15 days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor."

Approved April 20, 1991.

CHAPTER NO. 504

[HB 761]

AN ACT AUTHORIZING SEXUALLY TRANSMITTED DISEASE TESTING OF PERSONS CONVICTED OF A SEXUAL OFFENSE; REQUIRING RELEASE OF THE TEST RESULTS TO THE VICTIM AND THE CONVICTED PERSON; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Sexually transmitted disease testing — test procedure.** (1) A person convicted of a sexual offense, as defined in 46-23-502, may, following entry of judgment, be administered a standard test to determine whether the person suffers from a sexually transmitted disease, as defined in 50-18-101.

(2) Arrangements for the test required by subsection (1) must be made by the county attorney of the county in which the person was convicted. The test must be conducted by a health care provider, as defined in 50-16-504.

(3) The county attorney of the county in which the person was convicted shall release the information concerning the test results to:

(a) the convicted person; and

(b) the victim of the offense committed by the convicted person or to the parent or guardian of the victim if the victim is a minor.

(4) The provisions of the AIDS Prevention Act do not apply to this section.

Section 2. **Retroactive applicability.** [Section 1] applies retroactively, within the meaning of 1-2-109, to persons convicted prior to [the effective date of this act] who are, at the time a test is sought, in jail, prison, or other incarceration; on probation or parole; or otherwise still under state supervision for a sexual offense defined in 46-23-502.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 20, 1991.

CHAPTER NO. 505

[HB 767]

AN ACT TO GENERALLY REVISE AND AMEND THE LAW GOVERNING RESIDENTIAL TENANTS' SECURITY DEPOSITS; PROVIDING FOR TIMELY SECURITY DEPOSIT REFUNDS; AMENDING SECTIONS 70-25-101, 70-25-201, 70-25-202, 70-25-204, AND 70-25-206, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-25-101, MCA, is amended to read:

"**70-25-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Cleaning expenses" means the actual and necessary cost of cleaning done by an owner or his selected representative for cleaning needs not attributable to normal wear brought about by the tenant's failure to bring the premises to the condition it was at the time of renting.

(2) "Damage" means any and all tangible loss, injury, or deterioration of a leasehold premises caused by the willful or accidental acts of the tenant occupying same or by the tenant's family, licensees, or invitees, as well as any and all tangible loss, injury, or deterioration resulting from the tenant's omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold.

(3) "Leasehold premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas, and storage facilities to which the tenant has access, as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(4) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold agreement or to secure payment for damage to and cleaning of the leasehold premises. If a leasehold agreement or an agreement incident thereto requires the tenant or prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold agreement, the deposit

shall be presumed to be a security deposit. *A fee or charge for cleaning and damages, no matter how designated, is presumed to be a security deposit."*

Section 2. Section 70-25-201, MCA, is amended to read:

"**70-25-201. Security deposit — deductions authorized therefrom.** (1) Any landlord renting property covered by this chapter may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant, together with a sum equal to the unpaid rent owing to the landlord at the time of such deduction, *including rent owed under 70-24-441(3),* and a sum for actual cleaning expenses.

(2) At the request of either party, the premises may be inspected within 1 week prior to termination of the tenancy.

~~(2)~~*(3)* No cleaning charges may be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time the tenant occupies the space unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, no cleaning charges may be deducted until *written* notice has been given to the tenant. The notice shall include the cleaning not accomplished by the tenant and the additional and type or types of cleaning which need to be done by the tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice, the tenant has 48 hours to complete the required cleaning. *If notice is mailed by certified mail, service of the notice is considered to have been made 3 days after the date of the mailing.*

~~(3)~~*(4)* No person may deduct or withhold from the security deposit any amount for purposes other than those set forth in this section."

Section 3. Section 70-25-202, MCA, is amended to read:

"**70-25-202. List of damages and refund — delivery to departing tenant.** *(1)* Every landlord, within 30 days subsequent to the termination of a tenancy or within 30 days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a written list of *any rent due and* any damage and cleaning charges, brought after the provisions of 70-25-201 have been followed, to the leasehold premises ~~which~~ *that* the landlord alleges ~~is~~ *are* the responsibility of the tenant. Delivery of such list shall be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in 70-25-201. Delivery shall be accomplished by mailing the list and refund to the tenant's last-known address or the new address provided by the tenant.

(2) If after inspection there are no damages to the premises, no cleaning required, and no rent unpaid and if the tenant can demonstrate that no utilities are unpaid by the tenant, the landlord shall return the security deposit within 10 days."

Section 4. Section 70-25-204, MCA, is amended to read:

"**70-25-204. Wrongful withholding of security deposit — action.** (1) Any person who wrongfully withholds a residential property security deposit or any portion thereof shall be liable in damages to the tenant in a civil action for an amount equal to double the sum determined to have been wrongfully withheld or deducted. The attorney's fees may be awarded the prevailing party at the discretion of the court. The burden of proof of damages caused by the tenant to the leasehold premises shall be on the landlord.

(2) No action may be maintained by a tenant for any amount wrongfully withheld or deducted prior to:

(a) the tenant's receipt from the landlord or his agent of a written denial of the sum alleged to be wrongfully detained;

(b) the expiration of a 30-day period after the termination of a tenancy; ~~or~~

(c) the expiration of a 30-day period after surrender and acceptance of the leasehold premises~~, whichever occurs first~~; *or*

(d) the expiration of a 10-day period after the landlord has indicated there were no damages to the premises, no cleaning was required, no rent was unpaid, and no utilities were unpaid by the tenant."

Section 5. Section 70-25-206, MCA, is amended to read:

"**70-25-206. Landlord to furnish statement of condition of premises at beginning of lease.** (1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each ~~prospective~~ tenant, prior to execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the premises intended to be let~~, as well as~~. *At the written request of the tenant,* a copy of the written list of damage and cleaning charges, if any, provided to the tenant of the immediately preceding leasehold agreement for the premises in question *must be provided to the tenant.*

(2) Each written statement of the present condition of a premises intended to be let shall contain at least the following:

(a) a clear and concise statement of the present condition of the premises known to the landlord or his agent or which should have been known upon reasonable inspection;

(b) if the premises have never previously been let, a statement indicating such fact;

(c) if any damage to the leasehold premises resulting from the immediately preceding leasehold agreement has not been restored, a statement indicating such fact and setting forth such unrestored damage; and

(d) the signature of the landlord or his agent.

(3) Any person engaged in the rental of property for residential purposes who fails to furnish a ~~prospective~~ tenant, prior to the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the premises intended to be let and, ~~if any~~ *upon the written request of the tenant,* a written list of damage and cleaning charges provided to the tenant of the immediately preceding leasehold agreement shall be barred from recovering any sum for damage to or cleaning of the leasehold premises unless he can establish by clear and convincing evidence that the damage occurred during the tenancy in question and was caused by the tenant occupying the leasehold premises or the tenant's family, licensees, or invitees."

Section 6. **Applicability.** [This act] applies to all tenancies in existence 30 days after [the effective date of this act].

Approved April 20, 1991.

CHAPTER NO. 506

[HB 882]

AN ACT TO REQUIRE THAT A STATE AGENCY THAT OPERATES WITHIN OR CONTRACTS FOR A STATE CONSTRUCTION PROJECT WITHIN AN INDIAN RESERVATION GIVE A PREFERENCE IN HIRING TO QUALIFIED INDIAN RESIDENTS OF THE RESERVATION; AMENDING SECTIONS 49-2-303, 49-2-403, AND 49-3-103, MCA; AND PROVIDING AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 1 and 2] direct the commissioner of labor and industry to adopt rules to implement [sections 1 and 2]. It is the intent of the legislature that the rules also be designed to assist the commissioner of labor and industry to enforce the provisions of [sections 1 and 2] and to investigate complaints of any violations of law, as provided in [sections 1 and 2].

Be it enacted by the Legislature of the State of Montana:

Section 1. **Hiring preference for residents of Indian reservations for state jobs within reservation.** (1) A state agency that operates within an Indian reservation shall give a preference in hiring for a position of employment with the state agency to an Indian resident of the reservation who has substantially equal qualifications for the position.

(2) The commissioner of labor and industry shall enforce this section, investigate complaints of its violation, and may adopt rules to implement this section.

(3) For the purposes of this section, the following definitions apply:

(a) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

(b) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a state position. The term does not include:

(i) a state elected office;

(ii) appointment by an elected official to a body, such as a board, commission, committee, or council;

(iii) appointment by an elected official to a public office if the appointment is provided for by law; or

(iv) engagement as an independent contractor or employment by an independent contractor.

(c) "State agency" means a department, office, board, bureau, commission, agency, or other instrumentality of the executive or judicial branches of the government of this state.

Section 2. **Hiring preference for residents of Indian reservations for state construction projects within reservation.** (1) For any contract awarded by a state agency for a state construction project within the exterior boundaries of an Indian reservation, except a project partially funded with federal-aid money from the United States department of transportation or when residency preference laws are specifically prohibited by federal law, there must be inserted in the bid specification and the contract a provision, in language approved by the commissioner of labor and industry, implementing the requirements of this subsection. The bid specification and the contract must provide that a preference in hiring for positions of employment be given to Indian residents of the reservation who have substantially equal qualifications for any position. For the purposes of this section, the definitions in [section 1] apply.

(2) The commissioner of labor and industry shall enforce this section, investigate complaints of its violation, and may adopt rules to implement this section.

Section 3. Section 49-2-303, MCA, is amended to read:

"**49-2-303. Discrimination in employment.** (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference as provided for in [sections 1 and 2] may not be construed to be a violation of this section."

Section 4. Section 49-2-403, MCA, is amended to read:

"**49-2-403. Specific limits on justification.** (1) Except as permitted in 49-2-303(3) *and (4)* and 49-3-201(5), sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin may not comprise justification for discrimination ~~unless the nature of the service requires the discrimination~~ *except* for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental handicap may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations."

Section 5. Section 49-3-103, MCA, is amended to read:

"**49-3-103.** *(Temporary)* **Permitted distinctions.** (1) Nothing in this chapter prohibits any public or private employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this chapter, except that an employee benefit plan may not excuse the failure to hire any individual; or

(c) from discharging or otherwise disciplining an individual for good cause.

(2) The application of an employment preference as provided for in Title 39, chapter 29 or 30, and 10-2-402 by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter. *(Terminates July 1, 1991—sec. 19, Ch. 646, L. 1989.)*

49-3-103. *(Effective July 1, 1991)* **Permitted distinctions.** (1) Nothing in this chapter shall prohibit any public or private employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or

(c) from discharging or otherwise disciplining an individual for good cause.

(2) The application of an employment preference as provided for in Title 39, chapter 30, *[sections 1 and 2]*, and 10-2-402 by a public employer as defined in 39-30-103 may not be construed to constitute a violation of this chapter."

Section 6. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 18, and the provisions of Title 2, chapter 18, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 18, chapter 1, and the provisions of Title 18, chapter 1, apply to [section 2].

Section 7. **Applicability.** [This act] applies to hiring for vacancies in state agency or state construction project positions within an Indian reservation that occur after [the effective date of this act].

Approved April 20, 1991.

CHAPTER NO. 507

[HB 888]

AN ACT REVISING THE MONTANA WHEAT AND BARLEY COMMITTEE; EXPANDING THE GROUPS THAT MAY NOMINATE MEMBERS FOR APPOINTMENT TO THE COMMITTEE; REVISING THE TIME PERIOD IN WHICH NAMES OF NOMINEES MUST BE SUBMITTED; DELETING THE PROVISION THAT THE REPRESENTATIVE OF THE GRAIN TRADE ON THE COMMITTEE SERVES AT THE PLEASURE OF THE COMMITTEE; EXEMPTING THE EXECUTIVE DIRECTOR OF THE COMMITTEE FROM THE STATE EMPLOYEE CLASSIFICATION PLAN; ALLOWING THE COMMITTEE TO CONTRACT WITH ALL THE UNITS OF THE MONTANA UNIVERSITY SYSTEM; AMENDING SECTIONS 2-15-3002, 2-18-103, 80-11-202, AND 80-11-205, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3002, MCA, is amended to read:

"**2-15-3002. Montana wheat and barley committee — composition — allocation.** (1) There is a Montana wheat and barley committee.

(2) The committee consists of seven members and three ex officio, nonvoting members.

(3) The governor shall appoint one member from each of the following districts:

(a) District I, consisting of Daniels, Sheridan, and Roosevelt Counties;

(b) District II, consisting of Valley, Phillips, Blaine, and Hill Counties;

(c) District III, consisting of Liberty, Toole, Glacier, and Pondera Counties;

(d) District IV, consisting of Chouteau and Teton Counties;

(e) District V, consisting of Lewis and Clark, Cascade, Judith Basin, Fergus, Petroleum, Meagher, Broadwater, Wheatland, Golden Valley, and Musselshell Counties;

(f) District VI, consisting of Big Horn, Yellowstone, Stillwater, Carbon, Sweet Grass, Park, Gallatin, Madison, Jefferson, Silver Bow, Beaverhead, and all counties west of the continental divide;

(g) District VII, consisting of Garfield, McCone, Rosebud, Richland, Dawson, Wibaux, Prairie, Carter, Custer, Fallon, Powder River, and Treasure Counties.

(4) The ex officio members are:

(a) the director of the department of agriculture;

(b) the dean of agriculture of Montana state university;

(c) a representative of the grain trade in Montana elected by a majority of the appointed members.

(5) Each of the appointed members ~~shall~~ *must* be a citizen of Montana, derive a substantial portion of his income from growing wheat or barley in this state, and be a resident of and have farming operations in the district from which appointed. No more than four of the appointed members may be of the same political party.

(6) A list of nominees for appointment may be submitted to the governor by the Montana farmers union, Montana farm bureau, Montana grange, *Montana women involved in farm economics,* and the Montana grain growers association. Names of nominees ~~shall~~ *must* be submitted ~~within 91~~ *not more than 90* days *but not less than 30 days* before the expiration of a committeeman's term.

(7) The appointed members shall serve staggered terms of 3 years. A member may not serve more than three consecutive 3-year terms. ~~The ex officio representative of the grain trade shall serve at the pleasure of the committee.~~

(8) A member may be removed by the governor, after a full public hearing before the governor, for malfeasance, misfeasance, or neglect of duty. Removal proceedings may not be started except upon duly verified written charges. The member ~~shall~~ *must* be given a copy of the written charges at least 10 days in advance of the hearing. At the hearing, the member may be represented by an attorney and may present witnesses in his behalf.

(9) A member who ceases to reside in the state or in the district from which he was appointed or who ceases to grow wheat or barley in the state or district is disqualified from membership and his office becomes vacant. If the member refuses to recognize his disqualification, the refusal is cause for removal.

(10) The committee is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 2-18-103, MCA, is amended to read:

"**2-18-103. Officers and employees excepted.** Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief deputy;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of institutions or family services;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation;

(13) assistant director for security of the Montana state lottery;

(14) executive director and senior investment officer of the Montana board of science and technology development; ~~and~~

(15) executive director and employees of the state compensation mutual insurance fund*; and*

(16) executive director of the Montana wheat and barley committee."

Section 3. Section 80-11-202, MCA, is amended to read:

"**80-11-202. Declaration of policy.** In the presence of the facts that wheat *and barley* ~~is~~ *are* the principal grain ~~crop~~ *crops* produced in Montana and as such ~~is an~~ *are* agricultural ~~resource~~ *resources* of the first magnitude in the economy of the inhabitants of Montana, ~~a~~ prime ~~factor~~ *factors* in the production of wealth and the development and stabilization of property values and of activities and enterprises ~~which~~ *that* are bases and sources of important contributions by taxation to the public revenues, and that Montana wheat *and barley* ~~is a commodity which enters~~ *are commodities that enter* a world market highly competitive in character ~~and that barley is also an important crop~~, it is hereby declared to be the public policy of the state of Montana to protect and foster the health, prosperity, and general welfare of its people by encouraging and promoting intensive, scientific, and practical research into all phases of wheat and barley culture and production, marketing, and use and into the development of markets for wheat and barley grown in Montana by the department."

Section 4. Section 80-11-205, MCA, is amended to read:

"**80-11-205. Powers of the committee.** (1) The committee may:

(a) adopt rules necessary for the administration of this part;

(b) provide, through the department, for the enforcement of this part;

(c) provide for the conduct of research into the production, marketing, and uses of wheat and barley;

(d) enter into contracts or agreements with *units of the* Montana ~~state~~ university *system* and other local, state, or national organizations, public or private, for the purposes of improving wheat or barley quality, increasing the efficiency of production, developing marketing knowledge, developing markets, determining new uses for wheat or barley, developing alternative crops for wheat or barley, and carrying out all research and marketing contemplated by this part. The committee may not establish research units or agencies of its own.

(2) ~~No researchers~~ *Researchers* or professional or scientific personnel may *not* be employed to carry out this part except as provided in subsection (1)(d) of this section.

(3) None of the powers or duties provided for in this part permit participation in state or federal political action by the committee."

Section 5. **Effective date.** [This act] is effective July 1, 1991.

Approved April 20, 1991.

CHAPTER NO. 508

[HB 909]

AN ACT RELATING TO CERTIFICATION OF CHEMICAL DEPENDENCY COUNSELORS AND PERSONS PROVIDING COUNSELING FOR GAMBLING ADDICTIONS; ESTABLISHING REQUIREMENTS FOR CERTIFICATION OF CHEMICAL DEPENDENCY COUNSELORS; PROVIDING FOR SUSPENSION OR REVOCATION OF CERTIFICATION FOR VIOLATION OF PROFESSIONAL ETHICS STANDARDS; REQUIRING A STUDY OF THE MINIMUM REQUIREMENTS FOR CERTIFICATION OF PERSONS PROVIDING COUNSELING FOR GAMBLING ADDICTIONS; PROVIDING AN APPROPRIATION TO FUND THE STUDY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6] requires the department of institutions to adopt rules to define the requirements for demonstrating continuous effort in the certification or education process, which entitles an individual to apply for certification as a certified chemical dependency counselor under rules in effect on March 1, 1991, in lieu of certification in accordance with [section 1]. It is the intent of the legislature that rules require individuals applying for certification under [section 6] to:

(1) show a good faith, continuous effort in the certification or education process; and

(2) document their continuous effort every 4 months.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Certification of chemical dependency counselors.** (1) The department shall grant certification to practice as a certified chemical dependency counselor to any person who successfully completes a competency examination that must include a written exam, an oral exam, and a review of a taped work sample, as defined in rules adopted under 53-24-204.

(2) A person may apply for certification as a certified chemical dependency counselor if he:

(a) has:

(i) received a baccalaureate degree in alcohol and drug studies, psychology, sociology, social work, counseling, or a related field from an accredited college or university;

(ii) received an associate of arts degree in alcohol and drug studies, chemical dependency, or substance abuse from an accredited institution; or

(iii) successfully completed at least 1 year of formalized training in chemical dependency counseling in a program approved by the department or recognized under the laws of another state; and

(b) has completed 2,000 hours of supervised work experience in chemical dependency counseling in a state-approved chemical dependency treatment program, an internship supervised by the college or university and endorsed by the department, or a similar program recognized under the laws of another state. Work experience must include experience in 12 core function areas, including screening, intake, orientation, assessment, treatment planning, individual and group counseling, case management, crisis intervention, client education, referral, recordkeeping, and consultation with other professionals in regard to client treatment and services.

Section 2. **Suspension or revocation of certification.** (1) The department may suspend or revoke the certification of a chemical dependency counselor, according to the procedure contained in [section 3], if he has violated the professional ethics standards published by the department. A person may not practice as a certified chemical dependency counselor during the period for which certification is suspended or revoked.

(2) The department may not suspend certification for more than 6 months. Upon termination of the suspension period, the person whose certification has been suspended shall undergo a department review before resuming practice as a certified chemical dependency counselor.

(3) The department may not revoke a certificate for less than 3 years. Upon termination of the revocation period, the person whose certificate has been revoked may apply to the department for recertification.

Section 3. **Procedure for charging violation of professional ethics standards.** (1) A formal breach of professional ethics may be directed to the department. The charges must be made by affidavit, subscribed and sworn to by the person making it, and filed with the department.

(2) The director of the department shall appoint an ethics panel to investigate a formal breach of ethics directed to the department. The panel shall consist of:

(a) three certified chemical dependency counselors;

(b) one employee of the department; and

(c) one member of the public.

(3) The ethics panel has the power to either recommend that the person be cleared of any charges or to recommend suspension or revocation of certification.

Section 4. **Certification of gambling addiction counselors — treatment resources — study and report to legislature — appropriation.** (1) The department shall study:

(a) the minimum requirements for certification of persons providing counseling for gambling addictions; and

(b) the availability of effective treatment resources in Montana for persons suffering from gambling addictions.

(2) The department shall report its findings from the study required in subsection (1) and its recommendations for certification of gambling addiction counselors to the 53rd legislature.

(3) There is appropriated $32,243 in fiscal 1992 to the department of institutions from the state special revenue gambling license fee account to fund this study.

Section 5. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 53, chapter 24, part 2, and the provisions of Title 53, chapter 24, part 2, apply to [sections 1 through 3].

Section 6. **Applicability.** (1) [Section 1] does not apply to:

(a) persons who, prior to July 1, 1991, received certification from the department of institutions to practice as a certified chemical dependency counselor; or

(b) persons who, prior to March 1, 1991, have:

(i) registered for certification under existing rules; or

(ii) enrolled in a specific chemical dependency degree program.

(2) Individuals referred to in subsection (1)(b) may comply with the department's rules for certification in effect on March 1, 1991, in lieu of certification in accordance with [section 1], provided they demonstrate continuous effort in the certification or education process. Continuous effort must be defined in rules to be adopted by the department.

Section 7. **Effective date.** [This act] is effective July 1, 1991.

Approved April 20, 1991.

CHAPTER NO. 509

[HB 924]

AN ACT REQUIRING THE DEPARTMENT OF COMMERCE TO ASSIST PERSONS REPRESENTING RECREATIONAL, TRANSPORTATION, AND UTILITY INTERESTS AND OTHER INTERESTED PERSONS, INCLUDING ADJACENT LANDOWNERS, IN ACQUIRING OWNERSHIP OR EASEMENT OF ABANDONED RAILBEDS; AND AMENDING SECTION 60-11-111, MCA.

WHEREAS, the legislature recognizes that there is an ever-increasing demand for public recreational trails; and

WHEREAS, abandoned railbeds are uniquely suited for public recreational uses; and

WHEREAS, the potential value of abandoned railbeds as public rights-of-way should be evaluated prior to their disposal; and

WHEREAS, abandoned railbeds may be held in trust as public recreational trails until such time as the railbeds can be reactivated as a railroad.

STATEMENT OF INTENT

It is the policy of the state of Montana to preserve the integrity of abandoned or vacant railroad corridors for the purpose of recreational, transportation, and utility corridors. Accordingly, the state and the department of commerce should make every effort to preserve these corridors intact for future uses.

To further this policy and to alert the public of the potential availability of abandoned railbeds, the department shall identify and maintain a list of persons representing recreational, transportation, and utility interests throughout the state and other interested persons, including adjacent landowners, who have a potential interest or stake in abandoned railroad corridors. Upon receiving notification from the interstate commerce commission of an impending abandonment proceeding for a railbed in the state, the department shall, pursuant to 60-11-111(2)(d), notify each of the persons on the list. Upon receiving a request from an interested person representing a recreational, transportation, or utility interest, or from another interested person, including an adjacent landowner, the department shall arrange for and facilitate discussions between the person and the railroad. The department shall assist with these discussions for no longer than 30 days, and the railroad, under these circumstances, shall respond to any proposal set forth by an interested person or the department.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [section 2], the following definitions apply:

(1) "Railbed" means the fee or lessor interest in the land 8.5 feet to either side of the centerline of the railroad track.

(2) "Recreational interest" means a local government or a not-for-profit corporation that has as its stated purpose the development, use, or maintenance of public recreational trails.

Section 2. Section 60-11-111, MCA, is amended to read:

"**60-11-111. Identification and acquisition of railroad rights-of-way.** (1) Identification of those railroad lines proposed for abandonment in the state of Montana that may have potential for local transportation service or future use as transportation corridors is necessary to determine the feasibility of acquisition by the state and to allow the state to negotiate for acquisition of those railroad lines or easements therein.

(2) The department of commerce:

(a) shall identify railroad rights-of-way in this state that may be abandoned and research the feasibility of acquisition by the state of Montana of those rights-of-way that may be abandoned;

(b) shall report periodically to the legislative finance committee, created in 5-12-201, on the progress of the duties imposed upon it pursuant to subsection (2)(a); ~~and~~

(c) may negotiate for and acquire easements in the rights-of-way or the railroad rights-of-way and attendant facilities identified pursuant to subsection (2)(a) and:

(i) hold all such acquired lands in trust for transportation purposes; and

(ii) upon creation of an appropriate local authority, other than an agency of state government, shall transfer to such local authority all attendant facilities and all rights and responsibility to operate and maintain transportation services over the lands acquired in subsection (2)(c)~~.~~*;* *and*

(d) shall cooperate with and assist persons representing recreational, transportation, and utility interests and other interested persons, including

adjacent landowners, in acquiring ownership or easement of abandoned railbeds.

(3) Abandoned rights-of-way acquired and held in trust pursuant to subsection (2)(c)(i) must be administered by the department of state lands as prescribed in Title 77, until such time as the land is needed for transportation purposes."

Section 3. **Coordination instruction.** If [this act] is passed and approved and House Bill No. 233 fails to be passed and approved, then this bill is void.

Approved April 19, 1991.

CHAPTER NO. 510

[HB 948]

AN ACT TO PROVIDE FOR THE CREATION OF A COUNTY INTERDISCIPLINARY CHILD INFORMATION TEAM TO FACILITATE THE SHARING OF INFORMATION BY PERSONS AND ENTITIES DEALING WITH ABUSED, NEGLECTED, DEPENDENT, AND DELINQUENT CHILDREN AND YOUTH IN NEED OF SUPERVISION; AMENDING SECTIONS 41-3-205, 41-5-602, AND 41-5-603, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **County interdisciplinary child information team.** (1) The following persons and agencies operating within a county may by written agreement form a county interdisciplinary child information team:

(a) the youth court;

(b) the county attorney;

(c) the department of family services;

(d) the county superintendent of schools;

(e) the sheriff;

(f) the chief of any police force; and

(g) the superintendents of public school districts.

(2) The persons and agencies signing a written agreement under subsection (1) may by majority vote allow the following persons to sign the written agreement and join the information team:

(a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;

(b) entities operating private elementary and secondary schools;

(c) attorneys; and

(d) a person or entity that has or may have a legitimate interest in one or more children that the information team will serve.

(3) The members of the information team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

(4) The purpose of the team and written agreement is to facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused, neglected, dependent, and delinquent children and youth in need of supervision. Information regarding a child that a team member supplies to other team members or that is disseminated to a team member under 41-3-205, 41-5-602, or 41-5-603 may not be disseminated beyond the team.

(5) The terms of the written agreement must provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, and any other matters necessary to the purpose and functions of the team.

Section 2. Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department of social and rehabilitation services, the department of family services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state or any other state:

(a) a department, agency, or organization, including federal agencies, legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

(c) a licensed health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or his guardian ad litem;

(f) the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(g) a department or agency investigating an applicant for a license to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a substantiated report and the applicant is notified of the investigation;

(h) an employee of the department if disclosure of the records is necessary for administration of programs designed to benefit the child;

(i) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(j) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(k) a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case involving child abuse or neglect;

(l) a foster care review committee established under 41-3-1115; ~~or~~

(m) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202*; or*

(n) a member of a county interdisciplinary child information team formed under [section 1] who is not listed in subsection (3).

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a).

(5) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

Section 3. Section 41-5-602, MCA, is amended to read:

"**41-5-602. Law enforcement records.** (1) No law enforcement records concerning a youth, except traffic records, may be open to public inspection or their contents disclosed to the public unless the records are directly related to an offense to which publicity must be allowed under subsection (2) of 41-5-601 or unless inspection is ordered by the court.

(2) Inspection of law enforcement records concerning a youth, which records are not open to public inspection under subsection (1), is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the department if it is investigating, supervising, or providing services to the youth;

(c) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(d) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(e) law enforcement officers of Montana, when necessary for the discharge of their immediate duties;

(f) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence investigation;

(g) the county attorney; ~~or~~

(h) the youth, his parent, guardian, or counsel*; or*

(i) a member of a county interdisciplinary child information team formed under [section 1] who is not listed in subsection (2)."

Section 4. Section 41-5-603, MCA, is amended to read:

"**41-5-603. Youth court and department records.** (1) Youth court and youth court-related department records, including social, medical, and psychological records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon such party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority*; and* *(g) a member of a county interdisciplinary child information team formed under [section 1] who is not listed in subsection (1).*

(2) All or any part of records information secured from records listed in subsection (1) of this section, when presented to and used by the court in a proceeding under this chapter, shall also be made available to the counsel for the parties to the proceedings.

(3) Petitions, motions, and other pleadings filed in a case, including findings, verdicts, orders, and decrees, shall be open to public inspection only when related to an offense for which access must be allowed under 41-5-601.

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court or the department shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this chapter to receive such information, unless otherwise ordered by the judge.

(5) After youth court and department records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in subsection (1); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority."

Section 5. **Codification instruction — coordination.** (1) [Section 1] is intended to be codified as an integral part of Title 53, chapter 4, and the provisions of Title 53, chapter 4, apply to [section 1].

(2) If Senate Bill No. 205 is passed and approved, [section 1 of this act] is intended to be codified in the same part of Title 53, chapter 4, as [sections 1 through 3] of Senate Bill No. 205.

Section 6. **Effective date.** [This act] is effective July 1, 1991.

Approved April 20, 1991.

CHAPTER NO. 511

[SB 56]

AN ACT TO RESTRICT PLACEMENT OR EVALUATION OF PREDISPOSITIONAL YOUTH AT A STATE YOUTH CORRECTIONAL FACILITY; TO ELIMINATE THE REQUIREMENT THAT THE DEPARTMENT OF FAMILY SERVICES PROVIDE ADDITIONAL YOUTH EVALUATION PROGRAMS TO REPLACE SERVICES PERFORMED AT STATE INSTITUTIONS; TO CLARIFY THE RESPONSI-

BILITY OF COUNTIES TO PAY THE COST OF YOUTH EVALUATIONS ORDERED BY THE COURT; TO REQUIRE PARENTS WHO ARE FINANCIALLY ABLE TO CONTRIBUTE TO THE COST OF YOUTH EVALUATIONS; AMENDING SECTION 41-5-523, MCA; REPEALING SECTION 53-30-225, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-523, MCA, is amended to read:

"41-5-523. *(Temporary)* **Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home; provided, however, that:

(i) in the case of a youth in need of supervision, the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from his home. The court shall include such determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a youth correctional facility if the judge finds that such placement is necessary for the protection of the public;

(c) order restitution by the youth or his parents;

(d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(e) require the performance of community service;

(f) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish such services as the court may designate;

(i) order such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. Upon release or discharge from the mental health facility, the youth must be returned to the court for further disposition in accordance with this section unless the court order has expired or the court no longer retains jurisdiction under 41-5-205.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision may not be placed in a youth correctional facility.

(b) A youth may not be held in a youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(c) No youth may be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a youth correctional facility must be supervised by the department. A youth placed in any other placement must be supervised by the youth probation officer of the youth court having jurisdiction over the youth.

(4) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department for a period not to exceed 45 days. The department shall determine the place and manner of evaluation.

(5) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court commits a youth to the department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

41-5-523. *(Effective July 1, 1991)* **Disposition ~~of delinquent youth and youth in need of supervision~~ — *commitment to department — placement and evaluation of youth — restrictions.*** (1) If a youth is found to be *a* delinquent *youth* or *a youth* in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home~~;~~, provided~~, however,~~ that:

(i) in the case of a youth in need of supervision, the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from his home. The court shall include ~~such~~ *the* determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a *state* youth correctional facility if the judge finds that ~~such~~ *the* placement is necessary for the protection of the public;

(c) order restitution by the youth or his parents;

(d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(e) require the performance of community service;

(f) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish ~~such~~ services ~~as~~ the court may designate;

(i) order ~~such~~ further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. Upon release or discharge from the mental health facility, the youth must be returned to the court for further disposition in accordance with this section unless the court order has expired or the court no longer retains jurisdiction under 41-5-205.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision may not be placed in a *state* youth correctional facility.

(b) A youth may not be held in a *state* youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(c) ~~No~~ *A* youth may *not* be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a *state* youth correctional facility must be supervised by the department. A youth placed in any other placement must be supervised by the youth probation officer of the youth court having jurisdiction over the youth.

(4) ~~At any time after the youth has been taken into custody and before final disposition, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated for a period not to exceed 45 days.~~ *The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives his constitutional rights in the manner provided for in 41-5-303.* The county ~~commissioners are~~ *determined by the court as the residence of the youth is* responsible for the cost of the evaluation, *except as provided in subsection (5)* ~~and~~. *A county* may contract with the department or other public or private agencies to obtain evaluation services *ordered by the court.*

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.

~~(5)~~*(7)* ~~No~~ *An* evaluation of a youth may *not* be performed at the Montana state hospital unless ~~such~~ *the* youth is transferred to the district court under 41-5-206.

~~(6)~~*(8)* ~~Any~~ *An* order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

~~(7)~~*(9)* Whenever the court commits a youth to the department, it must transmit with the dispositional judgment copies of a medical report and ~~such~~ *any* other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth."

Section 2. **Repealer.** Section 53-30-225, MCA, is repealed.

Section 3. **Effective date.** [This act] is effective July 1, 1992.

Section 4. **Coordination instruction.** If Senate Bill No. 37 is not passed and approved, then [this act] is void.

Approved April 19, 1991.

CHAPTER NO. 512

[SB 164]

AN ACT TO CREATE A DEPARTMENT OF TRANSPORTATION; TO ABOLISH THE DEPARTMENT OF HIGHWAYS AND TRANSFER ITS FUNCTIONS AND CERTAIN FUNCTIONS OF THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF TRANSPORTATION; TO GENERALLY REVISE THE LAWS TO CONFORM TO THE ABOLISHMENT OF THE DEPARTMENT OF HIGHWAYS AND TRANSFER OF FUNCTIONS TO THE DEPARTMENT OF TRANSPORTATION; AMENDING SECTIONS 2-15-104, 2-15-1812, 2-15-2501, 2-15-2502, 15-1-701, AND 60-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** (1) The legislature intends, through the creation of a department of transportation within the executive branch of state government, to:

(a) provide the means to plan for the present and future transportation needs of the citizens of Montana;

(b) to assure that transportation remains a viable element in the private sector of the economy; and

(c) to provide energy-efficient and ecologically compatible transportation services with optimum efficiency, effectiveness, and economy.

(2) It is the policy of the state of Montana that adequate, safe, and efficient transportation facilities and services of all modes are essential to the economic growth of the state and the well-being of its people and that the planning and development of those facilities and services be coordinated by a department of transportation that has overall responsibility for balanced transportation policy and planning.

Section 2. Section 2-15-104, MCA, is amended to read:

"**2-15-104. Structure of executive branch.** (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:

(a) department of administration;

(b) department of military affairs;

(c) department of revenue;

(d) state board of education;

(e) department of labor and industry;

(f) department of commerce;

(g) department of justice;

(h) department of health and environmental sciences;

(i) department of social and rehabilitation services;

(j) department of institutions;

(k) department of ~~highways~~ *transportation*;

(l) department of public service regulation;

(m) department of agriculture;

(n) department of livestock;

(o) department of state lands;

(p) department of natural resources and conservation;

(q) department of fish, wildlife, and parks;

(r) department of family services.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division ~~shall be~~ *is* headed by an administrator.

(b) The principal unit of a division is a bureau. Each bureau ~~shall be~~ *is* headed by a chief.

(c) The principal unit of a bureau is a section. Each section ~~shall be~~ *is* headed by a supervisor."

Section 3. **Department of highways abolished — functions transferred to department of transportation.** The department of highways is abolished, and its functions are transferred to the department of transportation. Unless inconsistent with [sections 1 through 14], any reference in the Montana Code Annotated, including acts passed by the 52nd legislature, to the "department of highways", "department" (of highways), or "director" (of highways) is changed to the "department of transportation", "department" (of transportation), or "director" (of transportation).

Section 4. Section 2-15-2501, MCA, is amended to read:

"**2-15-2501. Department of ~~highways~~ *transportation* — head.** There is a department of ~~highways~~ *transportation*. The department head is ~~a~~ *the* director of ~~highways~~ *transportation* appointed by the governor in accordance with 2-15-111. *The department may have as many divisions as are necessary, but it must have divisions of:*

(1) highways;

(2) aeronautics;

(3) administration;

(4) rail and transit; and

(5) motor carrier services."

Section 5. Section 2-15-2502, MCA, is amended to read:

"**2-15-2502. Highway commission.** (1) The highway commission consists of five members. One member ~~shall~~ *must* be a ~~bona fide~~ resident of and appointed from each of these districts, each composed of the counties named:

(a) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Powell;

(b) District 2. Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Broadwater, Jefferson, Park;

(c) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Lewis and Clark;

(d) District 4. Carter, Powder River, Fallon, Custer, Rosebud, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan;

(e) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Judith Basin, Fergus, Petroleum, Treasure, Wheatland, Sweet Grass.

(2) ~~No two~~ *Two* members may *not be residents of the same district* at the time of appointment or thereafter during their respective terms of office ~~be residents of the same district~~.

(3) Not more than three members may at the time of appointment or ~~thereafter~~ during their respective terms be members of the same political party.

(4) ~~No~~ *An* elective state official or state officer during the term of office to which he was elected or appointed ~~and no~~ *or a* state employee may *not* be a member of the commission.

(5) ~~No~~ *A* resolution, motion, or other decision of the commission may *not* be adopted or passed without the favorable vote of at least three members.

(6) The commission is allocated to the department *of transportation* for administrative purposes only as prescribed in 2-15-121.

(7) The commission is designated as a quasi-judicial board for purposes of 2-15-124; however, the provision of 2-15-124(1) that at least one member of a quasi-judicial board be an attorney does not apply to the commission.

(8) The administrator of the highway division shall act as liaison between the highway commission and the department of transportation."

Section 6. **Transportation functions of department of commerce transferred.** (1) The following functions of the department of commerce are transferred to the department of transportation:

(a) developing, encouraging, regulating, and licensing aeronautics in Title 67;

(b) allocating funds for public transportation under 7-14-102;

(c) transloading facilities under 7-14-120;

(d) rail planning activities in Title 60, chapter 11; and

(e) state representation activities under 60-21-101.

(2) Unless inconsistent with [sections 1 through 14], any reference to the department of commerce in 7-14-102, 7-14-120; Title 60, chapters 11 and 21; and Title 67 is changed to department of transportation.

Section 7. Section 2-15-1812, MCA, is amended to read:

"**2-15-1812. Board of aeronautics — qualification — allocation — quasi-judicial.** (1) There is a board of aeronautics.

(2) The board consists of nine members. The members are:

(a) one member of the Montana pilots' association;

(b) one member of the Montana chamber of commerce;

(c) one representative of the Montana airport management association;

(d) one member of the Montana county commissioners association;

(e) one person actively engaged in aviation education in this state;

(f) one person representative of interstate commercial airline operators, who must at the time of appointment be an employee or official of an interstate commercial airline operator and a resident of this state;

(g) one member of the Montana league of cities and towns;

(h) one person representing the general public; and

(i) one person who must at the time of appointment be an active fixed base operator in this state, or an official of a fixed base operator in this state, of flying services or flying schools.

(3) The board is allocated to the department *of transportation* for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

(5) The administrator of the aeronautics division shall act as liaison between the board and the department of transportation."

Section 8. **Department of revenue — motor fuels tax functions transferred.** Unless inconsistent with [sections 1 through 14], any reference to the department of revenue in Title 15, chapter 70, is changed to the department of transportation.

Section 9. **Department of transportation to issue warrants for distraint.** The department of transportation is authorized to issue warrants for distraint as provided in Title 15, chapter 1, part 7, to collect motor fuels taxes and to enforce the provisions of this part.

Section 10. Section 60-3-201, MCA, is amended to read:

"**60-3-201. Distribution and use of proceeds of gasoline dealers' license tax.** (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of ~~revenue's~~ *transportation's* suspense account for gasoline tax refund, ~~shall~~ *must* be used and expended as provided in this section. ~~So much~~ *The portion* of that money on hand at any time ~~as~~ *that* may be needed to pay highway bonds and interest ~~thereon~~ *on highway bonds* when due and to accumulate and maintain a reserve ~~therefor~~ *for payment of highway bonds and interest*, as provided in laws and in resolutions of the state board of examiners authorizing ~~such~~ *the* bonds, ~~shall~~ *must* be deposited in the highway bond account in the debt service fund established by 17-2-102. Subject to that provision, 9/10 of 1% of all money ~~shall~~ *must* be deposited in the state park account, 1/2 of 1% of all money ~~shall~~ *must* be deposited in a snowmobile account in the state special revenue fund, and 1/25 of 1% of all money ~~shall~~ *must* be deposited in the aeronautics revenue fund of the department of ~~commerce~~ *transportation* under the provisions of 67-1-301. The remainder of the money ~~shall~~ *must* be used by the department of ~~highways~~ *transportation* on the federal-aid highways in this state selected and designated under Title 23, U.S.C., and on highways leading from each county seat in the state to the federal highway system of federal-aid roads where the county seat is not on the system and on the other roads ~~which~~ *that* have been or may be authorized by the laws of Montana and for collection of the license taxes and the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state in accordance with 60-3-204 through 60-3-206. Nothing in this title conflicts with Title 23, U.S.C., and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the state special revenue fund ~~shall~~ *must* be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost and to promote snowmobile safety. ~~For the 2 years following July 1, 1977, 15% of the amount deposited in the snowmobile account each year shall be used to promote snowmobile safety. Thereafter, 10%~~ *Ten percent* of the amount deposited in the snowmobile account ~~shall~~ *must* be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than 1/2 of 1% is used for propelling snowmobiles on public lands of this state.

(6) Money credited to the aeronautics account of the department of ~~commerce shall~~ *transportation must* be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds that of all the fuel sold in this state

for consumption in internal combustion engines, not less than 1/25 of 1% is used for propelling aircraft in this state."

Section 11. Section 15-1-701, MCA, is amended to read:

"**15-1-701. Warrant for distraint.** (1) A warrant for distraint is an order, under the official seal of the department of revenue *or of the department of transportation*, directed to a sheriff of ~~any~~ *a* county of Montana or to ~~any~~ *an* agent authorized by law to collect a tax. The order commands the recipient to levy upon and sell the real and personal property of a delinquent taxpayer.

(2) Upon filing the warrant as provided in 15-1-704, there is a lien against all real and personal property of the delinquent taxpayer located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, and the department may collect delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced.

(3) A warrant may be issued for the amount of unpaid tax plus penalty, if any, and accumulated interest. The lien is for the amount indicated on the warrant plus accrued interest from the date of the warrant."

Section 12. **Transfer of rulemaking authority.** Any existing authority of the department of highways, the department of commerce, or the department of revenue to make rules on the various functions transferred by the provisions of [sections 1 through 14] is extended to the provisions of [sections 1 through 14].

Section 13. **Application of transfer provisions.** The provisions of 2-15-131 through 2-15-137 govern:

(1) the merger into the department of transportation the functions of the department of highways and those functions of the departments of commerce and revenue specified in [sections 1 through 14]; and

(2) the transfer of the various functions contained in [sections 1 through 14].

Section 14. **Governor to implement.** The governor shall implement the provisions of [sections 1 through 14] by executive order.

Section 15. **Coordination instruction.** The code commissioner is instructed to revise any bill passed by the 52nd legislature by changing to the department of transportation any reference to:

(1) the department of highways;

(2) the department of revenue in Title 15, chapter 70, or in regard to administration of the motor fuels tax laws; or

(3) the department of commerce in regard to aeronautics in Title 67, allocating funds for public transportation in 7-14-102, or rail planning activities in Title 60, chapter 11.

Section 16. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 25, and the provisions of Title 2, chapter 15, part 25, apply to [section 1].

(2) [Section 9] is intended to be codified as an integral part of Title 15, chapter 70, part 2, and the provisions of Title 15, chapter 70, part 2, apply to [section 9].

(3) Section 2-15-1812 is intended to be renumbered and codified as an integral part of Title 2, chapter 15, part 25.

Section 18. **Effective date.** [This act] is effective July 1, 1991.

Approved April 20, 1991.

CHAPTER NO. 513

[SB 274]

AN ACT ALLOCATING REVENUE FROM RAILROADS OWNED BY THE STATE OF MONTANA FOR THE IMPROVEMENT OF THOSE RAILROADS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Legislative findings.** The legislature finds that it is in the interests of the state of Montana to preserve and encourage, whenever possible, Montana's railroad transportation infrastructure, especially those railroads classified as Class III carriers under 49 CFR, chapter 10, that operate mainly within the state.

Section 2. **Special railroad facilities account.** There is a special railroad facilities account in the state special revenue fund.

Section 3. **Disposition of revenue from state-owned railroads — use of money.** (1) Unless otherwise required by law, revenue from the lease or sale of assets of or revenue paid to the state of Montana by an operator of a railroad owned by the state of Montana must be deposited in the special railroad facilities account created in [section 2].

(2) The department of commerce is authorized to administer, as provided in [sections 1 through 3], the special railroad facilities account created in [section 2] to provide for improvement of railroad tracks and associated facilities of any state-owned railroad in Montana.

Section 4. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 60, chapter 11, and the provisions of Title 60, chapter 11, apply to [sections 1 through 3].

Section 5. **Effective date — applicability.** [This act] is effective on passage and approval and applies to all money received pursuant to [section 3(1)] after [the effective date of this act].

Approved April 20, 1991.

CHAPTER NO. 514

[SB 284]

AN ACT TO ALLOW THE MONTANA CHILDREN'S TRUST FUND BOARD TO HIRE ITS OWN STAFF; AND AMENDING SECTION 2-15-2402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2402, MCA, is amended to read:

"**2-15-2402. Montana children's trust fund board.** (1) There is a Montana children's trust fund board, consisting of seven members appointed by the governor and serving 3-year terms. Two board members must be chosen from state government agencies involved in education and social work relating to children. The governor shall ensure geographic distribution of appointees.

(2) The board is allocated to the department of family services for administrative purposes only, as provided in 2-15-121. *The board may employ staff to carry out its duties as described in Title 41, chapter 3, part 7.*"

Approved April 20, 1991.

CHAPTER NO. 515

[SB 314]

AN ACT TO GENERALLY REVISE AND CLARIFY THE WATER RESERVATION PROCESS; ALLOWING AVAILABLE WATER FROM A REVOKED OR MODIFIED RESERVATION TO BE APPROPRIATED; REQUIRING APPROVAL BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION OF CHANGES IN RESERVATIONS; ALLOWING TRANSFERS OF WATER RESERVATIONS AND ESTABLISHING CRITERIA FOR SUCH TRANSFERS; AMENDING SECTION 85-2-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-316, MCA, is amended to read:

"**85-2-316. Reservation of waters.** (1) The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time as the board designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental impact statement must be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

(i) the purpose of the reservation;

(ii) the need for the reservation;

(iii) the amount of water necessary for the purpose of the reservation;

(iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the board may not adopt an order reserving water for withdrawal and transport for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the board shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

(5) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) The board shall limit any reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams can be allocated at the discretion of the board.

(7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may, with the approval of the board, issue the permit

subject to terms and conditions it considers necessary for the protection of the objectives of the reservation.

(8) *(a)* Any person desiring to use water reserved to a conservation district for agricultural purposes shall make application for the use with the district, and the district, upon approval of the application, shall inform the department of the approved use *and issue the applicant an authorization for the use.* The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of such applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time the request was made. The board shall extend the time allowed to develop a plan identifying projects for utilizing a district's reservation so long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(b) Upon actual application of water to the proposed beneficial use the authorized user shall notify the conservation district. The notification must contain a certified statement by a person with experience in the design, construction, or operation of project works for agricultural purposes that the reserved water has been put to use in substantial accordance with the terms and conditions of the authorization to use reserved water. The department or the district may then inspect the appropriation to determine if it has been completed in substantial accordance with the authorization.

(9) Except as provided in 85-2-331, the priority of appropriation of a water reservation and the relative priority of the reservation to permits with a later priority of appropriation must be determined according to this subsection (9).

(a) A reservation under this section has a priority of appropriation dating from the filing with the department of a notice of intention to apply for a water reservation in a basin in which no other notice of intention to apply is currently pending. The notice of intention to apply must specify the basin in which the applicant is seeking a reservation.

(b) Upon receiving a notice of intention to apply for a water reservation, the department shall identify all potential water reservation applicants in the basin specified in the notice and notify each potential applicant of the opportunity to submit an application and to receive a reservation with the priority of appropriation as described in subsection (9)(a).

(c) To receive the priority of appropriation described in subsection (9)(a), the applicant shall submit a correct and complete water reservation application within 1 year after the filing of the notice of intention to apply. Upon a showing of good cause, the board may extend the time for preparing the application.

(d) The board may by order subordinate a water reservation to a permit issued pursuant to this part if:

(i) the permit application was accepted by the department before the date of the board order granting the reservation; and

(ii) the effect of subordinating the reservation to one or more permits does not interfere substantially with the purpose of the reservation.

(e) The board shall by order establish the relative priority of reservations approved under this section that have the same day of priority. A reservation may not adversely affect any rights in existence at that time.

(10) The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation. *Any undeveloped water made available as a result of a revocation or modification under this subsection is available for appropriation by others pursuant to this part.*

(11) The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the reservation or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water may not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use. The board may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(12) A reservant may not make a change in a reservation under this section except as permitted under 85-2-402 and this subsection. If the department approves a change, the board, upon notification by the department of its approval, shall give notice and require the reservant to establish that the criteria in subsection (4) will be met under the approved change.

(13) A reservation may be transferred to another entity qualified to hold a reservation under subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing of a water right transfer certificate with the board together with an affidavit from the entity receiving the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

~~(12)~~*(14)* Nothing in this section vests the board with the authority to alter a water right that is not a reservation.

~~(13)~~*(15)* The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

~~(14)~~*(16)* Water reserved under this section is not subject to the state water leasing program established under 85-2-141."

Section 2. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to all reservations of waters granted pursuant to 85-2-316.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 20, 1991.

CHAPTER NO. 516

[SB 363]

AN ACT REVISING THE LAW GOVERNING HORSERACING; EXPANDING THE TYPES OF SIMULCAST RACES THAT THE BOARD OF HORSERACING MAY APPROVE; AUTHORIZING LICENSEES TO WITHHOLD AN ADDITIONAL 1 PERCENT ON EXOTIC WAGERING; AMENDING SECTIONS 23-4-301 AND 23-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-4-301, MCA, is amended to read:

"23-4-301. **Parimutuel betting — other betting illegal.** (1) It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside of this state, except under this chapter.

(2) A licensee conducting a race meet under this chapter may provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted under this chapter and the rules of the board.

(3) A person licensed under this chapter to hold a race meet may~~, on the day a race meet is conducted, also provide~~ *simulcast live races at* a place in the race meet grounds or simulcast facility where the licensee may conduct or supervise the use of the parimutuel system by patrons on the results of simulcast races approved by the board. ~~The board shall approve only intrastate races and races of national prominence to the Montana racing season. However, the board has authority to approve races from other states during the off-season.~~

(4) It is unlawful to conduct pool selling or bookmaking or to circulate handbooks or to bet or wager on a race of a licensed race meet, other than by the parimutuel system and in the race meet grounds or enclosure where the race is held, or to permit a minor to use the parimutuel system.

(5) Each licensee conducting a parimutuel system for an intrastate simulcast race meet shall combine the parimutuel pools at a simulcast facility with those at the actual racing facility for the purpose of determining the odds and computing payoffs. The amount of the handle at the simulcast race meet must be combined with the amount of parimutuel handle at the live racing facility for the purposes of distribution of money derived from parimutuel betting under 23-4-302 and 23-4-304.

(6) Negotiated purse money from intrastate and interstate simulcast parimutuel handles at racing associations that do not conduct live racing will be pooled and distributed to all tracks conducting live racing, all moneys to be distributed on a percent, based on each track's percent, of total annual on-track parimutuel handle."

Section 2. Section 23-4-302, MCA, is amended to read:

"**23-4-302. Distribution of deposits — breakage.** (1) Each licensee conducting the parimutuel system shall distribute all sums deposited in any pool to the winner thereof, less an amount which in the case of exotic wagering on races shall not exceed ~~24%~~ *25%* and in all other races shall not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all sums deposited with the licensee in any pool for such simulcast race meet, less an amount which in the case of exotic wagering on such races shall not exceed ~~24%~~ *25%* and in all other such races shall not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of its total parimutuel handle of the simulcast facility and give it to the local fair board. The money must be used to operate or enhance the county fairgrounds facility."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 20, 1991.

CHAPTER NO. 517

[SB 395]

AN ACT TO REVISE THE LAWS RELATED TO THE TRANSFER OF TERRITORY FROM ONE ELEMENTARY OR HIGH SCHOOL DISTRICT TO ANOTHER; AMENDING SECTIONS 20-6-213 AND 20-6-320, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-213, MCA, is amended to read:

"**20-6-213. Transfer of territory from one elementary district to another.** (1) A majority of the *registered* electors of ~~any~~ *an* elementary district ~~who are qualified to vote under the provisions of 20-20-301 and~~ who reside in territory ~~which~~ *that* is a part of an elementary district may petition the county superintendent to transfer ~~such~~ *the* territory *in which they reside* to another elementary district when:

(a) ~~such~~ *the* territory *to be transferred* is contiguous to the district to which it is to be attached;

(b) ~~such~~ *the* territory *to be transferred* is not located within 3 miles, over the shortest practical route, of an operating school of the district from which it is to be detached;

(c) the transfer of ~~such~~ *the* territory will not reduce the taxable value of the district to less than $100,000 unless the remaining territory of the district will contain not less than 50,000 acres of nontaxable Indian land; ~~and~~

(d) the board of trustees of the school district that would receive the territory has approved *in writing* the transfer*; and*

(e) the territory proposed to be transferred to another elementary district has not been included in a petition filed under this section in the previous 3 years.

(2) The petition ~~shall~~ *must* be addressed to the county superintendent and ~~shall~~ *must*:

(a) ~~describe~~ *provide a legal description of* the territory that is requested to be transferred and ~~to what~~ *a description of the elementary* district *to which* it is to be transferred;

(b) state the reasons why ~~such~~ *the* transfer is requested; ~~and~~

(c) state the number of elementary school-age children residing in ~~such~~ *the* territory*; and*

(d) be accompanied by a $50 nonrefundable filing fee.

(3) *A petition that meets the criteria specified in subsection (1) and that contains all the information required by subsection (2) is considered a valid petition.* On receipt of a valid petition for a territory transfer, the county superintendent shall:

(a) file ~~such~~ *the* petition;

(b) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. The notices ~~shall~~ *must* be posted in the districts affected by the ~~request~~ *petition for the transfer of territory* in the manner prescribed in this title for school elections, with at least one ~~such~~ notice posted in the territory to be transferred.

(4) The county superintendent shall conduct the hearing as scheduled *in accordance with the rules of procedure adopted by the superintendent of public instruction pursuant to 20-3-107(3),* and any resident, ~~or~~ taxpayer, *or representative* of the affected districts ~~shall~~ *must* be heard. ~~If the county superintendent considers it advisable and in the best interests of the residents of such territory, he shall grant the petitioned request and order the change of district boundaries to coincide with the boundary description in the petition. Otherwise, he shall, by order, deny the request. Either of the orders shall be~~

(5) Within 30 days after the hearing, the county superintendent shall, after considering the testimony and exhibits presented at the hearing, issue findings of fact, conclusions of law, and an order. The county superintendent shall grant or deny the requested transfer of territory. The decision must be based on the effects that the transfer would have on those residing in the territory proposed for transfer as well as those residing in the remaining territory of the elementary district.

(6) The decision of the county superintendent is final 30 days after its date unless it is appealed to the board of county commissioners by a resident ~~or~~, taxpayer, *or representative* of ~~either district~~ *the elementary districts* affected by the territory transfer.

(7) The decision of the board of county commissioners, after a hearing on ~~such~~ *the* matter and consideration of the ~~material presented at~~ *record from* the county superintendent's hearing, ~~shall be~~ *is* final 30 days after its date unless *prior to that time it has been contested through the filing of* a *valid* petition to submit the question to a vote of the people in the *elementary* district from which the land is to be transferred~~, which has been~~. *In order for a petition to be valid, the petition must be* signed by ~~a majority~~ *20%* of the electors of the *elementary* district ~~who reside in the territory to be transferred and~~ who are qualified to vote in elections for that district under 20-20-301~~, is presented prior to that time~~. When a *valid* petition is submitted under this subsection, the question of whether the ~~land shall~~ *territory must* be transferred to another district ~~shall~~ *must* be put before the voters at the next regular school election in the affected *elementary* district. *The results of the vote must be the final decision on the petition for transfer of territory.*

~~(5)~~*(8)* Whenever a petition to transfer territory from one elementary district to another elementary district would create a joint elementary district or affect the boundary of an existing joint elementary district, the petition ~~shall~~ *to transfer territory must* be presented to the county superintendent of the county where the territory is located. ~~Such~~ *The* county superintendent shall notify any other county superintendents of counties with *elementary* districts affected by ~~such~~ *the* petition, and the duties prescribed in this section for the county superintendent and the board of county commissioners ~~shall~~ *must* be performed jointly by such county officials."

Section 2. Section 20-6-320, MCA, is amended to read:

"**20-6-320. Transfer of territory from one high school district to another.** (1) A majority of *registered* electors of ~~any~~ *a* high school district ~~who are qualified to vote under the provisions of 20-20-301 and~~ who reside in territory that is a part of a high school district may petition the county superintendent to transfer ~~such~~ *the* territory *in which they reside* to another high school district if:

(a) the territory ~~adjoins~~ *to be transferred is contiguous to* the *high school* district to which it is to be attached;

(b) the territory *to be transferred* is not located within 3 miles, over the shortest practical route, of an operating school of the *high school* district from which it is to be detached;

(c) the transfer of ~~such~~ *the* territory will not reduce the taxable value of the district to less than $300,000 unless the remaining territory of the *high school* district contains not less than 50,000 acres of nontaxable Indian land; ~~and~~

(d) the board of trustees of the school district that would receive the territory has approved *in writing* the transfer*; and*

(e) the territory proposed to be transferred to another high school district has not been included in a petition filed under this section in the previous 3 years.

(2) The petition must be addressed to the county superintendent and ~~shall~~ *must*:

(a) ~~describe~~ *provide a legal description of* the territory that is requested to be transferred and ~~to what~~ *a description of the high school* district *to which* it is to be transferred;

(b) state the reasons why ~~such~~ *the* transfer is requested; and

(c) state the number of high-school-age children residing in ~~such~~ *the* territory*; and*

(d) be accompanied by a $50 nonrefundable filing fee.

(3) *A petition that meets the criteria specified in subsection (1) and that contains all the information required by subsection (2) is a valid petition.* On receipt of a valid petition for a territory transfer, the county superintendent shall:

(a) present the petition to the board of county commissioners for certification that the criteria set forth in subsection (1) have been met. The board shall, within 10 days of receiving the petition, return it to the county superintendent with certification, signed by a majority of the board, that ~~such~~ *the* criteria have been met or with a notation, signed by a majority of the board, that the criteria have not been met. The board's certification is binding on the county superintendent unless the county superintendent believes that the certification is in error. A dispute between the board and the county ~~commissioners~~ *superintendent on this issue* must be decided by the superintendent of public instruction and the decision of the superintendent of public instruction on the matter is final.

(b) file the petition as certified by the board of county commissioners~~;~~.

~~(c)~~*(4) If the petition is certified or adjusted on appeal to the superintendent of public instruction to meet the criteria specified in subsection (1), the county superintendent shall:*

(a) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after receipt of the petition; and

~~(d)~~*(b)* give notice of the place, date, and time of the hearing. The notices must be posted in the *high school* districts affected by the ~~request~~ *petition for the territory transfer* in the manner prescribed in this title for school elections, with at least one notice posted in the territory to be transferred.

~~(4)~~*(5)* The county superintendent shall conduct the hearing as scheduled *in accordance with the rules of procedure adopted by the superintendent of public instruction pursuant to 20-3-107(3),* and any resident, ~~or~~ taxpayer, *or representative* of either affected *high school* district must be heard. ~~If the county superintendent considers it advisable and in the best interests of the residents of the territory, he shall grant the petitioned request and order the change of district boundaries to coincide with the boundary description in the petition. Otherwise, he shall by order deny the request. Either of the orders shall be~~

(6) Within 30 days after the hearing, the county superintendent shall, after considering the testimony and exhibits presented at the hearing, issue findings of fact, conclusions of law, and an order. The county superintendent shall grant or deny the requested transfer of territory. The decision must be based on the effects that the transfer would have on those residing in the territory proposed for transfer as well as those residing in the remaining territory of the high school district.

(7) The decision of the county superintendent is final ~~20~~ *30* days after its date unless it is appealed *pursuant to 20-3-107* to the superintendent of public instruction by a resident, *taxpayer, or representative* of either *high school* district affected by the *petitioned* territory transfer. The decision of

the superintendent of public instruction, after consideration of the ~~material presented at~~ *record from* the county superintendent's hearing, is final 30 days after its date. *The final order of the superintendent of public instruction is subject to judicial review pursuant to the Montana Administrative Procedure Act, Title 2, chapter 4.*

~~(5)~~*(8)* If a petition to transfer territory from one high school district to another high school district would create a joint high school district or affect the boundary of any existing joint high school district, the petition must be presented to the county superintendent of the county where the territory *proposed for transfer* is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly by such county officials."

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved April 20, 1991.

CHAPTER NO. 518

[SB 19]

AN ACT TO REQUIRE THAT CONTRACTS FOR AGRICULTURAL COMMODITIES SOLD BY CREDIT SALE CONTRACT CONTAIN A NOTICE OF FINANCIAL RISK IN A FORM ESTABLISHED BY DEPARTMENT OF AGRICULTURE RULE; AMENDING SECTION 80-4-422, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because 80-4-422(2)(f) requires the department of agriculture to adopt rules regarding the form of a notice of financial risk required to appear on credit sale contracts for the sale of agricultural commodities. It is intended that the warning appear on the face of the contract, in boldface type, and be in substantially the following form:

NOTICE TO SELLER OF FINANCIAL RISK

The seller recognizes that in the event of foreclosure or bankruptcy, this contract is equivalent to an unsecured loan to the purchaser. The seller and any of the seller's creditors should be advised of the financial risks involved in this contract.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-4-422, MCA, is amended to read:

"**80-4-422. Credit sale contracts.** (1) A commodity dealer who purchases agricultural commodities by credit sale contract shall maintain books, records, and other documents as required by the department to establish compliance with the provisions of this section.

(2) In addition to other required information, a credit sale contract must contain or provide for all of the following:

(a) the seller's name and address;

(b) the conditions of delivery;

(c) the amount and kind of agricultural commodities delivered;

(d) the price per unit or basis of value; ~~and~~

(e) the date payment is to be made*; and*

(f) a notice of financial risk involved in the credit sale contract, in a form the department shall adopt pursuant to the rulemaking authority provided in 80-4-403.

(3) Title to all agricultural commodities sold by credit sale contract is in the purchaser as of the time the contract is executed unless the contract provides otherwise. The contract must be signed by both parties and executed in duplicate. One copy ~~shall~~ *must* be retained by the commodity dealer, and one copy ~~shall~~ *must* be delivered to the seller. Upon revocation, suspension, or termination of a warehouseman's license, the department may advance the payment date for all credit sale contracts to a date not later than 30 days following the effective date of the revocation, suspension, or termination. When not otherwise provided, the purchase price for all agricultural commodities ~~shall~~ *must* be determined as of the effective date of revocation, suspension, or termination in accordance with all other provisions of the contract. However, if the business of the commodity dealer is sold to another licensed commodity dealer, credit sale contracts may be assigned to the purchasing commodity dealer."

Section 2. **Effective date — applicability.** [This act] is effective July 1, 1991, and applies to credit sale contracts for agricultural commodities entered into after July 1, 1991.

Approved April 22, 1991.

CHAPTER NO. 519

[SB 49]

AN ACT CREATING THE OFFENSE OF CRIMINAL SALE OF DANGEROUS DRUGS ON OR NEAR SCHOOL PROPERTY; PROVIDING PENALTIES; CREATING AN AFFIRMATIVE DEFENSE; AND AMENDING SECTIONS 46-18-231 AND 46-23-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Criminal sale of dangerous drugs on or near school property — penalty — affirmative defense.** (1) A person commits the offense of criminal sale of dangerous drugs on or near school property if he violates 45-9-101 in, on, or within 1,000 feet of the real property comprising a public or private elementary or secondary school.

(2) Except as provided in 46-18-222, a person convicted of criminal sale of dangerous drugs on or near school property:

(a) shall be imprisoned in the state prison for a term of not less than 3 years or more than life; and

(b) may be fined an amount of not more than $50,000.

(3) It is not a defense to prosecution under subsection (1) that the person did not know the distance involved.

(4) It is an affirmative defense to prosecution for a violation of this section that:

(a) the prohibited conduct took place entirely within a private residence; and

(b) no person 17 years of age or younger was present in the private residence at any time during the commission of the offense.

Section 2. Section 46-18-231, MCA, is amended to read:

"**46-18-231. Fines in felony and misdemeanor cases.** (1) Whenever, upon a verdict or a plea of guilty, a person has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103, 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), ~~and~~ 45-9-103(2), *and [section 1]*, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict or plea of guilty, a person has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not to exceed $50,000."

Section 3. Section 46-23-201, MCA, is amended to read:

"46-23-201. **Prisoners eligible for parole.** (1) Subject to the restrictions contained in subsections (2) through ~~(4)~~ *(5)*, the board may release on parole by appropriate order any person confined in the Montana state prison or the women's correction center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A convict serving a time sentence may not be paroled until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105; except ~~that~~ *as provided in subsection (3)*, a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 1/2 years.

(3) A convict serving a time sentence under [section 1] may not be paroled until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105.

~~(3)~~*(4)* A convict serving a life sentence may not be paroled until he has served 30 years, less the good time allowance provided for in 53-30-105.

~~(4)~~*(5)* A parole may be ordered only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

~~(5)~~*(6)* If the department of institutions certifies to the board that the population at the Montana state prison exceeds its design capacity of 744 by 96 inmates or that the population at the women's correction center exceeds its design capacity of 35 inmates and that the prison or the center has exceeded its capacity for a period of more than 30 days, the board shall consider convicts in the institution in which the design capacity has been exceeded eligible for parole 120 days prior to the eligibility dates provided for in subsections (2) ~~and (3)~~ *through (4)*.

~~(6)~~*(7)* Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration at Montana state prison, the provisions of subsection ~~(5)~~ *(6)* do not apply."

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 9, part 1, and the provisions of Title 45, chapter 9, part 1, apply to [section 1].

Approved April 22, 1991.

CHAPTER NO. 520

[SB 93]

AN ACT REVISING THE RESOURCE INDEMNITY TRUST TAX BY CHANGING THE RATE OF TAX ON COAL AND THE METHOD OF VALUING COAL; AMENDING SECTIONS 15-38-103 AND 15-38-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-38-103, MCA, is amended to read:

"**15-38-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Department" means department of revenue.

(2) "Gross value of product" means, except as provided in 15-38-126 *and [section 3]*, the market value of any merchantable mineral extracted or produced during the taxable year.

(3) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(4) "Total environment" means air, water, soil, flora, and fauna and the social, economic, and cultural conditions that influence communities and individual citizens."

Section 2. Section 15-38-104, MCA, is amended to read:

"**15-38-104. Tax on mineral production.** (1) Except as provided in subsection (2), the annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing a mineral is $25, plus an additional amount computed on the gross value of product that was derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 1/2 of 1% of the amount of gross value of product at the time of extraction from the ground, if in excess of $5,000. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners may be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(2) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing*:*

(a) talc is $25 plus an additional amount computed on the gross value of product for talc derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 4%*; and*

(b) coal is $25 plus an additional amount computed on the gross value of product for coal produced in Montana during the calendar year immediately preceding at the rate of 0.4%."

Section 3. **Gross value of product for coal.** As used in this part when referring to coal, "gross value of product" is determined by multiplying the contract sales price, as defined in 15-35-102, by the tonnage produced.

Section 4. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 15, chapter 38, part 1, and the provisions of Title 15, chapter 38, part 1, apply to [section 3].

Section 5. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved April 22, 1991.

CHAPTER NO. 521

[SB 148]

AN ACT PROVIDING FOR CONFIDENTIALITY OF INFORMATION FROM A GASOLINE DISTRIBUTOR THAT IS IDENTIFIABLE AS PERTAINING TO AN INDIVIDUAL; AND AMENDING SECTIONS 15-70-205 AND 15-70-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-205, MCA, is amended to read:

"**15-70-205. Distributor's statement and payment** — ***confidentiality.*** (1) Each distributor shall, not later than the 25th day of each calendar month, render a true statement, duly signed, to the department of revenue of all gasoline distributed and received by him in this state during the preceding calendar month and containing ~~such~~ *any* other information ~~as~~ the department may reasonably require in order to administer the gasoline license tax law. The statement ~~shall~~ *must* be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the total tax ~~which shall~~ *that may* be deducted by the distributor as an allowance for evaporation and other loss of gasoline distributed by ~~such~~ *the* distributor; ~~provided,~~ however, ~~that~~ no ~~such~~ allowance ~~shall~~ *may* be deducted from the 1 cent tax on aviation gasoline.

(2) ~~Any~~ *A* distributor engaged in or carrying on his business at more than one place or location in this state may include all ~~such~~ places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. Nothing in this section may be construed to prohibit:

(a) the delivery to a distributor or his authorized representative of a certified copy of any return or report filed in connection with his tax;

(b) the inspection by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or his representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction."

Section 2. Section 15-70-209, MCA, is amended to read:

"**15-70-209. Information reports — *confidentiality*.** (1) ~~Any~~ *A* person receiving gasoline, including every exporter, common carrier, private carrier, and contract carrier of property who ~~shall haul, receive, transport, or ship any~~ *hauls, receives, transports, or ships* gasoline from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state, shall submit to the department of revenue, upon its request and within the time specified, a statement showing the number of gallons of gasoline contained in each shipment in interstate commerce and the movement of ~~such~~ *the* products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee, and the date of delivery to the consignee.

(2) ~~In case of any~~ *A* person, except *a* licensed ~~distributors~~ *distributor* or ~~exporters~~ *exporter*, who refuses or fails to file a statement as ~~herein provided~~

~~for,~~ *required in this section* ~~there~~ is ~~hereby imposed~~ *subject to* a penalty of $25 for each failure or refusal; ~~provided,~~ however, ~~that~~ if ~~any~~ *a* person ~~shall establish~~ *establishes* to the satisfaction of the department that his failure to file a statement as prescribed by the department was due to reasonable cause, the department shall waive the penalty.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. Nothing in this section may be construed to prohibit:

(a) the delivery to a person or his authorized representative of a certified copy of any report filed under subsection (1);

(b) the inspection by the attorney general or other legal representative of the state of the report or statement of a person if a person or distributor brings an action to set aside or review the tax based on the report or statement or if an action or proceeding has been instituted in accordance with the provisions of Title 15 against that person or distributor;

(c) the publication of statistics classified to prevent the identification of particular reports or statements and the items in the reports or statements;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax on motor fuels or the authorized representative of either officer of the report or statement of any person or the furnishing to the officer or authorized representative of an abstract of the report or statement, but permission may be granted or information may be furnished to the officer or his representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction."

Approved April 22, 1991.

CHAPTER NO. 522

[SB 158]

AN ACT ESTABLISHING A SYSTEM FOR TRANSFER OF A FARM IMPLEMENT DEALERSHIP TO A DESIGNATED FAMILY MEMBER OR DESIGNATED SUCCESSOR; ESTABLISHING RIGHTS AND DUTIES OF THE DEALER, GRANTOR, AND SUCCESSOR; PROVIDING A PROCEDURE TO DETERMINE THE RIGHT TO SUCCEED IN DEALERSHIP OWNERSHIP; PROVIDING THAT A GRANTOR MAY NOT CANCEL A DEALERSHIP BASED ON A NATURAL DISASTER;

PROVIDING FOR REPURCHASE OF DEALERSHIP INVENTORY AT 100 PERCENT OF NET COST UPON CANCELLATION OF A DEALERSHIP; PROVIDING FOR DAMAGES; AMENDING SECTIONS 30-11-702 AND 30-11-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-11-801, MCA, is amended to read:

"**30-11-801. Definitions.** As used in this part, the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Dealer" means a person who is a grantee of a farm implements dealership situated in this state.

(3) "Dealership" means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in 61-4-201, by which a person is granted the right to sell or distribute farm implements, in which there is a community of interest in the business of offering, selling, or distributing farm implements.

(4) "Department" means the department of commerce established in 2-15-1801.

(5) (a) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer.

(6) "Designated successor" means a person designated in writing by the retiring dealer to succeed him in the dealership or, in the case of an incapacitated dealer, a person appointed by a court as the legal representative of the dealer's property or the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

~~(4)~~*(7)* "Farm implement" means any vehicle, machine, or attachment designed or adapted and used exclusively for agricultural operations and only incidentally operated or used on the highways.

~~(5)~~*(8) (a)* "Good cause", *when used in 30-11-801 through 30-11-803 and 30-11-811,* means:

~~(a)~~*(i)* failure by a dealer to comply substantially with essential and reasonable requirements imposed upon him by the grantor or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or

~~(b)~~*(ii)* bad faith by the dealer in carrying out the terms of the dealership.

(b) Good cause, when used in [sections 2 through 8], means a showing that succession to a dealership would be detrimental to the public interest or to the representation of the grantor.

~~(8)~~*(9)* "Grantor" means a person who grants a dealership.

~~(7)~~*(10)* "Person" means any individual, partnership, association, corporation, or other entity."

Section 2. **Transfer.** A grantor may not unreasonably withhold consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership to a designated member or members of the family of the dealer, to the principal owner of the dealership, or to a person whom the dealer wishes to designate as a designated successor. The grantor may require that the designated successor or designated family member meet the reasonable requirements of the grantor. The requirements must be specified and made available to any dealer upon request but may not extend beyond business, financial, character, and experience qualifications. If a grantor determines that a proposed transferee does not meet the requirements, the grantor shall give the dealer written notice stating the specific reasons for withholding consent.

Section 3. **Refusal to honor succession to ownership — notice required.** (1) If a grantor believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a designated family member or by a designated successor under the existing franchise agreement, the grantor may, within 30 days of receipt of notice of the designated family member's or designated successor's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member or designated successor and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and the intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the designated family member or designated successor and the department or if the department rules in favor of the complainant in a hearing held pursuant to [section 4], the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

Section 4. **Procedure to determine right to succeed.** (1) A designated family member or designated successor who receives notice of the grantor's refusal to honor his succession to the ownership and operation of the dealership may, within the 60-day period provided for in [section 3], file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The grantor shall establish good cause for refusal to honor the succession to ownership.

(3) The franchise agreement must continue in effect until the final determination of the issues raised in the complaint.

(4) If the grantor prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7.

Section 5. **Written designation of succession unaffected.** [Sections 2 through 8] do not preclude a dealer from designating any person as his successor by written instrument filed with the grantor.

Section 6. **Illegal cancellation of dealership based on natural disaster.** A grantor may not attempt or threaten to terminate, cancel, fail to renew, or substantially change the circumstances of a dealership if the attempt or threat is based on the results of a natural disaster, including a sustained drought, in the dealership market area.

Section 7. **Civil damages.** A dealer suffering pecuniary loss due to a violation of [sections 2 through 8] who prevails in a civil action for the loss is entitled to damages equal to the pecuniary loss, together with court costs and reasonable attorney fees.

Section 8. Section 30-11-702, MCA, is amended to read:

"**30-11-702. Repurchase of inventory items upon cancellation of dealership or distribution contract.** (1) If a retailer enters into a written dealership contract and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items~~, except repair parts,~~ held by the dealer at the time of cancellation, *plus cost of freight to return the inventory*; and

(b) ~~85%~~ *100%* of the current net price of each repair part carried on the most recent price list or catalog *or the last catalog or price list in which the repair part was listed as* provided by the manufacturer or distributor and held by the dealer at the time of cancellation, *plus cost of freight to return the repair parts*.

(2) If a wholesaler enters into a written distribution contract and either the wholesaler, manufacturer, or distributor cancels the contract, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler, or credit to the wholesaler's account if the wholesaler has

outstanding any sums owing to the manufacturer or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the wholesaler at the time of cancellation; and

(b) ~~85%~~ *100%* of the current net price of each repair part carried on the most recent price list or catalog *or the last catalog or price list in which the repair part was listed as* provided by the manufacturer or distributor and held by the wholesaler at the time of cancellation.

(3) Payment or allowance of credit to the retailer's or wholesaler's account of the sum required in subsection (1) or (2) must be made ~~upon~~ *within 60 days of the* return of the inventory items to the wholesaler, manufacturer, or distributor. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment."

Section 9. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Codification instruction.** [Sections 2 through 7] are intended to be codified as an integral part of Title 30, chapter 11, part 8, and the provisions of Title 30, chapter 11, part 8, apply to [sections 2 through 7].

Section 11. **Effective date.** [This act] is effective on passage and approval.

Approved April 22, 1991.

CHAPTER NO. 523

[SB 270]

AN ACT ALLOWING AND REGULATING AMUSEMENT GAMES; AMENDING SECTION 23-5-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** Unless the context requires otherwise, the following definitions apply in [sections 1 through 7]:

(1) "Arcade" means a commercial establishment whose primary purpose is to make amusement games available for public play.

(2) "Concessionaire" means a person who owns one or more amusement games and who enters into an agreement with an operator, as defined in subsection (5)(a), to conduct games. A concessionaire may also be an operator.

(3) "Crane game" means an amusement game activated by the insertion of a coin or token by which the player uses one or more buttons, control sticks, or similar means of control or a combination of those means of control to position a mechanical or electromechanical claw or other retrieval device over a prize and attempts to retrieve it.

(4) "Nonprofit organization" means a nonprofit corporation or a nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, or service organization, established for a purpose other than conducting amusement games.

(5) "Operator" means a person who:

(a) enters into an agreement with a county fair commission, board of directors of a fair district, joint fair and civic center commission, business, or an association of businesses, such as a shopping center or downtown area, to provide amusement games; or

(b) makes an amusement game available for public play on his premises or on premises owned by another person.

(6) "Prize" means only tangible personal property with a wholesale value of $50 or less or nontransferable tokens, tickets, or coupons that may be accumulated and redeemed for tangible personal property with a wholesale value of $50 or less.

Section 2. **Requirements for games.** An operator, concessionaire, nonprofit organization, or arcade may provide amusement games to the public under the following conditions:

(1) The sale of a right to participate, the determination of winners, and the distribution of prizes all occur in the presence of all players.

(2) The appropriate permit to operate the game has been obtained as provided for in [section 3].

(3) The player pays cash for the right to play the game.

(4) A cash prize is not awarded, and only a prize is awarded. Prizes must be displayed and may not be repurchased.

(5) The system for awarding prizes does not require forfeiture of a previously won prize unless the prize is traded for a prize of equal or greater value.

(6) Concealed numbers or conversion charts are not used in conducting the game.

(7) The game is not designed or adapted with a control device to permit manipulation of the game to control the ability of a player to win or to predetermine who the winner will be. A crane game may not contain a variable resistor or any turn screw, knob, potentiometer, or similar device that may be used to alter the closing strength of the game's claws or retrieval device.

(8) The object of the game is attainable and possible to perform, under the stated game rules, from the playing position of the player.

(9) The game is conducted in a fair and honest manner and does not constitute a fraud upon the players.

Section 3. **Permits.** (1) Before making an amusement game available for public play, an operator, concessionaire, nonprofit organization, or arcade shall obtain the appropriate permit, as provided in subsections (2) through (4), from the board of county commissioners of the county in which the game is to be made available for public play. The board of county commissioners may not charge a fee for issuing a permit under this section.

(2) The board of county commissioners may issue a permit to an operator, as defined in [section 1(6)(a)], a concessionaire, or a nonprofit organization. Each permit entitles the permittee to operate amusement games in the county for a maximum of 14 consecutive days.

(3) The board of county commissioners may issue an operator, as defined in [section 1(6)(b)], an annual permit for each amusement game to be operated in the county. A permit is effective January 1 through December 31. An operator, as defined in [section 1(6)(a)], a concessionaire, a nonprofit organization, or an arcade that makes an amusement game available for public play need not obtain a permit under this subsection.

(4) The board of county commissioners may issue an annual permit to an arcade. A permit is effective January 1 through December 31.

Section 4. **Amusement games allowed.** (1) Crane games, as defined in [section 1], and the games described in subsection (2) may be made available for public play.

(2) (a) Fish pond (duck pond). The player catches a fish or other object floating in a pond of water by using a pole, hand, net, or string. All fish or objects are marked on the bottom, indicating the size of prize the player wins. The player is awarded a prize each time, and the player must be allowed to continue playing until a prize is won.

(b) Hoop or ring toss. The player tosses a hoop or ring over a target that must consist of bottles, pegs, blocks, or prizes. The operator shall specifically advise the player as to the degree that the hoop or ring must go over the target. All hoops of the same color used at an individual stand must be the same size. All targets used at an individual booth must be the same size, or the operator shall advise the player by posting signs or using color codes denoting the different sizes.

(c) Dart games. The target area for all dart games must be of a material capable of being penetrated and of retaining a metal tip dart. The target area must be in the rear of the stand and must be at least 3 feet but not more than 15 feet from the foul line. A target must be stationary at all times.

(i) Balloon (poparoo) (balloon smash). The targets are inflated balloons. The player throws one or more darts to burst a predetermined number of balloons. If the predetermined number of balloons are burst by the darts, the player receives the prize indicated.

(ii) Dart throw. The targets are various sizes and shapes located on the target area. The player throws darts individually at the target. A dart must stick in a predetermined target to win the prize as designated.

(iii) Tic tac toe dart. The target is a tic tac toe board located in the target area. The player throws darts at the target and wins a designated prize when the thrown darts line up in a row in the target. The darts may line up vertically, horizontally, or diagonally to win.

(iv) Add-um-up darts. The target consists of numbered squares located in the target area. Prizes are awarded based on the total score obtained by the player by throwing and sticking the darts in the numbered squares. A dart that sticks on a line must be thrown again. The player may add up the score of the darts thrown.

(d) Ball tosses. In all ball toss games, the balls used at a specific stand must be of the same weight and size. Targets must be of the same weight and size, or the operator shall color code the targets and advise the player of the difference in targets by posting a sign or providing a duplicate of the target showing the limitations or restrictions. The sign or duplicate target must be readily visible to the player.

(i) Milk bottle toss. The player tosses or throws balls at simulated milk bottles. The player wins by either tipping over or knocking bottles off the raised platform as designated by the operator. The bottles may be constructed of wood, metal, or plastic or a combination of the three. Operators may vary the number of bottles and balls used in each game. Floating or loose weights in bottles are not allowed. The weight of individual bottles may not exceed 7 1/2 pounds.

(ii) Milk can (Mexican hat) (cone). The player tosses a ball into the opening of a milk can, into a fiberglass Mexican hat turned upside down, or through a cone to win.

(iii) Football toss (tire toss). The player tosses or throws a football through a stationary tire or hoop to win.

(iv) Basketball toss/throw. The player tosses or throws a basketball through a hoop to win.

(v) Bushel baskets. The player tosses balls into a bushel basket mounted on a stationary backdrop at a fixed angle. The balls must stay in the basket to win. Rim shots are allowed, except the operator may designate the top 6 inches of the basket rim by color and disallow balls striking this area as winning tosses.

(vi) Cat-ball-toss (star/diamond toss). The player tosses balls into a simulated cat's mouth or a round, diamond, or star-shaped hole to win.

(vii) Ping pong toss. The player tosses ping pong balls into dishes, saucers, cups, or ashtrays floating in water. A predetermined number of balls must remain in the dishes, saucers, cups, or ashtrays for the player to win. The dishes, saucers, cups, or ashtrays must have water covering the bottom of the surface that is facing up.

(viii) Fishbowl game. The player tosses ping pong balls into a water-filled fish bowl to win.

(ix) Volleyball toss (soccer ball). The player tosses a volley or soccer ball into a keg-type container mounted on a stationary backdrop at a fixed angle. The ball must stay in the keg to win a prize. Rim shots are authorized as stated in subsection (2)(d)(iv) for bushel baskets.

(x) Goblet ball (whiffle ball). The player tosses a whiffle ball into a target area of glass or plastic goblets. Located in the target area are colored goblets that determine the type of prize the player wins. At least 33% of the goblets in the target area must be winners. The ball must stay in the goblet to win a prize.

(xi) Break the plate/bottle. The player tosses or throws a ball at a plate, phonograph record, or bottle. The type of prize won is determined by the number of targets broken by the player.

(xii) Punk rack. The targets for this game are rows of dolls or cats on a ledge at the rear of the stand. The dolls or cats must be filled with sawdust, styrofoam, cotton, or other like material that provides a firm base for the ball to strike. The hair protruding from the side of the dolls or cats may not exceed 3 inches. The prize is determined by how many dolls or cats the player knocks over or off the ledge, as posted by the operator.

(xiii) Teeth game. The target consists of a large face with wooden teeth. The prize is determined by how many teeth the player knocks down by throwing a ball.

(xiv) Toilet game (doniker). To win, the player tosses or throws a ball or other object through a toilet seat located at the rear of the stand.

(xv) Coke roll. The player rolls a ball down an alley with the object of knocking over two coke bottles standing at the end of the alley. The player must tip over both bottles to win. Bottles must be placed on predetermined spots painted on the surface of the alley.

(xvi) Rolldown. The player rolls balls down an alley with the object of putting the balls in numbered slots at the end of the alley. The scores represented by the balls in each numbered slot are added up at the conclusion of the game. Scores above or below a predetermined score win. The alley surface must be smooth and free from defects at all times.

(xvii) Fascination (I got it). Fascination is a group game that involves competition among the players. The target area consists of 25 holes, and the player tosses or rolls a ball into one of the holes. The object of the game is to get five balls in a row either vertically, horizontally, or diagonally. The first player to accomplish this is the winner. Prize size is determined by the number of players participating in each game.

(xviii) Cakewalk. The players walk on a predetermined route with designated spots, and when the operator stops the walk, the player on a predetermined spot wins a prize.

(xix) Batter-up. The player uses a whiffle ball bat to swing and strike whiffle balls that are pitched at medium speed from a pitching machine. The player wins when he hits a ball into the home run shelf. The home run shelf is located at the back of the batting cage approximately 15 feet from the player.

(xx) Sky bowling. Two bowling pins are set on predetermined painted spots on a shelf. A ball is attached to a chain suspended from a stationary support at least 6 inches to the right or left of the bowling pins. The object is to swing the ball, miss the pins with the ball as it goes forward, and knock the pins over as the ball returns.

(xxi) Clown rolldown. A ball is tossed through the open mouth of a moving clown or animal head. The ball then rolls down a chute to numbered slots at the rear of the clown or animal head. The scores represented by the balls in each numbered slot are added up at the conclusion of the game. Prizes are awarded on the points achieved.

(xxii) Skee ball. The player rolls a ball up the mechanical bowling alley into targets. A computer adds up the scores, and the predetermined scores win.

(xxiii) Speedball radar game. The player gets four balls and throws three balls through radar to establish speeds and to estimate at what speed the fourth ball will pass through the radar. The player wins a prize if he accurately estimates the speed of the fourth ball. The radar must be mounted and stationary.

(e) Shooting games. These games are conducted by the player using a weapon of some type to shoot at a target in the rear of the stand. The safety requirements of local city or county ordinances must be observed by the operator and player. The target may be stationary or mobile.

(i) Short range (shooting gallery). In this game, the player is given four rounds to shoot at a spot target 1/4 inch or less in diameter. The player wins when the spot target is completely shot out, or the player is given five rounds to shoot one round each at five triangular, round, or 1/2-inch square targets. The prize is determined by the number of targets struck by the player, or the player is given five rounds to shoot one round each at five triangular, round, or 1/2-inch square targets. Within each target is a bull's eye. The player must hit the bull's eye without touching the outer surface of the target. The prize is determined by the number of bull's eyes correctly hit.

(ii) Shoot-out-the-star (machine gun). The player, using an automatic air pellet gun, is given 100 pellets to shoot at a star-shaped target. The player must shoot out all of the target to win. The star cannot be more than 1 1/4 inches from point-to-point.

(iii) Water racer. This group game involves a competition, with the player winning a prize based on the number of players competing. The player, using a water pistol, shoots the water into a target. The water that strikes the target causes a balloon to inflate or advances an object to ring a bell. The first player who bursts the balloon or rings the bell is the winner.

(iv) Rapid fire. This group game involves competition similar to the water racer game described in subsection (2)(e)(iii). The player uses an electronic pistol to shoot at a target. Hits on the target give the player a score. The first player to reach a predetermined score is the winner.

(v) Cork gallery. The player uses a cork gun or similar device to propel objects, including but not limited to corks, suction cup darts, or styrofoam balls, to shoot at targets located on a shelf or at a bull's eye target. The player must hit the bull's eye or knock the target over or off the shelf to win a prize. The prize is determined by the target knocked over or off the shelf, by the number of targets knocked over or off the shelf, or by the player accomplishing other tasks, as stated in the posted rules. When suction cup darts or other darts are used and fail to stay on or in the target, the player must shoot the dart again. The base of each target must be uniform, front and rear.

(vi) Boomball. The player uses a cannon with compressed air to propel balls into a target area. The targets have varied point value. If the ball remains in the target, a computer adds up the score. Prizes are awarded based on the points achieved.

(f) Coin pitchers.

(i) Spot pitch (lucky strike). The player pitches a coin at colored spots located on a table in the center of the stand. The coin must touch or stay inside of a spot to win a prize.

(ii) Plate pitch. The player pitches a coin onto a glass plate to win a prize as designated.

(iii) Glass pitch (bowl). The player pitches a coin into or onto dishes or glasses. If the coin remains in a top target glass item, then the player wins that item.

(g) Miscellaneous games.

(i) Skill chute (bulldozer) (penny fall). The player inserts a coin or token into a chute, aiming the coin or token so that it will fall in front of a continuous sweeper (bulldozer). If the coin or token is aimed correctly, the sweeper (bulldozer) will push additional tokens or prizes into a hole or chute that sends them to the player. Tokens are exchanged for prizes. If there is a hidden ledge, tip, or similar obstruction that inhibits the passage of tokens or prizes into the hole or chute that sends them to the player, the operator shall post a sign to advise the players.

(ii) Tip-em-up bottle. The player is provided with a pole and a string that has a hoop or ring attached at the end. The player, using the pole with a ring, must raise a bottle lying on its side to an upright position to win.

(iii) Hi-striker. The player, using a wooden maul, must strike a lever target that causes a metal weight to rise on a guideline or track and ring a bell. The player must ring the bell a predetermined number of times to win a prize.

(iv) Rope ladder. The player must climb up a rope ladder, which is anchored at both ends by a swivel, and ring a bell or buzzer to win a prize.

(v) Whac-a-mole. This is a group game that has a target surface with 5 holes through which animated moles pop up and down at random. The player must hit as many moles as possible with a mallet. The first player to hit a predetermined number of moles wins.

(vi) Dip bowling game. The player rolls a bowling-type ball over a hump in the track. If the ball stays on the back side of the hump, the player wins.

(vii) Horserace derby. This is a group game in which a player advances his horse by shooting or rolling a ball in the target area. The faster and more skillfully the player shoots or rolls his ball, the faster his horse will run. The first horse to cross the finish line wins.

(viii) Shuffleboard. The player pushes a puck down a shuffleboard alley to knock over poly pins at the end of an alley. The player wins by knocking down all the pins.

(ix) Bean bag. The player tosses or throws a bean bag or a simulated bean bag at cans, bottles, or other objects on a raised platform. The player wins a prize when he either knocks the object off the raised platform or tips the target over.

(x) Soccer kick. The player kicks a soccer ball through a hole in the target area to win.

(xi) Frog game. A plastic frog or similar object sits on a small end of a teeter-totter. The opposite end of the teeter-totter is struck with a mallet, causing the frog to fly off the teeter-totter. If the frog lands in a pail or similar receptacle, the player wins a prize.

(xii) Cover the spot. The object of this game is for the player to drop five circular discs onto a circular spot, completely covering the spot. The diameter of each of the discs used to cover the spot must be a minimum of 64% of the diameter of the spot to be covered. The spot to be covered must be painted or drawn on a permanent, solid material, such as metal or wood, or may be a lighted circle. The spot and each disc must have a uniform diameter.

(xiii) Pocket billiards. Using a regulation pocket billiard table, a player must run a consecutive number of balls to win a prize. The number of balls is set by the operator.

Section 5. **Authority to inspect.** At any time during normal business hours, local law enforcement officers and department of justice employees may inspect any amusement game made available for public play by an operator, concessionaire, nonprofit organization, or arcade for compliance with [section 2].

Section 6. **Gambling and illegal gambling devices and enterprises prohibited.** An operator, concessionaire, nonprofit organization, or arcade may not make available for play a gambling or illegal gambling device or enterprise governed under Title 23, chapter 5, parts 1 through 6.

Section 7. **Violations.** A person who purposely or knowingly violates or procures, aids, or abets in a violation of [section 2] is punishable by a fine not to exceed $1,000 or by imprisonment in the county jail for a term not to exceed 6 months, or both.

Section 8. Section 23-5-112, MCA, is amended to read:

"**23-5-112. Definitions.** Unless the context requires otherwise, the following definitions apply to parts 1 through 6 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 6 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. No more than 75 numbers may be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover a previously designated arrangement of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table authorized by permit and made available to the public on the premises of a licensed gambling operator.

(7) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(8) "Department" means the department of justice.

(9) "Distributor" means a person who:

(a) purchases or obtains from another person equipment of any kind for use in gambling activities; and

(b) sells, leases, or otherwise furnishes the equipment to another person for use in public.

(10) "Gambling" or "gambling activity" means risking money, credit, deposit, check, property, or any other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise. *The term does not include amusement games regulated by [sections 1 through 7].*

(11) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(12) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(13) "Gross proceeds" means gross revenue received less prizes paid out.

(14) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department.

(15) "Illegal gambling enterprise" means a gambling enterprise that violates a statute or a rule of the department.

(16) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

(17) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

(18) "License" means an operator's, dealer's, or manufacturer-distributor's license issued to a person by the department.

(19) "Licensee" means a person who has received a license from the department.

(20) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator.

(21) "Lottery" or "gift enterprise" means a scheme, by whatever name known, for the disposal or distribution of property by chance among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance. However, "gift enterprise" does not mean:

(a) lotteries authorized under part 10 of this chapter; or

(b) cash or merchandise attendance prizes or premiums that the county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos.

(22) "Manufacturer" means a person who assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device.

(23) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public, a gambling device or gambling enterprise authorized under parts 1 through 6 of this chapter.

(24) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 6 of this chapter.

(25) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(26) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(27) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access; or

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization.

(28) "Raffle" means a gift enterprise in which each participant buys a chance or chances to win a prize.

(29) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise,

tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner. This definition does not apply to video gambling machines authorized under part 6 of this chapter.

(30) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 9. **Effective date.** [This act] is effective on passage and approval.

Approved April 22, 1991.

CHAPTER NO. 524

[SB 381]

AN ACT ESTABLISHING AN ALTERNATIVE HEALTH CARE BOARD; PROVIDING FOR THE COMPOSITION OF THE BOARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Alternative health care board — composition — terms — allocation.** (1) There is an alternative health care board.

(2) The board consists of members appointed by the governor with the consent of the senate. The members are:

(a) two persons from each of the health care professions regulated by the board who have been actively engaged in the practice of their respective professions for at least 3 years preceding appointment to the board;

(b) one public member who is not a member of a profession regulated by the board; and

(c) one member who is a Montana physician whose practice includes obstetrics.

(3) The members must have been residents of this state for at least 3 years before appointment to the board.

(4) Following the initial appointment of members to the board, all members shall serve 4-year terms. A member may not be appointed for more than two consecutive terms. The governor may remove a member from the board for neglect of a duty required by law, for incompetency, or for unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121.

(6) The board is designated a quasi-judicial board for the purposes of 2-15-124, except that one member of the board need not be an attorney licensed to practice law in this state.

Section 2. **Initial appointments.** (1) The two members who are initially appointed to the alternative health care board from the professions regulated by the board must be appointed:

(a) one for a term of 4 years; and

(b) one for a term of 6 years.

(2) After the initial terms are served, the members from the professions are appointed for 4-year terms in accordance with [section 1].

Section 3. **Coordination instruction.** (1) If Senate Bill No. 172 is passed and approved and if it contains a section of law creating the board of direct-entry midwifery and a section of law defining the term "board" as the board of direct-entry midwifery, then the section in Senate Bill No. 172 creating the board of direct-entry midwifery is void and the section in Senate Bill No. 172 defining the board must provide that "board" means the alternative health care board established in [section 1 of this act]. Any reference to the term "board" in Senate Bill No. 172 must then be construed to mean the alternative health care board established in [section 1 of this act], and any reference in Senate Bill No. 172 to the bill section creating the board of direct-entry midwifery must be construed as a reference to [section 1 of this act].

(2) If Senate Bill No. 66 is passed and approved and if it contains a section of law creating the board of naturopathic physicians and a section of law defining the term "board" as the board of naturopathic physicians, then the section of law in Senate Bill No. 66 creating the board of naturopathic physicians is void and the section of law in Senate Bill No. 66 defining the board must provide that the term "board" means the alternative health care board as established in [section 1 of this act]. Any reference to the term "board" in Senate Bill No. 66 must then be construed to mean the alternative health care board established in [section 1 of this act], and any reference in Senate Bill No. 66 to the bill section creating the board of naturopathic physicians must be construed as a reference to [section 1 of this act].

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to [section 1].

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved April 22, 1991.

CHAPTER NO. 525

[HB 59]

AN ACT PROHIBITING RELEASE OF A PERSON'S DRIVING RECORD WITHOUT THAT PERSON'S APPROVAL; PROVIDING CERTAIN EXCEPTIONS; AND AMENDING SECTION 61-11-105, MCA.

STATEMENT OF INTENT

To implement 61-11-105(2), a statement of intent is required for this bill to provide guidelines for the adoption of rules under which the department of justice may determine if a person or firm has a legitimate purpose for requesting the individual driving record of a licensee. "Legitimate purpose" includes the formation and execution of a contract when the contract relies in part upon the contents of an individual's driving record.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-11-105, MCA, is amended to read:

"**61-11-105. Release of information — fees.** (1) ~~The~~ *Except as provided in subsection (2), the* department shall, upon request *and with the licensee's approval,* furnish a person the individual driving record of a licensee showing the following:

(a) licensee identification data ~~and address~~;

(b) driver's license status and expiration date;

(c) convictions of the licensee; and

(d) traffic accidents in which the licensee was involved.

(2) Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena. *The department shall, upon request, furnish a criminal justice agency or any person or firm having a legitimate purpose as determined by the department with the individual driving record of a licensee showing the items listed in subsections (1)(a) through (1)(d).*

(3) A fee of $3 must be paid for each record requested. A fee of $10 must be paid if a certified record, *as provided in 61-11-102(6),* is requested ~~as provided in 61-11-102(6)~~. Individual driving records must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency."

Approved April 22, 1991.

CHAPTER NO. 526

[HB 142]

AN ACT CREATING A STATUTORY JOINT COMMITTEE ON POSTSECONDARY EDUCATION POLICY AND BUDGET; APPROPRIATING FUNDS FOR THE COMMITTEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the 1987 Legislature recognized the need to review the adequacy of the funding method for the Montana University System and appointed an eight-member committee to study University System funding issues in conjunction with the Commissioner of Higher Education and the Governor's Office of Budget and Program Planning; and

WHEREAS, the 1989 Legislature, through adoption of House Bill No. 354, provided for appointment of an eight-member, bipartisan postsecondary education study committee to study postsecondary education fiscal policy and accountability issues; and

WHEREAS, the Postsecondary Education Study Committee recognizes the need for ongoing communication between the Legislative and Executive Branches and the Board of Regents; and

WHEREAS, at present, there is no effective mechanism for these parties to communicate on a regular basis; and

WHEREAS, the Legislature recognizes not only the need to be regularly informed of the long-range plans and short-range goals developed by the Board of Regents for the Montana University System, the community colleges, and the vocational-technical center system but also the need to be informed of the success or failure in attaining those plans and goals; and

WHEREAS, the Legislature recognizes the need to develop a link between planning and funding in postsecondary education; and

WHEREAS, the Legislature endorses the concept of outcome assessment as an accountability tool in postsecondary education; and

WHEREAS, the Legislature acknowledges that the Montana Constitution gives the Board of Regents full power, responsibility, and authority to supervise, coordinate, manage, and control the Montana University System and to supervise and coordinate other public educational institutions assigned by law; and

WHEREAS, the Legislature is vested with the exclusive authority to appropriate money; and

WHEREAS, the Legislature embraces its constitutional responsibility to ensure by law strict accountability of all revenue received and money spent by the state; and

WHEREAS, the Board of Regents has indicated its desire to work cooperatively with the Legislature for the benefit of the Montana University System and the State of Montana; and

WHEREAS, formation of a statutory joint committee on postsecondary education policy and budget would enhance communication among the Legislature, the Board of Regents, and the Executive Branch for the benefit of the State of Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Committee" means the joint committee on postsecondary education policy and budget created in [section 2].

(2) "University system" means those units listed in 20-25-201 and the vocational-technical centers designated in 20-16-106.

Section 2. **Joint committee on postsecondary education policy and budget — appointment and composition.** (1) There is a joint committee on postsecondary education policy and budget.

(2) The committee is composed of:

(a) two members of the senate, appointed by the committee on committees on a bipartisan basis, and two members of the house of representatives, appointed by the speaker of the house on a bipartisan basis;

(b) two regents appointed by the chairman of the board of regents;

(c) the commissioner of higher education; and

(d) a representative from the executive branch appointed by the governor.

(3) Legislative appointments must be made before final adjournment of a regular session.

(4) All other appointments must be made prior to the first committee meeting following adjournment of a regular session.

Section 3. **Term of office.** (1) Legislative appointments to the committee are for 2 years. A legislative member of the committee shall serve until his term of office as a legislator is ended or his successor is appointed, whichever occurs first.

(2) Appointments of members of the board of regents to the committee are for 2 years or until the expiration of the members' terms on the board of regents, whichever occurs first.

(3) The commissioner of higher education's appointment to the committee is continuous.

(4) The appointment of an executive branch representative to the committee is for 2 years.

Section 4. **Vacancies.** (1) A legislative vacancy occurring during a legislative session must be filled in the same manner as the original appointment.

(2) A legislative vacancy occurring when the legislature is not in session must be filled by the selection of a member from the appropriate house and political party by the remaining members of the committee.

(3) All other vacancies must be filled in the same manner as the original appointment.

(4) An appointment to the committee under this section is for the unexpired term of the original member.

Section 5. **Officers — quorum — meetings.** (1) The committee shall select one of its members as chairman and may elect other officers it considers necessary.

(2) A simple majority of the committee constitutes a quorum to do business.

(3) The committee shall meet at least quarterly.

Section 6. **Compensation.** (1) Legislative members are entitled to receive compensation and expenses as provided in 5-2-302.

(2) Members appointed by the board of regents are entitled to:

(a) $50 for each day in which a member is actually and necessarily engaged in the performance of committee duties; and

(b) travel expenses, as provided for in 2-18-501 through 2-18-503.

Section 7. **Staff assistance.** The legislative fiscal analyst shall provide staff assistance to the committee. The legislative fiscal analyst has the same authority of investigation and examination on behalf of the committee as provided under 5-12-303.

Section 8. **Powers and duties of committee.** (1) The committee may:

(a) organize and adopt rules to govern its proceedings; and

(b) exercise the investigatory powers of a standing committee under Title 5, chapter 5, part 1.

(2) The committee shall:

(a) provide information to the board of regents in the following areas:

(i) annual budget allocations;

(ii) annual goal statement development;

(iii) long-range planning;

(iv) outcome assessment programs; and

(v) any other area that the committee considers to have significant educational or fiscal policy impact;

(b) periodically review the success or failure of the university system in meeting its annual goals and long-range plans;

(c) periodically review the results of outcome assessment programs;

(d) develop mechanisms to ensure strict accountability of the revenues and expenditures of the university system;

(e) act as a liaison between both the legislative and executive branches and the board of regents;

(f) encourage cooperation between the legislative and executive branches and the board of regents; and

(g) report its activities, findings, recommendations, and any proposed legislation to the legislature.

Section 9. **Appropriation.** There is appropriated for the biennium ending June 30, 1993, $26,000 for travel costs and per diem and administrative support costs and $40,000 for consultant costs from the general fund to the office of the legislative fiscal analyst for use by the joint committee on postsecondary education policy and budget.

Section 10. **Effective date.** [This act] is effective on passage and approval.

Section 11. **Termination.** [This act] terminates July 1, 1993.

Approved April 22, 1991.

CHAPTER NO. 527

[HB 497]

AN ACT REVISING SALARIES OR COMPENSATION FOR CERTAIN COUNTY OFFICERS; AMENDING SECTIONS 7-4-2107, 7-4-2503, AND 7-4-2504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2107, MCA, is amended to read:

"**7-4-2107. Compensation of county commissioners.** (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive an annual salary equal to the annual salary established in 7-4-2503 for the clerk and recorder plus $2,000, but the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that level is lower than the level required by this subsection.

(2) Each member of the board in all other counties ~~is entitled to a salary for each day in which he is actually and necessarily engaged in the performance of board duties as set by resolution of the board. For the fiscal year beginning July 1, 1985, the salary is $60 a day. Thereafter, on or before July 1 of each year, the county commission shall fix a cost-of-living adjusted daily salary by adding to the amount of $60 an increment calculated as provided in 7-4-2504~~ *may receive an annual salary equal to the annual salary established in 7-4-2503(1)(a)(ii) for the clerk and recorder or a salary at a per-day rate determined by using the salary established in 7-4-2503(1)(a)(ii) for the clerk and recorder*, but the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that level is lower than the level required by this subsection. *The salary as determined by the board shall apply uniformly to all board members.*

(3) This section does not apply to counties that have adopted a charter form of government."

Section 2. Section 7-4-2503, MCA, is amended to read:

"**7-4-2503. Salary schedule for certain county officers.** (1) *(a)* The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties where the office is authorized, for the fiscal year beginning July 1, ~~1981~~ *1991*, ~~is computed by adding~~ *and each year thereafter must be established by the county governing body at no less than 80% of* the annual base salary of:

~~(a)~~*(i)* ~~$14,000~~ *$25,000* for the counties of the first through fifth class *added* to the population increment of $10 for each 100 persons or major fraction thereof included in the county's population as determined by the ~~1980~~ *1990* federal decennial census; or

~~(b)~~*(ii)* ~~$12,000~~ *$18,000* for counties of the sixth and seventh class *added* to the population increment of ~~$20~~ *$10* per 100 persons or major fraction thereof in the county's population as determined by the ~~1980~~ *1990* federal decennial census.

(b) The annual base established by the county governing body in subsection (1) must be uniform for all county officers referred to in subsection (1).

(2) (a) An elected county superintendent of schools shall receive, in addition to the salary based upon subsection (1), the sum of $400 per year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 per year.

(b) The county sheriff shall receive, in addition to the salary based upon subsection (1), the sum of $2,000 per year.

(c) The county sheriff shall receive a longevity payment amounting to 1% of the base salary set forth in subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the base salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(3) (a) In each county with a population in excess of 30,000, the county attorney shall be a full-time official under 7-4-2704, and his salary for the fiscal year beginning July 1, 1981, shall be $36,500. In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney for the fiscal year beginning July 1, 1981, shall be $36,500.

(c) Beginning on July 1, ~~1982~~ *1991*, and on July 1 of each succeeding year, each county attorney shall be entitled to an increase in salary calculated by adding to his annual salary on July 1, ~~1981~~ *1991*, an increment of ~~70%~~ *100%* of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. Unless restored pursuant to 7-4-2504(2), any cost-of-living increment that would have been received for such fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of his employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of his employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase, but, unless longevity increases are restored pursuant to 7-4-2504(2), the years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases.

(4) For each 10th year after the fiscal year beginning July 1, 1981, the latest federal decennial census statistics shall be the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year shall be based on the last calendar year's annual estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify."

Section 3. Section 7-4-2504, MCA, is amended to read:

"**7-4-2504. Salaries to be fixed by resolution — cost-of-living increments.** (1) The county governing body shall by resolution~~,~~ on or before July 1~~,~~ ~~1982, and on or before July 1~~, *1992, and on or before July 1* of each year thereafter adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, and the clerk of the district court; the county auditor (if there is one); and the county surveyor (if he receives a salary) ~~for cost-of-living increase by adding to the annual salary computed under 7-4-2503 an increment calculated by applying to the annual salary established by 7-4-2503(1) plus previous cost-of-living increments, 70% of~~. *Except as provided in subsection (3), the salaries fixed may be no less than 80% of the annual base salary provided for in 7-4-2503(1) plus a cost-of-living increment based on* the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The county governing body may, however, for all or the remainder of each fiscal year, in conjunction with setting salaries for the same action on the salaries of justices of the peace (if applicable), the county governing body, county attorney, and coroner, set the salary at the prior fiscal year level if that level is lower than the level required by this subsection. The cost-of-living increment for the fiscal year beginning July 1, ~~1983~~ *1992*, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. In such case the cost-of-living increment that would have been received for such fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(2) The county governing body may, in any subsequent fiscal year, restore for 1 or more years the annual cost-of-living increments withheld pursuant to subsection (1). If cost-of-living increments are restored, the longevity increases provided for sheriffs in 7-4-2503, for deputy county attorneys in 7-4-2503(3)(d)(i), and for undersheriffs and deputy sheriffs in 7-4-2510 must also be restored for the years for which the cost-of-living increment was restored.

(3) If the application of 7-4-2503 does not qualify a county official for a salary increase ~~of at least 7% on July 1, 1981, his salary on that date shall be increased by an amount sufficient to provide him total salary equal to 7% more than during the previous year~~, *his salary base for the fiscal year beginning July 1, 1991, must be the fiscal year 1990-91 salary plus 100% of the last previous calendar year's consumer price index for all urban consumers as set forth in subsection (1).*

(4) The county governing body shall by resolution, prior to July 1 of each year, establish the salary of the coroner and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in subsection (1), set the salary at the prior fiscal year level. The salary must be in effect upon the first day of each ensuing fiscal year."

Section 4. **Payment of county assessor salary.** The amount of county assessors' salaries to be paid by the state for fiscal 1992 and fiscal 1993 is limited to the amount of money appropriated in [this act] and any pay plan bill that is enacted for that purpose.

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved April 22, 1991.

CHAPTER NO. 528

[HB 534]

AN ACT TO CHANGE THE METHOD FOR ESTABLISHING A HIGH SCHOOL TRUSTEE POSITION FOR REPRESENTATION FOR ANY TERRITORY OF THE DISTRICT THAT IS WITHOUT EQUITABLE

REPRESENTATION ON THE DISTRICT BOARD OF TRUSTEES; AND AMENDING SECTIONS 20-3-302, 20-3-351, AND 20-3-352, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-352, MCA, is amended to read:

"**20-3-352. Request and determination of number of high school district additional trustee positions — *nonvoting trustee.*** (1) As provided in 20-3-351(1)(b), ~~each~~ *a* high school district, except a high school district operating a county high school, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, but without *equitable* representation on the high school district trustees under the provision of 20-3-351(1)(a), request the establishment of ~~such~~ additional trustee positions *under the provisions of subsection (2) or when the electors approve an alternative method of electing members of the board of trustees under the provisions of subsection (3).*

(2) A request for additional trustee positions ~~shall~~ *must* be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(a) The taxable valuation of the elementary district ~~which~~ *that* has its trustees placed on the high school trustees ~~shall~~ *must* be divided by the number of positions on the trustees of ~~such~~ *the* elementary district to determine the taxable valuation per trustee position.

(b) The taxable valuation used for the calculation in subsection (2)(a) ~~above shall~~ *must* be subtracted from the taxable valuation of the high school district to determine the taxable valuation of the territory of the high school district without representation on the high school district trustees.

(c) The taxable valuation determined in subsection (2)(b) ~~above-shall~~ *must* be divided by the taxable valuation per trustee position calculated in subsection (2)(a) ~~above~~. The resulting quotient ~~shall~~ *must* be rounded off to the nearest whole number, *except that when the quotient is less than 0.5, at least one nonvoting trustee position must be established for the territory without representation on the high school district board of trustees under the provision of 20-3-351(1)(a).*

~~(3)~~*(d)* ~~The~~ *Except for a nonvoting trustee position, the* number determined in subsection (2)(c) ~~above shall~~ *must* be the number of additional trustee positions, except that the number of additional trustee positions ~~shall~~ *may* not exceed four in a first- or second-class high school district or two in a third-class high school district except when two-thirds or more of the high school enrollment of the high school district and two-thirds or more of the taxable valuation of the high school district are located outside of the elementary district ~~which~~ *that* has its trustees placed on the high school district trustees. When this situation exists, three additional trustees ~~shall~~ *must* be elected from the elementary school districts ~~where~~ *in which* the high school is not located and one additional trustee ~~shall~~ *must* be elected at large in the high school district.

(3) (a) If more than half of the electors of the high school district reside outside the territory of the elementary school district in which the high school district buildings are located, at least 10% of the electors of the high school district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent, requesting an election to consider a proposition on the question of establishing the following alternative method of electing the members of the high school district board of trustees:

(i) one trustee to be elected from each elementary school district with territory included in the high school district; and

(ii) two or three trustees to be elected at large in the high school district, whichever number results in an odd number of members on the board of trustees.

(b) (i) When the county superintendent receives a valid petition, the county superintendent shall order the trustees of the high school district to conduct an election on the next regular school election day on the proposition allowed under the provisions of subsection (3)(a).

(ii) If the electors of the district approve a proposition to establish the alternative method of electing the high school board of trustees, the county superintendent shall order that the members of the board of trustees be elected according to subsection (3)(a) at the next regular school election.

(c) Whenever the trustees are elected at one regular election under subsection (3)(b), the members who are elected shall draw by lot to determine their terms of office. The terms of office by trustee position must be divided as equally as practicable among 1-, 2-, and 3-year terms.

(d) A petition to call an election for the purposes of subsection (3) may not be submitted to the county superintendent more than one time in each 5-year period."

Section 2. Section 20-3-302, MCA, is amended to read:

"**20-3-302. Legislative intent to elect less than majority of trustees.** (1) It is the intention of the legislature that the terms of a majority of the trustee positions of any district with elected trustees ~~shall~~ *may* not regularly expire and be subject to election on the same regular school election day. Therefore, in elementary districts, there ~~shall~~ *may* not be more than three trustee positions in first-class districts, two trustee positions in second-class districts or third-class districts having five trustee positions, or one trustee position in third-class districts having three trustee positions regularly subject to election at the same time. In high school districts there ~~shall~~ *may* not be more than two additional trustee positions in first- or second-class districts or more than one in third-class districts regularly subject to election at the same time. In high school districts operating a county high school, there ~~shall~~ *may* not be more than two trustee positions to be filled by members residing in the elementary district where the county high school building is located or more than one trustee position to be filled by members residing outside of the elementary district where the county high school building is located subject to election at the same time.

(2) While it is the intention of the legislature that the terms of a majority of trustees of any district ~~shall~~ *may* not regularly expire and be subject to election at the same time, it is recognized that the following circumstances, relating to the terms of trustees appointed to newly created positions or to positions vacated by death, resignation, or operation of law, may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time:

(a) the creation of a new elementary district under the provisions of 20-6-217;

(b) the consolidation of two or more elementary districts to form an elementary district under the provisions of 20-6-203;

(c) the establishment of additional trustee positions of a high school district under the provisions of 20-3-353 or 20-3-354 *or new trustee positions under the provisions of 20-3-352(3)*;

(d) the change of a district's classification under the provisions of 20-6-201 and 20-6-301;

(e) the filling of a trustee position ~~which~~ *that* has become vacant under the provisions of 20-3-308 or any other provision of law;

(f) the establishment of additional elementary trustee positions under the provisions of 20-3-341(3); or

(g) any other circumstance arising under the law wherein a trustee position is filled by appointment subject to election at the next regular school election."

Section 3. Section 20-3-351, MCA, is amended to read:

"**20-3-351. Number of trustee positions in high school districts.** (1) ~~The~~ *Except as provided in 20-3-352(3), the* trustees of a high school district, except a high school district operating a county high school, ~~shall~~ *must* be composed of:

(a) the trustees of the elementary district ~~where~~ *in which* the high school building is located or, if there is more than one elementary district ~~where~~ *in which* high school buildings are located, the trustees of the elementary district designated by the high school boundary commission; and

(b) the additional trustee positions determined in accordance with 20-3-352*(2)*.

(2) The trustees of a high school district operating a county high school ~~shall~~ *must* be composed of seven trustee positions."

Approved April 22, 1991.

CHAPTER NO. 529

[HB 544]

AN ACT TO ALLOW PROCEEDS FROM THE SALE OF DEPARTMENT OF JUSTICE EQUIPMENT TO BE DEPOSITED TO THE CREDIT OF THE ACCOUNTING ENTITY FROM WHICH IT WAS ORIGINALLY PURCHASED; AMENDING SECTION 44-1-106, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-1-106, MCA, is amended to read:

"**44-1-106. Authority of department of justice to dispose of equipment.** The department of justice shall have authority to destroy, sell, or dispose of any and all obsolete equipment, ~~or~~ uniforms, or parts ~~thereof, and any moneys~~ *of obsolete equipment or uniforms. Any money* received ~~therefrom shall~~ *from the sale of these items must* be ~~paid~~ *deposited* into the state ~~general fund~~ *treasury in the fund and to the credit of the accounting entity from which it was originally purchased.*"

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved April 22, 1991.

CHAPTER NO. 530

[HB 549]

AN ACT TO GENERALLY REVISE THE COUNTY NOXIOUS WEED CONTROL LAWS; REQUIRING TRAINING FOR WEED DISTRICT SUPERVISORS; ESTABLISHING NEW TERMINATION DATES FOR INFORMATION AND LIABILITY RESTRICTIONS ON HERBICIDE USE; AMENDING SECTIONS 7-22-2121, 7-22-2142, 7-22-2143, 7-22-2145, AND 7-22-2148, MCA, AND SECTION 7, CHAPTER 516, LAWS OF 1987; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the department of agriculture concerning the adoption of rules to identify the type and level of training a weed district supervisor should obtain to properly administer a noxious weed management program. It is the policy of the state of Montana to properly control and manage noxious weeds in order to protect the agricultural economy and natural ecosystems of the state. It is also the policy of the state of Montana to properly manage pesticides in order to ensure public and worker safety and to protect the environment. Weed district supervisors need special training and education in order to design and administer weed management programs that appropriately implement these policies. The legislature recognizes that funding is an important consideration that may constrain the level and type of training a weed district supervisor may obtain at any one time or in any particular year. The legislature directs the department to adopt rules that specify the objectives of weed district supervisor training and that identify the topics and level of education necessary for weed district supervisors to implement effective noxious weed management programs and to ensure that pesticides are properly managed. The legislature further directs the department, in cooperation with the Montana state university extension service, to assist in the development of a curriculum and a course of training for district weed supervisors that will fulfill the objectives specified in the department's rules. Within the limitations of available funding, county weed boards should ensure, over a period of several years if necessary, that district weed supervisors obtain proper training as defined in the department's rules.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Weed district supervisor training.** Within the limitations of available funds, the board shall ensure that the weed district supervisor obtains training to properly implement the noxious weed management program described in 7-22-2121. The department shall specify through rulemaking the level and type of training necessary to fulfill this requirement.

Section 2. Section 7-22-2121, MCA, is amended to read:

"**7-22-2121. Weed management program.** (1) The noxious weed management program must be based on a plan approved by the board.

(2) The noxious weed management plan must:

(a) specify the goals and priorities of the program;

(b) review the distribution and abundance of each noxious weed species known to occur within the district and specify the locations of new infestations and areas particularly susceptible to new infestations; ~~and~~

(c) *specify pesticide management goals and procedures, including but not limited to water quality protection, public and worker safety, equipment selection and maintenance, and pesticide selection, application, mixing, loading, storage, and disposal; and*

(d) estimate the personnel, operations, and equipment costs of the proposed program.

(3) The board shall provide for the management of noxious weeds on all land or rights-of-way owned or controlled by a county or municipality within the confines of the district. It shall take particular precautions while managing the noxious weeds to preserve beneficial vegetation and wildlife habitat. Where at all possible, methods for such control shall include cultural, chemical, and biological methods.

(4) The board may establish special management zones within the district. The management criteria in such zones may be more or less stringent than the general management criteria for the district."

Section 3. Section 7-22-2142, MCA, is amended to read:

"**7-22-2142. Sources of money for noxious weed fund.** (1) The commissioners may create the noxious weed fund *and provide sufficient money in the fund for the board to fulfill its duties, as specified in 7-22-2109,* by:

(a) appropriating money from the general fund of the county;

(b) at any time fixed by law for levy and assessment of taxes, levying a tax not exceeding 2 mills on the dollar of total taxable valuation in ~~such~~ *the* county. *The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control*; and

(c) levying a tax in excess of 2 mills if authorized by a majority of the qualified electors voting in an election held for this purpose pursuant to 7-6-2531 through 7-6-2536.

(2) The proceeds of the *noxious weed control* tax ~~shall~~ *must* be used solely for the purpose of managing noxious weeds in ~~said~~ *the* county and ~~shall~~ *must* be designated to the noxious weed fund.

(3) Any proceeds from work or chemical sales ~~shall~~ *must* revert to the noxious weed fund and ~~shall~~ *must* be available for reuse within that fiscal year or any subsequent year.

(4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund."

Section 4. Section 7-22-2143, MCA, is amended to read:

"**7-22-2143. Determination of cost of weed control program.** ~~The~~ *Based on the board's recommendations, the* commissioners shall determine and fix the cost of the control of noxious weeds in the district, whether the same be performed by the individual landowners or by the board."

Section 5. Section 7-22-2145, MCA, is amended to read:

"**7-22-2145. Expenditures from noxious weed fund.** (1) The noxious weed fund ~~shall~~ *must* be expended by the commissioners at ~~such~~ *the* time and in ~~such~~ *the* manner as is ~~deemed best~~ *recommended* by the board to secure the control of noxious weeds.

(2) Warrants upon ~~such~~ *the* fund ~~shall~~ *must* be drawn by the board. ~~No warrants shall~~ *Warrants may not* be drawn except upon claims duly itemized by the claimant, except payroll claims ~~which shall~~ *that must* be itemized and certified by the board, and each ~~such~~ claim ~~shall~~ *must* be presented to the commissioners for approval before the warrant ~~therefor shall be~~ *is* countersigned by the commissioners."

Section 6. Section 7-22-2148, MCA, is amended to read:

"**7-22-2148. Tax liability for payment of weed control expenses.** (1) The expenses referred to in 7-22-2124 shall be paid by the county out of the noxious weed fund, and unless the sum to be repaid by the person billed under 7-22-2124 is repaid on or before the date due, the county clerk shall certify the amount thereof, with the description of the land to be charged, and shall enter the same on the assessment list of the county as a special tax on the land. If the land for any reason is exempt from general taxation, the amount of such charge may be recovered by direct claim against the lessee and collected in the same manner as personal taxes. When such charges are collected, they shall be credited to the noxious weed fund.

(2) In determining what lands are included as land covered by the special tax and are described in the certificate of the county clerk, it is presumed that all work done upon any of the land of any one landowner is for the benefit of all of the land within the district belonging to ~~such~~ *the* owner ~~which was contiguous to or joined the parcel upon which the work was done at the time the work was done~~, together with the parcel upon which the work was done, and the amount certified becomes a tax upon the whole thereof."

Section 7. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 22, part 21, and the provisions of Title 7, chapter 22, part 21, apply to [section 1].

Section 8. Section 7, Chapter 516, Laws of 1987, is amended to read:

"Section 7. **Termination.** This act terminates July 1, ~~1991~~ *1995*."

Section 9. **Effective date.** [This act] is effective July 1, 1991.

Approved April 22, 1991.

CHAPTER NO. 531

[HB 556]

AN ACT REVISING THE LAW REGARDING GAME FARMS AND GAME FARM ANIMALS, INCLUDING THE IDENTIFICATION, TRANSPORTATION, AND INSPECTION OF GAME FARM ANIMALS AND REPORTS REQUIRED OF GAME FARM LICENSEES; PROVIDING THAT IMPORTATION PERMITS AND HEALTH CERTIFICATES

ARE REQUIRED OF GAME FARM ANIMALS; RESTRICTING THE IMPORTATION OF CERTAIN SPECIES FOR GAME FARM PURPOSES; AND AMENDING SECTIONS 81-2-702, 87-4-408, 87-4-414, 87-4-415, 87-4-417, AND 87-4-423, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-408, MCA, is amended to read:

"**87-4-408. Department jurisdiction — applicability of livestock laws and rules.** (1) The department has primary jurisdiction over game farms.

(2) A game farm licensee must also comply with all applicable laws and rules administered by the department of livestock *relating to marking, inspection, transportation, and health.*"

Section 2. Section 87-4-414, MCA, is amended to read:

"**87-4-414. Game farm animals as private property.** (1) All game farm animals lawfully raised on a licensed game farm are the private property of the licensee.

(2) The licensee may acquire, breed, grow, keep, pursue, capture, kill, use, sell, or dispose of the game farm animals and their progeny in any quantity, at any time of year, and in any manner, as long as he complies with the requirements of this part.

(3) A licensee shall mark each game farm animal in a manner approved by the department of livestock that facilitates ownership identification of animals for inspection, transportation, reporting, and taxation purposes.

~~(3)~~*(4)* Before allowing hunting of any game farm animals on a game farm, the game farm licensee must obtain a game farm shooting license from the department.

~~(4)~~*(5)* ~~The~~ *Except for importation permits and health certificates required under 81-2-703,* laws applicable to game animals do not apply to game farm animals raised on a licensed game farm."

Section 3. Section 87-4-415, MCA, is amended to read:

"**87-4-415. Transportation and sale of game farm animals — *quarantine*.** (1) Whenever the licensee of a licensed game farm sells or disposes of one or more game farm animals, he shall, at the same time, deliver to the recipient or otherwise cause to accompany each ~~such~~ game farm animal *or animals* an invoice or bill of sale signed by the licensee or his agent stating the number of the game farm license, the date of *acquisition or* disposition, the species, the ~~number~~ *age, sex, and class of game animals* disposed of, and the name and address of the transferee. This invoice or bill of sale, *along with any required health certifications,* authorizes transportation of the game farm animal or animals being sold, transferred, or disposed of.

(2) Within ~~a reasonable time~~ *10 days* after ~~disposition~~ *movement or sale,* the licensee or his agent shall mail postpaid a duplicate of the invoice or bill of sale to the department of livestock and the department.

(3) The department of livestock may quarantine any game farm animal pending inspection and health certification. The department shall advise the department of livestock regarding the importation or transportation of any game farm animal that the department reasonably believes may be infected with a disease specific to wildlife."

Section 4. Section 87-4-417, MCA, is amended to read:

"**87-4-417. Records and reporting.** (1) Each game farm licensee shall keep and maintain for 3 years accurate written records of all purchases, transfers, and sales of game farm animals showing:

(a) the number of each species of game farm animal purchased by the game farm licensee and from whom purchased;

(b) the number of each species of game farm animal transferred or sold, the date of transfer or sale, and the name and address of the person to whom the transfer or sale was made; and

(c) *individual* identification of each game farm animal purchased, transferred, or sold.

(2) On or before January 31 of each year, the game farm licensee shall file a report with the director, showing the number and species of game farm animals on hand as of January 1 and the number and species of game farm animals bought or sold during the past year."

Section 5. Section 87-4-423, MCA, is amended to read:

"**87-4-423. Revocation of license — *penalty.*** (1) A game farm license may be revoked for failure to operate the game farm according to the provisions of this part or rules adopted under this part.

(2) Upon discovery of a violation, the department shall give notice of the violation to the licensee, with a statement ~~of a specific time in which~~ *that* the violation must be corrected *within 30 days of the notice, unless a longer period is approved by the department.*

(3) Upon failure of the licensee to correct the violation, the department may institute revocation proceedings. If the department institutes revocation proceedings, it shall provide reasonable notice and opportunity for a hearing to the licensee. After hearing and upon proof of violation, the department may revoke the game farm license.

(4) In addition to the revocation of a license allowed by this section, a person who violates this part or a rule adopted under this part is subject to a fine of not more than $500 or imprisonment in the county jail for not more than 1 year, or both."

Section 6. Section 81-2-702, MCA, is amended to read:

"81-2-702. **Definitions.** As used in this part, the following definitions apply:

(1) "Animals" means livestock, dogs, cats, rabbits, rodents, game animals, *game farm animals,* fur-bearing and wild animals, and poultry and other birds.

(2) "Biologics" means medicinal preparations made from living organisms and their products. It includes but is not limited to serums, vaccines, antigens, and antitoxins.

(3) "Department" means the department of livestock.

(4) "Health certificate" means a legible record written on an official health certificate form of the state of origin or on an equivalent form of the U.S. department of agriculture attesting that the animals, animal semen, or animal biologics described thereon have been visually inspected by a federally accredited veterinarian and found to meet the entry requirements of the state of Montana.

(5) "Livestock" means cattle, horses, mules, asses, sheep, llamas, bison, swine, and goats.

(6) "Permit" means an official document issued by the department after proper application that allows the movement of animals, animal semen, or animal biologics into Montana.

(7) "Poultry" means domesticated birds, including but not limited to chickens, turkeys, ducks, geese, guinea fowl, pigeons, and pheasants."

Section 7. **Department restrictions on importation of certain species.** The department or the department of livestock may restrict from importation for purposes of game farming any species or subspecies and their hybrids with native species that are determined through scientific investigation to pose a threat to native wildlife or livestock through nonspecific genetic dilution, parasites, or disease.

Section 8. **Codification instruction.** [Section 7] is intended to be codified as an integral part of Title 87, chapter 4, part 4, and the provisions of Title 87, chapter 4, part 4, apply to [section 7].

Approved April 22, 1991.

CHAPTER NO. 532

[HB 620]

AN ACT REGULATING THE PRACTICE OF RESPIRATORY CARE; ESTABLISHING A QUASI-JUDICIAL BOARD OF RESPIRATORY CARE PRACTITIONERS WITH RULEMAKING AUTHORITY; REQUIRING LICENSURE OR A TEMPORARY PERMIT FOR RESPIRA-

TORY CARE PRACTITIONERS; REQUIRING FEES FOR A TEMPORARY PERMIT AND A LICENSE; PROVIDING THAT THE FEES ARE DEPOSITED TO THE SPECIAL REVENUE FUND FOR THE BOARD'S USE; PROVIDING PENALTIES; REQUIRING PRACTITIONERS TO REPORT CERTAIN CONDUCT AND PROVIDING IMMUNITY FOR REPORTING; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 5] grants rulemaking authority to the board of respiratory care practitioners.

(1) In outlining the powers and responsibilities of the board of respiratory care practitioners, it is the intent of [section 5] that the board have authority to adopt rules to implement and enforce [sections 1, 2, and 4 through 13] and specific authority to adopt rules regarding:

(a) license and temporary permit applications and procedures necessary to receive and process those applications;

(b) examinations and criteria for grading examinations;

(c) disciplinary standards for licensees and temporary permitholders, including definitions of conduct for which discipline may be appropriate;

(d) continuing education requirements;

(e) investigations of complaints;

(f) setting and modifying appropriate fees;

(g) a process for renewal of licenses and temporary permits, including procedures for late renewal;

(h) waiver of license requirements as provided in [section 7(2)]; and

(i) reciprocity conditions applicable to licensure.

(2) It is the intent of the legislature that the governor have the authority to implement staggered terms for board members during the appointment process.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Findings — purpose.** The legislature finds and declares that the practice of respiratory care in the state affects the public health, safety, and welfare. To protect the public from the unqualified practice of respiratory care or unprofessional conduct by qualified practitioners, respiratory care is subject to regulation and control. The purpose of [sections 1, 2, and 4 through 13] is to regulate the practice of respiratory care. The legislature recognizes that the practice of respiratory care is a dynamic and changing art and science that is continually evolving to include new ideas and more sophisticated techniques in patient care.

Section 2. **Definitions.** As used in [sections 1, 2, and 4 through 13], the following definitions apply:

(1) "Board" means the board of respiratory care practitioners established in [section 3].

(2) "Qualified medical direction" means the direction of:

(a) a medical director of an inpatient or outpatient respiratory care service, a respiratory care department, or a home-care agency; or

(b) a licensed physician with a special interest and knowledge about the diagnosis and treatment of respiratory problems.

(3) (a) "Respiratory care" means the care provided by a member of the allied health profession responsible for the treatment, management, diagnostic testing, and control of patients with deficiencies and abnormalities associated with the cardiopulmonary system. The term includes but is not limited to:

(i) administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures that are necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a physician;

(ii) transcription and implementation of the written or verbal orders of a physician regarding the practice of respiratory care;

(iii) observation and monitoring of a patient's signs and symptoms, general behavior, and physical response to respiratory care treatment and diagnostic testing, including determination of abnormal characteristics;

(iv) implementation of respiratory care protocols pursuant to a prescription by a physician; and

(v) initiation of emergency procedures prescribed by board rules.

(b) Respiratory care is not limited to a hospital setting but must be performed pursuant to a physician's order and under qualified medical direction. The term includes inhalation and respiratory therapy.

(4) "Respiratory care practitioner" means a person who has the knowledge and skill necessary to administer respiratory care and who is licensed under the provisions of [sections 6 through 10].

(5) "Student respiratory care practitioner" means a person:

(a) enrolled in a respiratory care educational program recognized by the joint review committee for respiratory therapy education and the American medical association's committee on allied health education and accreditation, or their successors;

(b) permitted to provide respiratory care under clinical supervision; and

(c) identified as a student respiratory care practitioner or "SRCP".

Section 3. **Board of respiratory care practitioners.** (1) There is a board of respiratory care practitioners. The board consists of five members appointed by the governor. Each member must be a citizen of the United States and a resident of this state. The governor may request advice from the Montana society for respiratory care in making appointments to the board.

(2) The board consists of:

(a) three respiratory care practitioners, each of whom has engaged in the practice of respiratory care for a period of at least 3 years immediately preceding their appointment to the board. At least one of these members must have passed the registry examination for respiratory therapists administered by the national board for respiratory care and at least one of these members must have passed the entry-level examination for respiratory therapy technicians administered by the national board for respiratory care.

(b) one physician licensed in Montana who has a special interest in the treatment of cardiopulmonary diseases; and

(c) one member of the public who is not a member of a health care profession.

(3) The board is a quasi-judicial board, except that one member of the board need not be an attorney licensed to practice law in this state. Members are appointed, serve, are compensated, and are subject to removal as provided in 2-15-124.

(4) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

Section 4. **Board meetings — procedure — seal.** (1) The board shall meet at least once a year and shall elect annually a president, vice president, and secretary-treasurer from its membership. The board may convene at the request of the president or at other times the board determines necessary to transact its business.

(2) The board shall adopt a seal by which the board may authenticate its documents.

Section 5. **Board powers and duties.** (1) The board shall:

(a) examine, license, grant temporary permits, and renew the licenses or permits of duly qualified applicants;

(b) establish examinations and passing scores for licensure under [section 7];

(c) adopt and implement rules for continuing education requirements to ensure the quality of respiratory care.

(2) The board may:

(a) adopt rules necessary to implement the provisions of [sections 1, 2 and 4 through 13]; and

(b) establish relicensing requirements and procedures that the board considers appropriate.

Section 6. **License required — exceptions — respiratory care not the practice of medicine.** (1) Except as otherwise provided in [sections 1, 2, and 4 through 13], a person may not practice respiratory care or represent himself to be a respiratory care practitioner unless he is licensed or granted a temporary permit under the provisions of [sections 6 through 9].

(2) [Sections 1, 2, and 4 through 13] do not prohibit:

(a) the practice of respiratory care that is an integral part of study by a student respiratory care practitioner;

(b) self-care by a patient or the gratuitous care by a friend or family member who does not hold himself out to be a respiratory care practitioner; or

(c) respiratory care rendered in the course of an emergency.

(3) Nothing in [sections 1, 2, and 4 through 13] is intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana.

(4) Nothing in [sections 1, 2, and 4 through 13] may be construed to permit the practice of medicine.

Section 7. **Licensing requirements — examination — fees.** (1) To be eligible for licensure by the board as a respiratory care practitioner, the applicant shall:

(a) submit to the board an application fee in an amount established by the board and a written application on a form provided by the board demonstrating that the applicant has completed:

(i) high school or the equivalent; and

(ii) a respiratory care educational program accredited or provisionally accredited by the American medical association's committee on allied health education and accreditation in collaboration with the joint review committee for respiratory therapy education or their successor organizations; and

(b) pass an examination prescribed by the board, unless the examination requirement is waived under subsection (2). The board may use the entry-level examination written by the national board for respiratory care or another examination that satisfies the standards of the national commission for health certifying agencies or the commission's equivalent.

(2) The board may issue a license to practice respiratory care to an applicant without requiring him to pass an examination if the applicant:

(a) is currently licensed to practice respiratory care under the laws of another state, territory, or country if the board considers the qualifications for licensure to be equivalent to those required in this state; or

(b) holds credentials, conferred by the national board for respiratory care, as a certified respiratory therapy technician or a registered respiratory therapist and affirms under oath that his credentials have not been suspended or revoked.

(3) A person holding a license to practice respiratory care in this state may use the title "respiratory care practitioner" and the abbreviation "RCP".

Section 8. **Renewal of license — application and fee.** (1) A respiratory care practitioner's license expires 1 year from the date of issuance.

(2) A licensee may renew his license by:

(a) filing an application with the board on a form approved by the board;

(b) paying a renewal fee in an amount established by the board; and

(c) documenting that he has completed the continuing education requirements prescribed by the board.

(3) An application for renewal of a license made within 90 days after expiration of the license is timely, and the rights and privileges of the applicant remain in effect during that period.

Section 9. **Temporary permit.** (1) The board may issue a temporary permit to practice respiratory care for a period of 1 year, pending receipt of an application for licensure and upon payment of a temporary permit fee in an amount established by the board. To receive the permit, the applicant shall demonstrate in writing, confirmed by oath, that he:

(a) has applied for licensure by reciprocity pursuant to [section 7(2)]. If the board considers the application and denies it, the temporary permit shall lapse.

(b) has taken the examination for licensure and is awaiting the results; or

(c) is a student respiratory care practitioner who expects to graduate within 30 calendar days of his application.

(2) Upon expiration of the permit and payment of an additional fee in an amount established by the board, the board may issue a permit for an additional period not to exceed 1 year pending reexamination or compliance with the provisions of [section 7].

(3) An applicant who reapplies for a temporary permit after he has abandoned a previous application is not entitled to a permit.

Section 10. **Revocation, suspension, or refusal to renew license.** The board may, after notice and hearing, revoke, suspend, or refuse to issue a license or permit; refuse to renew a license to practice respiratory care; or take other appropriate disciplinary action if the board finds that an applicant or respiratory care practitioner:

(1) is guilty of fraud or material misrepresentation in obtaining or attempting to obtain a license or renew a license to practice respiratory care;

(2) is guilty of gross negligence, incompetency, or misconduct in the practice of respiratory care;

(3) is habitually intemperate in the use of narcotic drugs, alcohol, or any other drug or substance that impairs the user physically or mentally;

(4) has obtained, possessed, used, or distributed illegal drugs or narcotics;

(5) is guilty of unprofessional conduct as defined by the board or is guilty of moral turpitude;

(6) has practiced respiratory care after his license or permit has expired or been suspended or revoked;

(7) has practiced respiratory care under cover of any permit or license illegally or fraudulently obtained or issued; or

(8) has aided or abetted others in the violation of any provision of this section or the rules adopted under this section.

Section 11. **Duty to report violations — immunity from liability.** (1) Notwithstanding any provision of state law regarding the confidentiality of health care information, a respiratory care practitioner shall report to the board any information that appears to show that another respiratory care practitioner is:

(a) mentally or physically unable to engage safely in the practice of respiratory care; or

(b) guilty of any act, omission, or condition that is grounds for disciplinary action under [section 10].

(2) There is no liability on the part of a respiratory care practitioner and no cause of action may arise against a respiratory care practitioner who in good faith provides information to the board as required by subsection (1).

Section 12. **Penalty.** A person convicted of violating any provision of [sections 1, 2, and 4 through 13] is guilty of a misdemeanor and shall be fined an amount not to exceed $500, or shall be imprisoned in a county jail for a term not to exceed 6 months, or both.

Section 13. **Deposit of fees.** All fees and money received by the department must be deposited in the state special revenue fund for the board's use subject to 37-1-101(6).

Section 14. **Licensure — grandfather provision.** The board shall grant a license to practice respiratory care without examination or completion of the requisite educational program to a person who has been performing respiratory care in this state for at least 1 year on [the effective date of this section].

Section 15. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. **Codification instruction.** (1) [Section 3] is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to [section 3].

(2) [Sections 1, 2, and 4 through 13] are intended to be codified as an integral part of Title 37 and the provisions of Title 37 apply to [sections 1, 2, and 4 through 13].

Section 17. **Effective dates.** [Sections 3 through 5, 14 through 16, and this section] are effective on passage and approval.

Approved April 22, 1991.

CHAPTER NO. 533

[HB 629]

AN ACT TO REQUIRE PERIODIC RENEWALS OF A CERTIFICATE OF LIMITED PARTNERSHIP.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Term and renewal of certification.** (1) Certification of a limited partnership is effective for a term of 5 years from the date of filing or renewal of certification. Upon application for renewal of certification on forms furnished by the secretary of state, the certification may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of certification of a limited partnership, the secretary of state shall notify the listed general partner or partners or specified agent of the pending expiration by addressing a notice to the last-known address of the general partner or partners or specified agent.

(3) If the general partner or partners or specified agent fail to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the certification, the secretary of state shall cancel the certification.

(4) A registration in force on July 1, 1991, expires 5 years from the date of the filing of certification or on July 1, 1992, whichever is later, if renewal of the certification is not effected in the manner provided for in [sections 1 through 4].

Section 2. **Application for renewal of certification.** One original and one copy of an application for renewal of certification of a limited partnership must be executed and delivered to the secretary of state. The application must include but is not limited to the following information:

(1) the complete name of the limited partnership;

(2) the name and address, including street name and number, if any, of each general partner;

(3) the address of the principal office of the limited partnership, including the street name and number;

(4) a description of the business;

(5) the name of the county or counties in which business is being transacted; and

(6) the name and address of the specified agent for service of process in the state.

Section 3. **Filing of application for renewal of certification — issuance of certificate.** (1) If the secretary of state finds that the application for renewal of certification of a limited partnership complies with the provisions of this part, he shall, when all fees have been paid as provided by rule:

(a) endorse on the original and on the copy the word "filed" and the month, day, and year of filing;

(b) file the original in his office; and

(c) issue a certificate of renewal, to which he shall affix the copy.

(2) The secretary of state shall return to the general partner or partners submitting the application the certificate of renewal, together with an attached copy of the application for renewal of certification of a limited partnership.

Section 4. **Involuntary cancellation of certificate.** For a certificate filed prior to July 1, 1991, the secretary of state shall cancel the certificate of limited partnership after July 1, 1992, if the certification is more than 5 years old and not renewed in accordance with this part.

Section 5. **Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 35, chapter 12, part 6, and the provisions of Title 35, chapter 12, part 6, apply to [sections 1 through 4].

Approved April 22, 1991.

CHAPTER NO. 534

[HB 665]

AN ACT TO REQUIRE SCHOOL DISTRICTS IN CERTAIN COUNTIES TO ESTABLISH AND IMPLEMENT EARTHQUAKE EMERGENCY PLANS AND PROCEDURES IN COOPERATION WITH THE DISASTER AND EMERGENCY SERVICES DIVISION OF THE DEPARTMENT OF MILITARY AFFAIRS AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION; AND TO ADVISE SCHOOL DISTRICTS IN OTHER COUNTIES TO ESTABLISH SUCH PLANS AND PROCEDURES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **School district emergency plans in seismic risk zones.** (1) School districts in counties within the following seismic risk zones shall establish and implement earthquake emergency plans and procedures as provided in subsections (2) and (3):

(a) seismic risk zone 3, subject to major earthquake damage: Beaverhead, Broadwater, Deer Lodge, Gallatin, Jefferson, Lewis and Clark, Madison, Meagher, Park, Powell, and Silver Bow Counties;

(b) seismic risk zone 2, subject to moderate earthquake damage: Carbon, Cascade, Chouteau, Fergus, Flathead, Glacier, Golden Valley, Granite, Hill, Judith Basin, Lake, Liberty, Lincoln, Mineral, Missoula, Pondera, Ravalli, Sanders, Stillwater, Sweet Grass, Teton, Toole, and Wheatland Counties; and

(c) seismic risk zone 1, subject to minor earthquake damage: Big Horn, Blaine, Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Musselshell, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Treasure, Valley, Wibaux, and Yellowstone Counties.

(2) A school district in seismic risk zone 3 shall establish and implement an earthquake emergency plan and procedures, in cooperation with the disaster and emergency services division of the department of military affairs and the superintendent of public instruction, that include:

(a) protective measures to be taken before, during, and following an earthquake;

(b) assurance that the students and staff of the district are aware of and properly trained in earthquake emergency procedures; and

(c) the practice of at least four earthquake drills during the pupil-instruction days of a school fiscal year, including:

(i) practice of the drills at varying times of the school day;

(ii) practice by the staff and students of the proper protective positions; and

(iii) full evacuation of the school at least twice during the pupil-instruction days of a school fiscal year.

(3) School districts in seismic risk zones 1 and 2 are advised to establish and implement earthquake emergency plans and procedures.

(4) The disaster and emergency services division of the department of military affairs and the superintendent of public instruction shall assist the school districts in the state to develop and implement earthquake emergency plans and procedures.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [section 1].

Approved April 22, 1991.

CHAPTER NO. 535

[HB 678]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE OPERATION OF THE STATE MOTOR POOL AND TO STATE-OWNED AND LEASED MOTOR VEHICLES; AND AMENDING SECTIONS 2-17-402, 2-17-411, 2-17-412, 2-17-413, 2-17-421, 2-17-422, 2-17-423, 2-17-431, AND 2-17-432, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-402, MCA, is amended to read:

"**2-17-402. Seal on motor vehicles.** A motor vehicle owned by the state ~~shall~~ *must* have a seal 8 inches in diameter placed upon the vehicle in accordance with the rules adopted by the department of highways~~, motor pool division~~."

Section 2. Section 2-17-411, MCA, is amended to read:

"**2-17-411. Helena-based motor pool — department of highways~~, motor pool division~~ — exceptions.** (1) The department of highways~~,~~

~~motor pool division,~~ is the custodian of all motor vehicles operated out of the Helena area used primarily to carry passengers or having a cargo rating of three-quarters of a ton or less and which do not carry specialized equipment that would render them unfit for interagency use, owned or leased by the state or its agencies.

(2) This part does not apply to a motor vehicle used in the service of the governor, the attorney general, or the highway patrol."

Section 3. Section 2-17-412, MCA, is amended to read:

"**2-17-412. Assignment and transfer.** (1) The department of highways~~, motor pool division,~~ may assign the use of state-owned or leased motor vehicles under its control to state officers, ~~or institutions~~ *state agencies,* or employees ~~thereof~~ *of state agencies.*

(2) All motor vehicles in the custody of the department of highways~~, motor pool division, which~~ *that* are not placed under custody of the ~~division~~ *department* by 2-17-411 ~~shall~~ *must* be equitably transferred to the custody of those agencies that have need of vehicles as demonstrated by use records."

Section 4. Section 2-17-413, MCA, is amended to read:

"**2-17-413. Interagency rental.** The department of highways~~, motor pool division,~~ shall promulgate regulations for interagency rental of motor vehicles. These regulations shall govern the manner in which vehicles in the custody of one agency and for a time not required for use by that agency can be rented by another agency for its use. These regulations shall also establish the charge for vehicle rental which may include reimbursement of actual costs for administration, maintenance, service, operation, storage, and replacement costs of these vehicles."

Section 5. Section 2-17-421, MCA, is amended to read:

"**2-17-421. Use — state business only — *exception* — compensation for driving personal vehicle — *penalty for private use.*** *(1)* A state officer or employee may not use a state-owned or leased motor vehicle for his own personal and private use, nor may he be compensated for driving his own motor vehicle unless that motor vehicle is used on state business.

(2) The department of highways may require that a decal be affixed to the instrument panel of each state-owned vehicle with the following information contained on the decal:

"Any officer or employee of the state government who uses or authorizes the use of any state-owned motor-propelled vehicle, or of any motor-propelled vehicle leased by the state government, for other than official purposes may be removed from office by the head of the department or establishment concerned."

(3) The private use of state-owned or leased motor vehicles for emergency travel-related purposes or exceptional circumstances by employees in a travel status may be approved by the head of the department or agency concerned.

(4) The head of the department or agency concerned may terminate the employment of any employee using state-owned or leased vehicles for personal or private use."

Section 6. Section 2-17-422, MCA, is amended to read:

"**2-17-422. Operating history.** All motor vehicle operating history records for motor vehicles under control of the department of highways~~,~~ ~~motor pool division, shall~~ *must* be entered in the department of highways~~,~~ ~~motor pool division~~. These records ~~shall~~ *must* show the purchase price of the vehicle and the items of expense incurred in the operation of the vehicle, including the expenses of gas, oil, repairs, labor, storage, and service. A complete summary of the operating cost and history record of all state-owned or leased vehicles and trucks ~~shall~~ *must* be prepared for each fiscal year."

Section 7. Section 2-17-423, MCA, is amended to read:

"**2-17-423. Use rules.** (1) The department of highways~~, motor pool division,~~ may adopt and enforce reasonable rules governing the use and operation of motor vehicles under control of the department of highways~~,~~ ~~motor pool division~~.

(2) The department shall establish reasonable rules governing:

(a) employee responsibility for misuse and negligent damage of state-owned or leased vehicles;

(b) determination of when the use of privately owned vehicles on state business may be justified as in the best interest of the state;

(c) procedures for determining when a state vehicle is not available for use.

(3) The ~~division~~ *department* shall adopt and formulate travel rules providing:

(a) for filing an application for travel showing necessity for trips, points to be visited, approximate time of departure and return;

(b) for filing a report upon completion of the trip, showing actual points reached, mileage traveled, and car cost record data; *and*

(c) for recording in the car operating history record book all items of expense incurred in the purchase of gas, oil, repairs, labor, storage, or service~~; and~~.

~~(d) that a decal be affixed to the instrument panel of every state-owned vehicle with the following information contained on the decal:~~

~~"Any officer or employee of the state government who uses or authorizes the use of any state-owned motor-propelled passenger-carrying vehicle, or of any motor-propelled passenger-carrying vehicle leased by the state~~

~~government, for other than official purposes shall be summarily removed from office by the head of the department of establishment concerned.~~"

Section 8. Section 2-17-431, MCA, is amended to read:

"**2-17-431. Costs.** The department of highways~~, motor pool division,~~ may charge the individual state agencies using the motor vehicles the actual costs for administration and their maintenance, service, storage, and replacement."

Section 9. Section 2-17-432, MCA, is amended to read:

"**2-17-432. Violation a misdemeanor ~~— dismissal~~.** A state officer or employee violating this part is guilty of a misdemeanor ~~and upon conviction shall be dismissed from state employment~~."

Approved April 22, 1991.

CHAPTER NO. 536

[HB 705]

AN ACT EXEMPTING CERTAIN RAILROAD EMPLOYEES FROM THE DRIVER'S LICENSE LAW WHILE ENGAGED IN TRAIN OPERATIONS; AMENDING SECTION 61-5-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-104, MCA, is amended to read:

"**61-5-104. Exemptions.** (1) The following persons are exempt from license ~~hereunder~~ *under this chapter*:

(a) ~~any~~ *a* person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) ~~any~~ *a* person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of such a person who holds a valid license issued by another state and who is not employed in Montana except as a member of the armed forces; if a spouse of a member of the armed forces becomes gainfully employed in Montana, ~~such~~ *the* spouse must be licensed as required by 61-5-102 within 90 days of becoming so employed;

(c) ~~any~~ *a* person on active duty in the armed forces of the United States who has in his immediate possession a valid license issued in a foreign country by the armed forces of the United States, for a period of 45 days from the date of his return to the United States;

(d) ~~any~~ *a* person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway*;*

(e) a person who is a locomotive engineer, assistant engineer, conductor, brakeman, railroad utility person, or other member of the crew of a railroad locomotive or train being operated upon rails, including operation on a railroad crossing a public street, road, or highway. A person employed as described in this subsection is not required to display a driver's license to a law enforcement officer in connection with the operation of a railroad locomotive or train within Montana.

(2) A nonresident who is at least 15 years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country may operate a motor vehicle in this state only as an operator.

(3) A nonresident who is at least 18 years of age and who has in his immediate possession a valid commercial operator's license issued to him in his home state or country may operate a motor vehicle or commercial motor vehicle in this state subject to the age limits applicable to commercial vehicle operators in this state.

(4) ~~Any~~ *A* nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle so operated is duly registered in the home state or country of such nonresident.

(5) A driver's license issued ~~hereunder~~ *under this chapter* to any person who enters the United States armed forces, if valid and in force and effect at the time ~~such~~ *the* person enters the service, ~~shall continue~~ *continues* in full force and effect so long as ~~such~~ *the* service ~~shall continue~~ *continues* unless ~~such~~ *the* license is sooner suspended, revoked, or canceled for a cause as provided by law, and for not to exceed 30 days following the date on which holder of ~~such~~ *the* driver's license is honorably separated from ~~such~~ *the* service. During ~~said~~ *the* 30-day period, ~~such~~ *the* license ~~shall be~~ *is* valid only when in the immediate possession of the licensee while driving and the licensee has his discharge, separation, leave, or furlough papers in his immediate possession."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 22, 1991.

CHAPTER NO. 537

[HB 773]

AN ACT RELATING TO THE RIGHTS OF A PERSON WHO IS INVOLUNTARILY DETAINED UNDER THE INVOLUNTARY COMMITMENT STATUTES TO BE INFORMED OF HIS RIGHTS; PROVIDING THAT THE PERSON MUST BE INFORMED OF HIS RIGHTS AT THE TIME OF HIS DETENTION; REMOVING THE REQUIREMENT THAT HE BE INFORMED OF HIS RIGHTS AT THE TIME OF EXAMINATION; AND AMENDING SECTION 53-21-114, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-114, MCA, is amended to read:

"**53-21-114. Notice of rights to be given.** (1) Whenever a person is involuntarily detained ~~or is examined~~ pursuant to 53-21-121 through 53-21-126, the person shall at the time of detention ~~or examination~~ be informed of his constitutional rights and his rights under this part. Within 3 days of such detention ~~or examination~~, he must also be informed in writing by the county attorney of such rights.

(2) Every respondent subject to an order for short-term treatment or long-term care and treatment shall be advised in writing of his right to appeal the order by the court at the conclusion of any hearing the result of which such an order may be entered."

Approved April 22, 1991.

CHAPTER NO. 538

[HB 856]

AN ACT TO FURTHER LIMIT THE EXEMPTION FROM TAXATION FOR TELEVISION DISTRICT SERVICES BY INCLUDING SUBSCRIBERS TO A COMMUNITY ANTENNA SYSTEM THAT DOES NOT DIRECTLY OR INDIRECTLY USE ANY SIGNAL REPEATED BY THE TELEVISION DISTRICT; TO PROVIDE AN EXEMPTION FROM TAXATION FOR SUBSCRIBERS OF A COMMUNITY ANTENNA TELEVISION SYSTEM WHO DO NOT RECEIVE THE TRANSLATOR SIGNAL OR A TAXPAYER WHO RECEIVES THE SIGNAL FROM A COMMUNITY ANTENNA TELEVISION SYSTEM THAT HAS A WRITTEN AGREEMENT WITH THE TELEVISION DISTRICT; AMENDING SECTION 7-13-2529, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2529, MCA, is amended to read:

"**7-13-2529. Exemption for nonbenefited taxpayers.** (1) The *following* taxpayers in the television district *are exempt from payment of the tax for the support of the television services of the television district upon the filing of an affidavit setting forth one of the following grounds:*

(a) ~~who do~~ *The taxpayer does* not receive the signal of the television translator station ~~or~~.

(b) ~~who receive~~ *The taxpayer receives* direct reception from the television station from which the television translator repeats a signal ~~or~~.

(c) The taxpayer ~~receive~~ *does not receive the translator signal directly but receives* service through the medium of a community antenna system ~~on which they are a subscriber in good standing~~ *and does not directly or indirectly use any signal repeated by the television district as its source.*

(d) The taxpayer receives the services through the medium of a community antenna system that has a written agreement with the district relating to the transmission of district signals ~~will be exempt from the payment of the tax for the support of the television services of the television district, provided they file an affidavit setting forth any of the grounds above mentioned~~.

(2) The affidavit shall be filed before September 1 with the board of trustees, who shall upon the receipt of such affidavit have the names of such persons so exempted from the tax for television services stricken from the list of taxpayers certified to the board of county commissioners. The exempted persons shall not be liable for such tax.

~~(2)~~*(3)* A similar exemption is available with respect to FM translator services. The procedure provided in subsection (1) shall be utilized for the FM exemption.

~~(3)~~*(4)* Any person or persons who shall make a false or fraudulent claim for exemption as provided in this section shall be guilty of a misdemeanor."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved April 22, 1991.

CHAPTER NO. 539

[HB 860]

AN ACT DECLARING ALL STATE BUILDINGS TO BE SMOKE-FREE; REQUIRING AN AGENCY HEAD TO ESTABLISH AT LEAST ONE DESIGNATED SMOKING AREA IN EACH STATE BUILDING; AMENDING SECTIONS 50-40-107 AND 50-40-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Public policy.** In recognition of the increased health hazards of passive smoke on the nonsmoker, it is the declared public policy of the state of Montana that all buildings maintained by the state are to be smoke-free.

Section 2. **Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or of an agency of the Montana university system.

(2) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(3) "Smoking" means any lighted cigar, cigarette, or pipe or any other lighted tobacco product.

Section 3. **Smoke-free buildings — designated smoking areas.** (1) In buildings maintained by the state, smoking is prohibited in the following areas:

(a) general office space;

(b) auditoriums, classrooms, and conference rooms;

(c) elevators;

(d) corridors, lobbies, restrooms, and stairways, except as provided in subsections (2)(b) and (4);

(e) medical care facilities;

(f) libraries; and

(g) hazardous areas.

(2) An agency head shall establish at least one "designated smoking area" in each building, except in those areas listed in subsection (1), suited by architectural design and functional purpose to be used as a smoking area.

(a) An agency head may designate a smoking area in a cafeteria. The size of the area must be determined by an estimate of the number of smoking and nonsmoking patrons served.

(b) An agency head may designate a corridor, lobby, or restroom as a smoking area when it is not possible to designate another smoking area.

(3) In establishing designated smoking areas, as provided in subsection (2), an agency head shall consider:

(a) the number of smokers and nonsmokers in the agency;

(b) the building ventilation system;

(c) the availability of space; and

(d) the protection of nonsmokers from involuntary exposure to smoke.

(4) Agencies in multitenant buildings are encouraged to work together to identify designated smoking areas.

Section 4. **Signing — smoking receptacles.** (1) The department shall place signs near each entrance to a building stating that the building is smoke-free.

(2) An agency head shall place signs stating where the designated smoking areas are located.

(3) An agency head is responsible for providing adequate ash trays or receptacles in the designated smoking areas.

(4) In buildings of historical significance, the department shall place signs that are aesthetically pleasing and that fit the architectural style of the building.

Section 5. Section 50-40-107, MCA, is amended to read:

"**50-40-107. Exemptions.** The following shall be exempt from this part:

(1) restrooms;

(2) taverns or bars where meals are not served;

(3) vehicles or rooms seating six or fewer members of the public;

(4) school district buildings and facilities designated as tobacco-free by the board of trustees of the school district;

(5) community college buildings or facilities designated as tobacco-free by the board of trustees of the community college district;

(6) state government buildings declared smoke-free."

Section 6. Section 50-40-201, MCA, is amended to read:

"**50-40-201. Reservation of smoking and nonsmoking areas in work areas in ~~state and~~ local government buildings.** In offices and work areas in buildings maintained by ~~the state or~~ a political subdivision, except a school or community college facility designated as tobacco-free by the board of trustees of the school district or community college district, in which seven or more employees of the ~~state or~~ political subdivision are employed, the manager or person in charge of the work area shall arrange nonsmoking and smoking areas in a convenient area."

Section 7. **Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 50, chapter 40, part 2, and the provisions of Title 50, chapter 40, part 2, apply to [sections 1 through 4].

Section 8. **Effective date.** [This act] is effective May 1, 1991.

Approved April 22, 1991.

CHAPTER NO. 540

[HB 870]

AN ACT TO REVISE THE PROCESS FOR MAKING A COMPLAINT AGAINST A PHYSICIAN OR PODIATRIST BY PROVIDING THAT THE COMPLAINT MAY BE IN WRITING RATHER THAN BY SWORN AFFIDAVIT; TO REQUIRE THE BOARD OF MEDICAL EXAMINERS TO SET A DATE FOR THE RENEWAL OF PODIATRY LICENSES; TO REQUIRE THE BOARD OF MEDICAL EXAMINERS TO PROVIDE NOTICE OF THE RENEWAL DATE FOR PODIATRY LICENSES; TO CHANGE THE DATE OF REVOCATION OF A PODIATRY LICENSE FOR FAILURE TO PAY THE LICENSE RENEWAL FEE; TO REQUIRE THE BOARD OF MEDICAL EXAMINERS TO SET A DATE FOR THE RENEWAL OF ACUPUNCTURE LICENSES; TO ELIMINATE THE REQUIREMENT THAT THE BOARD OF MEDICAL EXAMINERS PROVIDE NOTICE OF THE RENEWAL DATE FOR ACUPUNCTURE LICENSES TO LICENSED ACUPUNCTURISTS; TO CHANGE THE DATE OF REVOCATION OF AN ACUPUNCTURE LICENSE FOR FAILURE TO PAY THE LICENSE RENEWAL FEE; TO REMOVE THE LIMIT ON THE FEE THAT THE BOARD OF MEDICAL EXAMINERS MAY SET FOR APPROVAL OF PHYSICIAN ASSISTANT-CERTIFIED UTILIZATION PLANS; TO REVISE THE REQUIREMENTS AND PROCEDURES FOR THE ANNUAL RENEWAL OF PHYSICIAN ASSISTANT-CERTIFIED UTILIZATION PLANS; TO GRANT RULEMAKING AUTHORITY RELATING TO PODIATRY TO THE BOARD OF MEDICAL EXAMINERS; AND AMENDING SECTIONS 37-3-323, 37-6-304, 37-6-311, 37-13-306, AND 37-20-302, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because rulemaking authority is provided to the board of medical examiners to administer several licensing functions. It is the intent of the legislature that the board of medical examiners adopt rules to set: a date for annual renewal of licenses to practice podiatry or acupuncture; a date for annual renewal of the certificate issued to a physician assistant-certified; and the amount of the utilization plan approval fee. It is further the intent of the legislature that the board of medical examiners adopt rules to implement the provisions of Title 37, chapter 6, parts 1 and 3.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-323, MCA, is amended to read:

"**37-3-323. Revocation or suspension of license — probation — fine — disposition of fine.** (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured his license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or has a condition which impairs his intellect or judgment to the extent that it incapacitates him for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine while his license was suspended or revoked;

(d) has had his license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated its terms.

(2) The investigation shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination, and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(3) A person, including a member of the board, may file a ~~sworn~~ *written* complaint with the department against a person having a license to practice medicine in this state charging him with the commission of any of the offenses set forth in 37-3-322 or with any of the offenses or conditions set forth in subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused at his last address of record with the department, together with a written citation of the time and place of the hearing on it.

(4) At the hearing the board shall adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-3-322 or subsection (1) of this section do not exist with respect to the person or if he is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or

conditions referred to in 37-3-322 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place him on probation;

(e) impose a fine, not to exceed $500 an incident; or

(f) take any other action in relation to disciplining him as the board in its discretion considers proper.

(5) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent action of the board with respect to it.

(6) On the expiration of the term of suspension, the licensee shall be reinstated by the board if he furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced medicine in this state during the term of suspension, the board shall revoke the license at a hearing with notice and the procedure provided in subsection (1) of this section. The revocation is final and absolute.

(7) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent or seriously mentally ill or addicted to the use of narcotics, his license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until he is discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board.

(8) A fine imposed under this section must be deposited in the general fund.

(9) The remedies and method of enforcement of this part as provided for in this section are concurrent and in addition to the other remedies provided in this part."

Section 2. Section 37-6-304, MCA, is amended to read:

"**37-6-304. Designations on license — recording — renewal — display.** (1) A license issued under this chapter ~~shall be~~ *is* designated as a "registered podiatrist's license" or a "temporary podiatrist's license".

(2) Licenses ~~shall~~ *must* be recorded by the department the same as other medical licenses.

(3) Licenses must be renewed annually, on a date set by the board.

~~(3)~~*(4)* A license renewal fee set by the board ~~shall~~ *must* be paid annually on ~~July 1 of each year~~ *a date set by the board.*

~~(4)~~*(5)* The department shall mail renewal notices no later than ~~May 1 of each year and shall issue a receipt acknowledging payment of an annual renewal fee~~ *60 days prior to the annual renewal date set by the board under subsection (3).*

~~(5)~~*(6)* If *the* annual renewal ~~fees are~~ *fee is* not paid on or before ~~October 1 of each year~~ *the renewal date set by the board under subsection (3),* the board may revoke the licensee's certificate after giving 30 days' notice to the licensee. A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the certificate. No certificate may be revoked for nonpayment of a renewal fee if the licensee pays the annual renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.

~~(6)~~*(7)* A license revoked for nonpayment of the annual renewal fee may be reissued only on original application and payment of an additional fee prescribed by the board.

~~(7)~~*(8)* Licenses ~~shall~~ *must* be conspicuously displayed by podiatrists at their offices or other places of practice."

Section 3. Section 37-6-311, MCA, is amended to read:

"**37-6-311. Refusal or revocation of license — investigation — reinstatement.** (1) After notice and opportunity for a hearing, the board may deny, revoke, or refuse to renew a license to practice podiatry if the consensus of the board is that an applicant is not of good moral character or has engaged in unprofessional conduct. The department shall notify the applicant of the board's intent to deny, revoke, or refuse to renew a license by mailing a letter to the applicant's last-known address stating the board's intent and setting a time and place for a hearing. If the applicant fails without cause to appear at the hearing or if the board determines that the applicant is not entitled to a license, the board shall deny, revoke, or refuse to renew the applicant's license.

(2) The board may investigate whenever it is brought to its attention that a licensed podiatrist:

(a) is mentally or physically unable to engage safely in the practice of podiatry;

(b) has procured his license by fraud, misrepresentation, or through error;

(c) has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent;

(d) has a condition that impairs his intellect or judgment to the extent that it incapacitates him in the safe performance of his professional duties;

(e) has been found guilty of unprofessional conduct;

(f) has practiced podiatry while his license was suspended or revoked;

(g) has had his license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(h) while under probation has violated its terms.

(3) The investigation shall be for the purpose of determining the probability that the alleged conditions exist or that the alleged offenses were committed. The investigation may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interest of the public that this evaluation be secured. The board may examine the hospital records and reports of a licensee as part of the examination, and copies shall be released to the board on written request. If the board has reasonable cause to believe that the alleged conditions exist or that the alleged offenses were committed, the department shall mail to the person at his last-known address a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(4) A person, including a member of the board, may file a ~~sworn~~ *written* complaint with the department against a person having a license to practice podiatry in this state charging him with the commission of any of the offenses set forth in 37-6-310 or with any of the offenses or conditions set forth in subsection (1) or (2) of this section. The complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person complained against, at his last-known address, together with a written citation of the time and place of the hearing on the complaint.

(5) At the hearing the board shall adopt a resolution finding the person complained against guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-6-310 or subsection (1) or (2) of this section do not exist with respect to the person complained against or if he is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-6-310 or in subsection (1) or (2) of this section do exist or the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place him on probation; or

(e) take any other action in relation to disciplining him as the board in its discretion considers proper.

(6) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent measures taken by the board with respect to that action.

(7) On the expiration of the term of suspension, the licensee shall be reinstated by the board if he furnishes the board with evidence that he is then of good moral character and conduct or restored to good health and that he has not practiced podiatry in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced podiatry in this state during the term of suspension, the board shall revoke the license at a hearing held in accordance with the notice and procedure provided in subsection (1). The revocation is final.

(8) If a person holding a license to practice podiatry under this chapter is by a final order or adjudication of a court of competent jurisdiction determined to be mentally incompetent, seriously mentally ill, or addicted to the use of narcotics, his license may be suspended by the board. The suspension continues until the licensee is found by the court to be restored to reason or cured or until he is discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board."

Section 4. Section 37-13-306, MCA, is amended to read:

"**37-13-306. Annual renewal — fee — military exemption.** (1) The license to practice acupuncture ~~shall expire on December 31 of each calendar year and shall~~ *must* be renewed *annually, on a date set by the board,* without examination *and* upon request of the licensee. The request for renewal ~~shall~~ *must* be on forms prescribed by the board and accompanied by a renewal fee prescribed by the board. The request and fee ~~shall~~ *must* be in the hands of the secretary of the board not later than the expiration date of the license.

~~(2) On or before December 1 of each calendar year, the secretary of the board shall notify each licensee by letter, addressed to his last place of residence as the same appears on the records of the board, that his license will expire on December 31 following the date of notice unless application for renewal, accompanied by the annual renewal fee, is received by the board on or prior to that date.~~

~~(3)~~*(2)* Immediately following ~~December 31 of each calendar year~~ *the renewal date,* the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be cancelled and revoked upon the records of the board unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee prescribed by the board, ~~shall be~~ *is* in the hands of the secretary ~~prior to February 1 following the expiration~~ *within 30 days of the renewal* date.

~~(4)~~*(3)* ~~Immediately following February 1 of each calendar year~~ *If the licensee fails to renew within 30 days following the renewal date,* the secretary of the board shall cancel and revoke upon its records all licenses ~~which~~ *that* have not been renewed or reinstated as provided by this chapter and shall notify the licensees whose licenses are ~~so~~ revoked of ~~such~~ *the* action.

~~(5)~~*(4)* ~~Any~~ *A* licensee who allows his license to lapse by failing to renew or reinstate the ~~same~~ *license* as ~~herein~~ provided *in this section* may subsequently reinstate the ~~same~~ *license* upon good cause shown to the satisfaction of the board and upon payment of all annual renewal fees then accrued plus an additional fee prescribed by the board for each year following the cancelling of the license.

~~(6)~~*(5)* ~~Any~~ *A* person actively engaged in the military service of the United States and licensed to practice acupuncture as ~~herein~~ provided *in this part* ~~shall~~ *is* not ~~be~~ required to pay the annual renewal fee or make application for renewal until ~~December 31~~ *the renewal date* of the calendar year in which he returns from military service to civilian or inactive status."

Section 5. Section 37-20-302, MCA, is amended to read:

"**37-20-302. Utilization plan approval fee — renewal of approval — renewal fee.** (1) Every physician, office, firm, or professional service corporation proposing to employ a physician assistant-certified shall pay to the board a utilization plan approval fee in an amount set by the board~~, not exceeding $50~~. Payment must be made when the utilization plan is submitted to the board and is not refundable.

~~(2) Approval of every physician assistant-certified utilization plan expires 1 year from the date of approval and is invalid thereafter. The department of commerce shall notify each physician, office, firm, or professional corporation and physician assistant-certified named in a utilization plan of the date of expiration of board approval at least 1 month prior to the expiration of approval.~~

~~(3) Renewal of approval shall be granted by the board under such circumstances as would justify original approval of a utilization plan and upon payment by the employing physician, office, firm, or professional service corporation of a renewal fee in an amount to be set by the board, not to exceed $50.~~

~~(4)~~*(2)* Every physician, office, firm, or professional service corporation proposing to employ a physician assistant-certified on a locum tenens basis shall pay to the board a locum tenens utilization plan fee in an amount set by the board~~, not to exceed $50~~.

(3) A certificate issued under this part must be renewed annually, on a date set by the board.

(4) A certificate renewal fee set by the board must be paid at the time the certificate is renewed.

(5) The department shall mail a renewal notice no later than 60 days prior to the renewal date set by the board under subsection (3). A certified letter addressed to the delinquent certificate holder's last-known address as it appears on the records of the department constitutes notice of intent to revoke the certificate.

(6) If the annual renewal fee is not paid on or before the renewal date set by the board under subsection (3), the board may revoke the certificate after giving 30 days' notice to the certificate holder. A certificate may not be revoked for nonpayment of a renewal fee if the certificate holder pays the annual renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.

~~(5)~~*(7)* Fees received by the department must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6)."

Section 6. **Rulemaking authority.** The board may adopt rules to carry out the provisions of this chapter. Rules adopted by the board must be fair, impartial, and nondiscriminatory.

Section 7. **Codification instruction.** [Section 6] is intended to be codified as an integral part of Title 37, chapter 6, part 1, and the provisions of Title 37, chapter 6, apply to [section 6].

Approved April 22, 1991.

CHAPTER NO. 541

[HB 891]

AN ACT REQUIRING FINANCIAL ASSURANCE AS A CONDITION OF A LICENSE TO OPERATE A MEGALANDFILL; PROVIDING FOR THE RELEASE OF AN OPERATOR FROM FINANCIAL ASSURANCE; PROVIDING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES WITH THE AUTHORITY TO RECLAIM, RESTORE, OR REPLACE DAMAGED OR IMPAIRED NATURAL RESOURCES; ESTABLISHING A MEGALANDFILL RECLAMATION ACCOUNT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the board of health and environmental sciences and to the department of health and environmental sciences for the adoption of rules.

In adopting rules to set forth the specific terms and conditions of bonding as a financial assurance mechanism authorized under [section 2], the department shall consult and, to the greatest extent practicable, rely upon concepts and requirements contained in Rules 16.44.801 through 16.44.823, Administrative Rules of Montana, that establish financial assurance requirements for hazardous waste management facilities during the closure and postclosure phases of operations of such facilities.

The board shall adopt rules related to bond forfeiture and the reclamation, restoration, and replacement of damaged natural resources for which a bond has been forfeited. In developing these rules, the board shall consider the experience of the department of state lands and others involved with mine reclamation. The board shall also consult with the regulated community, local governments, and others involved in solid waste management.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Applicant" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity that applies for a license to operate a megalandfill pursuant to 75-10-221.

(2) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Megalandfill" means any new or existing solid waste management system licensed under 75-10-221 that accepts more than 200,000 tons of solid waste a year or an ash monofill that accepts more than 35,000 tons of ash a year.

(5) "Natural resource" means ground water, surface water, soil, wildlife, and other physical and biological resources as determined by the department by rule.

Section 2. **Megalandfill financial assurance — release.** (1) As a condition of a license to operate a megalandfill under 75-10-221, an applicant shall provide financial assurance sufficient to ensure the restoration or replacement of any natural resource damaged or impaired as a result of the construction, operation, or closure of the megalandfill. The department shall determine the amount of financial assurance that must be provided based on an assessment of the license application and the applicant's estimated cost of reclaiming, restoring, or replacing natural resources that may be damaged or impaired by the applicant's proposed operations.

(2) The department shall adopt rules to specify the terms and conditions of financial assurance.

(3) To satisfy the financial assurance requirement, the applicant shall file with the department a bond that is payable to the state of Montana with a surety satisfactory to the department, conditioned upon the faithful performance of the requirements of this section and the rules of the department.

(4) The bond approved by the department may not be less than the estimated cost to the state to reclaim, restore, or replace damaged or impaired natural resources.

(5) Every 2 years the department shall evaluate the amount of the bond provided for a licensed megalandfill. If the department determines that the amount of the bond does not represent the present cost of reclaiming, restoring, or replacing natural resources that may be damaged or impaired by the operation, the department may modify the terms and conditions of the bond.

(6) The department may not release an operator from the financial assurance requirement and may not release the bond:

(a) for a minimum of 30 years after the megalandfill has closed;

(b) until the department determines that the natural resources associated with the megalandfill have been permanently reclaimed, restored, or replaced to the quantity and quality that prevailed prior to the commencement of the licensed operations and that the megalandfill presents no significant future threat to those natural resources; and

(c) until a public hearing has been held. The department shall make all information that is relevant to the decision on whether to release an operator from the financial assurance requirement readily available to interested persons, and no less than 45 days prior to the public hearing the department shall:

(i) publish notice of the hearing in newspapers of general statewide circulation and circulation in the county where the megalandfill is located; and

(ii) take other appropriate measures to ensure broad distribution of the hearing notice.

(7) A person may submit to the department information relevant to the department's decision to release an operator from all or any part of the financial assurance requirement for a period of 30 days after the date of the public hearing required under subsection (6).

(8) A person may request the department to reconsider its decision to release an operator from all or any part of the financial assurance require-

ment based upon information the person submits to show that the licensee has not reclaimed, restored, or replaced the quantity or quality of natural resources that prevailed prior to the commencement of the licensed operations. The department's response to a request to reconsider its decision to release an operator from all or any part of the financial assurance requirement is the final agency decision.

Section 3. **Bond forfeiture.** At the board's discretion, the failure of a licensee to reclaim, restore, or replace damaged or impaired natural resources to the department's satisfaction, as required under [section 2(6)] or any rule adopted under [section 2(6)], may result in bond forfeiture.

Section 4. **Reclamation by board.** (1) Pursuant to the provisions of [sections 1 through 5], the board may reclaim, restore, or replace any affected natural resources for which a bond has been forfeited.

(2) The board may have reclamation work done by department employees or by employees of other governmental agencies or soil conservation districts or through contracts with qualified persons.

(3) Any funds or any public works programs available to the board be used and expended to reclaim, restore, or replace natural resources that have been damaged or impaired as a result of the construction, operation, or closure of a megalandfill. The board shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(4) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether a megalandfill has been reclaimed and rehabilitated in accordance with the requirements of [section 2(6)]. Upon request of the board, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection.

Section 5. **Megalandfill reclamation account.** (1) There is a megalandfill reclamation account in the state special revenue fund provided for in 17-2-102.

(2) All fees, fines, penalties, forfeited bonds, and other money that have been or will be paid to the department under the provisions of [sections 1 through 5] must be deposited in the account.

(3) Money in the account is available to the department for the reclamation, restoration, and replacement of natural resources damaged or impaired by the megalandfill. Unencumbered and unexpended money remaining in the account at the end of a fiscal year may not lapse but must be carried forward for the purposes of this subsection until appropriated by subsequent legislative action.

Section 6. **Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [sections 1 through 5].

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved April 22, 1991.

CHAPTER NO. 542

[HB 894]

AN ACT PROVIDING A TAX CREDIT FOR CONTRIBUTIONS MADE TO THE GENERAL ENDOWMENT FUNDS OF THE MONTANA UNIVERSITY SYSTEM FOUNDATIONS AND MONTANA PRIVATE COLLEGES OR THEIR FOUNDATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Credit for contributions to university system foundations.** (1) For taxable years beginning after December 31, 1990, and before January 1, 1996, an individual, corporation, partnership, or small business corporation, as defined in 15-31-201, is allowed a tax credit against taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 10% of the aggregate amount of charitable contributions made by the taxpayer during the year to any of the general endowment funds of the Montana university system foundations or a general endowment fund of a Montana private college or its foundation. The maximum credit a taxpayer may claim in a year under this section is $500. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.

(3) (a) For the purposes of this section, "foundation" means a nonprofit organization created exclusively for the benefit of any unit of the Montana university system or a Montana private college and that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

(b) For the purposes of this section, "Montana private college" means a nonprofit private educational institution:

(i) whose main campus and primary operations are within the state; and

(ii) that offers baccalaureate degree level education and is accredited for that purpose by a national or regional accrediting agency recognized by the board of regents of higher education.

Section 2. **Contribution by small business corporation.** A contribution to a general endowment fund of the Montana university system [or a Montana private college] by a small business corporation, as defined in 15-31-201, qualifies for the credit in [section 1]. The credit must be attributed to shareholders, using the same proportion used to report the corporation's income or loss for Montana income tax purposes.

Section 3. **Contribution by partnership.** A contribution to a general endowment fund of the Montana university system [or a Montana private college] by a partnership qualifies for the credit in [section 1]. The credit must be attributed to partners, using the same proportion used to report the partnership's income or loss for Montana tax purposes.

Section 4. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 1].

(2) [Sections 2 and 3] are intended to be codified as an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [sections 2 and 3].

Section 5. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved April 22, 1991.

CHAPTER NO. 543

[HB 908]

AN ACT REQUIRING THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES REQUIRING THE ACQUISITION, INSTALLATION, AND MAINTENANCE OF WATER MEASURING DEVICES ON CHRONICALLY DEWATERED WATERCOURSES OR PORTIONS OF WATERCOURSES; PROVIDING GUIDELINES FOR THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO IDENTIFY CHRONICALLY DEWATERED WATERCOURSES; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONSIDER WATER DEVELOPMENT PROGRAM GRANT AND LOAN APPLICATIONS FOR THE INSTALLATION OF REQUIRED MEASURING DEVICES; AND AMENDING SECTIONS 85-1-602, 85-1-604, 85-2-102, AND 85-2-113, MCA.

STATEMENT OF INTENT

A statement of intent is required to provide guidance to the board of natural resources and conservation in adopting rules to implement the provisions of [this act]. The legislature understands that many Montana watercourses or portions of watercourses suffer chronic dewatering. The legislature further understands that this dewatering severely impairs important beneficial uses of those watercourses, including but not limited to fisheries and agricultural, industrial, municipal, and recreational uses. It is the intent of the legislature, where reasonable and practical, to identify those watercourses or portions of watercourses where chronic dewatering significantly impairs these beneficial uses. It is also the intent of the legislature to require measuring devices on diversions in chronically dewatered watercourses or portions of watercourses to ensure that appropriators withdraw only the amounts they are entitled to withdraw under valid appropriative rights and water use permits.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

"**85-2-102.** *(Temporary)* **Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Commission" means the fish and game commission provided for in 2-15-3402.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(10) "Ground water" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

(13) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(14) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

~~(14)~~*(15)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(15)~~*(16)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(16)~~*(17)* "Water division" means a drainage basin as defined in 3-7-102.

~~(17)~~*(18)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(18)~~*(19)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(19)~~*(20)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. *(Terminates June 30, 1993—sec. 11, Ch. 658, L. 1989.)*

85-2-102. *(Effective July 1, 1993)* **Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(9) "Ground water" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(10) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(11) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

(12) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(13) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(14) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(15) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

~~(15)~~*(16)* "Water division" means a drainage basin as defined in 3-7-102.

~~(16)~~*(17)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(17)~~*(18)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(18)~~*(19)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-113, MCA, is amended to read:

"**85-2-113. Board powers and duties.** (1) The board may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, and all change approvals. There shall be no fees for any action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the board may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in excess of 100 gallons a minute;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

(4) (a) The board shall adopt rules to require the owner or operator of an appropriation facility on a watercourse or portions of a watercourse identified as chronically dewatered by the department under [section 3] to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after designation of the watercourse or portions of the watercourse as chronically dewatered, except that where the board specifically finds that the installation of measuring devices along the entire watercourse or portions of the watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

(b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any method used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using recognized methods of flow measurement, as determined by the board, are in compliance with subsection (4)."

Section 3. **Chronically dewatered watercourse — identification.** (1) Using the factors in subsection (2) as guidelines, the department, in consultation with other agencies and groups, shall identify chronically dewatered watercourses or portions of watercourses.

(2) The factors the department shall consider when identifying chronically dewatered watercourses or portions of watercourses include but are not limited to the:

(a) extent, duration, and frequency of the dewatering;

(b) impact of the dewatering on fish, wildlife, or other natural resources;

(c) particular species of fish and wildlife impacted;

(d) impact of dewatering on other off-stream uses, including but not limited to agricultural, industrial, municipal, and recreational uses;

(e) probable cause of the dewatering;

(f) existence of temporary or final decrees;

(g) history, if any, of conflict among water rights holders on the watercourse;

(h) practicality and reasonableness of installing measuring devices on diversions along the watercourse; and

(i) likelihood that the installation of measuring devices will significantly help to:

(i) solve the chronically dewatered condition of the watercourse; or

(ii) resolve conflicts among water rights holders on the watercourse.

Section 4. Section 85-1-602, MCA, is amended to read:

"**85-1-602. Objectives.** The department shall administer a water development program to accomplish such objectives as rehabilitation of state-owned water projects and works; promotion of private, local government, and state water development; development of water-based recreation and the protection of water resources for the benefit of agriculture, flood control, and other uses; development of offstream and tributary storage; encouragement of projects or programs that improve water use efficiency, including development of new, efficient water systems, ~~and~~ rehabilitation of older, less efficient water systems, *and acquisition and installation of measuring devices required under 85-2-113*; and development of state-tribal, state-federal, and state-tribal-federal water projects. The storage of water for existing and future beneficial uses shall be given the highest priority unless a water development project or activity designed to accomplish another objective is demonstrated to be more beneficial to a greater number of people. The water development program is the key implementation portion of the state water plan and shall be administered to accomplish the objectives of the plan."

Section 5. Section 85-1-604, MCA, is amended to read:

"**85-1-604. Water development state special revenue account created — revenues allocated — limitations on appropriations from account.** (1) There is created a water development state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the water development debt service fund pursuant to 85-1-603, there shall be paid into the water development state special revenue account:

(a) all revenues of the works and other money as provided in 85-1-332;

(b) 30% of the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the water development debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619; and

(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests.

(3) Appropriations may be made from the water development state special revenue account for the following purposes and subject to the following conditions:

(a) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection (3)(a) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(b).

(b) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(a) and only that amount may be appropriated from the account for:

(i) the rehabilitation of state-owned projects and works, including the rehabilitation of spillways of state-owned dams;

(ii) the formulation of downstream emergency warning and evacuation plans for state-owned dams;

(iii) the development of the hydropower potential of state-owned dams;

(iv) assistance in the implementation of the water reservations established under 85-2-316 of conservation districts;

(v) the promotion of the development of offstream and tributary storage;

(vi) the promotion of joint state-tribal, state-federal, and state-tribal-federal water development;

(vii) projects or programs that improve water use efficiency, including development of new, efficient water systems, ~~and~~ rehabilitation of older, less efficient water systems, *and acquisition and installation of measuring devices required under 85-2-113*;

(viii) administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, office space, and other necessities incurred in the administration of the water development program except the administration of loans and grants; and

(ix) any other expenditures that meet the policies and objectives of the state water development program.

(c) An amount less than or equal to that paid into the account from the sources provided for in (c) and (d) of subsection (2) and only that amount may be appropriated from the account for loans and grants for water development projects and activities; for purchase of liens and operation of property as provided in 85-1-615; for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, and office space; for the servicing of loans, including arrangements for obtaining security interests; and for other necessities incurred in administering the loans and grants."

Section 6. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to [section 3].

Approved April 22, 1991.

CHAPTER NO. 544

[HB 917]

AN ACT TO GENERALLY REVISE THE AIDS PREVENTION ACT; CHANGING THE DEFINITION OF "HEALTH CARE PROVIDER" TO CONFORM WITH THE UNIFORM HEALTH CARE INFORMATION ACT; CLARIFYING THE KIND OF COUNSELING THAT A HEALTH CARE PROVIDER IS REQUIRED TO GIVE IN ADMINISTERING AN HIV-RELATED TEST; ALLOWING NEXT-OF-KIN, A SIGNIFICANT OTHER, OR A DESIGNATED INDIVIDUAL TO CONSENT TO AN HIV-RELATED TEST ADMINISTERED TO AN UNCONSCIOUS OR MENTALLY INCAPACITATED PERSON; ESTABLISHING THAT AN ORDER TO PERFORM AN HIV-RELATED TEST ALSO CERTIFIES THAT PRIOR INFORMED CONSENT WAS OBTAINED; REQUIRING A HEALTH CARE PROVIDER WHO DOES NOT PROVIDE HIV-RELATED TESTS ON AN ANONYMOUS BASIS TO INFORM ALL THOSE WISHING TO BE TESTED THAT ANONYMOUS TESTING IS AVAILABLE ELSEWHERE; REQUIRING THE SUBJECT OF AN HIV-RELATED TEST TO DESIGNATE A HEALTH CARE PROVIDER TO RECEIVE THE RESULTS OF THE TEST; REQUIRING INSURANCE COMPANIES TO INFORM APPLICANTS OF POSITIVE HIV TEST RESULTS AND ALLOW THEM ACCESS TO NEGATIVE HIV TEST RESULTS; CLARIFYING WHEN CONSENT TO A TEST MAY BE WITHDRAWN AND WHEN IT IS NOT REQUIRED; PROVIDING FOR HIV TESTING OF PATIENTS POTENTIALLY INFECTING HEALTH CARE FACILITY OR EMERGENCY SERVICES PERSONNEL; ALLOWING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT STANDARDS FOR HIV-RELATED TESTING OF ORGAN, TISSUE, AND SEMEN DONORS; CLARIFYING WHEN THE IDENTITY OF THE SUBJECT OF AN HIV-RELATED TEST AND TEST RESULTS MAY BE DISCLOSED BY GOVERNMENT HEALTH CARE WORKERS; REVISING THE UNIFORM HEALTH CARE INFORMATION ACT TO ALLOW HEALTH CARE PROVIDERS TO RELEASE HEALTH CARE INFORMATION WITHOUT CONSENT WHEN DISCLOSURE WILL AVOID OR MINIMIZE DANGER TO THE HEALTH OR SAFETY OF A PERSON; MAKING IT A MISDEMEANOR FOR A PERSON TO UNLAWFULLY DISCLOSE CONFIDENTIAL HEALTH CARE INFORMATION; INCREASING THE CIVIL PENALTIES FOR VIOLATION OF THE AIDS PREVENTION ACT; AMENDING SECTIONS 50-16-529, 50-16-702, 50-16-1003, 50-16-1007, 50-16-1008, 50-16-1009, AND 50-16-1013, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] gives authority to the department of health and environmental sciences to adopt rules setting standards that must be met before donation of an organ, semen, or tissues in order to prevent transmission of the virus causing acquired immune deficiency syndrome (AIDS). It is intended that the department adopt nationally accepted standards that are developed for each type of donation and that are apparently most effective in preventing transmission of the virus.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-16-1003, MCA, is amended to read:

"**50-16-1003. Definitions.** As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means*:*

(a) an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes*; or*

(b) any other person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the center for disease control of the United States public health service.

(3) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(4) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(5) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(6) "HIV-related test" means a ~~laboratory~~ test *approved by the federal food and drug administration,* including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(7) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(8) "Health care provider" means a ~~physician, nurse, paramedic, psychologist, dentist, public health department agent, or other person providing medical, nursing, psychological, or other health care services of any kind~~ *person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of*

a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(10) "Local board" means a county, city, city-county, or district board of health.

(11) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(12) "Next-of-kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

~~(10)~~*(13)* "Person" means an individual, corporation, organization, or other legal entity.

~~(11)~~*(14)* "Posttest counseling" means counseling, conducted at the time the HIV-related test results are given, and includes, *at a minimum,* written materials provided by the department.

~~(12)~~*(15)* "Pretest counseling" means the provision of ~~written materials~~ *counseling* to the subject prior to conduct of an ~~HIV~~ *HIV-related* test~~. The~~*, including, at a minimum,* written materials ~~must be~~ developed and provided by the department.

~~(13)~~*(16)* "Release of test results" means a written authorization for disclosure of HIV-related test results that*:*

(a) is signed and dated *by the person tested or the person authorized to act for the person tested;* and ~~that~~

(b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(17) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.

~~(14)~~*(18)* (a) "Written informed consent" means an agreement in writing *that is* freely executed by the subject of an HIV-related test, ~~or~~ *by* the subject's legal guardian*, or, if there is no legal guardian and the subject is unconscious or otherwise mentally incapacitated, by the subject's next-of-kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf, and* that includes at least the following:

(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results; and

(ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and counseling, including notification that the test is voluntary and that consent may be withdrawn at any time *until the blood sample is taken;*

(iii) ~~a discussion~~ *an explanation* of whether and to whom the subject's name and test results may be disclosed; ~~and~~

(iv) a statement that the test may be obtained anonymously if the subject wishes~~.~~*;*

(v) the name and address of a health care provider whom the subject approves to receive the subject's test results and to provide the subject with posttest counseling; and

(vi) if the consent is for a test being performed as part of an application for insurance, a statement that only a positive test result will be reported to the designated health care provider and that negative test results may be obtained by the subject from the insurance company.

(b) The department shall develop a form agreement that may be used for purposes of this subsection."

Section 2. Section 50-16-1007, MCA, is amended to read:

"**50-16-1007. Testing — counseling — informed consent — penalty.** (1) ~~A person may not request an~~ *An* HIV-related test ~~without first~~ *may be ordered only by a health care provider and only after* receiving the written informed consent of*:*

(a) the subject of the test*;* ~~or~~

(b) the subject's legal guardian*;*

(c) the subject's next-of-kin or significant other if:

(i) the subject is unconscious or otherwise mentally incapacitated;

(ii) there is no legal guardian;

(iii) there are medical indications of an HIV-related condition; and

(iv) the test is advisable in order to determine the proper course of treatment of the subject; or

(d) the subject's next-of-kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

(i) the subject is in a hospital; and

(ii) the circumstances in subsection (1)(c)(i) through (iv) exist.

(2) ~~A~~ *When a* health care provider ~~shall certify in writing~~ *orders an HIV-related test, he also certifies* that informed consent has been received prior to ~~requesting testing. Testing may only be requested by a health care provider.~~ *ordering an HIV-related test.*

~~(2)~~*(3)* ~~Prior to executing an informed consent agreement,~~ *Before* the subject of the test *executes an informed consent agreement, the health care provider ordering the test or his designee must give pretest counseling to:*

(a) the subject; ~~or~~

(b) the subject's legal guardian ~~must be given pretest counseling~~*;*

(c) the subject's next-of-kin or significant other if:

(i) the subject is unconscious or otherwise mentally incapacitated; and

(ii) there is no guardian; or

(d) the subject's next-of-kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

(i) the subject is in the hospital; and

(ii) the circumstances in subsection (1)(c)(i) and (ii) exist.

~~(3)~~*(4)* A health care provider who does not provide HIV-related tests on an anonymous basis shall inform ~~a~~ *each* person who wishes to be tested ~~anonymously~~ that anonymous testing is available at one of the ~~counseling testing~~ *counseling-testing* sites established by the department, *or elsewhere.*

~~(4)~~*(5)* The *subject of an HIV-related test or any of the subject's representatives authorized by subsection (1) to act in the subject's stead shall designate, as part of his written informed consent, a health care provider to receive the* results of an HIV-related test. *The designated health care provider* ~~must be given to the health care provider designated by the subject, who~~ shall inform the subject *or the subject's representative* of the results in person.

~~(5)~~*(6)* At the time the subject of a test *or the subject's representative* is given the test results, *the health care provider or the provider's designee shall give* the subject *or the subject's representative* ~~must be provided with~~ posttest counseling.

(7) If a test is performed as part of an application for insurance, the insurance company must ensure that:

(a) negative results can be obtained by the subject or his representative upon request; and

(b) positive results are returned to the health care provider designated by the subject or his representative.

~~(6)~~*(8)* A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.

~~(7)~~*(9)* Subsections (1) through ~~(5)~~ *(6)* do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;

(b) the performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

(c) the performance of an HIV-related test when:

(i) the subject of the test is unconscious or otherwise mentally incapacitated;

(ii) there are medical indications of an HIV-related condition;

(iii) the test is advisable in order to determine the proper course of treatment of the subject; and

(iv) none of the individuals listed in subsections (1)(b), (1)(c), or (1)(d) exists or is available within a reasonable time after the test is determined to be advisable; or

(d) the performance of an HIV-related test conducted pursuant to 50-18-107 or 50-18-108, with the exception that the pretest and posttest counseling must still be given.

(10) (a) If an agent or employee of a health care facility, a health care provider with privileges at the health care facility, or a person providing emergency services who is described in 50-16-702(1) has been voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of transmission recognized by the center for disease control of the United States public health service, the physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and seek written informed consent in accordance with guidelines of the center for disease control for an HIV-related test of the patient. If written informed consent cannot be obtained, the health care facility, in accordance with the infectious disease exposure guidelines of the health care facility, may, without the consent of the patient, conduct the test on previously drawn blood or previously collected bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform a test authorized in this subsection. If a test is conducted pursuant to this subsection, the health care facility shall inform the patient of the results and provide the patient with posttest counseling. The patient may not be charged for a test performed pursuant to this subsection. The results of a test performed pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

(b) For the purposes of this subsection, "written informed consent" means an agreement in writing that is freely executed by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is incapacitated, by the subject's next-of-kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf.

~~(8)~~*(11)* A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of $1,000 or imprisonment for up to 6 months, or both."

Section 3. Section 50-16-1008, MCA, is amended to read:

"**50-16-1008. Testing of donors of organs, tissues, and semen required — penalty.** (1) ~~Immediately prior~~ *Prior* to donation of an organ, semen, or tissues, HIV-related testing of a prospective donor, *in accordance with nationally accepted standards adopted by the department by rule,* is required unless the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an HIV-related test.

(2) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of up to $1,000 or imprisonment of up to 6 months, or both."

Section 4. Section 50-16-1009, MCA, is amended to read:

"**50-16-1009. Confidentiality of records — *notification of contacts — penalty for unlawful disclosure.*** (1) ~~A~~ *Except as provided in subsection (2), a* person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5.

(2) A local board, local health officer, or the department may disclose the identity of the subject of an HIV-related test or the test results only to the extent allowed by the Government Health Care Information Act, Title 50, chapter 16, part 6, unless it is in possession of that information because a health care provider employed by it provided health care to the subject, in which case the Uniform Health Care Information Act governs the release of that information.

~~(2)~~*(3)* If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons ~~with whom there has been a contact capable of spreading HIV~~ *who are potential contacts.* If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

(4) A person who discloses or compels another to disclose confidential health care information in violation of this section is guilty of a misdemeanor punishable by a fine of $1,000 or imprisonment for 1 year, or both."

Section 5. Section 50-16-1013, MCA, is amended to read:

"**50-16-1013. Civil remedy.** (1) A person aggrieved by a violation of this part has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of this part, damages of ~~$1,000~~ *$5,000* or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of this part, damages of ~~$5,000~~ *$20,000* or actual damages, whichever is greater;

(c) reasonable attorney fees; and

(d) other appropriate relief, including injunctive relief.

(2) An action under this section must be commenced within 3 years after the cause of action accrues.

(3) The department may maintain a civil action to enforce this part in which the court may order any relief permitted under subsection (1).

(4) Nothing in this section limits the rights of a subject of an HIV-related test to recover damages or other relief under any other applicable law or cause of action.

(5) Nothing in this part may be construed to impose civil liability or criminal sanctions for disclosure of an HIV-related test result in accordance with any reporting requirement for a diagnosed case of AIDS or an HIV-related condition by the department or the centers for disease control of the United States public health service."

Section 6. Section 50-16-529, MCA, is amended to read:

"**50-16-529. Disclosure without patient's authorization based on need to know.** A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; for assisting the health care provider in the delivery of health care; or to a third-party health care payor who requires health care information and if the health care provider reasonably believes that the person will:

(a) not use or disclose the health care information for any other purpose; and

(b) take appropriate steps to protect the health care information;

(3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to

the patient, unless the patient has instructed the health care provider not to make the disclosure;

(4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;

(5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(6) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) contains reasonable safeguards to protect the information from improper disclosure;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and

(e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(7) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider~~; and~~

(8) to an official of a penal or other custodial institution in which the patient is detained*; and*

(9) to any contact, as defined in 50-16-1003, if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or any other individual."

Section 7. Section 50-16-702, MCA, is amended to read:

"**50-16-702. Report of unprotected exposure to disease.** (1) A report may be filed, as provided in subsection (2), by a person:

(a) employed by or acting as a volunteer with a public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, corrections officer, or ambulance service attendant; and

(b) who, in his official capacity with the public or private organization, attends or assists in transporting a patient to a health care facility and believes he has sustained an unprotected exposure.

(2) A person who qualifies in subsection (1) may submit to the health care facility, on a form prescribed by the department, a report of unprotected exposure that contains his name and other information required by the department, including a description of the unprotected exposure.

(3) If the exposure described in the report occurred in a manner that may allow infection by HIV, as defined in 50-16-1003, by a mode of transmission recognized by the center for disease control, then submission of the report to the health care facility constitutes a request to the patient's physician to seek consent for performance of an HIV-related test pursuant to 50-16-1007(10)."

Section 8. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. **Effective date.** [This act] is effective July 1, 1991.

Approved April 22, 1991.

CHAPTER NO. 545

[HB 943]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE LICENSURE AND REGULATION OF SANITARIANS; AUTHORIZING THE BOARD OF SANITARIANS TO MEET FOUR TIMES ANNUALLY; CLARIFYING THE DEFINITION OF PRACTICE OF THE PROFESSION OF SANITARIAN; PROVIDING FOR THE STATUS OF SANITARIAN-IN-TRAINING; EXEMPTING CERTAIN STATE EMPLOYEES FROM REGULATION; CLARIFYING AND DETAILING THE RULEMAKING AUTHORITY OF THE BOARD OF SANITARIANS; AUTHORIZING RULES FOR EDUCATIONAL EQUIVALENCY, CONTINUING EDUCATION, AND DISCIPLINE; AUTHORIZING THE ADOPTION OF A SCHEDULE OF FEES; AUTHORIZING ENFORCEMENT BY INJUNCTION AND OTHER RELIEF; AMENDING SECTIONS 37-40-101, 37-40-102, 37-40-201, 37-40-301, 37-40-302, 37-40-303, 37-40-304, 37-40-305, 37-40-311, AND 37-40-312, MCA; REPEALING SECTIONS 37-40-306 AND 37-40-307, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 4 and 6] grant rulemaking authority to the board of sanitarians. It is the intent of the legislature that the board of sanitarians adopt rules:

(1) establishing standards of professional conduct in order to maintain the integrity, dignity, and competency of the profession;

(2) governing the conduct of matters before the board including meetings, recordkeeping, rulemaking, hearings, and other matters;

(3) establishing educational equivalency requirements to determine qualifications for licensure;

(4) establishing procedures and passing scores for examinations for applicants for licensure;

(5) establishing requirements for continuing education to maintain professional knowledge and competence as a condition of continued licensure;

(6) defining qualifications for sanitarian-in-training status and issuance of a permit;

(7) establishing a schedule of nonrefundable fees to cover costs incurred in regulation of the profession; and

(8) defining unprofessional conduct as a basis for disciplinary action.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-40-101, MCA, is amended to read:

"37-40-101. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Board" means the board of sanitarians provided for in 2-15-1861.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Registered sanitarian" means a sanitarian licensed under this chapter.

(4) "Sanitarian", within the meaning and intent of this chapter, shall mean a person who, by reason of his special knowledge of the physical, biological, and chemical sciences and the principles and methods of public health acquired by professional education and practical experience through inspectional, educational, and/or enforcement duties, is qualified to practice the profession of sanitarian.

(5) "Practice the profession of sanitarian" means ~~planning, inspectional, educational, or enforcement duties in the field of environmental sanitation.~~:

(a) giving advice on or enforcing compliance with state and local regulations applicable to local government jurisdictions and programs concerning food service, food processing, public accommodations, trailer courts, campgrounds, day-care centers, schools, swimming pools and spas, air pollution, solid and hazardous waste collection and disposal, sewage treatment and disposal, vector control, underground storage tanks, drinking water, land subdivision, and milk sanitation;

(b) cooperating with government agencies on matters of public and environmental health, including epidemiological investigations and emergency response to investigations; and

(c) providing educational and training programs in environmental standards and public health.

(6) "Sanitarian-in-training" means a person who meets the minimum educational qualifications required for a sanitarian's license and who works under the supervision of a licensed sanitarian. Sanitarians-in-training may, with board approval, work in a public health agency for a period not to exceed 1 year and be considered exempt from the licensing and registration requirements of 37-40-301."

Section 2. Section 37-40-102, MCA, is amended to read:

"**37-40-102. Exemptions.** Persons exempt from the requirements of this chapter~~, unless practicing the profession of sanitarian,~~ are:

(1) any person teaching, lecturing, or engaging in research in environmental sanitation, but only insofar as such activities are performed as part of an academic position in a college or university;

(2) any person who is a ~~sanitary engineer, public health engineer,~~ registered professional engineer~~,~~ or engineer-in-training;

(3) any public health officer employed pursuant to 50-2-116; ~~and~~

(4) any person employed by a federal governmental agency, but only at such times as the person is carrying out the functions of his employment~~.~~;

(5) state employees unless expressly required by statute, regulation, or position description to be registered as a sanitarian; or

(6) any person not employed by a governmental entity or not under contract with a governmental entity for the performance of an official regulatory function."

Section 3. Section 37-40-201, MCA, is amended to read:

"**37-40-201. Chairman — meetings.** The board shall appoint one of its members chairman. The board shall meet at least ~~once~~ *four times* annually and at such other times as agreed upon. ~~The board shall not meet more than four times a year.~~"

Section 4. Section 37-40-203, MCA, is amended to read:

"**37-40-203. Rulemaking power.** (1) The board may adopt rules consistent with ~~this chapter for its administration~~ *the purposes of this chapter, as it considers necessary.*

(2) The board's rulemaking and hearing functions shall be in accordance with the Montana Administrative Procedure Act. *The board shall adopt rules:*

(a) establishing standards of professional conduct in order to maintain a high standard of integrity, dignity, and competency in the profession of sanitarian, including competency in specific fields of sanitation;

(b) governing the conduct of matters before the board;

(c) governing educational equivalency requirements, as provided in 37-40-302, for registration of sanitarians;

(d) prescribing requirements for continuing education to be met by registered sanitarians in order to maintain their professional knowledge and competence and as a condition to continuing in the practice of the profession of sanitarian; and

(e) defining qualifications for sanitarian-in-training status for issuance of the initial annual permit."

Section 5. Section 37-40-301, MCA, is amended to read:

"**37-40-301. License required.** A person may not practice *or offer to practice* the profession of ~~a~~ sanitarian *as defined in this chapter* or hold himself out *in any manner* to be a *licensed* sanitarian unless ~~he is~~ *the person is* licensed *and registered* under *the provisions of* this chapter."

Section 6. Section 37-40-302, MCA, is amended to read:

"**37-40-302. Application — examination — certificate.** (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form prescribed by the board.

(2) An applicant must possess a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college and must pass ~~an~~ *a written* examination *and an oral interview* given at a time and place set by the board. *The board shall establish procedures for examination and determination of passing scores by rule.*

(3) If the applicant meets the board's standards and passes the examination prescribed by the board, the department shall issue a certificate of registration upon payment of the required fee.

(4) Holders of current certificates shall be entitled to append to their name the initials "R.S."."

Section 7. Section 37-40-303, MCA, is amended to read:

"**37-40-303. Licensing sanitarians from other states.** The department ~~shall~~ *may* issue a license without examination to a person who applies to the department, pays a fee prescribed by the board, and submits satisfactory proof to the board that *the person*:

(1) ~~he~~ is of good moral character; ~~and~~

(2) ~~he~~ is registered or licensed as a sanitarian ~~in a state which has requirements comparable to those in this state~~ *in another state; and*

(3) has met the same qualifications for licensure as applicants registered by examination under this chapter."

Section 8. Section 37-40-304, MCA, is amended to read:

"**37-40-304. Fees — renewal.** (1) An applicant for a license shall pay a fee set by the board in an amount commensurate with examination and administrative costs.

(2) A registered sanitarian may renew his license by paying an annual fee set by the board *and submitting proof of continuing education as prescribed by the board.*

(3) Renewal fees are due July 1 of the renewal year. If the renewal fee is not paid, the license expires. Licenses which have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board."

Section 9. Section 37-40-305, MCA, is amended to read:

"**37-40-305. Deposit of fees.** ~~All fees collected by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).~~ *The board shall adopt a schedule of nonrefundable fees to be charged by the department and to be paid into the state special revenue fund for the use of the board. The fees charged must be reasonably related to the cost incurred in regulating the practice of the profession of sanitarian.*"

Section 10. Section 37-40-311, MCA, is amended to read:

"**37-40-311. Suspension or revocation of license.** (1) The board may suspend or revoke a license, *put a licensee on probation, reprimand a licensee, or refuse to issue or renew a license* for the following reasons:

(a) unprofessional conduct *as defined by rule of the board*;

(b) fraud and deceit in obtaining a license;

(c) ~~gross~~ negligence, incompetency, or misconduct in the practice as a sanitarian; or

(d) the conviction of a crime involving moral turpitude.

(2) Any person may bring charges of ~~fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. Charges, unless dismissed by the board as unfounded or trivial, must be heard by the board within 3 months after the date on which they were made.~~ *violating standards of conduct. The board may deny, suspend, or revoke a license or place a licensee on probation, or reprimand a licensee after a hearing held under the provisions of the Montana Administrative Procedure Act.*

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew a license.

(4) If, after a hearing, a majority of the board votes in favor of sustaining the charges, the board shall reprimand or *place the sanitarian on probation or* suspend, *deny,* refuse to renew, or revoke the certificate of registration of the professional sanitarian.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked if a majority of the members of the board vote in favor of the reissuance. A new certificate of registration, to replace a certificate revoked, lost, destroyed, or mutilated, may be issued by the department, subject to the rules of the board."

Section 11. Section 37-40-312, MCA, is amended to read:

"**37-40-312. Penalty.** *(1)* A person who offers his services as a sanitarian or uses, assumes, or advertises in any way any title or description tending to convey tne impression that he is a *registered* sanitarian who does not hold the license specified by this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500 or imprisonment for not longer than 6 months, or both.

(2) The board may enforce the provisions of this chapter by injunction or any other appropriate proceeding."

Section 12. **Repealer.** Sections 37-40-306 and 37-40-307, MCA, are repealed.

Section 13. **Effective date.** [This act] is effective July 1, 1991.

Approved April 22, 1991.

CHAPTER NO. 546

[HB 966]

AN ACT CREATING A COMMITTEE ON THE MONTANA STATE HOSPITAL AT GALEN AND AT WARM SPRINGS; DIRECTING THAT THE COMMITTEE CONDUCT A STUDY OF THE PAST, CURRENT, AND POTENTIAL FUTURE USES OF THE MONTANA STATE HOSPITAL; REQUIRING THE COMMITTEE TO REPORT THE STUDY'S FINDINGS TO THE 53RD LEGISLATURE; APPROPRIATING FUNDS FOR CONDUCTING THE STUDY; AND PROVIDING EFFECTIVE DATES.

WHEREAS, the Montana State Hospital, located at Galen and at Warm Springs, has served the citizens of Montana for nearly 100 years; and

WHEREAS, for nearly 100 years, the functions that the Montana State Hospital has performed have changed; and

WHEREAS, the 1990s and the next century suggest that the role of the Montana State Hospital will continue to change; and

WHEREAS, the current staff members at the Montana State Hospital are representative of past and future staffs of the hospital in their commitment to quality work and their adaptability to changing needs; and

WHEREAS, the physical plant and the dedicated staff stand ready to be employed in their current and changing roles for the benefit of Montana and its citizens for now and for years to come.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Committee on Montana state hospital — composition — duties.** (1) There is a committee on the Montana state hospital, located at Galen and at Warm Springs.

(2) The committee is composed of the following 15 members:

(a) four members of the senate, to be appointed by the committee on committees, of which no more than two may be of the same political party;

(b) four members of the house of representatives, to be appointed by the speaker, of which no more than two may be of the same political party;

(c) one primary or secondary consumer from the Montana mental health community, to be appointed by the Montana mental health association;

(d) one member who is knowledgeable about and represents the Montana chemical dependency community, to be appointed by the governor;

(e) one member who represents and is a member of the Galen task force, to be appointed by the Galen task force;

(f) the director of the department of institutions or a designee;

(g) the superintendent of the Montana state hospital or a designee;

(h) the director of the department of social and rehabilitation services or a designee; and

(i) the governor's coordinator of aging or a designee.

(3) (a) The members listed in subsection (2) must be appointed on or before June 1, 1991.

(b) A vacancy on the committee must be filled in the same manner as the original appointment.

(c) Appointments to the committee terminate January 1, 1993.

(4) The members of the committee shall elect a chairman and vice chairman from the members of the committee.

(5) Members of the committee are entitled to compensation in the manner provided for members of an advisory council, pursuant to 2-15-122(5).

(6) The purpose of the committee is, generally, to study the past uses of the Montana state hospital and, without limitation, possible uses for the physical plant and staff resources currently available at the Montana state hospital. Among other relevant subjects, the committee shall:

(a) examine the current use of all facilities at the Montana state hospital;

(b) compile and analyze information on client caseloads, staffing levels and patterns, training, rehabilitation, maintenance, occupancy, and client and facility needs;

(c) conduct an inquiry into potential future uses of the physical plant and staff resources of the Montana state hospital, including a determination of the role that the Montana state hospital will play as the institutional anchor for Montana's mental health system;

(d) examine such areas of public interest relative to the Montana state hospital and the future of Montanans as the committee may choose to address; and

(e) study other states' experiences with state mental health facilities.

(7) (a) The committee may request the assistance of the staffs of the legislative council, the office of the legislative auditor, the office of the legislative fiscal analyst, the department of institutions, or any other agency that may have information relative to the Montana state hospital.

(b) The legislative council shall provide administrative support to the committee.

(8) The committee shall conclude its business by October 1, 1992, and deliver to the 53rd legislature a report that must include the findings and

conclusions of the study and a detailed listing of all of the options identified by the committee for the current and continued use of the Montana state hospital. The report may contain consensus recommendations of the committee.

Section 2. **Appropriation.** There is appropriated from the general fund to the legislative council for the biennium ending June 30, 1993, $37,000 for the purposes of conducting the study required in [section 1].

Section 3. **Effective dates.** (1) [Section 1] and this section are effective on passage and approval.

(2) [Section 2] is effective July 1, 1991.

Approved April 22, 1991.

CHAPTER NO. 547

[SB 38]

AN ACT TO REVISE THE 24-HOUR STATUTORY PERIOD FOR HOLDING A YOUTH IN JAIL; TO PROHIBIT THE DETENTION OF A YOUTH IN JAIL EXCEPT UNDER CERTAIN CIRCUMSTANCES; TO ALLOW A 6-HOUR EXCEPTION FOR HOLDING A YOUTH IN JAIL FOR THE PURPOSE OF IDENTIFICATION, PROCESSING, OR TRANSFER OF THE YOUTH TO A DETENTION FACILITY OR SHELTER CARE FACILITY; TO PROVIDE A LIMITED 24-HOUR EXCEPTION FOR THE DETENTION OF A YOUTH IN JAIL PENDING A PROBABLE CAUSE HEARING; TO CLARIFY DETENTION PROCEDURES FOLLOWING A PROBABLE CAUSE HEARING; AMENDING SECTIONS 7-32-2244, 41-5-103, 41-5-206, 41-5-303, 41-5-306, 41-5-307, 41-5-309, 41-5-502, AND 53-30-229, MCA; AMENDING SECTIONS 14 AND 17, CHAPTER 434, LAWS OF 1989; REPEALING SECTION 41-5-308, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Youth not to be detained in jail — exceptions — time limitations.** (1) A youth may not be detained or otherwise placed in a jail or other adult detention facility except as provided in 41-5-206 and this section.

(2) A youth who has allegedly committed an offense that, if committed by an adult, would constitute a criminal offense may be temporarily detained in a jail or other adult detention facility for a period not to exceed:

(a) 6 hours, but in no case overnight, for the purpose of identification, processing, or transfer of the youth to an appropriate detention facility or shelter care facility; or

(b) 24 hours, excluding weekends and legal holidays, if the youth is awaiting a probable cause hearing pursuant to 41-5-303.

(3) The exception provided for in subsection (2)(b) applies only if:

(a) the court having jurisdiction over the youth is outside a standard metropolitan statistical area;

(b) alternative facilities are not available or alternative facilities do not provide adequate security; and

(c) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses.

(4) Whenever, despite all good faith efforts to comply with the time limitations specified in subsection (2), the limitations are exceeded, this circumstance does not serve as grounds for dismissal of the case nor does this circumstance constitute a defense in a subsequent delinquency or criminal proceeding.

Section 2. Section 41-5-103, MCA, is amended to read:

"**41-5-103. Definitions.** ~~For the purposes of~~ *As used in* the Montana Youth Court Act, unless *the context requires* otherwise ~~stated~~, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(6) "Delinquent youth" means a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

~~(5)~~*(7)* "Department" means the department of family services provided for in 2-15-2401.

(8) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at

any time after the youth is taken into custody and before final disposition of his case.

(9) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will.

(10) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-523.

~~(6)~~*(11)* "Foster home" means a private residence licensed by the department for placement of a youth.

~~(7)~~*(12)* "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(13) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

~~(8)~~*(14)* "Judge", when used without further qualification, means the judge of the youth court.

~~(9)~~*(15)* (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(16) "Necessary parties" includes the youth, his parents, guardian, custodian, or spouse.

~~(10)~~*(17)* "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

~~(11) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.~~

~~(12) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court judge and probation officers.~~

~~(13) "Delinquent youth" means a youth:~~

~~(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;~~

~~(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.~~

~~(14) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:~~

~~(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;~~

~~(b) habitually disobeys the reasonable and lawful demands of his parents, foster parents, physical custodian, or guardian or is ungovernable and beyond their control;~~

~~(c) being subject to compulsory school attendance, is habitually truant from school; or~~

~~(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.~~

~~(15) "Youth in need of care" means a youth as defined in 41-3-102.~~

~~(16) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given but does not include a person who has only physical custody.~~

~~(17) "Necessary parties" include the youth, his parents, guardian, custodian, or spouse.~~

~~(18) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills school in Miles City, and Mountain View school in Helena.~~

(18) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.

(19) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

~~(19)~~*(20)* "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(21) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-306(1).

~~(20) "Detention" means the temporary substitute care of youth in physically restricting facilities.~~

~~(21) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will.~~

~~(22) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.~~

(22) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school in Helena.

(23) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or *are* without the care and supervision of their parents or guardian.

(24) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(25) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court judge and probation officers.

~~(24) "Serious juvenile offender" means a youth who has committed an offense against the person, an offense against property, or an offense involving dangerous drugs which would be considered a felony offense if committed by an adult.~~

(26) "Youth detention facility" means a detention facility that:

(a) is operated, administered, and staffed separately and independently of a jail; and

(b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.

(27) "Youth in need of care" has the meaning provided for in 41-3-102.

(28) "Youth in need of supervision" means a youth who commits an offense prohibited by law that, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) habitually disobeys the reasonable and lawful demands of his parents, foster parents, physical custodian, or guardian or is beyond control;

(c) being subject to compulsory school attendance, is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of supervision."

Section 3. Section 41-5-303, MCA, is amended to read:

"41-5-303. *(Temporary)* **Rights of youth taken into custody — questioning — hearing for probable cause — detention.** (1) When a youth is taken into custody for questioning upon a matter which could result in a petition alleging that the youth is either delinquent or in need of supervision, the following requirements must be met:

(a) The youth shall be advised of his right against self-incrimination and his right to counsel.

(b) The youth may waive such rights under the following situations:

(i) when the youth is 16 years of age or older, the youth may make an effective waiver;

(ii) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they may make an effective waiver; and

(iii) when the youth is under the age of 16 years and the youth and his parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

(c) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth who has been taken into custody may not be held longer than 24 hours, excluding weekends and legal holidays, unless a hearing has been held by the court, a justice of the peace, a municipal or city judge, or a magistrate to determine whether there is probable cause to believe he is a delinquent youth or a youth in need of supervision. If a hearing under this subsection is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing shall be made by a court reporter or by a tape recording of the hearing.

(3) At the probable cause hearing, the youth shall be informed of his constitutional rights and his rights under this chapter.

(4) A parent, guardian, or legal custodian of the youth may be held in contempt of court for failing to be present at the probable cause hearing, unless he:

(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

(5) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-512.

(6) If it is determined that there is probable cause to believe the youth is delinquent or is a youth in need of supervision and if the youth meets the criteria in 41-5-305, the youth may be placed in a shelter care facility or detention facility as provided in 41-5-306. If probable cause is not found, the youth must be immediately released.

41-5-303. *(Effective July 1, ~~1991~~ 1992)* **Rights of youth taken into custody — questioning — hearing for probable cause — detention.** (1) When a youth is taken into custody for questioning upon a matter ~~which~~ *that* could result in a petition alleging that the youth is either *a* delinquent *youth* or *a youth* in need of supervision, the following requirements must be met:

(a) The youth ~~shall~~ *must* be advised of his right against self-incrimination and his right to counsel.

(b) The youth may waive ~~such~~ *these* rights under the following situations:

(i) when the youth is 16 years of age or older, the youth may make an effective waiver;

(ii) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they may make an effective waiver; and

(iii) when the youth is under the age of 16 years and the youth and his parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

(c) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) ~~A youth who has been taken into custody may not be held longer than 24 hours, excluding weekends and legal holidays, unless a hearing has been held by the court, a justice of the peace, a municipal or city judge, or a magistrate~~ *Unless a youth has been released, a hearing must be held within 24 hours after the youth is taken into custody, excluding weekends and legal holidays,* to determine whether there is probable cause to believe ~~he~~ *that the youth* is a delinquent youth or a youth in need of supervision.

(3) The probable cause hearing required under subsection (2) may be held by the youth court, a justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided in 41-5-203. If ~~a~~ *the probable cause* hearing ~~under this subsection~~ is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing ~~shall~~ *must* be made by a court reporter or by a tape recording of the hearing.

~~(3)~~*(4)* At the probable cause hearing, the youth ~~shall~~ *must* be informed of his constitutional rights and his rights under this chapter.

~~(4)~~*(5)* A parent, guardian, or legal custodian of the youth may be held in contempt of court for failing to be present at *or to participate in* the probable cause hearing~~,~~ unless he*:*

(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

~~(5)~~*(6)* At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-512.

~~(6)~~*(7)* If it is determined that there is probable cause to believe the youth is *a* delinquent *youth* or is a youth in need of supervision, *the court having jurisdiction in the case shall determine whether the youth should be retained in custody. If the court determines that continued custody of the youth is necessary* and if the youth meets the criteria in 41-5-305, the youth may be placed in a ~~shelter care facility or~~ detention *facility or shelter care* facility as provided in 41-5-306 but may not be placed in a jail or other facility *used* for *the confinement of* adults *accused or convicted of criminal offenses.*

(8) If probable cause is not found~~,~~ *or if a probable cause hearing is not held within the time specified in subsection (2),* the youth must be immediately released *from custody.*"

Section 4. **Probable cause hearing — telephonic proceeding authorized.** A probable cause hearing may be conducted by telephone if other means of conducting the hearing are impractical. All written orders and findings of the court in a hearing conducted by telephone must bear the name of the judge or magistrate presiding in the case and the hour and date the order or findings were issued.

Section 5. Section 41-5-306, MCA, is amended to read:

"**41-5-306.** *(Temporary)* **Place of shelter care or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only in:

(a) a licensed youth foster home as defined in 41-3-1102;

(b) a facility operated by a licensed child welfare agency; or

(c) a licensed youth group home as defined in 41-3-1102.

(2) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be placed in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in the facilities described in subsection (1), in a detention facility, or in a jail or other facility for the detention of adults only if the facilities in subsection (1) are not available or do not provide adequate security and the detention is in an area physically and visually separate and removed from that of adults. *(Terminates July 1, ~~1991~~ 1992—sec. 14, Ch. 434, L. 1989.)*

41-5-306. *(Effective July 1, ~~1991~~ 1992)* **Place of shelter care or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only in:

(a) a licensed youth foster home as defined in 41-3-1102;

(b) a facility operated by a licensed child welfare agency; or

(c) a licensed youth group home as defined in 41-3-1102.

(2) A youth alleged to be *a youth* in need of care ~~shall~~ *may* be placed only in the facilities stated in subsection (1) ~~of this section~~ and ~~shall~~ *may* not be placed in a jail or other facility intended or used for the ~~detention~~ *confinement* of adults ~~charged with~~ *accused or convicted of* criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in the facilities described in subsection (1) or in a *youth* detention facility ~~as defined in 41-5-103~~."

Section 6. Section 41-5-206, MCA, is amended to read:

"**41-5-206. Transfer to criminal court.** (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, ~~or~~ mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) aggravated kidnapping as defined in 45-5-303;

(G) possession of explosives as defined in 45-8-335;

(H) criminal sale of dangerous drugs as included in 45-9-101;

(I) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)(H);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be ~~to~~ *conducted by* the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition. ~~No~~ *A* youth may *not* be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(6) Upon order of the youth court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, his commitment ~~shall~~ *must* be to the department of institutions. ~~which~~ *The department* shall confine the youth in whatever institution it considers proper, including a state youth correctional facility under the procedures of 53-30-212; however, no youth under 16 years of age may be confined in the state prison.

(9) A youth whose case is transferred to district court may not be detained *or otherwise placed* in ~~an~~ *a jail or other* adult detention facility before final disposition of ~~the~~ *his* case unless ~~the youth court judge determines that~~:

(a) ~~the youth~~ *alternative* facilities do not provide adequate security; and

(b) ~~detention in the adult facility is in an area physically, aurally, and visually separate from that of adults~~ *the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses.*"

Section 7. Section 41-5-307, MCA, is amended to read:

"**41-5-307. Release or delivery from custody.** (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise, or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer ~~must~~ *shall* notify the probation officer immediately and shall, as soon as practicable, provide the probation officer with a written report of his reasons for holding ~~that~~ *the* youth in ~~custody~~ *detention.* If it is necessary to hold the youth pending appearance

before the youth court, then the youth must be held in ~~some~~ *a* place ~~that has been~~ *of detention* approved by the youth court ~~and is completely separated from adult offenders~~. If the peace officer believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately and shall provide a written report of his reasons for placing the youth in shelter care. If the youth is then held, the youth must be ~~sheltered in a place~~ *placed in a shelter care facility* approved by the youth court."

Section 8. Section 41-5-309, MCA, is amended to read:

"**41-5-309. Bail.** A youth placed in ~~a~~ detention or shelter care ~~facility~~ may be released on bail. The court shall use the provisions of Title 46, chapter 9, as guidance. In determining the amount of bail, the court shall consider the financial ability of the youth and the parents or legal custodian of the youth."

Section 9. Section 41-5-502, MCA, is amended to read:

"**41-5-502. Summons.** (1) After a petition has been filed, summons ~~shall~~ *must* be served directly to:

(a) the youth;

(b) his parent or parents having actual custody of the youth or his guardian or custodian, as the case may be; and

(c) ~~such~~ other persons as the court may direct.

(2) The summons ~~shall~~ *must*:

(a) require the parties to whom *it is* directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition;

(b) advise the parties of their right to counsel under the Montana Youth Court Act; and

(c) have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having legal custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and postdetention proceedings.

(5) If any youth is *placed* in *detention or* shelter care ~~or detained~~ under any provision of this chapter pending an adjudication, the court~~, upon petition of the youth, his parents or guardian, or his counsel,~~ shall, as soon as practicable, conduct a *probable cause* hearing ~~in order to determine whether the circumstances of the case require such detention or shelter care and the form the detention or shelter care should take. All mentioned parties shall be notified of such petition process at the time of initial detention or shelter care~~ *as provided in 41-5-303.*

(6) The youth court judge may also admit the youth to bail in accordance with Title 46, chapter 9."

Section 10. Section 7-32-2244, MCA, is amended to read:

"7-32-2244. ~~Juvenile detention center standards~~ *Detention of juveniles.* ~~(1)~~ Juveniles may be held in a detention center only in accordance with *[section 1],* 41-5-301 through *41-5-307, and* 41-5-309.

~~(2) Detention centers that hold juveniles must comply with the standards for the detention of juveniles promulgated by the department of family services.~~"

Section 11. Section 53-30-229, MCA, is amended to read:

"53-30-229. Hearing on alleged violation of aftercare agreement — right to appeal outcome. (1) When it is alleged by an aftercare counselor that a youth has violated the terms of his aftercare agreement, the youth ~~shall~~ *must* be granted a hearing at the site of the alleged violation or in the county ~~where~~ *in which* the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that he should be returned to the youth correctional facility from which he was released or a different plan for treatment should be pursued by the department of family services.

(2) The youth, upon advice of an attorney, may waive his right to a hearing.

(3) With regard to this hearing, the youth ~~shall~~ *must* be given:

(a) written notice of the alleged violation of his aftercare agreement, including notice of the purpose of the hearing;

(b) disclosure of the evidence against him and the facts constituting the alleged violation;

(c) opportunity to be heard in person and to present witnesses and documentary evidence to controvert the evidence against him and to show that there are compelling reasons that justify or mitigate the violation;

(d) opportunity to have the referee subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the referee.

(4) The department shall appoint a referee, who may not be an employee of the department, to conduct the hearing. In the conduct of the hearing, the department may request the county attorney's assistance as necessary. The department shall adopt rules necessary to effect a prompt and full review.

(5) If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the violation, he shall make a recommendation to the department for the placement of the youth. In making this recommendation, the referee may consider mitigating circumstances. Final approval rests with the department and must be made within 10 days of the referee's recommendation.

(6) The youth may appeal from the decision at the hearing to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department's decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when his detention or care is required to protect the person or property of the youth or of others or he may abscond or be removed from the community. The department shall determine the place and manner of detention and is responsible for the cost of the detention. Procedures for taking into custody and detention of a youth charged with violation of his aftercare agreement are as provided in 41-3-1111, 41-5-303~~(2) through (6)~~, 41-5-306, and ~~41-5-308~~ *[section 1]*.

(8) If the decision is made to return the youth to the youth correctional facility from which he was released and the youth appeals that decision, he shall await the outcome of the appeal at the facility."

Section 12. Section 14, Chapter 434, Laws of 1989, is amended to read:

"Section 14. Section 16, Chapter 475, Laws of 1987, is amended to read:

"Section 16. **Effective dates — termination date.** (1) Except as provided in subsections (2) and (3), sections 1 through 13 are effective October 1, 1987.

(2) The bracketed language in subsection (5) of section 1 is effective July 1, ~~1991~~ *1992.*

(3) The bracketed language in subsection (3) of section 9 terminates July 1, ~~1991~~ *1992.*""

Section 13. Section 17, Chapter 434, Laws of 1989, is amended to read:

"Section 17. **Effective ~~date~~ *dates.*** ~~[Sections 5 and 7 of this act] are~~ *(1) [Section 7] is* effective July 1, 1991.

(2) [Section 5] is effective July 1, 1992."

Section 14. **Repealer.** Section 41-5-308, MCA, is repealed.

Section 15. **Codification instruction.** (1) [Sections 1 and 4] are intended to be codified as an integral part of Title 41, chapter 5, part 3, and the provisions of Title 41, chapter 5, part 3, apply to [sections 1 and 4].

(2) Section 41-3-1111, MCA, is intended to be renumbered and codified as an integral part of Title 41, chapter 5, part 3.

Section 16. **Effective dates.** (1) [Sections 12, 13, 15, and this section] are effective July 1, 1991.

(2) [Sections 1 through 11 and 14] are effective July 1, 1992.

Section 17. **Coordination instruction.** If Senate Bill No. 37 is not passed and approved, then [this act] is void.

Approved April 23, 1991.

CHAPTER NO. 548

[SB 59]

AN ACT PROHIBITING THE PLACEMENT OF YOUTH IN NEED OF SUPERVISION IN A JAIL, SECURE DETENTION FACILITY, OR CORRECTIONAL FACILITY; PROVIDING CRITERIA FOR THE DETENTION OF YOUTH IN SECURE DETENTION FACILITIES AND SHELTER CARE FACILITIES; PROVIDING CRITERIA FOR THE DETENTION OF YOUTH IN LAW ENFORCEMENT FACILITIES THAT INCLUDE A JAIL; AMENDING SECTIONS 41-5-103, 41-5-305, 41-5-306, AND 53-30-202, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Detention of youth in need of supervision — prohibitions.** A youth alleged or found to be a youth in need of supervision may not be placed in a jail, secure detention facility, or correctional facility.

Section 2. Section 41-5-103, MCA, is amended to read:

"**41-5-103. Definitions.** ~~For the purposes of~~ *As used in* the Montana Youth Court Act, unless *the context requires* otherwise ~~stated~~, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

~~(4)~~*(5)* "Court", when used without further qualification, means the youth court of the district court.

(6) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(7) "Delinquent youth" means a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

~~(5)~~*(8)* "Department" means the department of family services provided for in 2-15-2401.

(9) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of his case.

(10) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will.

(11) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-523.

~~(6)~~*(12)* "Foster home" means a private residence licensed by the department for placement of a youth.

~~(7)~~*(13)* "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(14) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

~~(8)~~*(15)* "Judge", when used without further qualification, means the judge of the youth court.

~~(9)~~*(16)* (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(17) "Necessary parties" includes the youth, his parents, guardian, custodian, or spouse.

~~(10)~~*(18)* "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

~~(11) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.~~

~~(12) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court judge and probation officers.~~

(19) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.

(20) "Secure detention facility" means any public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(21) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult

and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(22) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(23) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-306(1).

(24) "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school in Helena.

(25) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardian.

(26) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(27) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court judge and probation officers.

(28) "Youth detention facility" means a secure detention facility that:

(a) is operated, administered, and staffed separately and independently of a jail; and

(b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.

(29) "Youth in need of care" has the meaning provided for in 41-3-102.

(30) "Youth in need of supervision" means a youth who commits an offense prohibited by law that, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) habitually disobeys the reasonable and lawful demands of his parents, foster parents, physical custodian, or guardian or is beyond control;

(c) being subject to compulsory school attendance, is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of supervision.

~~(13) "Delinquent youth" means a youth:~~

~~(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;~~

~~(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.~~

~~(14) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:~~

~~(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;~~

~~(b) habitually disobeys the reasonable and lawful demands of his parents, foster parents, physical custodian, or guardian or is ungovernable and beyond their control;~~

~~(c) being subject to compulsory school attendance, is habitually truant from school; or~~

~~(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.~~

~~(15) "Youth in need of care" means a youth as defined in 41-3-102.~~

~~(16) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given but does not include a person who has only physical custody.~~

~~(17) "Necessary parties" include the youth, his parents, guardian, custodian, or spouse.~~

~~(18) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills school in Miles City, and Mountain View school in Helena.~~

~~(19) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.~~

~~(20) "Detention" means the temporary substitute care of youth in physically restricting facilities.~~

~~(21) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will.~~

~~(22) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.~~

~~(23) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.~~

~~(24) "Serious juvenile offender" means a youth who has committed an offense against the person, an offense against property, or an offense involving dangerous drugs which would be considered a felony offense if committed by an adult.~~"

Section 3. Section 41-5-305, MCA, is amended to read:

"**41-5-305.** ~~**Detention and shelter care of youth**~~ ***Criteria for placement of youth in secure detention facilities or shelter care facilities.*** (1) ~~After a probable cause hearing provided for in 41-5-303, a~~ *A* youth may not be placed in a *secure* detention facility unless:

(a) he has allegedly committed an act ~~which~~ *that* if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;

(b) he is alleged to be a delinquent youth and:

~~(b)~~*(i)* he has escaped from a correctional *facility* or *secure* detention facility;

~~(c)~~*(ii)* he has violated a valid court order or an aftercare agreement;

~~(d)~~*(iii)* his detention is required to protect persons or property;

~~(e) there is good reason to believe the youth will not appear for court proceedings as ordered;~~

~~(f)~~*(iv)* he has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

~~(g)~~*(v)* there are not adequate assurances that he will appear for court when required; or

~~(h)~~*(vi)* he meets additional criteria for *secure* detention established by the youth court in the judicial district that has current jurisdiction over him~~.~~*; or*

(c) he has been adjudicated delinquent and is awaiting final disposition of his case.

(2) A youth may not be placed in a shelter care facility unless:

(a) the youth and his family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;

(d) shelter care is necessary to assess the youth and his environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family."

Section 4. Section 41-5-306, MCA, is amended to read:

"**41-5-306.** *(Temporary)* **Place of shelter care or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only in:

(a) a licensed youth foster home as defined in 41-3-1102;

(b) a facility operated by a licensed child welfare agency; or

(c) a licensed youth group home as defined in 41-3-1102.

(2) A youth alleged to be *a youth* in need of care ~~shall~~ *may* be placed only in the facilities stated in subsection (1) ~~of this section~~ and ~~shall~~ *may* not be placed in a jail or other facility intended or used for the ~~detention~~ *confinement* of adults ~~charged with~~ *accused or convicted of* criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in*:*

(a) the facilities described in subsection (1)~~, in~~*;*

(b) a *youth* detention facility~~, or in~~*; or*

(c) a jail or other facility for the ~~detention~~ *confinement* of adults *but* only if ~~the facilities in subsection (1)~~*:*

(i) alternative facilities are not available or *available facilities* do not provide adequate security*;* and

(ii) the ~~detention is in an area physically and visually separate and removed from that of adults~~ *youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses. (Terminates July 1, 1991—sec. 14, Ch. 434, L. 1989.)* "

Section 5. Section 41-5-306, MCA, is amended to read:

"**41-5-306.** *(Effective July 1, 1991)* **Place of shelter care or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only in:

(a) a licensed youth foster home as defined in 41-3-1102;

(b) a facility operated by a licensed child welfare agency; or

(c) a licensed youth group home as defined in 41-3-1102.

(2) A youth alleged to be *a youth* in need of care ~~shall~~ *may* be placed only in the facilities stated in subsection (1) ~~of this section~~ and ~~shall~~ *may* not be placed in a jail or other facility intended or used for the ~~detention~~ *confinement* of adults ~~charged with~~ *accused or convicted of* criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in the facilities described in subsection (1) or in a *youth* detention facility ~~as defined in 41-5-103~~."

Section 6. Section 53-30-202, MCA, is amended to read:

"53-30-202. **Establishment of *state* youth correctional facilities —*prohibitions*.** *(1)* The department of family services, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate ~~children~~ *youth* in need of these services. The ~~children~~ *youth* must be 10 years of age or older and under 19 years of age. The facilities include but are not limited to *the state youth correctional facilities at* the Mountain View school *in Helena* and the Pine Hills school *in Miles City*.

(2) A youth alleged or found to be a youth in need of supervision may not be placed in a state youth correctional facility as defined in 41-5-103."

Section 7. **Permitted acts — detention of youth in law enforcement facilities — criteria.** (1) Nothing in this chapter precludes the detention of youth in a police station or other law enforcement facility that is attached to or part of a jail if:

(a) the area where the youth is held is an unlocked, multipurpose area, such as a lobby, office, interrogation room, or other area that is not designated or used as a secure detention area or that is not part of a secure detention area, or, if part of such an area, that is used only for the purpose of processing, such as a booking room;

(b) the youth is not secured to a cuffing rail or other stationary object during the period of detention;

(c) use of the area is limited to ensuring custody of the youth for the purpose of identification, processing, or transfer of the youth to an appropriate detention or shelter care facility;

(d) the area is not designed or intended to be used for residential purposes; and

(e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff during the period of time that the youth is held in detention.

(2) For purposes of this section, "secure detention" means the detention of youth or confinement of adults accused or convicted of criminal offenses in a physically restricting setting, including but not limited to a locked room or set of rooms or a cell designed to prevent a youth or adult from departing at will.

Section 8. **Codification instruction.** [Sections 1 and 7] are intended to be codified as an integral part of Title 41, chapter 5, part 3, and the provisions of Title 41, chapter 5, part 3, apply to [sections 1 and 7].

Section 9. **Effective dates.** (1) [Sections 1 through 4, 6 through 8, and this section] are effective on passage and approval.

(2) [Section 5] is effective July 1, 1992.

Section 10. **Coordination instruction.** If Senate Bill No. 37 is not passed and approved, then [this act] is void.

Approved April 23, 1991.

CHAPTER NO. 549

[SB 128]

AN ACT ALLOWING AN UNINCORPORATED RESORT AREA TO IMPOSE A RESORT TAX; DEFINING "RESORT AREA"; EXTENDING THE TAX TO DESTINATION SKI RESORTS AND OTHER DESTINATION RECREATIONAL FACILITIES; AMENDING SECTIONS 7-6-4461, 7-6-4463, 7-6-4464, AND 7-6-4465, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-4461, MCA, is amended to read:

"**7-6-4461. Resort ~~community~~ tax — definitions.** As used in 7-6-4461 through 7-6-4467 *and [sections 2 and 6]*, the following definitions apply:

(1) "Luxuries" means any gift item, luxury item, or other item normally sold to the public or to transient visitors or tourists. The term does not include food purchased unprepared or unserved, medicine, medical supplies and services, *appliances, hardware supplies and tools,* or any necessities of life.

(2) "Medical supplies" means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.

(3) "Medicine" means substances sold for curative or remedial properties, including both physician prescribed and over-the-counter medications.

(4) "Resort area" means an area that:

(a) is an unincorporated area and is a defined contiguous geographic area;

(b) has a population of less than 2,500 according to the most recent federal census or federal estimate;

(c) derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area for purposes not related to their income production; and

(d) has been designated by the department of commerce as a resort area prior to its establishment by the county commissioners as provided in [section 2].

~~(4)~~*(5)* "Resort community" means a community that:

(a) is an incorporated municipality;

(b) has a population of less than 2,500 according to the most recent federal census or federal estimate;

(c) derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the municipality for purposes not related to their income production; and

(d) has been designated by the department of commerce as a resort community."

Section 2. **Establishment of a resort area — taxing authority — approval by electorate.** (1) The establishment of a resort area for the purpose of imposing a resort tax may be initiated by a written petition to the board of county commissioners of the county in which the area is located. The petition must contain a description of the proposed resort area and must be signed by at least 15% of the electors residing in the proposed area.

(2) The petition must include a proposal to impose a resort tax within the proposed resort area, including the rate, duration, effective date, and purpose of the tax as provided in 7-6-4464.

(3) Upon receiving a petition to establish a resort area, the board of county commissioners shall present the question to the electors residing in the proposed resort area as provided in 7-6-4464.

Section 3. Section 7-6-4463, MCA, is amended to read:

"**7-6-4463. Limit on resort ~~community~~ tax rate — goods and services subject to tax.** (1) The rate of the resort tax must be established by the election petition or resolution provided for in 7-6-4464, but the rate may not exceed 3%.

(2) (a) The resort tax is a tax on the retail value of all goods and services sold within the resort community *or area* by the following establishments:

(i) hotels, motels, and other lodging or camping facilities;

(ii) restaurants, fast food stores, and other food service establishments; ~~and~~

(iii) taverns, bars, night clubs, lounges, and other public establishments that serve beer, wine, liquor, or other alcoholic beverages by the drink~~.~~*; and*

(iv) destination ski resorts and other destination recreational facilities.

(b) Establishments that sell luxuries must collect a tax on such luxuries."

Section 4. Section 7-6-4464, MCA, is amended to read:

"**7-6-4464. Resort ~~community~~ tax — election required — procedure.** (1) A resort community *or area* may not impose or, except as provided in 7-6-4465, amend or repeal a resort tax unless the resort tax question has been submitted to the electorate of the resort community *or area* and approved by a majority of the electors voting on the question.

(2) The resort tax question may be presented to the electors of*:*

(a) ~~the~~ *a* resort community by~~:~~

~~(a)~~ a petition of the electors as provided by 7-1-4130, 7-5-132, and 7-5-134 through 7-5-137~~;~~ or

~~(b)~~ *by* a resolution of the governing body of the resort community*; or*

(b) a resort area by a resolution of the board of county commissioners, following receipt of a petition of electors as provided in [section 2].

(3) If a resort area is in more than one county, the resort tax question must be presented to and approved by the electors in the resort area of each county.

~~(3)~~*(4)* The petition or resolution referring the taxing question *must state*:

(a) ~~must state~~ the ~~exact~~ rate of the resort tax;

(b) ~~must state~~ the duration of the resort tax;

(c) ~~must state~~ the date when the tax becomes effective, which date may not be earlier than 35 days after the election; and

(d) ~~may specify~~ the purposes that may be funded by the resort tax revenue.

~~(4)~~*(5)* Upon receipt of an adequate petition, the governing body may:

(a) call a special election on the resort tax question; or

(b) have the resort tax question placed on the ballot at the next regularly scheduled election.

~~(5)~~*(6)* The question of the imposition of a resort tax may not be placed before the electors more than once in any fiscal year."

Section 5. Section 7-6-4465, MCA, is amended to read:

"**7-6-4465. Resort ~~community~~ tax administration.** *(1) In this section, "governing body" means the governing body of a resort community or, if the resort tax has been approved by the electors of a resort area, the board of county commissioners.*

~~(1)~~*(2)* Not less than 30 days prior to the date the resort tax becomes effective, the governing body ~~of the resort community~~ shall enact an administrative ordinance governing the collection and reporting of the resort taxes. This administrative ordinance may be amended at any time ~~thereafter~~ as may be necessary to effectively administer the resort tax.

~~(2)~~*(3)* The administrative ordinance ~~shall~~ *must* specify:

(a) the times taxes collected by ~~business~~ *businesses* are to be remitted to the ~~resort community~~ *governing body*;

(b) the ~~local government~~ office, officer, or employee *of the governing body* responsible for receiving and accounting for the resort tax receipts;

(c) the ~~local government~~ office, officer, or employee *of the governing body* responsible for enforcing the collection of resort taxes and the methods and procedures to be used in enforcing the collection of resort taxes due; and

(d) the penalties for failure to report taxes due, failure to remit taxes due, and violations of the administrative ordinance. The penalties may include:

(i) criminal penalties not to exceed a fine of $1,000 or 6 ~~months~~ *months'* imprisonment, or both ~~the fine and imprisonment~~;

(ii) civil penalties if the ~~resort community~~ *governing body* prevails in a suit for the collection of resort taxes, not to exceed 50% of the resort taxes found due plus the costs and attorney fees incurred by the ~~resort community~~ *governing body* in the action;

(iii) revocation of ~~the offender's~~ *a county or* municipal business license *held by the offender*; and

(iv) any other penalties that may be applicable for violation of an ordinance.

~~(3)~~*(4)* The administrative ordinance may include:

(a) further clarification and specificity in the categories of goods and services that are subject to the resort tax consistent with 7-6-4463;

(b) authorization for business administration and prepayment discounts. The discount authorization may allow each vendor and commercial establishment to:

(i) withhold up to 5% of the resort taxes collected to defray their costs for the administration of the tax collection; or

(ii) receive a refund of up to 5% of the resort tax payment received from them by the ~~resort community~~ *governing body* 10 days prior to the collection due date established by the administrative ordinance; and

(c) other administrative details necessary for the efficient and effective administration of the tax."

Section 6. **Use of resort area tax.** (1) Unless otherwise provided by the resolution approved by the electors under 7-6-4464, the board of county commissioners shall appropriate and spend revenue derived from a resort area tax for the purpose stated in the resolution.

(2) The resort area shall reimburse the board of county commissioners for costs associated with the collection, administration, and litigation of the resort area tax.

Section 7. **Codification instruction.** [Sections 2 and 6] are intended to be codified as an integral part of 7-6-4461 through 7-6-4467, and the provisions of 7-6-4461 through 7-6-4467 apply to [sections 2 and 6].

Section 8. **Effective date.** [This act] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 550

[SB 172]

AN ACT PROVIDING FOR THE LICENSING AND REGULATION OF DIRECT-ENTRY MIDWIVES; CREATING A BOARD OF DIRECT-ENTRY MIDWIFERY; PROVIDING FOR LICENSING, INCLUDING PROVISIONAL LICENSES AND APPRENTICE LICENSES; ESTABLISHING LICENSE EXEMPTION REQUIREMENTS; CREATING A COMMUNICATIONS PRIVILEGE; PROVIDING FOR LICENSING RECIPROCITY; REQUIRING INFORMED CONSENT; ESTABLISHING CLIENT SCREENING PROCEDURES; PROVIDING FOR PHYSICIAN CONSULTATION; REQUIRING THE FILING OF BIRTH CERTIFICATES AND REPORTS; PROVIDING FOR AN ADMINISTRATIVE FINE, A CRIMINAL PENALTY, AND AN INJUNCTION; GRANTING THE BOARD RULEMAKING AUTHORITY; AMENDING SECTIONS 27-1-734 AND 37-3-103, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6] grants rulemaking authority to the board of direct-entry midwifery to implement the provisions of this bill. In adopting rules, the board is encouraged to review regulations promulgated by the state of New Hampshire and, where appropriate, to adopt comparable rules specifically applicable to direct-entry midwifery in Montana. At a minimum, it is the intent of the legislature that the board adopt rules:

(1) governing the conduct of board business;

(2) establishing license application and examination procedures, criteria for and grading of examinations, examination and license fees, criteria for minimum educational, apprenticeship, and clinical requirements for license eligibility, and continuing education requirements for license renewal;

(3) establishing eligibility criteria for client screening by direct-entry midwives in order to achieve the goal of providing midwifery services to women during low-risk pregnancies;

(4) developing procedures for the issuance, renewal, suspension, revocation, and reciprocity of licenses;

(5) creating disciplinary standards for licensees, establishing investigatory procedures for processing complaints, and adopting ethical standards for licensed direct-entry midwives;

(6) establishing supporting documentation for primary birth attendants;

(7) establishing standardized informed consent and reporting forms; and

(8) establishing criteria that limits an apprenticeship, as provided in [section 6].

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 4 and 6 through 23] may be cited as the "Direct-Entry Midwifery Licensing Act".

Section 2. **Purpose.** The legislature finds and declares that because the practice of direct-entry midwifery affects the lives of the people of this state and because some Montanans may exercise their right to give birth where and with whom they choose, it is the purpose of [sections 1 through 4 and 6 through 23] to provide for the common good by regulating and ensuring the qualified and professional practice of direct-entry midwifery.

Section 3. **Definitions.** As used in [sections 1 through 4 and 6 through 23], the following definitions apply:

(1) "Apprentice" means a person who is working under the supervision of a licensed direct-entry midwife and is seeking licensure as a direct-entry midwife under [sections 1 through 4 and 6 through 23].

(2) "Board" means the board of direct-entry midwifery established in [section 5].

(3) "Continuous care" means care provided for one person from the initial history-taking interview through monthly prenatal, intrapartum, and postpartum periods.

(4) "Department" means the department of commerce provided for in 2-15-1801.

(5) "Direct-entry midwife" means a person who advises, attends, or assists a woman during pregnancy, labor, natural childbirth, or the postpartum period.

(6) "Licensee" means a person authorized by [sections 1 through 4 and 6 through 23] to practice direct-entry midwifery.

(7) "Postpartum period" means the period up to 6 weeks following birth.

(8) "Practice of direct-entry midwifery" means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period.

Section 4. **Exemptions.** [Sections 1 through 4 and 6 through 23] do not limit or regulate the practice of a licensed physician, certified nurse-midwife, or licensed basic or advanced emergency medical technician. The practice of direct-entry midwifery does not constitute the practice of medicine, certified nurse-midwifery, or emergency medical care to the extent that a direct-entry midwife advises, attends, or assists a woman during pregnancy, labor, natural childbirth, or the postpartum period when the pregnancy is not a high-risk pregnancy.

Section 5. **Board — composition — allocation — quasi-judicial — compensation.** (1) There is a board of direct-entry midwifery.

(2) The board is composed of five members. Members are appointed by the governor to serve staggered 4-year terms. The board consists of:

(a) three members who are direct-entry midwives who filed the affidavit required by 37-75-102. Subsequent appointments may be made only from those direct-entry midwives who are licensed pursuant to [sections 1 through 4 and 6 through 23].

(b) one member who is a physician whose present practice includes obstetrics; and

(c) one member of the general public.

(3) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

(5) Members of the board are entitled to compensation and travel expenses.

Section 6. **General powers and duties of board — rulemaking authority.** (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in this section; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board's duties.

(2) The board shall have the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer [sections 1 through 4 and 6 through 23]. The rules must include but are not limited to:

(a) the development of a license application and examination, criteria for and grading of examinations, and establishment of examination and license fees commensurate with actual costs;

(b) the issuance of a provisional license to midwives who filed the affidavit required by 37-75-102;

(c) the establishment of criteria for minimum educational, apprenticeship, and clinical requirements that, at a minimum, meet the standards established in [section 7];

(d) the development of eligibility criteria for client screening by direct-entry midwives in order to achieve the goal of providing midwifery services to women during low-risk pregnancies;

(e) the development of procedures for the issuance, renewal, suspension, revocation, and reciprocity of licenses;

(f) the adoption of disciplinary standards for licensees;

(g) the establishment of investigatory and hearing procedures for processing complaints received by the board;

(h) the establishment of continuing education requirements of at least 14 hours annually for license renewal for direct-entry midwives;

(i) the development of standardized informed consent and reporting forms;

(j) the adoption of ethical standards for licensed direct-entry midwives;

(k) the adoption of supporting documentation requirements for primary birth attendants; and

(l) the establishment of criteria limiting an apprenticeship that, at a minimum, meets the standards established in [section 7].

Section 7. **Qualifications of applicants for license — educational and practical experience requirements.** To be eligible for a license as a direct-entry midwife, an applicant:

(1) must be a high school graduate;

(2) must be of good moral character and be at least 21 years of age;

(3) shall satisfactorily complete educational requirements in pregnancy and natural childbirth, approved by the board, which must include but are not limited to the following:

(a) provision of care during the antepartum, intrapartum, postpartum, and newborn period;

(b) parenting education for prepared childbirth;

(c) observation skills;

(d) aseptic techniques;

(e) management of birth and immediate care of the mother and the newborn;

(f) recognition of early signs of possible abnormalities;

(g) recognition and management of emergency situations;

(h) special requirements for home birth;

(i) intramuscular and subcutaneous injections;

(j) suturing necessary for episiotomy repair;

(k) recognition of communicable diseases affecting the pregnancy, birth, newborn, and postpartum periods;

(l) assessment skills; and

(m) the use and administration of drugs authorized in [section 11];

(4) shall acquire practical experience, which may be attained in a home, clinic, or hospital setting. Practical experience attained in a hospital does not constitute training or supervision by the hospital, nor may a hospital be required to provide such practical experience. At a minimum, this experience must include the following types and numbers of experiences acquired through an apprenticeship or other supervisory setting:

(a) provision of 100 prenatal examinations;

(b) observation of 40 births; and

(c) participation as the primary birth attendant at 25 births, 15 of which included continuous care, as evidenced by signing the birth certificate as the primary birth attendant.

(5) shall file documentation with the board that the applicant has been certified by the American heart association or American red cross to perform adult and infant cardiopulmonary resuscitation. Certification

must be current at the time of application and remain valid throughout the license period.

Section 8. **Examination — exemption.** (1) Except as provided in subsection (4), an applicant for a license as a direct-entry midwife shall pass a qualifying, written examination, prescribed by the board, that is designed to test knowledge of theory regarding pregnancy and childbirth and to test clinical judgment in midwifery management. If considered necessary, an oral interview may be conducted in addition to the written examination to determine the fitness of the applicant to practice as a direct-entry midwife.

(2) Before an applicant may take the examination, the applicant shall demonstrate to the board that the educational and practical experience requirements in [section 7(2) and (3)] have been met.

(3) An applicant is exempt from the educational and practical experience requirements of [section 7(2) and (3)] if the applicant has:

(a) satisfactorily completed the first examination given by the board following [the effective date of sections 1 through 4 and 7 through 25]; and

(b) filed supporting documentation, as required by the board by rule, certifying that the applicant has served as the primary birth attendant, providing continuous care at no less than 75 births within the 7 years prior to [the effective date of sections 1 through 4 and 7 through 25] as verified by birth certificates from Montana or another state, a signed affidavit from the birthing mother, or documented records from the midwife.

(4) Upon payment of the license fee established by the board, a nurse-midwife certified pursuant to 37-8-409 is exempt from the requirements of [section 7 and this section] and may be licensed as a direct-entry midwife.

Section 9. **Provisional license — apprentice license.** (1) Upon payment of a $200 fee to the department, the board may grant a provisional direct-entry midwife license only to a person who filed an affidavit required by 37-75-102.

(2) The provisional license is valid until the issuance of grades for the first examination administered pursuant to [section 10].

(3) Upon payment of a $200 fee to the department, the board may grant an apprentice direct-entry midwife license to a person who is working under the personal supervision of a licensed direct-entry midwife, a certified nurse-midwife, or a physician licensed under Title 37, chapter 3, and who is seeking licensure as a direct-entry midwife under [sections 1 through 4 and 6 through 23].

(4) An apprentice direct-entry midwife license is valid for 1 year and must be renewed annually, with a limit of four renewals.

Section 10. **Examination — preparation — requirements.** (1) An examination for a license to practice direct-entry midwifery must be prepared by a certified nurse-midwife designated by the board in consultation with the physician on the board.

(2) Examinations must be conducted once each year, be fair and impartial, and be sufficiently comprehensive to adequately test the applicant's competence and ability.

(3) A person must attain a grade of at least 70% to pass the examination.

(4) A person who fails to achieve a passing grade on the examination may not engage in the practice of midwifery.

Section 11. **Administration of prescription drugs prohibited — exceptions.** A licensed direct-entry midwife may not dispense or administer prescription drugs other than newborn vitamin K (oral or intramuscular preparations) pitocin (intramuscular) postpartum, xylocaine (subcutaneous), and, in accordance with Rule 16.24.215, Administrative Rules of Montana, prophylactic eye agents to newborn infants. These drugs may be administered only if prescribed by a physician.

Section 12. **Operative and surgical procedures prohibited — exception.** A licensed direct-entry midwife may not perform any operative or surgical procedures except for an episiotomy and simple surgical repair of an episiotomy or simple second-degree lacerations.

Section 13. **Fees.** (1) An applicant for a direct-entry midwife license shall, upon submitting an application to the board, pay an application fee set by the board, commensurate with costs.

(2) An applicant required to take an examination shall, before commencement of the examination, pay an examination fee set by the board, commensurate with costs.

(3) Before a license may be issued or renewed, an applicant shall pay a fee set by the board, commensurate with costs.

(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for use by the board.

Section 14. **Denial, suspension, revocation, or refusal to renew license — grounds.** (1) The board, after notice and hearing, may reprimand a licensee or deny, suspend, revoke, or refuse to renew the license of a licensee who:

(a) is using alcohol or other drugs to the point that job performance is impaired;

(b) is guilty of immoral or unprofessional conduct as defined by board rule;

(c) is guilty of gross negligence in practicing direct-entry midwifery;

(d) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

(e) is guilty of conduct detrimental to the best interests of the public; or

(f) has violated any provision of [sections 1 through 4 and 6 through 23] or a rule adopted by the board.

(2) The board may impose an administrative fine of not more than $500 per incident for any violation that could result in the suspension or revocation of a direct-entry midwife license. A fine collected under this subsection must be deposited in the state general fund.

Section 15. **Unlawful to practice without license.** It is unlawful for a person to practice direct-entry midwifery in this state without first obtaining a license under [sections 1 through 4 and 6 through 23].

Section 16. **Reciprocity.** Upon payment of the license fee provided for in [section 13], the board may grant a license to a person who, at the time of application, is licensed or certified as a midwife in another state if the board determines that the licensing requirements of that state are equal to or exceed the requirements of [sections 1 through 4 and 6 through 23] and if the other state extends similar privileges to direct-entry midwives licensed under [sections 1 through 4 and 6 through 23].

Section 17. **Privileged communications — exceptions.** A licensee may not disclose any information acquired from clients during consultation in a professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that the licensee need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in the licensee's professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation to the information in any investigation, trial, or other legal proceeding in which the commission of the crime is the subject of inquiry;

(4) that if the client or the client's personal representative or guardian brings an action against a licensee for a claim arising out of the client's interaction with the direct-entry midwife, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client;

(6) when the client is seeking emergency medical treatment and the client's history is requested by the attending medical professional; and

(7) as may otherwise be required by law.

Section 18. **Informed consent.** (1) Prior to accepting a woman for care, a licensed direct-entry midwife shall first obtain written, informed consent from the woman.

(2) Informed consent must be evidenced by a written statement, in a form prescribed by the board and signed by the direct-entry midwife and the woman to whom care is to be given, in which the direct-entry midwife certifies that full disclosure has been made and acknowledged by the woman on the following:

(a) the direct-entry midwife's educational background;

(b) the nature and scope of the care to be given, including the possibility of and procedure for transport of the patient to a hospital;

(c) the available alternatives to direct-entry midwifery care;

(d) a description of the risks of home birth, primarily those conditions that may arise during delivery;

(e) the fact that the patient has been advised to consult with a physician at least twice during the pregnancy;

(f) whether the midwifery services provided are located more than 50 miles from the nearest hospital; and

(g) that a health care provider's liability in rendering care or assistance in good faith to a patient of a direct-entry midwife in an emergency situation is limited to damages caused by gross negligence or by willful or wanton acts or omissions.

Section 19. **Reports — failure to report.** (1) A licensed direct-entry midwife shall submit semiannually to the board, on forms supplied by the board, a summary report on each patient given care. The report must include vital statistics on each patient and information on the procedures and scope of care administered, including any transport of the patient to a hospital and physician referrals, but may not include information disclosing the identity of the patient.

(2) A licensed direct-entry midwife shall report within 72 hours to the board and to the department of health and environmental sciences any maternal, fetal, or neonatal mortality or morbidity in patients for whom care has been given.

(3) Failure of a direct-entry midwife to submit required reports constitutes grounds to deny renewal of a license.

Section 20. **Screening procedures.** In addition to meeting the eligibility criteria for client screening established by the board pursuant to [section 6], a direct-entry midwife shall recommend that patients secure the following services by an appropriate health care provider:

(1) the standard serological test as defined in 50-19-101(2) for women seeking prenatal care;

(2) screening for hepatitis B and, when appropriate, human immunodeficiency virus;

(3) maternal serum alpha-fetoprotein test and ultrasound, upon request;

(4) Rh antibody and glucose screening at 28 weeks' gestation, upon request;

(5) nonstress testing by a fetal monitor of a fetus at greater than 42 ½ weeks' gestation or if other reasons indicate the testing;

(6) screening for phenylketonuria;

(7) Rh screening of the infant for RhoGAM treatment if the mother is Rh negative; and

(8) screening for premature labor and other risk factors.

Section 21. **Physician consultation advised.** A licensed direct-entry midwife shall advise all women accepted for midwifery care to consult with a physician or certified nurse-midwife at least twice during the pregnancy.

Section 22. **Filing of birth certificate.** (1) When a birth occurs with a licensed direct-entry midwife in attendance, the direct-entry midwife shall prepare and file a birth certificate, as required by 50-15-201, with the department of health and environmental sciences within 30 days of the birth of the newborn.

(2) Failure of a direct-entry midwife to prepare and file the birth certificate constitutes grounds for the suspension or revocation of a license granted under [sections 1 through 4 and 6 through 23].

Section 23. **Violation — penalties — injunction — manner of charging violation.** (1) A person who violates any provision of [sections 1 through 4 and 6 through 23] or any rule adopted pursuant to [sections 1 through 4 and 6 through 23] is guilty of a misdemeanor and is punishable by a fine not to exceed $500, by imprisonment in the county jail for a term of not more than 6 months, or both.

(2) Notwithstanding any other provisions of [sections 1 through 4 and 6 through 23], the board may maintain an action to enjoin a person from engaging in the practice of direct-entry midwifery until a license to practice direct-entry midwifery is obtained. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing direct-entry midwifery without a license from criminal prosecution. The remedy by injunction is in addition to remedies provided for criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of law by practicing direct-entry midwifery without a license, it is sufficient to charge that the person did, on a certain day and in a certain county, engage in the practice of direct-entry midwifery

while not having a license to do so, without averring further or more particular facts concerning the violation.

Section 24. Section 27-1-734, MCA, is amended to read:

"**27-1-734. Limits on liability of health care provider in emergency situations.** ~~(1)~~ A physician licensed under Title 37, chapter 3, a nurse licensed under Title 37, chapter 8, or a hospital licensed under Title 50, chapter 5, rendering care or assistance in good faith to a patient of a direct-entry midwife in an emergency situation is liable for civil damages for acts or omissions committed in providing such emergency obstetrical care or assistance only to the extent that those damages are caused by gross negligence or by willful or wanton acts or omissions.

~~(2) The limitations on liability provided in subsection (1) do not apply in the following cases:~~

~~(a) The physician, nurse, or hospital had provided prior medical diagnosis or treatment to the patient for a condition having a bearing on or relevance to the treatment of the obstetrical condition that required emergency services.~~

~~(b) Before rendering emergency obstetrical services, the physician, nurse, or hospital had a contractual obligation or agreement with the patient, another health care provider, or a third-party payer to provide obstetrical care for the patient.~~"

Section 25. Section 37-3-103, MCA, is amended to read:

"**37-3-103. Exemptions from licensing requirements.** (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States veterans' administration of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(o) the execution of a death sentence pursuant to 46-19-103; and

(p) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. A *Except as authorized in [section 11], a* direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(2) Licensees referred to in subsection (1) of this section who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or

mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 26. **Codification instruction.** (1) [Sections 1 through 4 and 6 through 23] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 4 and 6 through 23].

(2) [Section 5] is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to [section 5].

Section 27. **Effective dates.** (1) [Sections 5, 6, 26, and this section] are effective on passage and approval.

(2) [Sections 1 through 4 and 7 through 25] are effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 551

[HB 6]

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS AND GRANTS UNDER THE WATER DEVELOPMENT PROGRAM AND THE RENEWABLE RESOURCE DEVELOPMENT PROGRAM; TO AUTHORIZE LOANS FROM WATER DEVELOPMENT BOND PROCEEDS, RENEWABLE RESOURCE DEVELOPMENT BOND PROCEEDS, AND APPROPRIATE FUNDS FOR DEBT SERVICE; TO REAUTHORIZE GRANTS AND LOANS APPROVED BY THE 51ST LEGISLATURE; TO REALLOCATE CERTAIN RESOURCE INDEMNITY TRUST ACCOUNT INTEREST INCOME FOR WATER DEVELOPMENT PROGRAM GRANTS DURING THE BIENNIUM ENDING JUNE 30, 1993; TO PLACE CERTAIN CONDITIONS UPON GRANTS AND LOANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriations from the water development state special revenue account.** (1) Because the legislature cannot appropriate individual grants to private entities, there is appropriated to the department of natural resources and conservation $72,208 from the water development state special revenue account during the 1992-93 biennium for grants to private persons for water development projects and activities pursuant to the provisions of Title 85, chapter 1, part 6. This appropriation is from money available in the water development state special revenue account for grants for water development projects and activities under 85-1-604(3)(c) and according to priorities established in subsections (3) and (4) of this section.

(2) There are appropriated to the department the interest earnings from the proceeds of water development bonds and renewable resource development bonds issued to finance loans authorized by [sections 1 through 12]. Interest earnings must be deposited in the water development debt service fund and the renewable resource development account, respectively.

(3) There are appropriated to the department all other funds not appropriated under subsection (1) and available for grants to political subdivisions and local government entities from the water development state special revenue account during the 1992-93 biennium. This appropriation is from money available in the water development state special revenue account and renewable resource development account for grants and from the water development or renewable resource accounts for loans for water development projects and activities under 85-1-604(3)(c) and [sections 1 through 12]. The funds appropriated in this section must be awarded by the department to the named entities for the described purposes and in the described grant amounts set out in subsection (4), subject to the conditions set forth in [sections 1 through 12] and the contingencies described in the renewable resource and water development program's January 1991 report. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (4), with grants to be made in the order indicated in the prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or used by higher ranked projects and activities must be provided for projects and activities further down the priority list that would not otherwise receive funding. If the total expenditure of funds appropriated under this section results in a cutoff that ends at a point at which more than one project or activity is ranked equal in priority, the decision regarding which project or projects will receive funding must be made by the department. Any projects that are funded by the reclamation and development grants program may not be funded under [sections 1 through 12]. Actual rank and score of the various projects and activities are contained within the renewable resource and water development program's project evaluations and recommendations report for the 1992-93 biennium.

(4) The following are the grant and loan prioritized projects and activities:

WATER DEVELOPMENT PROGRAM

	Recommended Funding	
Applicant/Project	Grant	Loan
CHINOOK IRRIGATION DISTRICT		
Milk River Water Supply Project	$100,000	
LOWER MUSSELSHELL CONSERVATION DISTRICT		
River Management Tools	72,539	

GLASGOW IRRIGATION DISTRICT		
Improving Water Use Efficiency	100,000	
GREENFIELDS IRRIGATION DISTRICT		
Greenfields Gravity Sprinkler Planning	100,000	
MONTANA STATE LIBRARY		
Drought Monitoring System	58,364	
JOCKO, MISSION, AND FLATHEAD IRRIGATION DISTRICTS, JOINT BOARD OF CONTROL		
Flathead Irrigation Information System	92,000	
LEWIS AND CLARK COUNTY CONSERVATION DISTRICT		
Nilan Water Conservation Project	100,000	
PRIVATE APPLICANT		
Ruby Creek Dam Feasibility Study	14,708	
PRIVATE APPLICANT		
Wastewater Collection and Treatment System	50,000	$150,000
FORT SHAW IRRIGATION DISTRICT		
Rehabilitation of Headworks and "A" System Diversion	50,000	50,000
DUTTON, TOWN OF		
Dutton Water Storage Reservoir	91,319	
PHILLIPS CONSERVATION DISTRICT		
Moisture Monitoring Project	53,382	
PRIVATE APPLICANT		
Sun River Water System	7,500	
CHINOOK, TOWN OF		
Milk River Weir Replacement		200,000
BELT, TOWN OF		
Sewage System Improvements		100,000
GLASGOW, TOWN OF		
Glasgow Water and Wastewater		80,950

MISSOULA CITY/COUNTY HEALTH DEPARTMENT	
Linda Vista Sewer Interceptor	100,000
FAIRFIELD, TOWN OF	
Fairfield Waterway	14,169

(5) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 1993 biennium pursuant to 17-7-302.

Section 2. **Appropriations under renewable resource development program — eligibility.** (1) There are appropriated to the department of natural resources and conservation all available funds from the renewable resource development account during the 1992-93 biennium for projects under the renewable resource development program.

(2) The department shall award grants to the named entities for the described purposes and in the described amounts set out in subsection (3). The legislature, pursuant to 90-2-111, approves the listed grants, with grants to be made in order of priority ranking, except renewable resource development grants for water development projects and activities that must be made in the order of priority listed in [section 1]. Projects and activities sponsored by public entities listed in [section 1] that do not receive water development funding are eligible for renewable resource development funds on the basis of the renewable resource development program priority ranking criteria. Any project or activity listed in [section 1] that receives water development funds is not eligible to compete for renewable resource development funds. Projects and activities listed in this section that do not receive renewable resource development funding are eligible for water development funds on the basis of the water development program priority ranking criteria. A project or activity listed in this section that receives renewable resource development funds is not eligible to compete for water development funds. Funds not accepted or used by higher ranked projects must be provided for projects further down the priority list that would not otherwise receive funding. If the total expenditure of funds appropriated under this section results in a cutoff that ends at a point at which more than one project is ranked equal in priority, the decision regarding which project or projects will receive funding must be made by the department. Actual rank and score of the various projects are contained within the renewable resource and water development program's project evaluations and recommendations report for the 1992-93 biennium.

(3) The following are the grant and loan prioritized projects and activities:

RENEWABLE RESOURCE DEVELOPMENT PROGRAM

Applicant/Project	Recommended Funding Grant	 Loan
YELLOWSTONE COUNTY CONSERVATION DISTRICT		
Streambank Reinforcement	$100,000	
JEFFERSON VALLEY CONSERVATION DISTRICT		
Cereal-Legume Energy Efficient Crop Rotations	48,677	
NEIHART, TOWN OF		
Neihart Water System Improvements	50,000	$150,000
EKALAKA, TOWN OF		
Water Supply and Storage Project	49,975	100,000
MONTANA STATE UNIVERSITY, MONTANA WATER RESOURCES CENTER		
Public Education in Water Management	100,000	
STILLWATER CONSERVATION DISTRICT		
Evaluation of Plastic Lining and Fabrication Process	56,848	
BROADWATER CONSERVATION DISTRICT		
Irrigation Water Management Demonstration Project	100,000	
NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF, WATER MANAGEMENT BUREAU		
Beaverhead County Ground Water Study	100,000	
POLSON, CITY OF		
Wellhead Protection Program	76,055	
THREE FORKS, TOWN OF		
Water System Improvements	100,000	
FORT SHAW IRRIGATION PROJECT		
Rehabilitation and Betterment Study	50,000	
BUTTE-SILVER BOW, GOVERNMENT OF		
Blacktail Creek Restoration	100,000	

LIBERTY COUNTY CONSERVATION DISTRICT		
Sweetgrass Hills Ground Water Study	100,000	
MISSOULA COUNTY CONSERVATION DISTRICT		
Irrigation Diversion Alternatives	85,250	
FALLON COUNTY		
Baker Lake Erosion Control and Recreation Path	15,361	
DARBY SCHOOL DISTRICT NO. 9		
Darby School Park Project	25,300	
MEAGHER COUNTY CONSERVATION DISTRICT		
South Side Canal Lining Project	37,500	62,500
NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF		
Battle Creek Storage Unit	82,000	

(4) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 1993 biennium pursuant to 17-7-302.

Section 3. **Opportunity to receive loans for projects that do not receive grants.** Sponsors of recommended projects and activities on the prioritized lists in [sections 1 and 2] that are not recipients of available grant funds must be offered the opportunity to receive loan funds for up to the total recommended project amount, subject to the conditions described in [sections 1 through 12]. The interest rate applicable to these loans must be the rate paid on bonds issued pursuant to [sections 1 through 12].

Section 4. **Approval of loans from bond proceeds and completion of appropriation.** (1) The legislature, pursuant to 85-1-605, 85-1-606, and 90-2-107, hereby approves loans to private sponsors approved by the department of natural resources and conservation during the 1992-93 biennium and the loans for projects and activities identified and described in [section 1] to public entities from water development bond proceeds, interest earnings on such proceeds deposited in the water development debt service fund, and loans from renewable resource development bond proceeds deposited in the renewable resource development account. Bond proceeds may be used for the payment of bond issuance costs. Funds are appropriated for these costs to a maximum of 4% of the amount of each bond sale.

(2) The approval of specific loans completes an appropriation of the coal severance tax proceeds allocated by 15-35-108 to the water development bond account for the purpose of paying, in the manner established by 85-1-619, principal of and interest and redemption premiums on any water development bonds issued to provide the proceeds for the loans to private

and public entities for projects and activities approved in [section 1], and it also completes an appropriation to the renewable resource debt service fund for the purpose of paying, in the manner established by 90-2-123, principal of and interest and redemption premiums on any renewable resource development bonds issued to provide the proceeds for the loans to political subdivisions and local government entities for projects and activities approved in [sections 1 and 2].

Section 5. **Reauthorization of loans and grants approved.** (1) The 51st legislature, in House Bill No. 775, Laws of 1989, approved loans and grants from the water development and renewable resource development bond accounts for the Cascade County RID No. 26, Sun Prairie, in the amount of $200,000; Carbon County/Roberts Water System Improvements in the amount of $142,500; City of Shelby in the amount of $100,000; Sage Creek County Water District in the amount of $158,600; Town of Cascade in the amount of $200,000; City of Belgrade in the amount of $200,000; Town of Hysham in the amount of $200,000; and East Glacier Water and Sewer District in the amount of $116,380. Loans and grants for the entities described in this section are hereby reauthorized.

(2) The 50th legislature, in House Bill No. 7, Laws of 1987, approved a grant from the renewable resource development account to Eastern Sanders Conservation District for $86,300 for recharge enhancement of the Little Bitterroot Aquifer. Among the contingencies contained in the grant authorization was a requirement that a commitment be obtained from the U.S. Bureau of Reclamation for federal matching funds. It has since been determined that the federal matching funds will not be forthcoming. The grant for the above described entity is hereby authorized for $86,300, with the contingency for federal matching funding from the U.S. Bureau of Reclamation deleted. Additional sampling of surface water and ground water for herbicides and pesticides must be conducted.

Section 6. **Reallocation of resource indemnity trust account interest income.** Except for special departmental appropriation and notwithstanding any provisions of 85-1-604 to the contrary, all remaining interest income allocated to the water development state special revenue account from the resource indemnity trust fund by 15-38-202(2) during the 1992-93 biennium may be used only for the purposes set out in 85-1-604(3)(c).

Section 7. **Emergency grants.** There is appropriated to the department of natural resources and conservation up to $125,000 from the water development state special revenue account to be used for emergency projects. If these funds are not needed for emergencies, they may be used for grants approved in [section 1].

Section 8. **Conditions of loans and grants.** Disbursement of funds under [sections 1 through 12] for both loans and grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(2) documented commitment of other funds required for project completion;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource and water development program's project evaluations and recommendations report for the 1992-93 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved loan authority;

(4) execution of a loan or grant agreement with the department; and

(5) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan or grant as evidenced from the application to the department or from the proposal to the legislature.

Section 9. **Conditions for grants.** Notwithstanding the conditions described in [section 1], grant funds are disbursed in the order of priority listed in [section 1] as coal tax and resource indemnity trust account interest income revenues are received. No project approved by [sections 1 through 12] is entitled to receive grant funds not collected and allocated to the water development state special revenue account or the renewable resource development account.

Section 10. **Conditions for loans.** Each sponsor authorized for a loan from water development bond proceeds or renewable resource development bond proceeds may be required to pay to the department of natural resources and conservation a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 11. **Private and discount purchase of loans.** Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence thereof may be made and purchased by and sold to the department of natural resources and conservation at a discount and at private negotiated sale, notwithstanding the provisions of any other law applicable to such political subdivisions or local government entities.

Section 12. **Appropriations established.** For any entity of state government that receives a grant or loan under [sections 1 through 12], an appropriation is established for the amount of the grant or loan upon award of the grant or loan by the department of natural resources and conservation. Grants to state entities from prior bienniums are reauthorized for completion of contract work.

Section 13. **Funds available.** It is the intent of the legislature that the water development grant program be a minimum of $1 million and the renewable resources grant program be a minimum of $1 million for the 1993 legislative session.

Section 14. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. **Effective date.** [This act] is effective on passage and approval.

Approved April 23, 1991.

CHAPTER NO. 552

[HB 8]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; REAUTHORIZING CERTAIN PREVIOUS GRANTS; AND ESTABLISHING CONDITIONS FOR GRANTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriations for reclamation and development grants.** (1) There is appropriated to the department of natural resources and conservation from the reclamation and development grants special revenue account all funds allocated for appropriation from the interest income of the resource indemnity trust fund set forth in Title 15, chapter 38, with the exception of those allocations made in 15-38-202 and 75-1-1101.

(2) The funds appropriated in this section must be awarded by the department to the entities listed in [section 2] for the prescribed purposes and in the prescribed grant amounts, subject to the conditions provided in [sections 3 and 4].

Section 2. **Approved grant projects.** (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or used by higher ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation's Montana reclamation and development grants program project evaluations and recommendations report for the 1992-93 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
BUTTE-SILVER BOW, GOVERNMENT OF	
Water, Air, Soils Testing and Evaluation Center (WASTEC)	$296,113
CHINOOK IRRIGATION DISTRICT	
Milk River Water Supply Project, Rehabilitation and Betterment Element	300,000
JUDITH BASIN CONSERVATION DISTRICT	
Community-Led Rural Development in Montana	170,000
HEALTH AND ENVIRONMENTAL SCIENCES, DEPARTMENT OF, AND CENTRAL MONTANA HEALTH DISTRICT	
Arro Refinery Sludge Cleanup	300,000
MONTANA BOARD OF OIL AND GAS CONSERVATION	
Abandoned Well Plugging Project "A"	300,000
MONTANA BOARD OF OIL AND GAS CONSERVATION	
Abandoned Well Plugging Project "B"	295,000
MONTANA SALINITY CONTROL ASSOCIATION	
Soil and Water Nonpoint Source Pollution Control and Management	137,500
MONTANA STATE UNIVERSITY, RECLAMATION RESEARCH UNIT	
Effect of Sodium, Chlorine, and Total Salts from Treated Cyanide Solutions on Soils	82,885
CARBON COUNTY, STILLWATER COUNTY, AND THE CITY OF BIG TIMBER	
Integrated Waste Management in Southcentral Montana	45,437
HEALTH AND ENVIRONMENTAL SCIENCES, DEPARTMENT OF, WATER QUALITY BUREAU	
Nonpoint Pollution Control Project in Montana	146,620

MONTANA BUREAU OF MINES AND GEOLOGY	
Downhole Geophysical Logging Techniques	39,749
MONTANA BOARD OF OIL AND GAS CONSERVATION	
Abandoned Well Plugging Project "C"	144,000
TOOLE COUNTY	
North Toole County Reclamation Project	105,000
CARBON COUNTY, CHOUTEAU COUNTY, CUSTER COUNTY, DAWSON COUNTY, AND LAKE COUNTY	
Pesticide Contamination Cleanup	300,000
BUTTE-SILVER BOW, GOVERNMENT OF	
Upper Clark Fork River Basin Coordinator	60,000
NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF, WATER MANAGEMENT BUREAU	
Arsenic in Upper Missouri River Basin	179,330
STATE LANDS, DEPARTMENT OF	
Well Assessment and Abandonment	300,000
STATE LANDS, DEPARTMENT OF	
Comet Mine Wetlands Development	250,700
GLACIER COUNTY CONSERVATION DISTRICT	
Comprehensive Evaluation of Ground Water Contamination	197,453
HEALTH AND ENVIRONMENTAL SCIENCES, DEPARTMENT OF, WATER QUALITY BUREAU	
Hydrogeology, Land Use, and Chemical Quality of Water Resources in the Clark's Fork Yellowstone River Basin	218,250
SHERIDAN COUNTY CONSERVATION DISTRICT	
Extent of Oil Field Waste Contamination	134,736
YELLOWSTONE COUNTY	
Yellowstone Co. LIS/GIS Project	50,000
MONTANA STATE UNIVERSITY BIOLOGY DEPARTMENT	
Trout Stream Restoration	45,500

MONTANA SALINITY CONTROL ASSOCIATION

Supplemental Funding for Soil and Water Nonpoint Source Pollution Control and Management	62,500

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 1993 biennium pursuant to 17-7-302.

Section 3. **Coordination of fund sources for grants program projects.** A sponsor of a grants program project who has applied for a grant for that project under both the reclamation and development grants program and either the water development program or the renewable resource development program may not receive duplicative funding.

Section 4. **Conditions of grants.** Disbursement of grant funds under [sections 1 through 6] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Reduction in a scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed, and the commitment must be documented.

(3) The project sponsor shall show satisfactory completion of conditions described in the recommendations section of the project narrative of the reclamation and development grants program report for the 1992-93 biennium.

(4) An agreement between the department and the grant applicant must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(5) The recipient of the water, air, soils testing, and evaluation center (WASTEC) grant shall consider the pilot plant treatment of contaminated water from the Berkeley pit project and the detoxification of acid mine drainage from the Berkeley pit waters project that were submitted for consideration as reclamation and development grants projects during the 52nd legislature.

(6) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or as defined by the legislature.

Section 5. **Appropriations established.** For any entity of state government that receives a grant under [sections 1 through 6], an appropriation is established for the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to state entities from prior bienniums are reauthorized for completion of contract work.

Section 6. **Reauthorization of grants.** The 50th legislature, in House Bill No. 6, Laws of 1987, approved a grant from the reclamation and development grant account to the department of state lands for $107,000 for Upper Blackfoot streambank reclamation. The 51st legislature determined that additional funds were required for this project and, in House Bill No. 776, Laws of 1989, approved a grant from the reclamation and development grant account to the Lewis and Clark County conservation district for $300,000 for Blackfoot River abandoned mines. The engineering work for these projects has been completed, and the reclamation is to begin during the summer of 1991. Because it has since been determined that there may be legal constraints on the use of this money by the department of state lands due to the existence of a potential responsible party, the two grants for $407,000 for the above-described projects are hereby transferred to the department of health and environmental sciences. The department shall initiate cleanup, as authorized in the approved projects, under its existing legal authority and seek cost recovery from the responsible party.

Section 7. **Reversion of funds.** All funds allocated to the reclamation and development grants special revenue account under [sections 1 through 6] that are unspent and unencumbered on June 30, 1993, revert to that account.

Section 8. **Funds available.** It is the intent of the legislature that the funds available for the reclamation and development grants program for the 1993 legislative session be a minimum of $3 million.

Section 9. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 23, 1991.

CHAPTER NO. 553

[HB 10]

AN ACT APPROPRIATING OIL OVERCHARGE MONEY FOR PROGRAMS ADMINISTERED BY THE STATE OF MONTANA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Policy.** As a result of overcharges on sales of domestic crude oil, the federal courts have ordered or approved settlements requiring the repayment of the total amount of overcharges, plus interest, into escrow accounts to be distributed by the U. S. treasury to the states, territories, and possessions of the United States. It is the policy of this state to use the oil overcharge money distributed to the state to supplement state and federal programs that the state administers and to use the money in a manner consistent with federal court orders establishing or approving the payment of the funds to the state of Montana.

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Cities service payments" means the oil overcharge payments and any interest accrued on the payments made to the U.S. treasury for distribution to the state of Montana pursuant to the consent agreement between cities service oil and gas and the U. S. department of energy as affirmed by the federal energy regulatory commission.

(2) "Exxon payments" means the oil overcharge payments made by the exxon corporation to the U. S. treasury for distribution to the state of Montana pursuant to the order of the U. S. district court for the District of Columbia in Civil Action No. 78-1035.

(3) "Getty oil payments" means the oil overcharge payments made to the U. S. treasury for distribution to the state of Montana pursuant to the order of disbursement issued in Civil Action No. 77-347 (MMS) in the U. S. district court for the district of Delaware and any interest accrued on the payments.

(4) (a) "Stripper well payments" means the oil overcharge payments made to the U. S. treasury for distribution to the state of Montana as the result of the final settlement agreement in the U. S. district court for the district of Kansas, Cause No. M.D.L. 378, and any interest accrued on the payments. The term also includes but is not limited to cities service payments, as defined in subsection (1), getty oil payments, as defined in subsection (3), texaco payments, as defined in subsection (5), and any unspent project funds, as defined in subsection (6).

(b) The term does not include stripper well payments that have been expended or legally obligated or that have been incorporated into any of the existing federal energy programs as the result of prior appropriations by the legislature.

(5) "Texaco payments" means the oil overcharge payments made to the U. S. treasury for distribution to the state of Montana pursuant to the texaco final consent order, 53 Fed. Reg. 32929, August 29, 1988, and any interest accrued on the payments.

(6) "Unspent project funds" means stripper well payments that were not expended or otherwise legally obligated during the 1991 biennium but

that were appropriated for the 1991 biennium in Chapter 597, Laws of 1989, in:

(a) section 4;

(b) section 6(1);

(c) section 7;

(d) section 8(1); and

(e) section 9(1).

Section 3. **Deposit of oil overcharge revenue.** All funds from stripper well and exxon payments must be deposited by the state treasurer in the federal special revenue fund. All interest earned on these funds or payments must also be deposited in the federal special revenue fund.

Section 4. **Low-income home weatherization — appropriation.** There is appropriated $600,000 from the exxon payments contained in the federal special revenue fund and $550,000 from the stripper well payments contained in the federal special revenue fund to the department of social and rehabilitation services for use in the home weatherization program created in 90-4-201.

Section 5. **Matching funds for low-income energy assistance — appropriation.** (1) There is appropriated $100,000 from the stripper well payments contained in the federal special revenue fund to the department of social and rehabilitation services for the purpose described in subsection (2).

(2) The department of social and rehabilitation services shall match private contributions to energy share, inc., to be used to assist persons not eligible for federal low-income energy assistance whose income is less than 150% of the federal poverty threshold published by the U. S. bureau of the census in the most recent edition of its publication, Poverty in the United States. All of the funds appropriated under subsection (1) must be used for clients' fuel bills or other energy needs.

Section 6. **Biological agents for weed control — findings — appropriation.** There is appropriated $200,000 from the stripper well payments contained in the federal special revenue fund to the department of agriculture to continue the collection and distribution of biological agents to control leafy spurge and spotted knapweed. The project will reduce energy consumption by reducing the need for repeated chemical applications and will build upon the accomplishments derived from the funding provided in section 8, House Bill 621, Laws of 1987, and in section 7, Chapter 597, Laws of 1989.

Section 7. **Safflower oil as diesel fuel substitute or extender — appropriation.** There is appropriated $200,000 from the stripper well payments contained in the federal special revenue fund to the department of natural resources and conservation for the demonstration of vegetable oil fuel substitutes or extenders designed to reduce petroleum consumption and result in a new potential cash crop for Montana farmers. Stripper well funds must be matched at least dollar for dollar with private or federal revenue, or both. The appropriation must be used to:

(1) contract with Montana farmers to grow high oleic safflower strains such as montola 2000, which was developed by the Montana state university agricultural experiment station through previous research funded by the department of natural resources and conservation;

(2) field-test lube oil additive mixes to minimize polymerization in diesel engines that use vegetable oil fuel;

(3) evaluate engine testing results from safflower fuel oil use; and

(4) perform preliminary market development for montola 2000 or other high oleic strains.

Section 8. **Technical assistance to local governments — appropriation.** There is appropriated $235,000 from the stripper well payments contained in the federal special revenue fund to the department of natural resources and conservation to award a grant to a public or private entity to provide technical assistance to local government entities for the purpose of developing a program for retrofitting local government buildings with energy conservation measures, similar to the state building energy conservation program established by Title 90, chapter 4, part 6, for state buildings. Priority must be given to developing a self-sustaining local government building energy conservation program. The program may be based upon mechanisms that include but are not limited to leveraging private and public funds, selling the energy savings to utilities, pooling groups of local government facilities into larger retrofit packages for financing or sale to utilities, and working with the department to pool state and local government retrofit packages for sale to utilities. The department shall submit to the 53rd legislature a report that is based upon the work completed by the local government entity and that includes options and recommendations for a self-sustaining local government building conservation program and the legislation necessary to implement the program. The department shall allow grant funds not used by the local government entity to develop the local government retrofit program to be used to support general technical assistance to local jurisdictions and award matching grants for specific energy conservation demonstration projects that offer opportunities for long-term energy savings. The grant must be approved pursuant to 10 CFR 465.8.

Section 9. **Agricultural energy conservation program — appropriation.** There is appropriated $100,000 from the stripper well payments contained in the federal special revenue fund to the department of natural resources and conservation for use by the conservation districts in funding local energy efficiency or renewable energy projects, such as solar livestock watering systems, stock water tank insulation and solar heating, and farming techniques to more efficiently use irrigation water, pesticides, and fertilizers.

Section 10. **Low-income leaking underground home heating oil tank replacement assistance program — appropriation.** (1) There is appropriated $200,000 from the stripper well payment contained in the federal special revenue fund to the department of health and environmental sciences for the purpose described in subsection (2).

(2) The department of health and environmental sciences shall remove and replace home heating oil tanks and lines that are losing fuel to the ground or that were over 30 years old in 1986 as reported pursuant to Rule 16.45.901, Administrative Rules of Montana, and that serve residences occupied by low-income home energy assistance recipients. The department of health and environmental sciences shall supply the most economical and environmentally safe alternative to replace the systems it removes and shall consider fuel-switching options in choosing among replacement alternatives.

(3) The department of health and environmental sciences shall consult with the department of natural resources and conservation when it evaluates the economics of various replacement alternatives. The department of health and environmental sciences shall, whenever possible, supplement the funding provided in this section by using heating conversion or furnace repair or replacement funds provided through the federal low-income home energy assistance or weatherization assistance programs.

(4) The funds appropriated in this section may not be spent to clean soil or water contaminated by fuel lost from leaking home heating oil tanks or lines.

Section 11. **Institutional conservation program — appropriation.** There is appropriated $650,000 from the stripper well payments contained in the federal special revenue fund to the department of natural resources and conservation for use in the institutional conservation program for schools and hospitals administered by the department pursuant to 10 CFR 455.

Section 12. **Conditions applied to appropriations.** The appropriations made in [sections 4 through 11] are biennial appropriations subject to the following conditions:

(1) One-half of the total amount appropriated to each program in [sections 4 through 11] is appropriated in fiscal year 1992 and one-half is appropriated in fiscal year 1993. As biennial appropriations, the unexpended funds appropriated in fiscal year 1992 may be carried forward within each program to the second year of the 1993 biennium.

(2) The exxon payments appropriated in [section 4] are to be authorized in fiscal year 1992 and in fiscal year 1993 to the extent they are available before any stripper well payments appropriated in [section 4] are authorized.

Section 13. **Appropriations prioritized.** The appropriations in [sections 4 through 11] are approved in order of priority as they appear in [sections 4 through 11], with the appropriation in [section 4] having the highest priority and the appropriation in [section 11] having the lowest priority. If the U.S. department of energy does not approve one or more of the programs that are funded by [sections 4 through 11], any stripper well payments that are not used to fund higher priority programs must be provided to lower ranked programs up to the amounts appropriated in [sections 4 through 11]. If stripper well payments are insufficient to fully fund the appropriations made in [sections 4 through 11], the lowest ranking program must have its appropriation reduced until the deficiency is eliminated. If the deficiency is in excess of the appropriation to the lowest ranking program, the next lowest ranking program must have its appropriation reduced until the deficiency is eliminated, and so forth as the programs are prioritized. These priorities must be applied to one-half of the total amount appropriated in [sections 4 through 11] for fiscal year 1992 and to the remaining appropriation for fiscal year 1993. In order to provide continuity for the programs when establishing the appropriations for each fiscal year of the 1993 biennium, anticipated stripper well payments that will be received under terms of the agreements during the biennium may be considered as available to fund the activities. If House Bill No. 777 is passed and approved, the stripper well payments appropriated in House Bill No. 777 have a higher priority than any appropriation of stripper well payments in [sections 4 through 11]. The expenditures authorized by [sections 4 through 11] may not exceed the amount of the stripper well and exxon payments available in the biennium.

Section 14. **Effective date.** [This act] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 554

[HB 272]

AN ACT CREATING THE MONTANA COMMUNITY CORRECTIONS ACT; AUTHORIZING LOCAL GOVERNMENTS, TRIBAL GOVERNMENTS, AND PRIVATE AGENCIES TO ESTABLISH AND OPERATE COMMUNITY CORRECTIONS FACILITIES AND PROGRAMS; PROVIDING FOR CREATION OF COMMUNITY CORRECTIONS BOARDS; ALLOWING SENTENCING COURTS TO SENTENCE NONVIOLENT FELONY OFFENDERS TO A COMMUNITY CORRECTIONS FACILITY OR PROGRAM; GRANTING THE DEPARTMENT OF INSTITUTIONS AUTHORITY TO ADOPT RULES GOVERNING OPERATION OF COMMUNITY CORRECTIONS FACILITIES AND PROGRAMS; ESTABLISHING PENALTIES FOR OFFENDERS WHO ESCAPE FROM COMMUNITY CORRECTIONS FACILITIES; AUTHORIZING PLACEMENT OF OFFENDERS IN A COMMUNITY CORRECTIONS FACILITY OR PROGRAM AS A CONDITION OF THE DEFERRED IMPOSITION OR SUSPENDED EXECUTION OF SENTENCES;

AMENDING SECTIONS 45-7-306 AND 46-18-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article II, section 28, of the Montana Constitution requires that laws for the punishment of crime must be founded on the principles of prevention and reformation; and

WHEREAS, it is the state's policy that persons convicted of crime should be treated in accordance with their individual characteristics, circumstances, needs, and potentialities; and

WHEREAS, the existing state corrections system offers few alternatives to imprisonment for offenders who have been convicted of a nonviolent felony offense; and

WHEREAS, community corrections programs provide an alternative to imprisonment that is of value both to society and to the individual because such programs provide offenders opportunities to overcome alcohol and drug problems, to obtain employment or become involved in an educational or vocational program, to learn life skills, or to be engaged in other activities that will reduce the recidivism of offenders and enable them to be productive members of society; and

WHEREAS, community corrections programs are desirable because such programs cost substantially less compared to the costs of imprisonment in the Montana State Prison.

THEREFORE, the Legislature of the State of Montana finds it appropriate to enact legislation to establish community corrections facilities and programs for the placement and treatment of nonviolent felony offenders.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 10] grants the department of institutions authority to adopt rules necessary to carry out the provisions of [sections 1 through 15].

It is the intent of the legislature that the department adopt regulations and standards for the operation of community corrections facilities and programs. In adopting rules, the department shall comply with the requirements established under [section 10]. In addition, the department should consider the goals of [sections 1 through 15], which are:

(1) to reduce reliance upon the Montana state prison for detention of low-risk, nonviolent felony offenders;

(2) to increase services to offenders to help them become productive members of society;

(3) to require offenders to pay restitution to crime victims;

(4) to impose upon offenders responsibility for payment of a portion of the costs of their room and board at community corrections facilities or programs;

(5) to decentralize authority for corrections programs from state government to local or tribal governments;

(6) to stimulate local or tribal participation in the establishment of community corrections facilities and programs;

(7) to reduce the long-term costs of state corrections; and

(8) to reduce court commitments to the state prison, thereby reducing the long-term capital construction costs for the Montana state prison and other corrections facilities.

To ensure the success of the community corrections program, the department, when contracting for services, should consider a potential service provider's knowledge, background, and special expertise in the area of postconviction diversion community corrections programs.

Prior to adopting rules, the department should examine community corrections programs established in other states, especially in the states of Colorado, Iowa, Minnesota, Oregon, and Wyoming. In addition, the comments of potential service providers should be encouraged during the rulemaking process.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 15] may be cited as the "Montana Community Corrections Act".

Section 2. **Purpose.** It is the purpose of [sections 1 through 15] to:

(1) encourage the development of community corrections facilities and programs by units of local government, tribal governments, and nongovernmental agencies;

(2) reduce court commitments to the state penitentiary through diversion of low-risk, nonviolent felony offenders to community corrections facilities and programs;

(3) provide a procedure by which units of local government, tribal governments, and nongovernmental agencies may provide corrections services to the sentencing courts; and

(4) include citizen participation in the policymaking and program planning related to community corrections facilities and programs through the formation of local community corrections boards.

Section 3. **Definitions.** As used in [sections 1 through 15], unless the context requires otherwise, the following definitions apply:

(1) "Community corrections board" means a community corrections board as provided in [section 5].

(2) "Community corrections facility or program" means a community-based or community-oriented facility or program, other than a jail, that:

(a) is operated by a unit of local government, a tribal government, or a nongovernmental agency; and

(b) provides programs and services to aid offenders in:

(i) obtaining and holding regular employment;

(ii) enrolling in and maintaining academic courses;

(iii) participating in vocational training programs;

(iv) utilizing the resources of the community to meet their personal and family needs;

(v) obtaining the benefits of specialized treatment services that exist within the community; and

(vi) paying restitution or performing community restitution to crime victims.

(3) "Crime of violence" means:

(a) an offense in which a person uses or possesses and threatens the use of a deadly weapon during the commission or attempted commission of an offense, including felony assault, kidnapping, aggravated kidnapping, robbery, arson, burglary, aggravated burglary, escape, or intimidation;

(b) an offense, other than an offense in which negligence is an element of the offense, in which the person causes serious bodily injury or death to a person other than himself during the commission or attempted commission of an offense; or

(c) any sexual offense in which the offender causes bodily injury to the victim or uses threat, intimidation, or force against the victim.

(4) "Department" means the department of institutions created in 2-15-2301.

(5) "Nongovernmental agency" means a person, private nonprofit agency, corporation, association, labor organization, or other nongovernmental entity.

(6) "Nonviolent felony offender" means a person who has committed a felony other than a crime of violence.

(7) "Offender" means a person who has entered a plea of guilty or has been convicted of a felony. The term excludes a person who has committed a crime of violence.

(8) "Tribal government" means a federally recognized Indian tribe within the state of Montana.

(9) "Unit of local government" means a county, city, town, or city-county consolidated government.

Section 4. **Community corrections facilities and programs operated by units of local government.** (1) A unit of local government may establish, maintain, and operate any community corrections facilities and programs that it considers necessary to serve its own needs or the needs of offenders who are sentenced to the facility or program by a judge as provided in [section 9].

(2) A unit of local government may enter into a contract or agreement with the department for the purpose of providing community corrections facilities and programs for offenders.

Section 5. **Creation of community corrections boards — membership — appointment — terms — compensation.** (1) A unit of local government, the governing bodies of two or more units of local government, or a tribal government may establish a community corrections board.

(2) A community corrections board consists of nine members, must, when possible, be gender-balanced and have racial parity, and must be appointed as follows:

(a) one local law enforcement officer;

(b) one county attorney;

(c) one district court judge;

(d) one probation and parole officer;

(e) one local private employer or representative of the department of labor and industry;

(f) one mental health professional;

(g) one person representing local or tribal drug and alcohol treatment programs; and

(h) two members of the public.

(3) Members of a community corrections board must be nominated by representatives of units of local government or a tribal government and appointed by the district court judges or the tribal judges in the judicial district in which community corrections facilities or programs are established.

(4) Members of a community corrections board shall serve for a term of 4 years.

(5) Members of a community corrections board shall serve without compensation except as otherwise decided by the units of local government or a tribal government.

Section 6. **Powers and duties of community corrections boards.** (1) A community corrections board may establish and enforce standards for:

(a) the operation of community corrections facilities and programs operated by the unit of local government or a tribal government served by the community corrections board; and

(b) the conduct of offenders placed in local community corrections facilities and programs.

(2) The community corrections board, together with the department and the judicial district, shall establish procedures for screening offenders who are to be placed in the community corrections facility or program. The screening must take into account the aptitude, attitude, and social and occupational skills of the offender and the risk of harm the offender may present to himself and others.

(3) A community corrections board may accept, reject, or reject after acceptance the placement of any offender in the community corrections facility or program. If an offender is rejected by the community corrections board after initial acceptance, the offender must be remanded to the custody of the sheriff of the county in which the facility or program is located. The community corrections board shall notify in writing the sentencing judge who, after considering the board's reasons for rejection, shall appropriately modify the sentencing order.

Section 7. **Community corrections facilities and programs operated by tribal governments.** (1) A tribal government may establish, maintain, and operate a community corrections facility or program to serve the needs of offenders who are sentenced to the facility or program by a judge as provided in [section 9].

(2) A tribal government may enter into an agreement with the department, pursuant to Title 18, chapter 11, part 1, for the purpose of providing community corrections facilities or programs for offenders. The agreement must provide for strict accountability procedures and practices for the conduct and supervision of offenders assigned or sentenced to a facility or program operated by a tribal government.

(3) A tribal government operating a community corrections facility or program may accept, reject, or reject after acceptance the placement of any offender in the facility or program pursuant to an agreement with a unit of local government, a nongovernmental agency, or a judicial district. If an offender is rejected by the tribal government after initial appearance and the offender is a court referral, the offender must be remanded to the custody of the sheriff of the county in which the facility or program is located. The tribal government shall notify in writing the sentencing judge who, after considering the tribal government's reasons for rejection, shall appropriately modify the sentencing order.

Section 8. **Community corrections facilities and programs operated by nongovernmental agencies.** (1) Except as provided in subsection (2), a nongovernmental agency may establish, maintain, and operate a community corrections facility or program to serve the needs of offenders who are sentenced to the facility or program by a judge as provided in [section 9].

(2) A nongovernmental agency may not establish a community corrections facility or program unless approved by the local community corrections board in a local government or tribal government that has established a community corrections board.

(3) A nongovernmental agency may enter into a contract or agreement with the department for the purpose of providing community corrections facilities or programs for offenders. The contract or agreement must provide for strict accountability procedures and practices for the conduct and supervision of offenders assigned or sentenced to a facility or program operated by a nongovernmental agency.

(4) A nongovernmental agency operating a community corrections facility or program may accept, reject, or reject after acceptance the placement of any offender in the facility or program pursuant to a contract or agreement with a unit of local government, a tribal government, or a judicial district. If an offender is rejected by the nongovernmental agency after initial acceptance and the offender is a court referral, the offender must be remanded to the custody of the sheriff of the county in which the facility or program is located. The nongovernmental agency shall notify in writing the sentencing judge who, after considering the agency's reasons for rejection, shall appropriately modify the sentencing order.

Section 9. **Authority of judge to utilize community corrections facilities or programs — procedure — restrictions.** (1) Subject to the restrictions contained in subsection (3), a judge may order placement of a nonviolent felony offender in a community corrections facility or program operated by a unit of local government, a tribal government, or a nongovernmental agency. If a judge orders placement of an offender in a community corrections facility or program, the judge shall indicate in the sentencing order that the offender would have been sentenced to prison if the community corrections facility or program had not been available.

(2) Placement of an offender in a community corrections facility or program may be ordered only if:

(a) the community corrections facility or program is operated by a unit of local government, a tribal government, or a nongovernmental agency that has entered into a contract or agreement with the department to provide community corrections services for offenders; and

(b) funding for the placement is available.

(3) A judge may not order placement of an offender in a residential community corrections facility or program for a period exceeding 1 year. After completing the residential community corrections portion of his sentence, an offender shall serve the remainder of his sentence under normal probation supervision, if applicable.

(4) An offender is not eligible for parole while serving a sentence in a community corrections facility or program.

(5) The probation and parole officers for the judicial district shall include in their presentence report to the sentencing judge recommendations for utilization of a community correctional facility or program that has been approved for use by the judicial district.

Section 10. **Powers and responsibilities of department — rulemaking authority.** The department shall:

(1) with the active and full participation of the local community corrections board, establish minimum standards for the operation of community corrections facilities and programs operated by a unit of local government, a tribal government, or a nongovernmental agency that has entered into a contract or agreement with the department to provide services for offenders;

(2) review and evaluate all community corrections facilities and programs established under [sections 1 through 15], subject to the requirements established in [section 13];

(3) prescribe accounting and reporting standards for all units of local government, tribal governments, and nongovernmental agencies that have entered into a contract or agreement with the department;

(4) reimburse units of local government, tribal governments, or nongovernmental agencies for community correctional services at a rate to be negotiated by the department;

(5) adopt rules necessary to carry out the provisions of [sections 1 through 15].

Section 11. **Offender payments.** (1) An offender placed in a community corrections facility or program under [sections 1 through 15] shall execute a written contract or agreement with the director of the facility or program, setting forth the terms and conditions for placement in the facility or program. The contract or agreement may provide that a portion of any money received from employment of the offender be set aside for payment of the following expenses in order of the priority in which they appear below:

(a) reimbursement to the community corrections facility or program for a portion of the cost of the room and board provided at the facility or program. The reimbursement rate must be reasonable, based on the offender's employment status and other financial obligations. However, the charges for room and board may not exceed 20% of the offender's net employment income.

(b) victim restitution ordered by the sentencing court, which may not exceed 20% of the offender's net employment income;

(c) deposits to a savings account or fund to be used by the offender for general living expenses following his release from the community corrections facility or program; and

(d) payment of family support.

(2) In a community corrections facility or program, the offender has the primary obligation to obtain employment, but the department of labor and industry shall provide assistance to the offender in obtaining suitable employment.

Section 12. **Good time allowance.** If an offender successfully completes the residential community corrections portion of his sentence, he accrues a good time allowance at a rate of 1 day of good time for each day served in the facility or program. The good time allowance operates as a credit on the remainder of his sentence.

Section 13. **Technical assistance and training.** The department shall contract with qualified community corrections specialists to provide necessary technical assistance and training to judicial districts and corrections boards.

Section 14. **Report to legislature.** No later than January 30, 1993, the department shall submit to the legislature a report describing:

(1) the number of community corrections facilities and programs that have been established;

(2) the number and type of court-referred offenders assigned to community corrections facilities and programs;

(3) the number and type of department-referred offenders assigned to community based prerelease centers;

(4) the extent to which offenders have received and benefited from educational or job training programs related to rehabilitation;

(5) the rate of reconviction of community corrections program participants as compared to the reconviction rate for similar offenders sentenced to the state penitentiary;

(6) the amount of taxes, restitution, and room and board fees paid by offenders assigned to community corrections facilities and programs; and

(7) the number of court-referred offenders who, in the absence of community corrections facilities and programs, would have been sentenced to the custody of the department.

Section 15. **Escape from custody.** An offender is guilty of escape from official detention and shall be punished as provided in 45-7-306 if, without proper authorization, he:

(1) fails to remain within the extended limits of his confinement or fails to return within the time specified to a community corrections facility or program to which he has been assigned, sentenced, or transferred; or

(2) leaves his place of employment or neglects or fails to return to the community corrections facility or program after being specifically ordered to do so.

Section 16. Section 45-7-306, MCA, is amended to read:

"**45-7-306. Escape.** (1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, *placement in a community corrections facility or program,* supervision while under a supervised release program, participation in a county jail work program under 7-32-2225 through 7-32-2227, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. "Official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if he is participating in a county jail work program under 7-32-2225 through 7-32-2227 and he knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if he escapes from a state prison, county jail, city jail, *community corrections facility or program,* or supervised release program by the use or threat of force, physical violence, weapon, or simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if he:

(i) escapes from a state prison, county jail, city jail, halfway house, life skills center, *community corrections facility or program,* or supervised release program; or

(ii) escapes from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon; or

(c) fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if he commits escape under circumstances other than (a) and (b) of this subsection."

Section 17. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court appointed counsel as provided in 46-8-113;

(ix) placement in a community corrections facility or program as provided in [section 9];

~~(ix)~~*(x)* community service;

~~(x)~~*(xi)* any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

~~(xi)~~*(xii)* any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)~~(xi)~~*(xii)*.

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution, with or without a fine as provided by law for the offense;

(f) order the offender to be placed in a community corrections facility or program as provided in [section 9];

~~(f)~~*(g)* impose any combination of subsections (1)(b) through (1)~~(e)~~*(f)*.

(2) If any financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either

expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail time already served.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-502(3), 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of such imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program."

Section 18. **Codification instruction.** [Sections 1 through 15] are intended to be codified as an integral part of Title 53, chapter 30, and the provisions of Title 53, chapter 30, apply to [sections 1 through 15].

Section 19. **Effective date.** [This act] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 555

[HB 335]

AN ACT TO ALLOW AN ELEMENTARY DISTRICT TO ATTACH TO A HIGH SCHOOL DISTRICT WITH THE SAME BOUNDARIES TO FORM A K-12 SCHOOL DISTRICT; AMENDING SECTIONS 20-6-101, 20-7-705, 20-9-314, 20-9-406, AND 20-9-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is necessary for this bill to clarify that the superintendent of public instruction shall promulgate rules to prescribe procedures for budgeting and for revenue distribution for K-12 school districts formed by the attachment of an elementary district to a high school district. It is the intent of the legislature to encourage the formation of K-12 school districts whenever the trustees and the electorate of districts with the same boundaries choose to do so. In order to facilitate this action, it may be necessary for the superintendent of public instruction to address certain unforeseen circumstances through the rulemaking process.

Be it enacted by the Legislature of the State of Montana:

Section 1. **K-12 school districts allowed — definition — procedure for creation.** (1) An elementary district with the same district boundaries as a high school district may attach to the high school district for the purpose of establishing a K-12 school district.

(2) For the purposes of Title 20, unless the context clearly indicates otherwise, "K-12 school district" means a high school district with an elementary district that has been attached to the high school district under the procedures provided in this section, with the high school district remaining an organized district under the provisions of 20-6-101 and other provisions of law and the elementary district becoming an inactive district under the provisions of 20-6-101.

(3) The attachment of an elementary district to a high school district to form a K-12 school district must be conducted under the following procedure:

(a) An attachment proposition may be introduced in the districts by either of the following methods:

(i) the trustees may pass a resolution requesting the county superintendent to order an election to consider an attachment proposition involving their districts; or

(ii) not less than 20% of the electors of the elementary district and the high school district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent, requesting an election to consider an attachment proposition involving their districts.

(b) (i) When the county superintendent receives a resolution or a valid petition from each of the districts included in the attachment proposition, the county superintendent shall, within 10 days after receipt of the last resolution or petition and as provided by 20-20-201, order the trustees of the districts included in the attachment proposition to call an attachment election in conjunction with a regular school election.

(ii) The proposition must include the assumption of the bonded indebtedness of the elementary district by the high school district.

(c) The districts shall call and conduct an election in the manner prescribed in this title for school elections.

(d) After the county superintendent receives the certificate of election provided for in 20-20-416 from the trustees of the districts included in an attachment proposition, the county superintendent shall determine if the attachment proposition has been approved in the districts. If the districts have approved the attachment proposition, the county superintendent shall, within 10 days after receipt of the certificate of election, order the attachment of the elementary district to the high school district to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the order to the board of county commissioners, the trustees of the districts included in the attachment order, and the superintendent of public instruction.

Section 2. **Funding for K-12 school districts.** (1) Notwithstanding the provisions of subsections (2) through (6), a K-12 school district formed under the provisions of [section 1] is subject to the provisions of law for high school districts.

(2) The number of elected trustees of the K-12 school district must be based on the classification of the attached elementary district under the provisions of 20-3-341 and 20-3-351.

(3) Calculations for the following must be made separately for the elementary school program and the high school program of a K-12 school district:

(a) the calculation of ANB for purposes of determining the foundation program schedule payments must be in accordance with the provisions of 20-9-311;

(b) the basic county tax and revenues for the elementary foundation program amount for the district must be determined in accordance with the provisions of 20-9-331, and the basic special tax and revenues for the high school foundation program amount for the district must be determined in accordance with 20-9-333; and

(c) the guaranteed tax base aid for the permissive levy amount for a K-12 school district must be calculated separately, using the mill value per elementary ANB and the mill value per high school ANB as defined in 20-9-366. The permissive amount to be levied for the K-12 school district must be prorated based on the ratio of the foundation program amounts for elementary school programs to the foundation program amounts for high school programs.

(4) The retirement obligation and eligibility for retirement guaranteed tax base aid for a K-12 school district must be calculated and funded as a high school district retirement obligation under the provisions of 20-9-501.

(5) For the purposes of budgeting for a K-12 school district, the trustees shall adopt a single fund for any of the budgeted or nonbudgeted funds described in 20-9-201 for the costs of operating all grades and programs of the district.

(6) Tuition for attendance in the K-12 school district must be determined separately for high school pupils and for elementary pupils under the provisions of chapter 5, part 3, except that the actual expenditures used for calculations in 20-5-305 and 20-5-312 must be based on an amount prorated between the elementary and high school programs in the appropriate funds of each district in the year prior to the attachment of the districts.

Section 3. **Transitions after formation of K-12 school district.** (1) When an attachment order for a K-12 school district becomes effective on July 1 under the provisions of [section 1]:

(a) the board of county commissioners shall execute all necessary and appropriate deeds, bills of sale, or other instruments for the conveyance of title to all real and personal property of the elementary district to the high school district;

(b) the trustees of the elementary district shall entrust the minutes of the board of trustees, the elementary district documents, and other records to the high school district to which it is attached; and

(c) the county treasurer shall transfer all end-of-the-year warrants and fund balances of the attached elementary district to the similar funds established for the K-12 school district in the high school district.

(2) All taxes levied by and revenue due from a previous school fiscal year to an elementary district attached to a high school district must be payable to the appropriate fund of the high school district.

(3) The previous year's general fund budget amounts for the elementary district and the high school district that form a K-12 school district must be combined to determine the budget limitation for the ensuing school fiscal year pursuant to 20-9-315.

(4) An elementary district and a high school district that form a K-12 school district under the provisions of [section 1] may not be considered an enlarged district for the purpose of bonus payments under 20-6-401 through 20-6-408.

Section 4. **Contracts protected.** Whenever an elementary district is attached to a high school district to form a K-12 school district under the provisions of [section 1], a district superintendent, principal, teacher, or other employee of the school districts who has a continuing contract or right of tenure under Montana law is protected, and the board of trustees of the high school district in which the person will perform duties shall recognize and give effect to the contract or right of tenure.

Section 5. **Dissolution of K-12 school district.** The dissolution of a K-12 school district that has been formed by the attachment of an elementary district to a high school district must be conducted by introducing a proposition for dissolution of the K-12 school district by either of the methods set forth in [section 1(3)] for formation of a K-12 school district. Following receipt of a valid petition or resolution, the county superintendent shall order the trustees to call an election on the dissolution proposition. For the dissolution of a K-12 school district, the trustees and the county superintendent shall adhere to the procedures for attachment set forth in [section 1(3)(b) through (3)(d)] regarding an election and any resulting order.

Section 6. Section 20-6-101, MCA, is amended to read:

"**20-6-101. Definition of elementary and high school districts.** (1) As used in this title, except as defined in 20-9-402 for bonding purposes or unless the context clearly indicates otherwise, the term "district" means the territory, regardless of county boundaries, organized under the provisions of this title to provide public educational services under the jurisdiction of the trustees prescribed by this title. High school districts may encompass all or parts of the territory of one or more elementary districts.

(2) *(a)* An elementary district is a district organized for the purpose of providing public education for all grades up to and including grade 8 and for preschool programs and kindergartens. *An elementary district may be inactive if the district attaches to a high school district under the provisions of [section 1] to form a K-12 school district.*

(b) A high school district is a district organized for the purpose of providing those public educational services authorized by this title for all grades beyond grade 8, including postsecondary programs, except those programs administered by community college districts or the Montana university system. *A high school district with an attached elementary district may provide the educational services for an elementary district through the procedures established in [sections 1 through 3].*

(3) An elementary district ~~shall be~~ *is* known as "District No. ...., ... County" and a high school district, except a high school district where a county high school is operated, ~~shall be~~ *is* known as "High School District No. ...., ... County". ~~Any~~ *A* district ~~shall be~~ *is* a body corporate and, as ~~such~~ *a* body corporate, may sue and be sued, contract and be contracted with, and acquire, hold, use, and dispose of real or personal property for school purposes, within the limitations prescribed by law. Unless the context clearly indicates otherwise, the trustees of elementary districts and high school districts ~~shall~~ have the same types of powers, duties, and responsibilities authorized and imposed by the laws of Montana.

(4) Unless the context clearly indicates otherwise, an elementary district operating a high school in a county that has not been divided into high school districts ~~shall be~~ *is* considered a high school district under this title and the trustees of the elementary district ~~shall be~~ *are* the trustees of the high school district. ~~Such an~~ *An* elementary district operating a high school

~~shall~~ *may* not have the bonding authority of a high school district. However, the elementary district may exercise its bonding authority, in the manner provided by law, for high school purposes.

(5) As used in this title, unless the context clearly indicates otherwise, a county high school ~~shall be~~ *is* considered a high school district subject to the limitations prescribed by law for a county high school as a result of its being a part of the county government. The boundaries of the high school district for a county high school ~~shall be~~ *are*:

(a) the high school district boundaries established by the county high school boundary commission; or

(b) if no ~~such~~ boundaries have been established, the county boundaries, except for any territory located in a joint high school district.

(6) ~~Any~~ *A* county high school recognized as a high school district under the provisions of subsection (5)(b) ~~above shall~~ *may* not have a bonding authority. Instead, the county shall exercise its bonding authority in the manner provided in 20-9-451."

Section 7. Section 20-9-406, MCA, is amended to read:

"**20-9-406. Limitations on amount of bond issue.** (1) *(a)* The maximum amount for which ~~each~~ *an elementary district or a high* school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the taxable value of the property subject to taxation as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of ~~such~~ *the* indebtedness.

(b) The maximum amount for which a K-12 school district, as formed pursuant to [section 1], may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is up to 90% of the taxable value of the property subject to taxation as ascertained by the last-completed assessment for state, county, and school taxes previous to the incurring of the indebtedness. The total indebtedness of the high school district with an attached elementary district as represented by the issuance of bonds must be limited to the sum of 45% of the taxable value of the property for elementary school program purposes and 45% of the taxable value of the property for high school program purposes.

(2) The ~~45%~~ maximum *amounts determined in subsection (1)*, however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to bonds issued for the repayment of tax protests lost by the district. All bonds issued in excess of ~~such~~ *the* amount ~~shall be~~ *are* null and void, except as provided in this section.

~~(2)~~*(3)* When the total indebtedness of a school district has reached the ~~45% limitation~~ *limitations* prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

~~(3)~~*(4)* Whenever bonds are issued for the purpose of refunding bonds, any ~~moneys~~ *money* to the credit of the debt service fund for the payment of the bonds to be refunded ~~are~~ *is* applied towards the payment of ~~such~~ *the* bonds and the refunding bond issue is decreased accordingly."

Section 8. Section 20-9-502, MCA, is amended to read:

"**20-9-502. Purpose and authorization of a building reserve fund by an election.** (1) The trustees of any district, with the approval of the qualified electors of the district, may establish a building reserve for the purpose of raising money for the future construction, equipping, or enlarging of school buildings or for the purpose of purchasing land needed for school purposes in the district. In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(a) the purpose or purposes for which the new or addition to the building reserve will be used;

(b) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(c) the total amount of money that will be raised during the duration of time specified in subsection (1)(b); and

(d) any other requirements under 20-20-201 for the calling of an election.

(2) The total amount of building reserve when added to the outstanding indebtedness of the district ~~shall~~ *may* not be more than ~~45% of the taxable value of the taxable property of the district~~ *the limitations provided in 20-9-406.* ~~Such limitation shall be determined in the manner provided in 20-9-406.~~ A building reserve tax authorization ~~shall~~ *may* not be for more than 20 years.

(3) The election ~~shall~~ *must* be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election ~~shall~~ *must* be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition ~~shall~~ *must* be substantially in the following form:

OFFICIAL BALLOT
SCHOOL DISTRICT BUILDING RESERVE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BUILDING RESERVE—YES" if you wish to vote for the establishment of a building reserve (addition to the building reserve); if you are opposed to the establishment of a building reserve (addition to the building reserve) make an X or similar mark in the square before the words "BUILDING RESERVE—NO".

Shall the trustees be authorized to impose an additional levy each year for .... years to establish a building reserve (add to the building reserve) of this school district to raise a total amount of .... dollars ($....), for the purpose(s) ....: (here state the purpose or purposes for which the building reserve will be used)?

☐ BUILDING RESERVE—YES.

☐ BUILDING RESERVE—NO.

(4) The building reserve proposition ~~shall be~~ *is* approved if a majority of those electors voting at the election approve the establishment of or addition to ~~such~~ *the* building reserve. The annual budgeting and taxation authority of the trustees for a building reserve ~~shall be~~ *is* computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve ~~shall lapse~~ *lapses* when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve ~~shall~~ *must* be used for such purpose or purposes before any money realized by the bond issue is used."

Section 9. Section 20-7-705, MCA, is amended to read:

"**20-7-705. Adult education fund.** (1) A separate adult education fund ~~shall~~ *must* be established when an adult education program is operated by a district or community college district. The financial administration of ~~such~~ *the* fund ~~shall~~ *must* comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of any district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund ~~shall~~ *must* be the depository for all federal, state, and district ~~moneys~~ *money* received by the district in support of the adult education program.

(3) The trustees of any district may authorize the levy of a tax of not more than 1 mill on the district, except that trustees of a county high school district that is not unified with an elementary district *or of a K-12 school district formed under the provisions of [section 1]* may authorize a levy of not more than 2 mills on the district, for the operation of an adult education program when the superintendent of public instruction has approved the educational program to be supported by ~~such~~ *the* levy. The *trustees shall acquire the* approval of the superintendent of public instruction ~~shall have been acquired by the trustees~~ before the fourth Monday of June in order to include the expenditures to be financed by the levy in the preliminary budget. The superintendent of public instruction shall promulgate rules and forms for ~~such~~ *the* approval.

(4) Whenever the trustees of any district decide to offer an adult education program during the ensuing school fiscal year, they shall budget

for the cost of ~~such~~ *the* program in the adult education fund of the preliminary budget. Any expenditures in support of the adult education program under the final adult education budget ~~shall~~ *must* be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program ~~which~~ *that* has been approved by the superintendent of public instruction is included as a revenue item on the final adult education budget, the county superintendent shall report ~~such~~ *the* levy requirement to the county commissioners on the second Monday of August and a levy on the district ~~shall~~ *must* be made by the county commissioners in accordance with 20-9-142."

Section 10. Section 20-9-314, MCA, is amended to read:

"**20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.** A district ~~which~~ *that* anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(4), may increase its foundation program for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to May 10, the district shall estimate the ~~probable average number belonging~~ *elementary or high school enrollment* to be realized during the ensuing ~~ANB calculation period~~ *school fiscal year*, based on as much factual information as may be available to the district.

(2) No later than May 10, the district shall submit its application for an unusual enrollment increase *by elementary or high school level* to the superintendent of public instruction. The application must include:

(a) the ~~average number belonging~~ *enrollment* for the preceding ~~ANB calculation period~~ *school fiscal year*;

(b) the ~~current~~ average number belonging *used to calculate the foundation program schedule amount for the current school fiscal year*;

(c) the average number belonging that will be used to calculate the foundation program schedule amount for the ensuing school fiscal year;

~~(c)~~*(d)* the estimated ~~average number belonging for the ensuing ANB calculation period~~ *enrollment*, including the factual information on which the estimate is based, as provided in subsection (1); and

~~(d)~~*(e)* any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing ANB calculation period. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage increase that the estimated ~~average number belonging for the ensuing ANB calculation period~~ *enrollment increase* is over the current ~~average number belonging~~ *enrollment*; and

(b) approve an increase of the average number belonging used to establish the ensuing year's foundation program in accordance with subsection (5) if the increase in subsection (3)(a) is at least 6%.

(4) The superintendent of public instruction shall notify the district of ~~his~~ *the* decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the foundation program for the ensuing ANB calculation period is the difference between the ~~approved estimated average number belonging~~ *enrollment* for the ensuing ~~ANB calculation period~~ *school fiscal year* and 106% of the current ~~average number belonging~~ *enrollment.* The amount determined is the maximum allowable increase added to the ~~actual current~~ average number belonging for the purpose of establishing the ensuing year's foundation program.

(6) Any equalization or entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year. If the actual ~~average number belonging~~ *enrollment* is less than the average number belonging used for foundation program and entitlement calculations, the superintendent of public instruction shall revise the foundation program and entitlement calculations using the actual average number belonging. All payments received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of 20-9-344(3)."

Section 11. **Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 20, and the provisions of Title 20 apply to [sections 1 through 5].

Section 12. **Coordination instruction.** If House Bill No. 470 is passed and approved, then [section 4 of this act] must read as follows:

"Section 4. **Tenure protected — hiring preference for noncertified employees.** (1) Whenever an elementary district is attached to a high school district to form a K-12 school district under the provisions of [section 1], a district superintendent, principal, teacher, or other certified employee of the elementary district who has a right of tenure under Montana law continues to have tenure in the K-12 district and the board of trustees of the high school district in which the person will perform duties shall recognize and give effect to the right of tenure.

(2) A noncertified, nonprobationary employee of an elementary district that is attached to a high school district to form a K-12 district [illegible] given preference in hiring for any position with the K-12 district [illegible] the employee has substantially equal qualifications and [illegible] of a position, may not be given probationary status."

Section 13. **Effective date.** [This act] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 556

[HB 371]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF FAMILY SERVICES FOR IN-HOME SERVICES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated to the department of family services from the general fund $200,000 for the biennium ending June 30, 1993, for in-home services as provided for in 53-5-101.

Approved April 23, 1991.

CHAPTER NO. 557

[HB 441]

AN ACT ALLOWING THE HOLDER OF A PERFECTED SECURITY INTEREST IN A MOBILE HOME OR HOUSETRAILER TO FILE A NOTICE OF THE INTEREST WITH THE COUNTY TREASURER; REQUIRING NOTICE OF AN IMPENDING SHERIFF'S SALE OF A MOBILE HOME OR HOUSETRAILER TO THE HOLDERS OF PERFECTED SECURITY INTERESTS IN THE MOBILE HOME OR HOUSETRAILER; ALLOWING A MOVING DECLARATION FOR A MOBILE HOME OR HOUSETRAILER PURSUANT TO A REPOSSESSION; LIMITING THE DELINQUENT TAX LIABILITY OF THE HOLDER OF A PERFECTED SECURITY INTEREST IN A MOBILE HOME OR HOUSETRAILER; AND AMENDING SECTIONS 15-24-202 AND 15-24-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-202, MCA, is amended to read:

"**15-24-202. Payment of tax — interest and penalty — display of tax-paid sticker.** (1) (a) The owner of a mobile home or housetrailer which is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two payments, except as provided in 15-24-206.

(b) The first payment is due within 30 days from the date of the notice of taxes due.

(c) The second payment is due no later than September 30 of the year in which the property is assessed.

(d) If not paid on or before the date due, the tax is considered delinquent and subject to the penalty and interest provisions in 15-16-102 applicable to other delinquent property taxes. The penalty must be assessed and interest begins to accrue on the first day of delinquency.

(2) Upon request, the treasurer shall notify a lienholder if taxes on a mobile home or housetrailer have not been paid.

~~(2)~~*(3)* Taxes assessed against a mobile home after the second payment date must be prorated to reflect the remaining portion of the tax year. The prorated taxes must be added to the following year's tax roll and, except as provided in 15-24-206, are due with and must be collected with the first payment due in that year.

~~(3)~~*(4)* The department of revenue shall issue tax-paid stickers to the county treasurers. ~~If~~ *Except as provided in 15-24-206 and [section 3], if* a mobile home or housetrailer is to be moved and all taxes, interest, and penalties on the mobile home or housetrailer are paid in full, the treasurer shall issue a tax-paid sticker to the owner of the mobile home or housetrailer. Prior to and while in the process of moving the mobile home or housetrailer, the owner shall display the tax-paid sticker, which must be visible from the exterior of the mobile home or housetrailer. No mobile home movement declaration of destination provided for in 15-24-206 may be issued unless*:*

(a) the taxes have been paid in full to the county treasurer*; or*

(b) the exceptions in 15-24-206(3) or [section 3] apply.

~~(4)~~*(5)* On the movement of a mobile home or housetrailer in violation of this part, the county treasurer for the county where the mobile home or housetrailer first comes to rest shall issue a written notice to the owner, showing the amount of delinquent taxes, special assessments, penalties, and interest due. In addition to the penalties provided in 15-16-102, 20% or $50, whichever is greater, must be added to the delinquent taxes as penalty for violation of this part. On receipt of the delinquent taxes, special assessments, penalties, and interest, the county treasurer shall forward all delinquent taxes, special assessments, penalties, and interest collected under 15-16-102 to the county treasurer for the county of origin. The county of destination shall retain the penalty."

Section 2. Section 15-24-206, MCA, is amended to read:

"**15-24-206. Declaration of destination on imported mobile homes — display — tax receipt — exemptions.** (1) ~~Whoever~~ *A person who* brings a mobile home into the state shall immediately upon arrival in the state execute a written declaration, verified under oath, stating the destination of the mobile home and ~~such~~ *any* other information ~~as~~ the department of revenue may require and shall deliver the original of the declaration to whomever is on duty at the nearest port of entry station, state vehicle weight station, or ~~such~~ other place ~~and person as~~ the department may prescribe. He shall also immediately upon arrival in the state affix a copy of the declaration to the mobile home at a conspicuous place.

(2) The treasurer shall issue the mobile home movement declaration provided for in this section to a person required by this section to execute it, in ~~such~~ quantities ~~as~~ he requests to a maximum of 100. The treasurer shall issue ~~such~~ additional quantities of the declaration to a maximum of 100 as the person requests at the discretion of the county treasurer upon receipt from the person of the previously issued declarations properly executed. ~~In any event executed~~ *Executed* declarations must be delivered to the treasurer within 30 days from their issue.

(3) ~~Whoever~~ *A person who* moves a mobile home from a point within the state to another point within or without the state shall first:

(a) execute the declaration provided for in subsection (1) ~~of this section~~, deliver the original of it to the treasurer of the county in which the move originates or to ~~such~~ *any* other person ~~as~~ the department may prescribe, and affix a copy of it in a conspicuous place on the mobile home to be moved;

(b) obtain from the county treasurer of the county in which the move originates a receipt showing*:*

(i) payment in full of property taxes with respect to that mobile home*; or*

(ii) payment of the property taxes provided for in [section 3].

(4) The provisions of subsection (3)(b) do not apply whenever a person moves a mobile home:

(a) from a point without to a point within the state;

(b) between places of business of dealers within or without the state;

(c) from the place of business of a dealer to a point within or without the state*; or*

(d) pursuant to the repossession of a mobile home, unless the treasurer has furnished the lienholder or secured party with timely notice of the delinquent tax due when information has been requested under 15-24-202(2)."

Section 3. **Limit on delinquent mobile home taxes chargeable to security interest holder.** The holder of a perfected security interest in a mobile home or housetrailer who repossesses the mobile home or housetrailer as provided by law and as authorized in the contract between the owner and the secured party may not be required to pay delinquent property taxes for more than 3 years as a condition of moving the mobile home or housetrailer or transferring it to another person. Any additional delinquent taxes due upon the mobile home or housetrailer are a lien upon any other personal or real property of the person who was required by law to pay the delinquent taxes at the time the taxes were due.

Section 4. **Notice of impending sale to certain lienholders.** After entry of a notation under 15-16-115(2) concerning a mobile home that is not taxed as an improvement to real property but before directing the sheriff to make a levy and sale on the mobile home, the treasurer shall notify a person who has a properly perfected security interest in the mobile home and who has furnished the treasurer a copy of the instrument by which the interest was perfected of the levy and sale. The notice must state that the sheriff may soon be requested to make a levy and sale on the mobile home.

Section 5. **Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 15, chapter 24, part 2, and the provisions of Title 15, chapter 24, part 2, apply to [sections 3 and 4].

Approved April 23, 1991.

CHAPTER NO. 558

[HB 465]

AN ACT TO PROVIDE THAT STATUTORY AND COMMON-LAW RULES OF EVIDENCE DO NOT APPLY TO DEPARTMENT OF LABOR AND INDUSTRY WORKERS' COMPENSATION HEARINGS; TO CHANGE THE IMPAIRMENT EVALUATION PROCEDURE; TO CHANGE PROVISIONS RELATING TO THE YEARLY MEDICAL SERVICES FEE SCHEDULES; TO CHANGE APPLICATION REQUIREMENTS FOR VOCATIONALLY HANDICAPPED BENEFITS; TO CLARIFY THAT WORKERS' COMPENSATION STATUTES RELATING TO THE VOCATIONALLY HANDICAPPED ALSO APPLY TO OCCUPATIONAL DISEASES; GRANTING THE DEPARTMENT DISCRETION AS TO THE SIZE OF THE SECURITY DEPOSITED BY AN EMPLOYER THAT SELF-INSURES; AMENDING SECTIONS 39-71-201, 39-71-306, 39-71-604, 39-71-605, 39-71-704, 39-71-711, 39-71-905, 39-71-2106, 39-71-2401, 39-71-2410, AND 39-72-402, MCA; REPEALING SECTION 39-72-304, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Hearings — rules of evidence.** The statutory and common law rules of evidence do not apply to a hearing before the department under this chapter.

Section 2. Section 39-71-201, MCA, is amended to read:

"**39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the department must administer are to be paid upon lawful appropriation. The following money collected by the department must be deposited in the state treasury to the credit of the workers' compensation administrative fund and must be used for the administrative expenses of the department:

(a) all fees and penalties provided in 39-71-205 and 39-71-304;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer may be less than $200. The assessments must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund ~~its~~ *the* direct costs and an equitable portion of the indirect costs ~~as referred to above~~ *of regulating plan No. 3.* Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

(2) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(3) Disbursements from the administration money must be made after being approved by the department upon claim therefor."

Section 3. Section 39-71-306, MCA, is amended to read:

"39-71-306. **Insurers to file summary reports of benefits paid for injuries and statements of medical expenditures.** Every insurer shall, on or before the 15th day ~~of~~ *after* each ~~and every month~~ *state government fiscal quarter,* file with the department:

(1) summary reports of benefits for all *compensation* payments made during the previous ~~month~~ *state fiscal quarter* to injured workers or their beneficiaries or dependents; and

(2) statements showing the amounts expended during the previous ~~month~~ *state fiscal quarter* for *all* medical~~, surgical, and hospital~~ services for injured workers ~~and for the burial of deceased workers~~."

Section 4. Section 39-71-604, MCA, is amended to read:

"**39-71-604. Application for compensation.** (1) If a worker is entitled to benefits under this chapter, the worker shall file with the insurer ~~or the department~~ all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the department without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) If death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer ~~or the department~~. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the department."

Section 5. Section 39-71-605, MCA, is amended to read:

"**39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost.** (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, he shall, upon the written request of the insurer, submit from time to time to examination by a physician or panel of physicians, who shall be provided and paid for by such insurer, and shall likewise submit to examination from time to time by any physician or panel of physicians selected by the department.

(b) The request or order for such examination shall fix a time and place ~~therefor, due~~ *for the examination, with* regard ~~being had to the convenience of the employee and~~ *for the employee's convenience,* his physical condition, and *his* ability to attend at the time and place ~~fixed~~ *that is as close to the employee's residence as is practical.* The employee shall be entitled to have a physician present at any such examination. So long as the employee, after such written request, shall fail or refuse to submit to such examination or shall in any way obstruct the same, his right to compensation shall be suspended. Any physician or panel of physicians employed by the insurer or the department who shall make or be present at any such examination may be required to testify as to the results thereof.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to such examination as it may deem desirable by a physician or panel of physicians within the state or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician or panel of physicians making the examination shall file a written report of findings with the ~~department~~ *claimant and insurer* for ~~its~~ *their* use in the determination of the controversy involved. The ~~department~~

requesting party shall pay the physician or panel of physicians for the examination ~~and shall be reimbursed by the party who requested it~~.

(3) This section does not apply to impairment evaluations provided for in 39-71-711."

Section 6. Section 39-71-704, MCA, is amended to read:

"**39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates —** ***fee limitation.*** (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following must be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the department for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(c) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(2) ~~A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, must be established annually by the department and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state fund during the year preceding the adoption of the schedule. The state fund shall report fees billed in the form and at the times required by the department. The department shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules must be modeled on the 1974 revision of the 1969 California Relative Value Studies.~~ *The department shall annually establish a schedule of fees for medical nonhospital services necessary for the treatment of injured workers. The department may require insurers to submit information to be used in establishing the schedule.*

(3) Beginning January 1, 1988, the department shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The department may coordinate this ratesetting function with other public agencies that have similar responsibilities.

(4) Notwithstanding subsection (2), beginning January 1, 1988, through December 31, 1991, the maximum fees payable by insurers must be limited to the ~~relative-value~~ fee schedule established in January 1987. Notwithstanding subsection (3), beginning January 1, 1988, through December 31, 1991, the hospital rates payable by insurers must be limited to those set in January 1988. *After December 31, 1991, the percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage as defined in 39-71-116.*"

Section 7. Section 39-71-711, MCA, is amended to read:

"**39-71-711. Impairment evaluation — ratings.** (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association; and

(c) must be expressed as a percentage of the whole person.

(2) A claimant or insurer, or both, may obtain an impairment rating from *an evaluator who is* a medical doctor or from *an evaluator who is* a chiropractor if the ~~claimant's treating physician is a chiropractor~~ *injury falls within the scope of chiropractic practice.* If the claimant and insurer cannot agree upon the rating, the *mediation* procedure in ~~subsection (3)~~ *part 24 of this chapter* must be followed.

~~(3) (a) Upon request of the claimant or insurer, the department shall direct the claimant to an evaluator for a rating. The evaluator shall:~~

~~(i) evaluate the claimant to determine the degree of impairment, if any, that exists due to the injury; and~~

~~(ii) submit a report to the department, the claimant, and the insurer.~~

~~(b) Unless the following procedure is followed, the insurer shall begin paying the impairment award, if any, within 30 days of the evaluator's mailing of the report:~~

~~(i) Either the claimant or the insurer, within 15 days after the date of mailing of the report by the first evaluator, may request that the claimant be evaluated by a second evaluator. If a second evaluation is requested, the department shall direct the claimant to a second evaluator, who shall determine the degree of impairment, if any, that exists due to the injury.~~

~~(ii) The reports of both examinations must be submitted to a third evaluator, who may also examine the claimant or seek other consultation. The three evaluators shall consult with one another, and then the third evaluator shall submit a final report to the department, the claimant, and~~

~~the insurer. The final report must state the degree of impairment, if any, that exists due to the injury.~~

~~(iii) Unless either party disputes the rating in the final report as provided in subsection (6), the insurer shall begin paying the impairment award, if any, within 45 days of the date of mailing of the report by the third evaluator.~~

~~(4)~~*(3)* ~~The department shall appoint impairment evaluators to render ratings under subsection (1). The department shall adopt rules that set forth the qualifications of evaluators and the locations of examinations.~~ An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter 12. ~~The department may seek nominations from the board of medical examiners for evaluators licensed under Title 37, chapter 3, and from the board of chiropractors for evaluators licensed under Title 37, chapter 12.~~

~~(5) The cost of impairment evaluations is assessed to the insurer, except that the cost of an evaluation under subsection (3)(b)(i) or (3)(b)(ii) is assessed to the requesting party.~~

~~(6)~~*(4)* ~~A party may dispute a final impairment rating rendered under subsection (3)(b)(ii) by filing a petition with the workers' compensation court within 15 days of the evaluator's mailing of the report.~~ Disputes over impairment ratings are not subject to 39-71-605 ~~or to mandatory mediation~~.

~~(7) An impairment rating rendered under subsection (3) is presumed correct. This presumption is rebuttable.~~"

Section 8. Section 39-71-905, MCA, is amended to read:

"**39-71-905. Certification as vocationally handicapped.** A person who wishes to be certified as vocationally handicapped for purposes of this part shall apply to the department on forms furnished by the department. The department shall conduct an investigation and shall issue a certificate to a person who, in the department's discretion, meets the requirements for vocationally handicapped certification. ~~An employee who is requesting reemployment may be certified as vocationally handicapped. An employee who is not employed at the time of application for certification must be certified as vocationally handicapped before entering new employment in order for the new employer to receive the~~ *A person shall apply for certification before employment or within 60 days after he becomes employed or reemployed and before an injury occurs that is covered by this part. The certification is effective on the date of employment or reemployment. Failure to apply before employment or within 60 days after employment or reemployment precludes the employer from the protection and* benefits of this part."

Section 9. Section 39-71-2106, MCA, is amended to read:

"**39-71-2106. Requiring security of employer.** (1) *(a)* The department may require any employer who elects to be bound by compensation plan No. 1 to provide a security deposit. ~~Such~~ *Except as provided in* *subsection (1)(b), the* security deposit may be a surety bond, government bond, or letter of credit approved by the department and must be the greater of:

~~(a)~~*(i)* $250,000; or

~~(b)~~*(ii)* an average of the workers' compensation liabilities incurred by the employer in Montana for the past 3 calendar years.

(b) The department may, in accordance with rules adopted by the department, require a larger deposit as additional evidence of solvency and financial ability to pay the liabilities provided by this chapter.

(2) If the department finds that an employer has lost his solvency or financial ability to pay the compensation herein provided to be paid which might reasonably be expected to be chargeable to the employer during the fiscal year to be covered by the permission or that the employer is an association, corporation, or organization of individual employers seeking permission to operate under compensation plan No. 1, the department must require the employer, before granting to him permission or before continuing or engaging in such employment subject to the provisions of compensation plan No. 1, to give security in addition to the security described in subsection (1) for the payment of compensation, which security must be in such an amount as the department finds is reasonable and necessary to meet all liabilities of the employer which may reasonably and ordinarily be expected to accrue during the fiscal year.

(3) The security provided for in subsection (2) must be deposited with the department and may be a certain estimated percent of the employer's last preceding annual payroll or a certain percent of the established amount of his annual payroll for the fiscal year; or the security may be in the form of a bond or undertaking executed to the department in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that the employer will well and truly pay or cause to be paid all sums and amounts for which the employer shall become liable under the terms of this chapter to his employees during the fiscal year; or such security may consist of any state, county, municipal, or school district bonds or the bonds or evidence of indebtedness of any individuals or corporations which the department deems solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the department as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities or any remaining part thereof shall be returned to the depositor.

(4) The department is liable for the value and safekeeping of all such deposits or securities and shall, at any time, upon demand of a bondsman or the depositor, account for the same and the earnings thereof."

Section 10. Section 39-71-2401, MCA, is amended to read:

"**39-71-2401. Disputes — jurisdiction — ~~evidence —~~ settlement requirements — mediation.** (1) A dispute concerning benefits arising under this chapter or chapter 72, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.

(2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the department jurisdiction must be brought before the department.

(3) An appeal from a department order may be made to the workers' compensation court.

~~(4) The common law and statutory rules of evidence do not apply in a case brought to hearing before the department.~~

~~(5)~~*(4)* Except as otherwise provided in this chapter, before a party may bring a dispute concerning benefits before a mediator, the parties shall attempt to settle as follows:

(a) The party making a demand shall present the other party with a specific written demand that contains sufficient explanation and documentary evidence to enable the other party to thoroughly evaluate the demand.

(b) The party receiving the demand shall respond in writing within 15 working days of receipt. If the demand is denied in whole or in part, the response shall state the basis of the denial.

(c) Upon motion of a party or upon the mediator's own motion, the mediator has the authority to dismiss a petition if he finds that either party did not comply with this subsection. A decision dismissing a petition under this subsection must be in writing and must state in detail the grounds for dismissal. The mediator's decision may be reviewed by the workers' compensation court upon motion of a party.

(d) Nothing in this subsection relieves a party of an obligation otherwise contained in this chapter."

Section 11. Section 39-71-2410, MCA, is amended to read:

"**39-71-2410. Limitations on mediation proceedings.** (1) Except as may be necessary for the workers' compensation court to rule on issues arising under 39-71-2401~~(5)(c)~~*(4)(c)* or 39-71-2411(7)(c), mediation proceedings are:

(a) held in private;

(b) informal and held without a verbatim record; and

(c) confidential.

(2) All communications, verbal or written, from the parties to the mediator and any information and evidence presented to the mediator during the proceeding are confidential.

(3) A mediator's files and records are closed to all but the parties.

(4) (a) A mediator may not be called to testify in any proceeding concerning the issues discussed in the mediation process.

(b) Neither the mediator's report nor any of the information or recommendations contained in it are admissible as evidence in any action subsequently brought in any court of law.

(5) Notwithstanding subsections (1) through (4), a mediator may issue a report and the parties and the mediator may be required to attend a conference before the workers' compensation court as set forth in 39-71-2411."

Section 12. Section 39-72-402, MCA, is amended to read:

"39-72-402. Practice and procedure — applicability of Workers' Compensation Act. (1) Except as otherwise provided in this chapter, the practice and procedure prescribed in the Workers' Compensation Act applies to all proceedings under this chapter.

(2) Sections 39-71-304, 39-71-403, 39-71-406, 39-71-409, 39-71-411 through 39-71-413, ~~and~~ 39-71-742, *and Title 39, chapter 71, part 9, which are contained* in the Workers' Compensation Act, specifically apply to and are incorporated as part of this chapter."

Section 13. **Repealer.** Section 39-72-304, MCA, is repealed.

Section 14. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 2 or 3, and the provisions of Title 39, chapter 71, apply to [section 1].

Section 15. **Applicability.** [This act] applies to injuries that occur on or after [the effective date of this act].

Section 16. **Effective date.** [This act] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 559

[HB 491]

AN ACT REQUIRING THE DEPARTMENT OF FAMILY SERVICES TO PROVIDE RESPITE CARE FOR CHILDREN IN LICENSED YOUTH FOSTER HOMES; ESTABLISHING REQUIREMENTS FOR RESPITE CARE; PROVIDING FOR THE RECRUITMENT, TRAINING, AND EMPLOYMENT OF RESPITE CARE PROVIDERS; APPROPRIATING FUNDS TO THE DEPARTMENT OF FAMILY SERVICES; AMENDING SECTION 41-3-1102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-1102, MCA, is amended to read:

"**41-3-1102. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of family services provided for in 2-15-2401.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a licensed youth foster home.

~~(3)~~*(4)* "Operator of a youth care facility" means any person owning or operating a youth care facility into which he takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance he receives money or other consideration of value, and which child is neither his son, daughter, nor ward, except that this part shall not apply when any person accepts such care and custody of such child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of such child.

~~(4)~~*(5)* "Person" means any individual, partnership, voluntary association, or corporation.

(6) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.

(7) "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under [section 2].

~~(5)~~*(8)* "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

~~(6)~~*(9)* "Youth care facility" means a facility licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, youth group homes, and child-care agencies.

~~(7)~~*(10)* "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

~~(8)~~*(11)* "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth."

Section 2. **Respite care.** (1) The department shall provide respite care, to the extent funds are available, for foster children who are:

(a) developmentally disabled and either on a respite care waiting list or not eligible for respite care from another program;

(b) medically demanding because they are nonambulatory or have other special needs requiring intensive supervision or care; or

(c) suffering from severe emotional problems that are manifested in serious behavior problems.

(2) Respite care may be provided by the department on an hourly, daily, or weekly basis at a rate of payment to be determined by the department.

(3) Respite care may not be provided in an institutionalized setting except in cases involving foster children who require intensive supervision or care.

Section 3. **Respite care providers — recruitment, training, and employment — qualifications.** (1) The department shall either directly or by contract with public or private, nonprofit agencies recruit, train, and employ respite care providers.

(2) Respite care providers shall meet the qualifications and requirements specified in rules adopted by the department pursuant to 41-3-1103.

Section 4. **Appropriation.** There is appropriated from the general fund to the department of family services for the biennium ending June 30, 1993, the sum of $100,000 to be used to provide respite care for foster children.

Section 5. **Codification instruction.** [Sections 2 and 3] are intended to be codified as an integral part of Title 41, chapter 3, part 11, and the provisions of Title 41, chapter 3, part 11, apply to [sections 2 and 3].

Section 6. **Effective date.** [This act] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 560

[HB 513]

AN ACT REQUIRING THE BOARD OF COUNTY COMMISSIONERS TO ORDER A REFUND OF CERTAIN TAXES; ALLOWING A TAXPAYER TO FILE A CLAIM FOR A REFUND ON TAXES PAID DURING THE IMMEDIATELY PRECEDING 10 YEARS; PROVIDING THAT THE

REFUND MAY BE PAID IN ANNUAL INSTALLMENTS FOR A PERIOD NOT TO EXCEED 10 YEARS; AMENDING SECTION 15-16-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-601, MCA, is amended to read:

"15-16-601. Taxes or penalties illegally collected or duplicate taxes to be refunded. (1) (a) ~~Any~~ *A taxpayer is entitled to a refund on:*

(i) taxes, interest, penalties, or costs paid more than once or erroneously or illegally collected *if an appeal pursuant to 15-1-402 was not available;*

(ii) ~~or any amount of tax~~ *the taxes* paid for which ~~a taxpayer is entitled to~~ a refund *is allowed* under 15-16-612 or 15-16-613*;* or

(iii) ~~any part or~~ *the* portion of taxes paid ~~which~~ *that* were mistakenly computed on government bonus or subsidy received by the taxpayer.

(b) ~~may~~ *Subject to the provisions in subsections (4) and (5), the county treasurer may,* by order of the board of county commissioners, ~~be refunded by the county treasurer~~ *pay the refund to the taxpayer.*

(2) (a) ~~Whenever~~ *The refund applies to* any payment *that* has been made to the state treasurer as provided in 15-1-504 ~~and it afterwards appears to the satisfaction of~~ *if* the board of county commissioners *determines* that a portion of the money ~~so~~ paid should be refunded as ~~herein~~ provided~~,~~ *in this section.*

(b) ~~the~~ *The* board of county commissioners may *order the county treasurer to* refund *to the taxpayer* the portion of the taxes, interest, penalties, and costs ~~so~~ paid to the state treasurer~~,~~.

(c) ~~and upon the rendering of the report required by 15-1-505 the~~ *The* county clerk and recorder shall, *at the time for filing the report required by 15-1-505,* certify to the state auditor, in ~~such~~ *the* form as the state auditor may prescribe, ~~all~~ *the* amounts ~~so~~ refunded. In the next settlement of the county treasurer with the state, the state auditor shall give the county treasurer credit for the state's portion of the amounts ~~so~~ refunded.

~~(b)~~*(3)* When ~~any~~ *a* part of the taxes, interest, penalties, or costs ~~hereinbefore~~ referred to *in this section* were levied in behalf of ~~any~~ *a* school district or municipal or other public corporation and collected by the county treasurer, the ~~same may~~ *taxes must* be refunded upon the order of the board of county commissioners.

~~(c)~~*(4) (a)* ~~No~~ *An* order for the refund of any taxes, interest, penalties, or costs under this section ~~shall~~ *may not* be made except upon a claim ~~therefor, verified~~ *filed* by the ~~person~~ *taxpayer* who has paid the taxes, interest, penalties, or costs or his guardian or, in case of his death, by his executor or administrator~~,~~.

(b) ~~which~~ *A taxpayer may file a* claim ~~must be filed within~~ *for taxes, interest, penalties, or costs paid during the immediately preceding* 10 years after the date when the second half of ~~such~~ *the* taxes would have become delinquent if the ~~same~~ *taxes* had not been paid.

(c) Except as provided in subsections (6) and (7), if a refund pursuant to subsection (1) is ordered, the board of county commissioners shall order a refund for taxes illegally collected or for any duplicate taxes paid during the immediately preceding 10 years regardless of when the taxes were first illegally collected or when the duplicate taxes were first paid.

(5) (a) In the order to refund taxes as provided in subsection (4)(c), the board of county commissioners shall determine the method of repayment. The board may:

(i) refund the entire amount due the taxpayer within 60 days after the date of the order; or

(ii) refund the amount due the taxpayer in annual installments, for a period not to exceed 10 years.

(b) If the refund is made in annual installments as provided in subsection (5)(a)(ii), the taxpayer is entitled to interest on the unpaid balance at the greatest interest rate in effect on October 1 of each year of the installment period received on public money invested by the county as provided in Title 7, chapter 6, part 2; Title 7, chapter 6, part 27; or 17-6-204.

(c) In satisfying the requirements of subsection (5)(a)(ii), the first annual installment must be paid within 60 days after the date of the order by the board of county commissioners. Subsequent annual installments must be paid on the first business day following October 1 of the year the installment is due.

(d) The treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the annual installment of the taxpayer refund and costs for which the taxing jurisdiction is proratably responsible.

(6) The board of county commissioners shall refund any tax, penalty, or interest collected as a result of an error in the description or location of real property or improvements or for any duplicate taxes paid as determined by the department of revenue. The refund is subject to the provisions of subsections (4) and (5).

(7) The board of county commissioners shall refund any net or gross proceeds tax, penalty, or interest when the department of revenue notifies the board that an overpayment occurred. The department shall determine the amount of overpayment. The refund is subject to the provisions of subsections (4) and (5), but no refund may be granted for any taxes paid more than 5 years prior to the date the claim was received.

~~(d)~~*(8)* All refunds ordered to be paid by the board of county commissioners must be paid by the county treasurer out of the general fund of the county, and the county treasurer shall then make ~~such~~ transfers from other county funds and from state, school district, and other public corporation funds in his possession as may be necessary to reimburse the county general fund for payments made ~~therefrom~~ *from the fund.*

~~(2)~~*(9)* Upon the entering of judgment under 15-2-306, the county commissioners of the affected county shall order a refund of ~~such~~ *the* portion of the taxes ~~as~~ *that* the state tax appeal board has judged should be refunded."

Section 2. **Effective date — applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to any claim for a refund that was timely filed on or before [the effective date of this act].

Approved April 23, 1991.

CHAPTER NO. 561

[HB 520]

AN ACT INCREASING REIMBURSABLE PER DIEM AND LODGING EXPENSES FOR STATE EMPLOYEES; AND AMENDING SECTION 2-18-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-501, MCA, is amended to read:

"2-18-501. Meals, lodging, and transportation of persons in state service. Every elected official, appointed members of boards, commissions, or councils, department directors, and all other state employees shall be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) For travel within the state of Montana, the following provisions apply:

(a) The governor shall be authorized actual and necessary expenses not to exceed $55 per day.

(b) All other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees shall be authorized the actual cost of lodging, not exceeding ~~$24~~ *$30* per day, and taxes on the allowable cost of lodging, except as provided in subsection (3), plus ~~$3~~ *$3.50* for the morning meal, ~~$3.50~~ *$4* for the midday meal, and $8 for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) For travel out of the state of Montana, the following provisions apply:

(a) The governor shall be authorized the actual cost of lodging in addition to a meal allowance not to exceed $30 per day.

(b) All other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees shall be authorized the actual cost of lodging, not exceeding $50 per day, except as provided in subsection (3), plus ~~$4~~ *$5* for the morning meal, $6.50 for the midday meal, and $12 for the evening meal. All claims for the lodging expense reimbursement allowed under this subsection must be documented by an appropriate receipt.

(3) All other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees shall be authorized the actual cost of lodging when traveling in the normal course of their duties to certain designated areas. The department of administration shall designate those areas where the actual cost of lodging shall be reimbursed.

(4) For travel to a foreign country, the following provisions apply:

(a) All elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees must be reimbursed for the cost of meals and lodging within the rates established by the department of administration when traveling in the normal course of their duties to designated areas. The department shall use the United States department of state maximum travel per diem allowances for foreign areas in establishing the rates.

(b) All claims for meals and lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.

(5) When other than commercial, nonreceiptable lodging facilities are utilized by a state employee while conducting official state business in a travel status, the amount of $12 will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(b) or (2)(b) above. However, when overnight accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.

(6) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status shall be subject to reimbursement.

(7) The provisions of this section shall not be construed as affecting the validity of 5-2-301.

(8) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

(9) All commercial air travel shall be by the least expensive class service available."

Approved April 23, 1991.

CHAPTER NO. 562

[HB 524]

AN ACT APPROPRIATING OIL OVERCHARGE MONEY FOR PROGRAMS ADMINISTERED BY THE STATE OF MONTANA; FUNDING A WIND FARM TRANSMISSION STUDY; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Policy.** As a result of overcharges on sales of domestic crude oil, the federal courts have ordered or approved settlements requiring the repayment of the total amount of overcharges, plus interest, into escrow accounts to be distributed by the U.S. treasury to the states, territories, and possessions of the United States. It is the policy of this state to use the oil overcharge money distributed to the state to supplement state and federal programs that the state administers and to use the money in a manner consistent with federal court orders establishing or approving the payment of the funds to the state of Montana.

Section 2. **Definitions.** As used in [sections 1 through 7], "stripper well payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana as the result of the final settlement agreement in the U.S. district court for the district of Kansas, Cause No. M.D.L. 378, and any interest accrued on the payments. The term does not include stripper well payments that have been expended or legally obligated or that have been incorporated into any of the existing federal energy programs as the result of prior appropriations by the legislature.

Section 3. **Deposit of oil overcharge revenue.** All funds from stripper well payments must be deposited by the state treasurer in the federal special revenue fund. All interest earned on these funds or payments must also be deposited in the federal special revenue fund.

Section 4. **Wind farm transmission study — appropriation.** There is appropriated $70,000 from the stripper well payments contained in the federal special revenue fund to the department of natural resources and conservation for a study to assess the ability of the present electrical transmission system, as well as possible future expansions, in Montana and the Pacific Northwest to accommodate the development of utility-scale wind farms in Montana, with the goals of reducing future costs to electric ratepayers and encouraging the orderly development of a Montana natural resource. The stripper well payments appropriated in this section must be matched at least $2 to $1 with private or federal revenue. The design and conduct of this study must recognize efforts within the Pacific Northwest to develop wind as a resource and must be coordinated closely with the relevant transmission utilities.

Section 5. **Conditions applied to appropriations.** The appropriation made in [section 4] is a biennial appropriation. One-half of the total amount appropriated in [section 4] is appropriated in fiscal year 1992, and one-half is appropriated in fiscal year 1993. As a biennial appropriation, the unexpended funds appropriated in fiscal year 1992 may be carried forward to the second year of the 1993 biennium.

Section 6. **Appropriations prioritized.** The appropriation in [section 4] is to be funded after the low-income leaking underground home heating oil tank replacement program appropriation in [section 10 of House Bill No. 10] and before the institutional conservation program appropriation in [section 11 of House Bill No. 10]. In order to provide continuity for the programs when establishing the appropriations for each fiscal year of the 1993 biennium, anticipated stripper well payments that will be received under terms of the agreements during the biennium may be considered as available to fund the appropriations. If House Bill No. 10 or House Bill No. 777 is passed and approved, the stripper well payments appropriated in House Bill No. 10 and House Bill No. 777 are prioritized as stated in those bills, respectively, and in this section. The expenditures authorized by [section 4] may not exceed the amount of the stripper well payments available in the biennium.

Section 7. **Effective date.** [This act] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 563

[HB 572]

AN ACT CHANGING THE COMMERCIAL MOTOR VEHICLE OPERATOR LICENSING STATUTES TO COMPLY WITH FEDERAL MANDATES; REMOVING THE AUTHORITY OF A PERSON WITH A COMMERCIAL VEHICLE OPERATOR'S ENDORSEMENT TO HAUL HAZARDOUS MATERIALS; RAISING FROM 10 YEARS TO LIFE THE MAXIMUM ADMINISTRATIVE SUSPENSION FOR OPERATING A COMMERCIAL MOTOR VEHICLE WITH A BLOOD ALCOHOL CONTENT OF OVER 0.04; REDUCING FROM 0.04 TO ANY MEASURABLE AMOUNT THE MINIMUM BLOOD ALCOHOL CONTENT LEVEL FOR TEMPORARILY REMOVING A COMMERCIAL MOTOR VEHICLE OPERATOR FROM SERVICE; PROVIDING THAT THE SUSPENSIONS CALLED FOR IN THE COMMERCIAL OPERATOR STATUTES FOR SECOND OR SUBSEQUENT OFFENSES BE IMPOSED FOR ANY COMBINATION OF OFFENSES CALLING FOR SUSPENSION; PROVIDING FOR SEPARATE OFFENSES OF DRIVING UNDER THE INFLUENCE, OPERATING WITH A BLOOD ALCOHOL CONTENT OF 0.04 OR MORE, LEAVING THE SCENE OF AN ACCIDENT WHILE OPERATING A COMMERCIAL MOTOR VEHICLE, OR USING A COMMERCIAL MOTOR VEHICLE IN THE COMMISSION OF A FELONY; AND AMENDING SECTIONS 61-1-135, 61-5-208, 61-8-805, AND 61-8-806, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-135, MCA, is amended to read:

"**61-1-135. Commercial vehicle operator's endorsement.** "Commercial vehicle operator's endorsement" means an endorsement to a Montana driver's license that authorizes the licensee to operate a class of commercial motor vehicle. ~~However, if the applicant's vehicle does not otherwise require a commercial vehicle operator's endorsement, a hazardous material endorsement may be substituted for the commercial vehicle operator's endorsement.~~"

Section 2. Section 61-5-208, MCA, is amended to read:

"**61-5-208. Period of suspension or revocation.** (1) The department may not suspend or revoke a driver's license, commercial vehicle operator's endorsement, or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as *otherwise* permitted ~~under subsection (2) of this section, 61-5-207, 61-5-212, 61-6-123, 61-8-803 through 61-8-805, and 61-11-211~~ *by law*.

(2) A person whose license, commercial vehicle operator's endorsement, or privilege to drive a motor vehicle on the public highways has been suspended or revoked is not entitled to have the license, endorsement, or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of the revocation or suspension, the person may make application for a new license or endorsement as provided by law but the department may not issue a new license or endorsement unless and until it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in Montana. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination thereof or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the license, including any commercial vehicle operator's endorsement, or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license, commercial vehicle operator's endorsement, or driving privilege of the person for a period of 1 year, except that if the 1-year period passes and the person has not completed an alcohol information course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both are completed.

(3) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).

(4) The period of revocation for any person convicted of any offense which makes mandatory the revocation of the driver's license commences from date of conviction or forfeiture of bail.

(5) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in subsection (2). In addition, the department shall suspend the person's commercial vehicle operator's endorsement in accordance with the provisions of this title."

Section 3. Section 61-8-805, MCA, is amended to read:

"**61-8-805. Suspension for operating a commercial vehicle with a blood alcohol concentration of 0.04 or more — hearing.** (1) A person whose blood alcohol concentration is 0.04 or more while he drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of his commercial vehicle operator's endorsement. If the department receives a sworn report from a peace officer that the person was operating a commercial motor vehicle while his blood alcohol concentration was 0.04 or more, the department shall suspend the driver's commercial vehicle operator's endorsement:

(a) for 1 year, with no provision for a restricted probationary license or endorsement, upon receipt of the first report, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension must be for 3 years; and

(b) for ~~10 years~~ *life*, with no provision for a restricted probationary license or endorsement, upon receipt of a second or subsequent report at any time as determined from the records of the department, *unless a restricted license or endorsement is allowed by federal rules governing commercial drivers.*

(2) A peace officer who determines that a commercial motor vehicle ~~operator's blood alcohol concentration is 0.04 or more~~ *operator has any measured amount or detected presence of alcohol in his body while operating a commercial motor vehicle* shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that any person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against any charge of violating the provisions of subsection (1).

(4) The department shall immediately notify in writing any person whose commercial vehicle operator's endorsement is suspended under this section. The person suspended has the right to file a petition within 30 days after the notice is given for a hearing in the matter in the district court in the county in which the finding of blood alcohol concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days' written notice to the county attorney of the county in which the appeal is filed. The county attorney shall represent the state. The court shall take testimony and examine the facts of the case, except that the issue is limited to whether the person was driving or had actual physical control of a

commercial motor vehicle while his blood alcohol concentration was 0.04 or more. The court shall determine whether the petitioner is entitled to a commercial vehicle operator's endorsement or is subject to suspension as provided in this section. The provisions of 61-8-404 apply to any proceedings under this section."

Section 4. Section 61-8-806, MCA, is amended to read:

"**61-8-806. Chemical blood, breath, or urine tests of commercial vehicle operators — procedure — suspension.** (1) A person who operates a commercial motor vehicle upon the ways of this state open to the public is considered to have given consent, subject to the provisions of 61-8-401 and 61-8-805, to a chemical test of his blood, breath, or urine for the purpose of determining the alcohol content of his blood if he is requested to submit to the test by a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public while his blood alcohol concentration was 0.04 or more. The peace officer may designate a blood, breath, or urine test to be administered.

(2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have withdrawn the consent provided in subsection (1).

(3) If a commercial motor vehicle operator who is a resident of Montana refuses upon the request of a peace officer to submit to a chemical test designated by the officer as provided in subsection (1), the test may not be given. On behalf of the department, the officer shall immediately seize the person's driver's license showing the commercial vehicle operator's endorsement and forward the license to the department, along with a sworn report that he had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while having a blood alcohol concentration of 0.04 or more and that the person had refused to submit to the test upon the request of the officer. Upon receipt of the report, the department shall suspend the license for a period provided in subsection (5).

(4) Upon seizure of a resident's driver's license showing a commercial vehicle operator's endorsement, the peace officer shall issue, on behalf of the department, a temporary driving permit without the commercial vehicle operator's endorsement. The temporary driving permit is valid for 72 hours after issuance.

(5) If a commercial motor vehicle operator refuses to submit to a chemical test as provided in subsection (3), the department shall suspend his commercial vehicle operator's endorsement:

(a) upon first refusal, for 1 year, with no provision for a restricted probationary license or endorsement, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension for a first refusal must be for 3 years;

(b) upon a second or subsequent refusal at any time as determined from the records of the department, for ~~10 years~~ *life*, with no provision for a restricted probationary license or endorsement *unless allowed by federal rules governing commercial drivers.*

(6) A nonresident commercial motor vehicle operator who refuses to submit to a chemical test as provided in subsection (3) is subject to suspension by the department as provided in subsection (5) and may receive a temporary driving permit as provided in subsection (4)."

Section 5. **Leaving the scene of an accident involving commercial motor vehicle — suspension.** Upon receipt of information that a commercial motor vehicle operator has been convicted of an offense under 61-7-103, 61-7-104, or 61-7-106 while operating a commercial motor vehicle, the department shall suspend the driver's commercial motor vehicle endorsement as provided in [section 7].

Section 6. **Suspension of commercial vehicle operator's endorsement — felony involving a commercial motor vehicle.** Upon receipt of information that a commercial motor vehicle operator has been convicted of using a commercial motor vehicle in the commission of a felony, the department shall suspend the driver's commercial vehicle operator's endorsement as provided in [section 7].

Section 7. **Suspension of commercial vehicle operator's endorsement — duration — second or subsequent offense.** Upon receiving notice pursuant to 61-5-208, [section 5], or [section 6], the department shall suspend an operator's commercial vehicle operator's endorsement, as follows:

(1) upon notice of a first conviction, for 1 year, with no provision for a probationary license, except that if the offense occurred while operating a commercial motor vehicle transporting hazardous material, the suspension must be for 3 years;

(2) upon notice of a second conviction, as determined from the records of the department, for life, with no provision for a restricted license or endorsement unless allowed by federal rules governing commercial drivers; and

(3) upon notice of a third conviction, an operator's commercial vehicle endorsement must be suspended for life and the operator is ineligible for reinstatement.

Section 8. **Codification instruction.** [Sections 5 through 7] are intended to be codified as an integral part of Title 61, chapter 8, part 8, and the provisions of Title 61, chapter 8, part 8, apply to [sections 5 through 7].

Approved April 23, 1991.

CHAPTER NO. 564

[HB 631]

AN ACT INCREASING THE MINIMUM SENTENCE FOR SEXUAL ASSAULT INVOLVING A PERSON UNDER 16 YEARS OF AGE; PROVIDING, WITH AN EXCEPTION, THAT A MANDATORY SENTENCE OF IMPRISONMENT FOR SEXUAL ASSAULT INVOLVING A PERSON UNDER 16 YEARS OF AGE MAY NOT BE DEFERRED OR SUSPENDED; AND AMENDING SECTIONS 45-5-502, 46-18-201, AND 46-18-222, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-502, MCA, is amended to read:

"**45-5-502. Sexual assault.** (1) A person who knowingly subjects another not his spouse to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, he shall be imprisoned in the state prison for any term not ~~to exceed~~ *less than 2 years or more than* 20 years and may be fined not more than $50,000.

(4) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim."

Section 2. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court appointed counsel as provided in 46-8-113;

(ix) community service;

(x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution, with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If any financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail time already served.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), *45-5-502(3),* 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under ~~45-5-502(3),~~ 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of such imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program."

Section 3. Section 46-18-222, MCA, is amended to read:

"**46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence.** All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (4), (5), and (6) of 46-18-201, 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; ~~or~~

(5) where applicable, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense~~.~~*; or*

(6) the offense was committed under 45-5-502(3) and the court determines that treatment of the defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the ultimate protection of society, in which case the court shall include in its judgment a statement of the reasons for its determination."

Approved April 23, 1991.

CHAPTER NO. 565

[HB 660]

AN ACT SPECIFYING THAT THE EXCLUSION IN THE MONTANA SOLID WASTE MANAGEMENT ACT APPLIES ONLY TO A PERSON DISPOSING OF SOLID WASTE THAT WAS GENERATED IN REASONABLE ASSOCIATION WITH THE PERSON'S HOUSEHOLD OR AGRICULTURAL OPERATIONS; PROVIDING A CIVIL PENALTY FOR VIOLATIONS OF SOLID WASTE DISPOSAL LAWS AND RULES; AMENDING SECTION 75-10-214, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-214, MCA, is amended to read:

"**75-10-214. Exclusions — exceptions to exclusions.** (1) *(a)* This part may not be construed to prohibit a person from disposing of his own solid waste *that is* generated in *reasonable association with his household or agricultural operations* ~~Montana~~ upon land owned or leased by that person or covered by easement or permit as long as ~~it~~ *the disposal* does not create a nuisance or public health hazard *or violate the laws governing the disposal of hazardous or deleterious substances.*

(b) This part does not apply to the operation of an electric generating facility, to the drilling, production, or refining of natural gas or petroleum, or to the operation of a mine, mill, smelter, or electrolytic reduction facility.

(2) The ~~exclusion~~ *exclusions* contained in subsection (1) of this section ~~does~~ *do* not apply to a division of land of 5 acres or less made after July 1, 1977, ~~which~~ *that* falls within the definition of subdivision in Title 76, chapter 4, part 1, or the Montana Subdivision and Platting Act in Title 76, chapter 3."

Section 2. **Civil penalties.** (1) A person who violates any provision of this part, a rule adopted under this part, or a license provision of this part is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the

department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Fines and penalties collected for violations of this part must be deposited in the solid waste management account provided for in 75-10-117.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 75, chapter 10, part 2, and the provisions of Title 75, chapter 10, part 2, apply to [section 2].

Section 4. **Applicability.** A person who disposed of solid waste under the exclusion provided in 75-10-214 before [the effective date of this act] and who loses his exclusion by virtue of [this act] has until [1 year after the effective date of this act] to comply with solid waste disposal regulations made applicable by the loss of the exclusion and is not subject to the civil penalty provisions of [section 2] during that 1-year period. However, the person may not dispose of additional solid waste in violation of solid waste disposal regulations.

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved April 23, 1991.

CHAPTER NO. 566

[HB 703]

AN ACT AUTHORIZING THE MONTANA SCIENCE AND TECHNOLOGY ALLIANCE TO USE UP TO $2 MILLION TO MAKE LOANS OF NOT MORE THAN $1 MILLION FROM THE IN-STATE INVESTMENT FUND TO PRIVATE VENTURE CAPITAL COMPANIES FOR INVESTMENT IN NEW OR EXPANDING BUSINESS; PROVIDING CRITERIA FOR THE INVESTMENT LOANS; PROVIDING TERMS FOR THE INVESTMENT LOANS; AMENDING SECTIONS 90-3-102, 90-3-501, 90-3-522, AND 90-3-523, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-3-102, MCA, is amended to read:

"**90-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Act" means the Montana science and technology financing act.

(2) "Board" means the Montana board of science and technology development provided for in 2-15-1818.

(3) "Company" means a firm, partnership, corporation, association, or any other entity authorized to conduct business in Montana.

(4) "Convertible debenture" means a debenture convertible into stock under certain conditions by any individual or company. The debenture may not be converted by the board.

(5) "Debenture" or "note" means a writing or certificate issued as evidence of debt.

(6) "Department" means the department of commerce created in 2-15-1801.

(7) "Expansion capital project" means a science and technology development project undertaken to enable a company to expand its manufacturing and marketing activities in order to move its products or services into new markets or to expand existing markets.

(8) "Innovative technology" means the involvement of a product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.

(9) "Matching funds" means the funds received in cash by the science and technology development project loan recipient from nonstate-appropriated sources and committed by the loan recipient to the project in an amount that is at least equal to the funds loaned to the recipient by the board for use in the science and technology development project.

(10) "Portfolio company" means a startup or expansion stage company that has received a seed capital project loan from the board.

(11) "Private sector" means any entity or individual, not principally a part of or associated with a governmental unit, that is associated with or involved in commercial activity.

(12) "Research and development project" means a science and technology development project that falls into the category of research capability development, applied technology research, or technology transfer and assistance.

(13) "Research and development project loan" means a science and technology development project loan entered into between the board and a loan recipient for a research and development project.

(14) "Science and technology development project" means either a seed capital project or research and development project designed to discover, develop, transfer, utilize, or commercialize existing or new, innovative technology in order to strengthen and enhance economic development in Montana.

(15) "Science and technology development project loan agreement" or "loan" means an agreement entered into between the board and the loan

recipient of a seed capital project loan or a research and development project loan that:

(a) creates a debt relationship between the parties;

(b) provides for a financial return to the board;

(c) provides economic development potential to the state; and

(d) contains the applicable provisions and terms required by this chapter.

(16) "Seed capital project" means a startup capital project or expansion capital project.

(17) "Seed capital project loan" means a science and technology development project loan entered into between the board and a loan recipient for a seed capital project.

(18) "Startup capital project" means a science and technology development project that assists a company in initiating commercial operations.

(19) "State" means the state of Montana.

(20) *"Venture capital company" means a partnership, corporation, or other business entity engaged in raising funds from investors and earning a financial return for those investors by making equity or quasi-equity investments in new or expanding business.*

(21) "Warrant" means an instrument issued by a corporation that gives a holder other than the board the right to purchase stock of a corporation either for a limited time or perpetually."

Section 2. Section 90-3-501, MCA, is amended to read:

"**90-3-501. Science and technology development project — priorities.** (1) The board shall make a loan for a science and technology development project if it determines that the project has potential to stimulate economic development in this state and meets the loan criteria established in this chapter.

(2) The board shall give priority to project proposals that it determines incorporate innovative technologies and involve, but are not limited to, one or more of the following target technologies:

(a) mineral technology;

(b) agricultural technology;

(c) forestry technology;

(d) energy technology;

(e) materials sciences;

(f) information sciences;

(g) biotechnology;

(h) microelectronics and computer sciences; or

(i) hazardous waste treatment and disposal.

(3) The board may use up to 25% of the funds for seed capital project loans to make seed capital project loans that do not address the innovative technologies listed in subsection (2)."

Section 3. Section 90-3-522, MCA, is amended to read:

"**90-3-522. Science and technology development project loan agreement.** (1) The board shall enter into a science and technology development project loan agreement with a loan recipient whose product or process will be developed and commercialized as a result of a science and technology development project loan.

(2) The loan agreement, at a minimum, must contain the following provisions:

(a) the project budget;

(b) the financing, marketing, and production milestones for the project that describe project tasks to be achieved in each phase of the project at designated times;

(c) the reporting requirements, including but not limited to:

(i) quarterly financial statements;

(ii) quarterly commercialization progress reports;

(iii) annual reports; and

(iv) reports on any significant project transactions;

(d) the disbursement schedule for the loan;

(e) the payback to the board;

(f) the causes for loan revocation, suspension, or termination; and

(g) the intellectual property provisions, *when applicable*."

Section 4. Section 90-3-523, MCA, is amended to read:

"**90-3-523. Seed capital project loan agreement — specific requirements — payback.** (1) ~~In~~ *Except as provided in [section 5], in* addition to the loan agreement provisions required in 90-3-522, a seed capital project loan must be structured as contracted debt that includes but is not limited to the following terms:

(a) an interest rate set at the level that provides a return to the board, from paybacks by all of its portfolio companies, in an amount at least equal to the principal amount of the loans and that provides for a market rate of return when considering the overall benefit to the state derived from the projects;

(b) a provision in the note that may defer debt service until maturity of the note, the term of which may not exceed 8 years;

(c) a loan amount that may not exceed $350,000 in any one round of financing. Successive rounds of financing in which the board participates for any one company may not occur within a 9-month period. The total amount that may be loaned to any one company may not exceed $750,000.

(d) a provision that the note becomes due in full upon dissolution or liquidation of the company.

(2) (a) In addition to the provisions in 90-3-522 and subsection (1) *of this section,* a seed capital project loan agreement may provide for any of the following:

(i) a convertible debenture;

(ii) a warrant held by the board; or

(iii) a warrant held by a third party for the benefit of the board.

(b) ~~However, the~~ *The* board itself may not convert the convertible debenture, exercise the warrant, or hold stock acquired upon any conversion or exercise."

Section 5. **Venture capital companies.** The board may make up to $2 million of its funds available under 17-6-308 for seed capital project loans to venture capital companies in order to further the development of seed capital resources available for investment in technology-oriented business development and expansion activities if the venture capital companies meet the criteria in subsections (1) and (2):

(1) Venture capital companies must be selected for loans by the board on the basis of the demonstrated ability of the companies' principals to make sound investments and the principals' business development experience.

(2) The company has raised or is in the process of raising its investment capital under the terms of a prospectus or other offering document that gives the board assurance that the company:

(a) is in compliance with the United States securities and exchange commission and Montana securities laws and regulations applicable to venture capital companies;

(b) will use equity or quasi-equity investment mechanisms for at least three-fourths of its investments and will not use conventional secured debt mechanisms for more than one-fourth of its investments;

(c) will otherwise conduct its investment strategy and investment management practices in a manner that conforms to standard venture capital industry practices; and

(d) has a management team that will dedicate the equivalent of at least one full-time manager to the operation of the company.

(3) The board may adopt rules governing loans to venture capital companies to implement the terms of this section and to ensure that the loans meet the requirements of 90-3-501 through 90-3-504.

Section 6. **Seed capital project loan agreement with venture capital company.** A seed capital project loan agreement with a venture capital company must contain the following terms:

(1) a loan amount that may not be less than $500,000 or more than $1 million; and

(2) payback provisions:

(a) that are structured as contracted debt;

(b) that allow debt to be repaid in portions of the original loan amount or as interest on the original loan amount in the same proportion as any paybacks made to the other investors or lenders that make up the remaining capitalization of the venture capital company, based upon the original capital invested in or loaned to the venture capital company by the other investors or lenders;

(c) that are not more or less favorable than the repayment and earnings provisions applicable to other investors or lenders that make up the remaining capitalization of the venture capital company; and

(d) that are based on a term no greater than 12 years.

Section 7. **Effective date.** [This act] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 567

[HB 711]

AN ACT TO PROVIDE A SUPPLEMENTAL HIGHWAY PATROL BENEFIT PAYMENT FOR CERTAIN RETIREES RECEIVING MONTHLY BENEFITS PRIOR TO JULY 1, 1991; TO PROVIDE FOR AN INCREASE IN MOTOR VEHICLE FEES; TO PROVIDE A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 61-3-321, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Supplemental benefits for certain retirees.** (1) In addition to any retirement allowance payable under this chapter, a retired patrol officer or a beneficiary determined by the board to be eligible under subsection (2) shall receive an annual lump-sum payment beginning in September 1992 and each succeeding year as long as he remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, and must be:

(a) a retired patrol officer who is 55 years of age or older and who has been receiving a service allowance for at least 5 years prior to the date of distribution;

(b) a beneficiary of a patrol officer who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability or survivorship allowance under 19-6-601 or 19-6-603.

(3) A retired patrol officer otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19, chapters 3 through 13, is ineligible to receive any lump-sum payments provided for in this section until his employment in the covered position is terminated. Upon termination of his covered employment, the officer becomes eligible in the next fiscal year succeeding his termination.

(4) (a) Twenty-five cents of each motor vehicle registration fee provided for in 61-3-321 must be deposited in the highway patrol fund at the end of each fiscal year. The fee is statutorily appropriated, as provided in 17-7-502, for payment of benefits to eligible recipients. The total funds must be distributed by the department in lump-sum payments to eligible recipients along with their normal retirement allowance payment.

(b) The lump-sum payment must be distributed proportionally to all eligible recipients based on years of service at the time of retirement, subject to the following:

(i) a recipient under subsection (2)(c) is considered to have 20 years of service for the purposes of the distributions;

(ii) any recipient of a service retirement allowance exceeding the maximum monthly allowance under 19-6-707(2)(a) must have his years of service reduced 25% for the purposes of the distributions;

(iii) the maximum amount available for payment of supplemental benefits under this section after August 31, 1993, is limited to an amount that will provide a percentage increase in the average supplemental benefit of all eligible members that is equal to the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency. The intent of this subsection is to limit each annual individual supplemental benefit payment to no more than the increase in the consumer price index for the previous calendar year.

(c) Any amount deposited in the account, meaning the highway patrol officers' retirement pension trust fund, under subsection (4)(a) for the payment of supplemental benefits under this section that exceeds the limitation of subsection (4)(b)(iii) must be used to amortize unfunded liabilities of the account.

(5) Every 10 years following July 1, 1991, the department shall review the size of the additional fee collected under 61-3-321(5) and deposited in the account in accordance with subsection (4)(a) and recommend to each legislature following the department's review any legislation necessary to reduce the fee to the minimum amount necessary to provide the supplemental benefits provided by this section.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; *[section 1]*; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 3. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees. (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors and/or trucks, $10;

(f) buses are classed as motortrucks and licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds maximum gross loaded weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds maximum gross loaded weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds maximum gross loaded weight, $10;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, $15 annually, regardless of size or capacity.

(2) All rates are 25% higher for motor vehicles, trailers, and semitrailers not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle, except passenger cars, used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee.

(5) An additional fee of ~~$5.25~~ *$5.50* per year for each registration of a vehicle must be collected as a registration fee. Revenue from this fee must be forwarded by the respective county treasurers to the state treasurer for deposit in the general fund. The department of justice shall distribute 25 cents from each fee collected to the highway patrol retirement fund. *In addition, the department shall distribute 25 cents from the motor vehicle registration fee for payment of supplemental benefits provided for in [section 1].*

(6) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(3) are issued. Revenue from this fee must be deposited as provided in subsection (5).

(7) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers or semitrailers, or tractors owned or controlled by the United States of America or any state, county, or city.

(8) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335."

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 6, part 7, and the provisions of Title 19, chapter 6, part 7, apply to [section 1].

Section 5. **Coordination instruction.** If Senate Bill No. 192 is passed and approved, the motor vehicle registration fee is $5.25, and 25 cents must be distributed to fund the supplemental benefits provided for in [section 1].

Section 6. **Effective date.** [This act] is effective July 1, 1991.

Section 7. **Termination — disposition of funds.** (1) The provisions of [sections 1 through 6] terminate upon the death of the last recipient eligible under [section 1(2)] for the supplemental benefit provided by [section 1].

(2) Money collected for the purposes of the supplemental payment under [section 1] that remains in the account, meaning the highway patrol officers' retirement pension trust fund, upon the termination of [sections 1 through 6] must be used to amortize unfunded liabilities of the account.

Approved April 23, 1991.

CHAPTER NO. 568

[HB 715]

AN ACT TO GENERALLY REVISE LAWS RELATED TO SCHOOL DISTRICT ACCOUNTING PROCEDURES; AMENDING SECTIONS 2-9-212, 20-3-331, 20-6-604, 20-7-457, 20-7-705, 20-7-713, 20-9-133, 20-9-201, 20-9-435, 20-9-512, AND 20-10-147, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-212, MCA, is amended to read:

"**2-9-212. Political subdivision tax levy to pay premiums.** Notwithstanding any provisions of law to the contrary, ~~all~~ *a* political ~~subdivisions~~ *subdivision, except for a school district,* may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as herein authorized and to pay the principal and interest on bonds or notes issued pursuant to 2-9-211(5), even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby, provided that the revenues derived therefrom may not be used for any other purpose."

Section 2. Section 20-3-331, MCA, is amended to read:

"**20-3-331. Purchase of ~~liability~~ insurance — *self-insurance plan.*** *(1)* The trustees of ~~any~~ *a* district may purchase insurance coverage *or establish a self-insurance plan* for the district, trustees, and employees ~~against~~ *for* liability ~~for the death, injury, or disability of any person or damage to property~~ *as provided in 2-9-211 and for group health and life insurance as provided in 2-18-702.* The trustees shall include the cost of coverage in the general fund budget of the district *and as authorized for the district transportation program in 20-10-143(1)(d).*

(2) Whenever the trustees of a district establish a self-insurance plan, the trustees shall establish an internal service fund to account for the activities of the self-insurance plan."

Section 3. Section 20-6-604, MCA, is amended to read:

"**20-6-604. Sale of property when resolution passed after hearing — appeal procedure.** (1) Whenever the trustees of ~~any~~ *a* district determine that a site, building, or any other real or personal property of the district is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of ~~such~~ *the* district, the trustees may sell or otherwise dispose of ~~such~~ *the* real or personal property in accordance with this section and without conforming to the provisions of 20-6-603. If a decision to sell or dispose of property is made, the trustees shall adopt a resolution to sell or otherwise dispose of ~~such~~ *the* district real or personal property because it is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district.

(2) The resolution may not become effective for 14 days after the notice required in subsection (3) is made.

(3) The trustees shall cause notices of the resolution to be published in a newspaper of general circulation in the district. If there is no newspaper of general circulation, the trustees shall cause notices of the resolution to be posted in the manner required for school elections in 20-20-204.

(4) ~~Any~~ *A* taxpayer may appeal the resolution of the trustees, at any time prior to the effective date of the resolution, to the district court by filing a verified petition with the clerk of ~~such~~ *the* court and serving a copy of ~~such~~ *the* petition upon the district. The petition ~~shall~~ *must* set out in detail the objections of the petitioner to the adoption of the resolution or to the disposal of the property. The service and filing of the petition ~~shall~~ stay the resolu-

tion until final determination of the matter by the court. The court shall immediately fix the time for a hearing at the earliest convenient time. At the hearing, the court shall hear the matter de novo and may take testimony as it ~~deems~~ *considers* necessary. Its proceedings ~~shall be~~ *are* summary and informal, and its decision ~~shall be~~ *is* final.

(5) The trustees of a district that has adopted a resolution to sell or otherwise dispose of district real or personal property and, if appealed, has been upheld by the court shall sell or dispose of ~~such~~ *the* real or personal property in any reasonable manner that they determine to be in the best interests of the district.

(6) The ~~moneys~~ *money* realized from the sale or disposal ~~shall~~ *of real or personal property of the district must* be credited to the debt service fund, building fund, general fund, or ~~any combination of these three funds~~ *other appropriate fund,* at the discretion of the trustees."

Section 4. Section 20-7-457, MCA, is amended to read:

"**20-7-457. Funding provisions for special education cooperatives or joint boards.** (1) The superintendent of public instruction shall pay directly to a cooperative or to a joint board formed under 20-3-361 for special education purposes the approved allowable costs for contracted special education services from the state special revenue fund for state equalization aid as provided in 20-9-343. The total of the payments must be within the limit set by the legislature for approved special education budgets.

(2) A school district that elects to participate in a cooperative shall agree in the cooperative contract to participate for a period of at least 3 years.

(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint board agreement for the next school fiscal year.

(4) After June 30, 1990, a cooperative that has not met the requirements of 20-7-453 and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service special education cooperatives formed after June 30, 1990.

(5) A full service education cooperative may establish a retirement fund, a miscellaneous programs fund, and a transportation fund, as provided for in 20-9-201, for the purposes of a full service education cooperative contract and the purposes allowed by law."

Section 5. Section 20-7-705, MCA, is amended to read:

"**20-7-705. Adult education fund.** (1) A separate adult education fund ~~shall~~ *must* be established when an adult education program is operated by a district or community college district. The financial administration of ~~such~~ *the* fund ~~shall~~ *must* comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of ~~any~~ *a* district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund ~~shall be~~ *is* the depository for all ~~federal, state, and~~ district ~~moneys~~ *money* received by the district in support of the adult education program. *Federal and state adult education program money must be deposited in the miscellaneous programs fund.*

(3) The trustees of ~~any~~ *a* district may authorize the levy of a tax of not more than 1 mill on the district, except that trustees of a county high school district that is not unified with an elementary district may authorize a levy of not more than 2 mills on the district, for the operation of an adult education program when the superintendent of public instruction has approved the educational program to be supported by ~~such~~ *the* levy. The *trustees shall obtain the* approval of the superintendent of public instruction ~~shall have been acquired by the trustees~~ before the fourth Monday of June in order to include the expenditures to be financed by the levy in the preliminary budget. The superintendent of public instruction shall promulgate rules and forms for ~~such~~ approval.

(4) Whenever the trustees of ~~any~~ *a* district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of ~~such~~ *the* program in the adult education fund of the preliminary budget. Any expenditures in support of the adult education program under the final adult education budget ~~shall~~ *must* be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program ~~which~~ *that* has been approved by the superintendent of public instruction is included as a revenue item on the final adult education budget, the county superintendent shall report ~~such~~ *the* levy requirement to the county commissioners on the second Monday of August and a levy on the district ~~shall~~ *must* be made by the county commissioners in accordance with 20-9-142."

Section 6. Section 20-7-713, MCA, is amended to read:

"**20-7-713. Adult ~~basic~~ education fund ~~cash~~ *operating* reserve.** At the end of each school fiscal year, the trustees of ~~any~~ *a* school district that operates an adult ~~basic~~ education program may designate ~~what~~ *the* portion of the adult ~~basic~~ education ~~fund~~ end-of-the-year ~~cash~~ *fund* balance that is to be earmarked as ~~cash~~ *operating* reserve for the purpose of paying, whenever a cash flow shortage occurs, adult ~~basic~~ education fund warrants issued by the district from July 1 through June 30 of the ensuing school fiscal year. The amount of the adult ~~basic~~ education fund ~~cash~~ balance that is earmarked as ~~cash~~ *operating* reserve may not exceed 35% of the final adult ~~basic~~ education fund budget for the ensuing school fiscal year."

Section 7. Section 20-9-133, MCA, is amended to read:

"**20-9-133. Adoption and expenditure limitations of final budget.** (1) When the trustees ~~have caused~~ *determine and set* the amount ~~of an item~~ of the budget for ~~the district to be determined and set~~ *each budgeted fund,* they shall enter the amount in the portion of the budget form provided for the reporting of the final budget and ~~upon completion of all the items,~~ the chairman and clerk shall sign the budget form. The resulting budget ~~shall constitute~~ *constitutes* the final budget and the appropriations for the district for the current school fiscal year.

(2) Except as provided in subsection (3), the trustees and all officers and employees of the district ~~shall be~~ *are* limited in making expenditures or incurring liabilities to the *total* amount of ~~such appropriations, except that transfers~~ *each fund's budget. Transfers* from any appropriation item to another appropriation item within a fund's budget may be made as provided by ~~law~~ *20-9-208.* Except as provided in subsection (3), *money of the district may not be used to pay* expenditures made, liabilities incurred, or warrants issued in excess of ~~any of~~ the final budget ~~appropriations for any item, as originally determined or as revised by transfer, shall not be a liability of the district, and no money of the district shall ever be used to pay the same~~ *established for each budgeted fund.*

(3) If a district incurs a legal bonded debt payment after the final debt service fund budget for the current fiscal year has been adopted and if payment on the debt is required for the current fiscal year, payment on the debt in the current school fiscal year is allowed if money is available."

Section 8. Section 20-9-201, MCA, is amended to read:

"**20-9-201. Definitions and application.** (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law. Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend money from the fund. The general fund, transportation fund, bus depreciation reserve fund, elementary tuition fund, retirement fund, debt service fund, leased facilities fund, building reserve fund, adult education fund, nonoperating fund, and any other funds so designated by the legislature are budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend money on deposit in the fund. The school food services fund, miscellaneous federal programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, *internal service fund, enterprise fund, agency fund,* and any other funds so designated by the legislature are nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district except the extracurricular money realized from pupil activities. Elementary and high school districts shall record the receipt and disbursement of all money in accordance with generally accepted accounting principles. The superintendent of public instruction has general supervisory authority as prescribed by law

over the school financial administration provisions, as they relate to elementary and high school districts. ~~He~~ *The superintendent of public instruction* shall adopt rules necessary to secure compliance with the law."

Section 9. Section 20-9-435, MCA, is amended to read:

"**20-9-435. Delivery of school district bonds and disposition of sale moneys.** (1) After the school district bonds have been registered, the county treasurer shall:

(a) when the board of investments has purchased ~~such~~ *the* bonds, forward the bonds to ~~such state~~ *the* board ~~which~~ *that,* in turn, shall ~~cause the bonds to be sent~~ *send the bonds* to the state treasurer and shall ~~cause~~ *pay* the bonds ~~to be paid~~ ~~for~~ in the manner provided by law; or

(b) when the purchaser is anybody other than the board of investments, deliver the bonds to ~~such~~ *the* purchaser when full payment of the bonds has been made by the purchaser.

(2) If any of the trustees fails or refuses to pay into the proper county treasury the money arising from the sale of any bonds, ~~he~~ *the trustee* is guilty of a felony and shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years, by a fine of not more than $50,000, or by both ~~such~~ fine and imprisonment.

(3) All money realized from the sale of school district bonds ~~shall~~ *must* be paid to the county treasurer~~, and he~~. *The county treasurer* shall credit ~~such~~ *the* money to the building fund of the school district issuing the bonds, except money realized for the purposes defined in 20-9-403(1)(c) and (1)(d) ~~shall~~ *must* be deposited in the debt service fund for the purchase of ~~such~~ *the* bonds *and money realized for the purposes authorized in 20-9-403(1)(e) must be deposited in a fund as provided for in 2-9-316 to pay a final judgment against the school district.* The money realized from the sale of school district bonds ~~shall~~ *must* be immediately available to ~~such~~ *the* school district, and the trustees may expend ~~such~~ *the* money without budgeted authorization only for the purposes for which the bonds were authorized by the school district bond election. Under the provisions of 7-6-2802, the trustees may invest the money for which there is no immediate demand and the interest earned by ~~such~~ *the* investment ~~shall~~ *must* be used in the manner provided ~~therein~~ *in that section.* After the full accomplishment of the purpose or purposes of a bond issue, the excess money realized from ~~such~~ *the* bond issue ~~shall~~ *must* be transferred to the debt service fund of the school district to be used for the redemption or purchase of bonds of ~~such~~ *the* issue."

Section 10. Section 20-9-512, MCA, is amended to read:

"**20-9-512. Reserve fund for payment of accumulated sick leave.** (1) The trustees of ~~any~~ *a* school district may establish a reserve fund for the purpose of paying any accumulated amount of sick leave that a nonteaching school district employee is entitled to upon termination of employment with the district in accordance with the provisions of 2-18-618. ~~Such a~~ *The* reserve fund may be used only for the stated purpose of this section.

(2) At the end of each school fiscal year, the trustees may appropriate a portion of the general fund end-of-the-year ~~cash~~ *fund* balance to establish ~~such~~ a reserve fund.

(3) The maximum amount in a reserve fund established under the provisions of subsections (1) and (2) may not exceed 30% of the total school district liability for accumulated sick leave of nonteaching school district employees on ~~January 15~~ *June 30* of the preceding school fiscal year."

Section 11. Section 20-10-147, MCA, is amended to read:

"**20-10-147. Bus depreciation reserve.** (1) The trustees of ~~any~~ *a* district owning a bus or a two-way radio used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the replacement of ~~such~~ *the* bus or radio.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio ~~for such purposes~~. *The amount budgeted may not, over time, exceed 150% of the original cost of a bus or two-way radio.* The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, ~~shall~~ *must* be reported by the county superintendent to the county commissioners on the second Monday of August as the bus depreciation reserve fund levy requirement for that district, and a levy ~~shall~~ *must* be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund ~~moneys shall~~ *money must* be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only for the purchase of buses or radios to replace the buses or radios for which the bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve ~~cash~~ *fund* balance to any other fund maintained by the district, ~~it~~ *the trustees* shall submit ~~such~~ *the* proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 20-20-301, and the election ~~shall~~ *must* be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer."

Section 12. **Effective dates.** (1) [Sections 1 through 5, 7 through 11, and this section] are effective on passage and approval.

(2) [Section 6] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 569

[HB 728]

AN ACT PROVIDING FOR ACCESSIBILITY TO FOOD PROGRAMS AND NUTRITIONAL SERVICES; ESTABLISHING A STATE ADVISORY COUNCIL ON FOOD AND NUTRITION; CREATING THE POSITION OF PUBLIC HEALTH NUTRITIONIST; MANDATING THAT A PLAN BE SUBMITTED TO THE 1993 LEGISLATURE FOR THE EXTENSION OF THE WIC PROGRAM TO EVERY COUNTY; APPROPRIATING MONEY TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR FOOD PROGRAMS AND NUTRITIONAL SERVICES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, many Montana households are experiencing hunger and are not participating in food programs; and

WHEREAS, food programs are not available in all parts of the state or in all public schools; and

WHEREAS, the state of Montana has no mechanism to coordinate food programs to assure the most effective and efficient use of food programs; and

WHEREAS, nutrition education and monitoring are not generally available, and they are valuable services to improve health and prevent chronic diseases.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** It is the policy of the state of Montana that all citizens should have access to food programs and nutrition services to prevent any needy citizen from experiencing hunger and poor nutrition and their impact on physical and mental health.

Section 2. **Short title.** This act may be cited as the "Montana Access to Food and Nutrition Act".

Section 3. **Definitions.** For purposes of [sections 1 through 3 and 5 through 9], unless the context requires otherwise, the following definitions apply:

(1) "Council" means the state advisory council on food and nutrition established in [section 4].

(2) "Department" means the department of health and environmental sciences as provided in 2-15-2101.

(3) "Food programs and nutrition services" means public or private programs to provide food and nutrition assistance to persons who have need. The term includes but is not limited to the food stamp program, food programs for the elderly, and supplemental food programs for women, infants, and children.

Section 4. **State advisory council on food and nutrition.** (1) There is a state advisory council on food and nutrition.

(2) The council is composed of eleven members appointed by the governor as follows:

(a) one person from the department of social and rehabilitation services who supervises or administers services under the food stamp program;

(b) one person from the department of health and environmental sciences who supervises or administers supplemental food programs for women, infants, and children;

(c) one person from the office of public instruction who is responsible for administration of school food programs under the National School Lunch Act;

(d) one person from a statewide organization active in food, nutrition, and hunger issues;

(e) one person representing local food bank programs;

(f) one person from among local, private operators of food and nutrition programs for the elderly;

(g) one person representing the general public who is knowledgeable and active in food, nutrition, and hunger issues;

(h) one person who is an agent in the Montana cooperative extension service;

(i) one Native American; and

(j) one member of the house of representatives and one member of the senate, who must be paid their compensation and expenses as provided in 5-2-302 while engaged in advisory council business.

(3) The council is allocated to the department of health and environmental sciences for administrative purposes only as provided in 2-15-121.

(4) The provisions of 2-15-122(5) through (8) apply to the council and its members.

Section 5. **Terms — vacancies.** (1) Members of the council shall serve staggered terms of 3 years.

(2) A vacancy on the council must be filled in the same manner as the original appointment.

Section 6. **Powers and duties.** The duties of the council are to:

(1) advise all state agencies on policies to coordinate the operation of public and private food assistance programs;

(2) annually report to the governor on the state of access to food and nutrition in Montana;

(3) provide a forum for review and discussion of state policies affecting hunger, food programs, and the status of nutrition for the population at risk;

(4) promote food assistance programs within the private and agricultural sectors of Montana's economy;

(5) recognize public and private acts and individuals who significantly contribute to the reduction of hunger in Montana; and

(6) educate the public as to problems and needs of hungry citizens.

Section 7. **Gifts and grants.** The council may accept contributions, gifts, and grants to fund its activities.

Section 8. **Public health nutritionist — appointment and duties.** The director of the department shall appoint a registered dietician as a public health nutritionist. The appointment of the public health nutritionist may not be required unless funding for the position is available. The public health nutritionist shall:

(1) establish a program of public education and technical assistance for programs that provide food assistance;

(2) provide staff assistance to the council;

(3) provide technical assistance to the governor's advisory council on aging; and

(4) provide technical assistance to health care and public health agencies.

Section 9. **Women, infants and children food supplement program to be available in all counties.** The department shall provide the 1993 legislature with a plan to provide the services of the women, infants and children (WIC) food supplement program to counties that are currently not served by the program.

Section 10. **Appropriations.** (1) There is appropriated from the federal special revenue fund to the department of health and environmental sciences $67,075 for the fiscal year beginning July 1, 1991, and $62,882 for the fiscal year beginning July 1, 1992, to fund the position of public health nutritionist.

(2) There is appropriated from the federal special revenue fund to the department of health and environmental sciences $7,000 for the biennium ending June 30, 1993, to fund the state advisory council on food and nutrition.

Section 11. **Effective date.** [This act] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 570

[HB 757]

AN ACT TO PROVIDE A PROCESS FOR ASSESSING AND COLLECTING TAXES ON REAL PROPERTY AND IMPROVEMENTS THAT CHANGED FROM AN EXEMPT STATUS TO A TAXABLE STATUS DURING THE TAXABLE YEAR; AMENDING SECTION 15-8-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Assessment of property previously exempt.** (1) Real property or improvements exempt from taxation under Title 15, chapter 6, that during a taxable year become the property of a person subject to taxation must be assessed and taxed from the date of change from a nontaxable status to a taxable status.

(2) As provided in subsection (3), the county treasurer shall adjust the tax that would have been due and payable for the current year on the property under 15-16-102 had the property not been exempt.

(3) To determine the amount of tax due for previously exempt property, the county treasurer shall multiply the amount of tax levied and assessed on the original taxable value of the property for the year by the ratio that the number of days in the year that the property will be in taxable status bears to 365.

(4) If the property has not been assessed and taxed during the taxable year because of exemption, the department of revenue or its agent shall prepare a special assessment for the property and the county treasurer shall determine the amount of taxes that would have been due under subsection (2).

(5) Upon determining the amount of tax due, the county treasurer shall notify the person to whom the tax is assessed, in the same manner as notification is provided under 15-16-101(2), of the amount due and the date or dates on which the taxes due are payable as provided in 15-16-102.

Section 2. Section 15-8-201, MCA, is amended to read:

"**15-8-201. General assessment day.** (1) The department of revenue or its agent must, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county. The department or its agent must assess property to the person by whom it was owned or claimed or in whose possession or control it was at midnight of January 1 next preceding. It must also ascertain and assess all mobile homes arriving in the county after midnight of January 1 next preceding. No mistake in the name of the owner or supposed owner of real property, however, renders the assessment invalid.

(2) The procedure provided by this section may not apply to:

(a) motor vehicles that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date;

(b) motor homes, travel trailers, and campers;

(c) watercraft;

(d) livestock;

(e) property defined in 61-1-104 as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate; ~~and~~

(f) mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade*; and*

(g) property subject to the provisions of [section 1].

(3) Credits must be assessed as provided in 15-1-101(1)(f)."

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 16, part 2, and the provisions of Title 15, chapter 16, part 2, apply to [section 1].

Section 4. **Applicability.** [This act] applies after December 31, 1991.

Approved April 23, 1991.

CHAPTER NO. 571

[HB 777]

AN ACT AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 1992-93; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS TO BE ISSUED; APPROPRIATING STRIPPER-WELL PAYMENTS CONTAINED IN THE FEDERAL SPECIAL REVENUE FUND; REMOVING THE STATUTORY APPROPRIATION FROM SECTION 90-4-613, MCA; WITHDRAWING AUTHORIZATION FOR THE BONDS AUTHORIZED BY CHAPTER 473, LAWS OF 1989; AMENDING SECTIONS 17-7-502 AND 90-4-613, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Chapter 473, Laws of 1989, established the state building energy conservation program and authorized the issuance of up to $3 million of general obligation bonds to provide money for the state building energy conservation program for fiscal years 1990-91; and

WHEREAS, the Department of Natural Resources and Conservation determined that the issuance of the bonds was not necessary during fiscal years 1990-91 and that portions of the projects identified in section 9, Chapter 473, Laws of 1989, were either funded from other sources or not in the state's best interest at the time; and

WHEREAS, recommended projects for the state building energy conservation program for fiscal years 1992-93 have been identified as required by Title 90, chapter 4, part 6.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Stripper-well payments — definition — appropriation — priority.** (1) There is reappropriated from the stripper-well payments contained in the federal special revenue fund to the department of natural resources and conservation $400,000 to fulfill duties authorized by 90-4-605 and 90-4-607. This appropriation is a biennial appropriation.

(2) (a) "Stripper-well payments" means the oil overcharge payments made to the United States treasury for distribution to the state of Montana as the result of the final settlement agreement in the United States district court for the district of Kansas, Cause No. M.D.L. 378, and any interest accrued on the payments.

(b) The term does not include stripper-well payments that have been expended or legally obligated or have been incorporated into any of the existing federal energy programs as the result of prior appropriations by the legislature.

(3) The stripper-well payments appropriated in this section have a higher priority than any other appropriation of stripper- well payments for fiscal years 1992-93.

Section 2. **Approval of energy conservation projects.** (1) Pursuant to Title 90, chapter 4, part 6, the legislature approves the following energy conservation projects for fiscal years 1992-93:

FACILITY

University of Montana

Central Heating Plant

Health Science Building

Chemistry/Pharmacy Building

Math Building

Mansfield Library

Science Complex

Pharmacy/Psychology Building

Music Building

Eastmont Human Services Center

Pine Hills School Campus

Cogswell Building, State Capitol Complex

(2) In addition to the projects listed in subsection (1), the department of natural resources and conservation may expend funds appropriated under [section 3] to respond to unanticipated situations that provide an opportunity to finance, acquire, construct, or install energy-saving equipment, systems, or improvements in a state facility in circumstances in which the opportunity will be lost whenever the department is delayed in providing the necessary funds until specific legislative approval can be obtained.

Section 3. **Bond authorization — appropriation of bond proceeds.** (1) The board of examiners may, pursuant to 90-4-611, issue and sell bonds of the state in an aggregate principal amount not to exceed $3 million for fiscal years 1992-93. The bonds are general obligations for which the full faith and credit and taxing powers of the state are pledged for payment of the principal and interest on the bonds. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premiums and accrued interest received, must be deposited in the energy conservation program account established by 90-4-612. Premiums and accrued interest must be deposited in the debt service fund established in 17-2-102. Proceeds of bonds deposited in the energy conservation program account may be used to pay the costs of issuing the bonds and to fund the projects approved by the legislature in [section 2]. For purposes of 17-5-803 and 17-5-804, the energy conservation program account constitutes a capital projects account. The bond proceeds must be available to the department of natural resources and conservation and may be used for the purposes authorized in this section without further budgetary authorization.

Section 4. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; ~~90-4-613;~~ 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 5. Section 90-4-613, MCA, is amended to read:

"**90-4-613. Use of energy conservation program account.** The energy conservation program account must be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the energy conservation program. The department may transfer all money authorized by the legislature for its administrative expenditures from the energy conservation program account to a special revenue fund. ~~This money is statutorily appropriated as provided in 17-7-502.~~"

Section 6. **Withdrawal of authorization for previously authorized bonds.** The authorization granted by section 10, Chapter 473, Laws of 1989, for the issuance of up to $3 million in bonds to provide money for fiscal years 1990-91 energy conservation program is withdrawn.

Section 7. **Requirements for approval of state debt.** Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3].

Section 8. **Effective date.** [This act] is effective on passage and approval.

Approved April 23, 1991.

CHAPTER NO. 572

[HB 782]

AN ACT CLARIFYING THE REQUIREMENTS RELATING TO MOTOR VEHICLE RECYCLING AND DISPOSAL; AMENDING SECTIONS 75-10-501, 75-10-503, 75-10-521, 75-10-534, AND 75-10-541, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-501, MCA, is amended to read:

"**75-10-501. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

~~(2)~~*(3)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(3)~~*(4)* "Junk vehicle" means a discarded, ruined, wrecked, or dismantled motor vehicle, including component parts, which is not lawfully and validly licensed and remains inoperative or incapable of being driven.

~~(4)~~*(5)* "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.

~~(5)~~*(6)* "Motor vehicle wrecking facility" means:

(a) a facility buying, selling, or dealing in four or more vehicles per year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or

(b) a facility ~~which~~ *that* buys or sells ~~integral secondhand parts or component material thereof~~ *component parts*, in whole or in part, and deals in secondhand motor vehicle parts. A facility ~~which~~ *that* buys or sells ~~integral secondhand parts or component material~~ *component parts* of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

~~(6)~~*(7)* "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

~~(7)~~*(8)* "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

~~(8)~~*(9)* "Shielding" means the construction or use of fencing or manmade or natural barriers to conceal junk vehicles from public view."

Section 2. Section 75-10-503, MCA, is amended to read:

"**75-10-503. Adoption of rules.** (1) The department shall adopt rules necessary for the administration of this part, except 75-10-520, including but not limited to rules pertaining to:

(a) the establishment, control, operation, and licensing of motor vehicle wrecking facilities and graveyards;

(b) the control of junk vehicles in locations other than motor vehicle wrecking facilities and graveyards;

(c) the inspection and evaluation of premises and records subject to or required by this part;

(d) the development of budget and fiscal forms and procedures for counties;

(e) the review, approval, and control procedures for county motor vehicle graveyards developed under this part; and

(f) the shielding of a junk vehicle and motor vehicle wrecking facility and graveyard from public view. The department may not adopt a rule which requires any motor vehicle wrecking facility that existed prior to July 1, 1973, and has been continuously utilized thereafter as a motor vehicle wrecking facility to construct a fence or manmade barrier which would be in excess of 12 feet in height.

(2) The department of health and environmental sciences shall~~, after seeking input from counties, licensed motor vehicle wrecking facilities, and the general public,~~ adopt rules ~~pertaining to~~ *authorizing* the ~~reuse and restoration of junk vehicles~~ *sale of junk vehicles by county motor vehicle graveyards to licensed motor vehicle wrecking facilities.* The department shall adopt these rules no later than July 1, ~~1990~~ *1992.*"

Section 3. Section 75-10-521, MCA, is amended to read:

"**75-10-521.** ~~**Motor vehicle graveyards — consolidation — budget**~~ ***Powers and duties of county motor vehicle recycling and disposal programs.*** (1) *(a)* Each county shall acquire, develop, and maintain property for free motor vehicle graveyards. The property may be acquired by purchase, lease, or otherwise.

~~(2)~~*(b)* As an alternative, the county may contract for the maintenance and operation of a motor vehicle graveyard or graveyards, but any such contract may be entered into only with a motor vehicle wrecking facility licensed under the provisions of this part.

~~(3)~~*(2)* Two or more counties may join to form a district for the purpose stated in this section. If a district is formed, all provisions of this part pertaining to a county also apply to a district formed under this subsection.

~~(4)~~*(3)* When there is an accumulation of at least 200 junk vehicles in the graveyard, the county shall notify the department for disposal purposes.

(4) The county commissioners of each county shall designate a representative to be responsible for implementing this part.

(5) Each county, through its designated representative, shall inspect each licensed motor vehicle wrecking facility within its boundaries, consistent with rules adopted by the department.

(6) Each county may sell junk vehicles from the motor vehicle graveyard to licensed motor vehicle wrecking facilities. The sales may be conducted only pursuant to a plan that has been approved by the department for consistency with its rules.

~~(5)~~*(7)* A county shall submit to the department for approval a plan for the collection of junk vehicles and the establishment and operation of the motor vehicle graveyard.

~~(6)~~*(8)* ~~Prior to June 15, the~~ *The* county shall submit to the department for approval a proposed budget for the succeeding fiscal year. The budget shall be for the amounts required by the county for collection costs, ~~and~~ acquisition, maintenance, and operation of the graveyard *and for other duties relating to implementation of this part.* Any proposed change in the budget or plan must be approved by the department."

Section 4. Section 75-10-534, MCA, is amended to read:

"**75-10-534. Department to pay approved county budget.** The department shall pay to a county the amount of the approved junk vehicle collection and graveyard budget of the county. The yearly payment may not exceed $1 for each motor vehicle under 8,001 pounds gross vehicle weight that is licensed in that county. However, for those counties that have fewer than 5,000 such motor vehicles, the department may pay up to $5,000, providing the county can justify this payment. *Counties realizing revenue from the sale of junk vehicles shall return to the state junk vehicle program revenue account money equal to the salvage value of each vehicle sold. The salvage value of a vehicle must be the average contract value of a crushed ton of junk vehicles as determined by the statewide salvage bids received by the department during the current fiscal year. Any additional revenue realized from the sale of junk vehicles may be retained by the county for use in the county's junk vehicle program in addition to the approved junk vehicle collection and graveyard budget of the county.*"

Section 5. Section 75-10-541, MCA, is amended to read:

"**75-10-541. Injunction — action to collect civil penalty.** (1) The department~~, through the attorney general or the county attorney of the county in which a facility is located,~~ may sue to enjoin the operation or maintenance of a motor vehicle wrecking facility or graveyard either permanently or until compliance with this part, the rules of the department, or an order issued pursuant to this part has been demonstrated.

(2) The department~~, through the attorney general or the county attorney of the county in which a motor vehicle wrecking facility or graveyard is located,~~ may sue in district court to collect a civil penalty as provided in 75-10-542.

(3) Upon request of the department, the attorney general or the county attorney of the county in which a motor vehicle wrecking facility or graveyard is located may petition the district court to enjoin further operation or maintenance of a motor vehicle wrecking facility or graveyard or to impose, assess, and recover a civil penalty, as appropriate."

Section 6. **Shielding and removal of junk vehicles generally.** Notwithstanding the provisions of this part, any person possessing one or more junk vehicles, regardless of ownership, shall shield the vehicles from public view or remove the vehicles to a licensed motor vehicle wrecking facility or to a licensed motor vehicle graveyard after the vehicles are released from the owner. Small accumulations of salvageable vehicles or component parts, none of which are offered for sale, retained by active farming or ranching operations for repair and maintenance of vehicles, or agricultural equipment used in their operations, are exempted from this requirement.

Section 7. **Codification instruction.** [Section 6] is intended to be codified as an integral part of Title 75, chapter 10, part 5, and the provisions of Title 75, chapter 10, part 5, apply to [section 6].

Section 8. **Effective date.** [This act] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 573

[HB 807]

AN ACT TO MAKE CONSISTENT THE EXCLUSIONS FROM THE DEFINITIONS OF EMPLOYMENT IN THE UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION ACTS; TO REQUIRE THAT AN INDIVIDUAL FOUND TO BE AN INDEPENDENT CONTRACTOR UNDER TITLE 39, CHAPTER 71, PART 4, MCA, IS AN INDEPENDENT CONTRACTOR FOR PURPOSES OF TITLE 39, CHAPTER 51, MCA; TO REQUIRE THE DEPARTMENT OF LABOR AND INDUSTRY TO REPORT INDEPENDENT CONTRACTOR AND EMPLOYMENT EXEMPTIONS TO THE STATE COMPENSATION MUTUAL INSURANCE FUND; AMENDING SECTIONS 39-51-204 AND

39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-204, MCA, is amended to read:

"**39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) *household and* domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed ~~in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;~~ *as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection:*

(i) "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to his main duties, carries or delivers papers.

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and who has acknowledged in writing that he is not covered by unemployment insurance and workers' compensation and who contracts with a cosmetological establishment as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract shall show the cosmetologist or barber is free from all control and direction of the owner in the contract and in fact; receives payment for services from his or her individual clientele; leases, rents, or furnishes all of his or her own equipment, skills, or knowledge; and whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetological establishment or barbershop shall not be construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service.

"Regularly employed" means the services are performed during at least 24 days in the same quarter.

(n) employment of sole proprietors or working members of a partnership;

~~(n)~~*(o)* services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution.

(4) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter."

Section 2. Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to his main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l).

(3) (a) A sole proprietor or a working member of a partnership who holds himself out or considers himself an independent contractor ~~[and who is not contracting] for cosmetologist's services or barber's services as defined in 39-51-204(1)(l)~~ must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the department for an exemption from the Workers' Compensation Act for himself.

(b) The application must be made in accordance with the rules adopted by the department. The department may deny the application only if it determines that the applicant is not an independent contractor.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains his status as an independent contractor until he notifies the department of any change in his status and provides a description of his present work status.

(e) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A private corporation shall provide coverage for its officers and other employees under the provisions of compensation plan No. 1, 2, or 3. However, pursuant to such rules as the department promulgates and subject in all cases to approval by the department, an officer of a private

corporation may elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by the department, served in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and the department; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the employer, the department, and the insurer.

(b) If the employer changes plans or insurers, the officer's previous election is not effective and the officer shall again serve notice as provided if he elects not to be bound.

(c) The appointment or election of an employee as an officer of a corporation for the purpose of excluding the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer must sign the notice required by subsection (4)(a) under oath or affirmation, and he is subject to the penalties for false swearing under 45-7-202 if he falsifies the notice.

(5) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 3. **Exemption.** An exemption granted under 39-71-401(3) by the department that a particular employee is an independent contractor or that a particular employment is exempt from the provisions of this chapter must be reported to the state compensation mutual insurance fund.

Section 4. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 39, chapter 51, part 6, and the provisions of Title 39, chapter 51, part 6, apply to [section 3].

Section 5. **Applicability date.** [This act] applies to all claims filed on or after [the effective date of this act].

Section 6. **Effective date.** [This act] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 574

[HB 837]

AN ACT REVISING THE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE ACTS; AMENDING SECTIONS 39-71-116, 39-71-414, 39-71-702, 39-71-703, 39-71-704, 39-71-741, 39-71-1003, 39-71-1011, 39-71-1013, 39-71-1025, AND 39-71-1032, MCA; REPEALING SECTIONS 39-71-1012, 39-71-1015, 39-71-1016, 39-71-1017, 39-71-1018, 39-71-1019, 39-71-1023, 39-71-1024, 39-71-1026, AND 39-71-1033, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to the investigation, review, and settlement of claims; payment of benefits; setting of reserves; furnishing of services and facilities; and utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (3)(a) through (3)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (3)(a) through (3)(e) of this section, exists).

(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(6) "Days" means calendar days, unless otherwise specified.

(7) "Department" means the department of labor and industry.

(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(10) "Invalid" means one who is physically or mentally incapacitated.

(11) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(12) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(13) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(14) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in ~~the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both~~ *some capacity but the physical restriction impairs the worker's ability to work.*

(15) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker ~~is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012~~ *has no reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.*

(16) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(17) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(18) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(19) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(20) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(21) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

(22) "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-414, MCA, is amended to read:

"**39-71-414. Subrogation.** (1) If an action is prosecuted as provided for in 39-71-412 or 39-71-413 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2) (a) If the injured employee intends to institute the third party action, he shall give the insurer reasonable notice of his intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including attorneys' fees.

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorneys' fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to institute the third party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement which is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorneys' fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) If the amount of compensation and other benefits payable under the Workers' Compensation Act have not been fully determined at the time the employee, the employee's heirs or personal representatives, or the insurer have settled in any manner the action as provided for in this section, the department shall determine what proportion of the settlement shall be allocated under subrogation. The department's determination may be appealed to the workers' compensation judge.

(6) (a) The insurer is entitled to full subrogation rights under this section, even though the claimant is able to demonstrate damages in excess of the workers' compensation benefits and the third-party recovery combined. The insurer may subrogate against the entire settlement or award of a third party claim brought by the claimant or his personal representative, without regard to the nature of the damages.

(b) If no survival action exists and the parties reach a settlement of a wrongful death claim without apportionment of damages by a court or jury, the insurer may subrogate against the entire settlement amount, without regard to the parties' apportionment of the damages, unless the insurer is a party to the settlement agreement.

(7) Regardless of whether the amount of compensation and other benefits payable have been fully determined, the insurer and the claimant may stipulate the proportion of the third-party settlement to be allocated under subrogation. Upon review and approval by the department, the agreement constitutes a compromise settlement of the issue of subrogation and may not be reopened by the department."

Section 3. Section 39-71-702, MCA, is amended to read:

"**39-71-702. Compensation for permanent total disability.** (1) If a worker is no longer temporarily totally disabled and is ~~unable to return to work due to injury~~ *permanently totally disabled, as defined in 39-71-116,* the worker is eligible for permanent total disability benefits. ~~At an insurer's request, an evaluation of all options under 39-71-1012 must be made before permanent total disability status is determined.~~ Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710 ~~and 39-71-1026~~.

(2) The determination of permanent total disability must be supported by a preponderance of medical evidence.

(3) Weekly compensation benefits for an injury resulting in permanent total disability shall be 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed the state's average weekly wage at the time of injury.

(4) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. A worker may not receive more than 10 such adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year or 3%, whichever is less.

(6) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for permanent total disability may not exceed the state's average weekly wage of $299 established July 1, 1986."

Section 4. Section 39-71-703, MCA, is amended to read:

"**39-71-703. Compensation for permanent partial disability — ~~impairment awards and wage supplements.~~** ~~(1) The benefits available for permanent partial disability are impairment awards and wage supplements. A worker who has reached maximum healing and is not eligible for permanent total disability benefits but who has a medically determined physical restriction as a result of a work-related injury may be eligible for an impairment award and wage supplement benefits as follows:~~

~~(a) The following procedure must be followed for an impairment award:~~

~~(i) Each percentage point of impairment is compensated in an amount equal to 5 weeks times 66-2/3% of the wages received at the time of the injury, subject to a maximum compensation rate of one-half of the state's average weekly wage at the time of injury.~~

~~(ii) When a worker reaches maximum healing, an impairment rating is rendered by one or more physicians as provided for in 39-71-711. Impairment benefits are payable beginning the date of maximum healing.~~

~~(iii) An impairment award may be paid biweekly or in a lump sum, at the discretion of the worker. Lump sums paid for impairments are not subject to the requirements set forth in 39-71-741, except that lump-sum conversions for benefits not accrued may be reduced to present value at the rate set forth by the department in 39-71-741(5).~~

~~(iv) If a worker becomes eligible for permanent total disability benefits, the insurer may recover any lump-sum advance paid to a claimant for impairment, as set forth in 39-71-741(5). Such right of recovery does not apply to lump-sum benefits paid for the period prior to claimant's eligibility for permanent total disability benefits.~~

~~(v) If a worker suffers additional injury, an impairment award payable for the additional injury must be reduced by the amount of a previous award paid for impairment to the same site on the body.~~

~~(b) The following procedure must be followed for a wage supplement:~~

~~(i) A worker must be compensated in weekly benefits equal to 66-2/3% of the difference between the worker's actual wages received at the time of the injury and the wages the worker is qualified to earn in the worker's job pool, subject to a maximum compensation rate of one-half the state's average weekly wage at the time of injury.~~

~~(ii) Eligibility for wage supplement benefits begins at maximum healing and terminates at the expiration of 500 weeks minus the number of weeks for which a worker's impairment award is payable, subject to 39-71-710. A worker's failure to sustain a wage loss compensable under subsection (1)(b)(i) does not extend the period of eligibility. However, if a worker becomes eligible for temporary total disability, permanent total disability, or total rehabilitation benefits after reaching maximum healing, the eligibility period for wage supplement benefits is extended by any period for which a worker is compensated by those benefits after reaching maximum healing.~~

~~(2) The determination of permanent partial disability must be supported by a preponderance of medical evidence.~~

~~(3) Notwithstanding subsection (1), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for permanent partial disability may not exceed $149.50, which is one-half the state's average weekly wage established July 1, 1986.~~ *(1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award.*

(2) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (3) by 350 weeks.

(3) An award granted an injured worker may not exceed a permanent partial disability rating of 100%. The criteria for the rating of disability must be calculated using the medical impairment rating as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment. The percentage to be used in subsection (2) must be determined by adding the following applicable percentages to the impairment rating:

(a) if the claimant is 30 years of age or younger at the time of injury, 0%; if the claimant is over 30 years of age but under 56 years of age at the time of injury, 2%; and if the claimant is 56 years of age or older at the time of injury, 3%;

(b) for a worker who has completed less than 9 years of education, 3%; for a worker who has completed 9 through 12 years of education or who has received a graduate equivalency diploma, 2%; for a worker who has completed more than 12 years of education, 0%;

(c) if a worker has no wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of $2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than $2 an hour as a result of the industrial injury, 20%; and

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 20%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 15%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 10%.

(4) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(5) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(6) As used in the section:

(a) "Heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "Medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "Light labor activity" means the ability to lift up to 25 pounds occasionally or up to 10 pounds frequently; and

(d) "Sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

Section 5. Section 39-71-704, MCA, is amended to read:

"**39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates.** (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following must be furnished:

(a) After the happening of the injury *and subject to the provisions of subsection (1)(d)*, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the department for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(c) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(d) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, must be established annually by the department and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state fund during the year preceding the adoption of the schedule. The state fund shall report fees billed in the form and at the times required by the department. The department shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules must be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) Beginning January 1, 1988, the department shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The department may coordinate this ratesetting function with other public agencies that have similar responsibilities.

(4) Notwithstanding subsection (2), beginning January 1, 1988, through December 31, 1991, the maximum fees payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), beginning January 1, 1988, through December 31, 1991, the hospital rates payable by insurers must be limited to

those set in January 1988. *After December 31, 1991, the percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage as defined in 39-71-116.*"

Section 6. Section 39-71-741, MCA, is amended to read:

"**39-71-741. Compromise settlements~~,~~** ***and*** **lump-sum payments~~,~~ ~~and lump-sum advance payments~~.** (1) (a) Benefits may be converted in whole to a lump sum:

(i) if a claimant and an insurer dispute the initial compensability of an injury; and

(ii) if the claimant and insurer agree to a settlement.

(b) The agreement is subject to department approval. The department may disapprove an agreement under this section only if there is not a reasonable dispute over compensability.

(c) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department ~~or by any court~~.

~~(d) The parties' failure to reach an agreement is not a dispute over which a mediator or the workers' compensation court has jurisdiction.~~

(2) (a) If an insurer has accepted initial liability for an injury, ~~permanent total and~~ permanent partial ~~wage supplement~~ *disability* benefits may be converted in whole *or in part* to a lump-sum payment.

~~(b) The conversion may be made only upon agreement between a claimant and an insurer.~~

(b) The total of any lump-sum conversion in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703 or $20,000, whichever is less.

(c) ~~The~~ *An* agreement is subject to department approval. The department may ~~approve an agreement if:~~

~~(i) there is a reasonable dispute concerning the amount of the insurer's future liability or benefits; or~~

~~(ii) the amount of the insurer's projected liability is reasonably certain and the settlement amount is not substantially less than the present value of the insurer's liability~~ *disapprove an agreement only if the department determines that the settlement amount is inadequate. If disapproved, the department shall set forth in detail the reasons for disapproval.*

~~(d) The parties' failure to reach agreement is not a dispute over which a mediator or the workers' compensation court has jurisdiction.~~

~~(c)~~*(d)* Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department ~~or by any court~~.

~~(3) (a) Permanent partial wage supplement benefits may be converted in part to a lump-sum advance.~~

~~(b) The conversion may be made only upon agreement between a claimant and an insurer.~~

~~(c) The agreement is subject to department approval. The department may approve an agreement if the parties demonstrate that the claimant has financial need that:~~

~~(i) relates to the necessities of life or relates to an accumulation of debt incurred prior to injury; and~~

~~(ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.~~

~~(d) The parties' failure to reach an agreement is not a dispute over which a mediator or the workers' compensation court has jurisdiction.~~

~~(4)~~*(3)* Permanent total disability benefits may be converted *in whole or in part* to a ~~lump-sum advance~~ *lump sum*. The total of all lump-sum ~~advance payments~~ *conversions in part that are awarded* to a claimant may not exceed $20,000. A conversion may be made only upon the written application of the injured worker with the concurrence of the insurer. Approval of the lump-sum ~~advance~~ payment rests in the discretion of the department. The approval or award of a lump-sum ~~advance~~ payment by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(a) relates to:

(i) the necessities of life;

(ii) an accumulation of debt incurred prior to the injury; or

(iii) a self-employment venture ~~as set forth in 39-71-1026; and~~ *that is considered feasible under criteria set forth by the department; or*

(b) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(4) Any lump-sum conversion of benefits under subsection (3) must be converted to present value using the rate prescribed under subsection (5)(b).

(5) (a) An insurer may recoup any lump-sum ~~advance~~ *payment* amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year, rounded to the nearest whole number.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

(6) ~~The~~ *Subject to the other provisions of this section, the* department has full power, authority, and jurisdiction to allow, approve, or condition compromise settlements *for any type of benefits provided for under this chapter* or lump-sum ~~advances~~ *payments* agreed to by workers and insurers. All such compromise settlements and lump-sum payments are void without the approval of the department. Approval by the department must be in writing. The department shall directly notify a claimant of a department order approving or denying a claimant's compromise or lump-sum payment.

(7) ~~Subject to 39-71-2401, a~~ *A* dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump-sum ~~advance under subsection (4)~~ is considered a dispute, for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum ~~advance~~ *payment* but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision."

Section 7. Section 39-71-1003, MCA, is amended to read:

"**39-71-1003. Eligibility for vocational rehabilitation expenses.** *(1)* Upon certification by the department of social and rehabilitation services, a disabled worker may be paid vocational rehabilitation expenses from funds provided in 39-71-1004, in addition to benefits payable under the Workers' Compensation Act.

(2) The appeal process provided for in 53-7-106 is the exclusive remedy for an injured worker aggrieved in the receipt of vocational rehabilitation services provided by the department of social and rehabilitation services."

Section 8. Section 39-71-1011, MCA, is amended to read:

"**39-71-1011. Definitions.** As used in this chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) "Disabled worker" means one who has a medically determined restriction resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury.

~~(3) "I.W.R.P." means an individualized, written rehabilitation program prepared by the department of social and rehabilitation services.~~

~~(4)~~*(3)* "Rehabilitation benefits" means benefits provided in 39-71-1003, *[section 11],* and ~~39-71-1023 through~~ 39-71-1025.

(4) "Rehabilitation plan" means an individualized plan to assist a disabled worker in acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training, or specialized job modification.

(5) "Rehabilitation provider" means a rehabilitation counselor~~, other than the department of social and rehabilitation services,~~ certified by the board for rehabilitation certification and designated by the insurer to the department *or a department of social and rehabilitation services counselor when a worker has been certified by the department of social and rehabilitation services under 39-71-1003.*

(6) "Rehabilitation services" consists of a program of evaluation, planning, and delivery of goods and services to assist a disabled worker to return to work.

~~(7) (a) "Worker's job pool" means those jobs typically available for which a worker is qualified, consistent with the worker's age, education, vocational experience and aptitude and compatible with the worker's physical capacities and limitations as the result of the worker's injury. Lack of immediate job openings is not a factor to be considered.~~

~~(b) A worker's job pool may be either local or statewide, as follows:~~

~~(i) a local job pool is the job service office area that includes the worker's residence; and~~

~~(ii) the statewide job pool is the state of Montana.~~"

Section 9. Section 39-71-1013, MCA, is amended to read:

"**39-71-1013. Agreement between worker and insurer regarding option.** A worker and an insurer may agree ~~that an option in 39-71-1012 is appropriate without following the procedures provided in this part. Failure to reach agreement is not a dispute under 39-71-2401~~ *to a rehabilitation plan and file the agreement with the department.*"

Section 10. **Rehabilitation benefits.** (1) An injured worker is eligible for rehabilitation benefits if:

(a) the injury results in permanent partial disability or permanent total disability as defined in 39-71-116;

(b) a physician certifies that the injured worker is physically unable to work at the job the worker held at the time of the injury;

(c) a rehabilitation plan completed by a rehabilitation provider and designated by the insurer certifies that the injured worker has reasonable vocational goals and a reemployment and wage potential with rehabilitation. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests; and

(d) a rehabilitation plan between the injured worker and the insurer is filed with the department. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of social and rehabilitation services to use the funds.

(2) After filing the rehabilitation plan with the department, the injured worker is entitled to receive rehabilitation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed-upon rehabilitation plan. Rehabilitation benefits must be paid while the worker is satisfactorily completing the agreed-upon rehabilitation plan.

(3) If the rehabilitation plan provides for job placement, a vocational rehabilitation provider shall assist the worker in obtaining other employment and the worker is entitled to weekly benefits for a period not to exceed 8 weeks at the worker's temporary total disability rate. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection may not be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section.

(4) If there is a dispute as to whether an injured worker can return to the job the worker held at the time of injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether the worker can return to the job held at the time of injury. If it is determined that he cannot, the worker is entitled to rehabilitation benefits and services as provided in subsection (2).

(5) A worker may not receive temporary total or biweekly permanent partial disability benefits and rehabilitation benefits during the same period of time.

(6) The rehabilitation provider, as authorized by the insurer, shall continue to work with and assist the injured worker until the rehabilitation plan is completed.

Section 11. Section 39-71-1025, MCA, is amended to read:

"**39-71-1025. Auxiliary rehabilitation benefits.** In addition to benefits otherwise provided in this chapter, separate benefits not exceeding a total of $4,000 may be paid by the insurer for~~:~~

~~(1)~~ reasonable travel and relocation expenses used to:

~~(a)~~*(1)* search for new employment;

~~(b)~~*(2)* return to work but in a new location; ~~and~~

~~(c)~~*(3)* implement a rehabilitation ~~program pursuant to a final order of determination by~~ *plan that has been filed with* the department; and

(4) attend an on-the-job training program.

~~(2) reasonable participation with an employer in an on-the-job training program.~~"

Section 12. Section 39-71-1032, MCA, is amended to read:

"**39-71-1032. Termination of benefits for noncooperation with rehabilitation provider ~~or the department of social and rehabilitation services~~ — department hearing and appeal.** (1) If an insurer believes a worker is refusing unreasonably to cooperate with the rehabilitation provider ~~or the department of social and rehabilitation services~~, the insurer, with 14 days' notice to the worker and department on a form approved by the department, may terminate any rehabilitation benefits the worker is receiving under this part until the worker cooperates. ~~If the worker is receiving wage supplement benefits, those benefits must continue until the department's determination under subsection (3) is made.~~

(2) The worker may contest the insurer's termination of benefits by filing a written exception to the department within ~~10~~ *20* working days after the date of the 14-day notice. The worker or insurer may request a hearing ~~or~~ *before* the department ~~may hold a hearing on its own motion~~. *The department shall hold a hearing within 30 days of receipt of the request.* The department shall issue an order within ~~30~~ *15* days of the hearing.

(3) ~~If no exceptions are timely filed or the department determines the worker unreasonably refused to cooperate, the insurer may terminate wage loss supplement benefits the worker is receiving until the worker cooperates with the rehabilitation provider.~~ If the worker prevails at a hearing before the department, it may award attorney fees and costs to the worker under 39-71-612.

(4) Within ~~10 working~~ *30* days after the department mails its order to the party's last-known address, a party may appeal to the workers' compensation court."

Section 13. **Codification instruction.** [Section 10] is intended to be codified as an integral part of Title 39, chapter 71, part 20, and the provisions of Title 39, chapter 71, apply to [section 10].

Section 14. **Repealer.** Sections 39-71-1012, 39-71-1015, 39-71-1016, 39-71-1017, 39-71-1018, 39-71-1019, 39-71-1023, 39-71-1024, 39-71-1026, and 39-71-1033, MCA, are repealed.

Section 15. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. **Effective date.** [This act] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 575

[HB 841]

AN ACT STATUTORILY APPROPRIATING MONEY COLLECTED UNDER THE ALFALFA SEED INDUSTRY ACT TO THE MONTANA ALFALFA SEED COMMITTEE; AMENDING SECTIONS 17-7-502 AND 80-11-310, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; *80-11-310;* 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 2. Section 80-11-310, MCA, is amended to read:

"**80-11-310. Deposit and disbursement of funds — records — investment.** (1) As soon as possible after receipt, all money received by the department from the assessment levied under 80-11-307 and all other money received shall be deposited in the state special revenue fund.

(2) All money referred to in subsection (1) ~~of this section~~ *is statutorily appropriated, as provided in 17-7-502, to the committee and* may be used only for the payment of expenses incurred in carrying out the provisions of this part. The committee may be assessed costs by the department for the services it provides upon request or pursuant to 2-15-121; however, the costs charged must have a substantial relationship to the cost of services supplied.

(3) Money received under this section, 80-11-312, and 80-11-313 not immediately required for the purposes of this part must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2.

(4) Money received under this section, 80-11-312, and 80-11-313 is appropriated to the committee for the purposes of this part."

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 576

[HB 901]

AN ACT TO GENERALLY REVISE THE MONTANA CAPITAL COMPANY ACT; TRANSFERRING ADMINISTRATION OF THE ACT TO THE DEPARTMENT OF COMMERCE; EXPANDING THE DEFINITION OF QUALIFIED INVESTMENT; LIMITING TAX CREDITS UNDER THE ACT; PROVIDING THAT INVESTORS ARE SUBJECT TO A PENALTY, UNDER CERTAIN CONDITIONS, FOR FAILURE TO MAKE QUALIFIED INVESTMENTS; PROVIDING FOR A LIMITATION ON INVESTMENTS TO PROMOTE DILIGENCE IN INVESTMENT DECISIONS; PROVIDING THE DEPARTMENT WITH PROPOSED INVESTMENT INFORMATION; PROVIDING FOR DECERTIFICATION FOR NONCOMPLIANCE; PROVIDING FOR DECERTIFICATION UPON MEETING AN INVESTMENT SCHEDULE, HAVING 70 PERCENT OF THE INVESTMENT IN A QUALIFIED INVESTMENT, AND HAVING BEEN A QUALIFIED MONTANA CAPITAL COMPANY FOR AT LEAST 5 YEARS FROM THE DATE OF QUALIFICATION; PROVIDING THE DEPARTMENT OF COMMERCE WITH THE AUTHORITY TO CHARGE FEES FOR ADMINISTRATION OF THE ACT; AMENDING SECTIONS 90-8-104, 90-8-105, 90-8-201, 90-8-202, 90-8-203, 90-8-301, 90-8-303, 90-8-311, 90-8-312, 90-8-313, AND 90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-8-104, MCA, is amended to read:

"**90-8-104. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

~~(1) "Board" means the board of investments provided for in 2-15-1808.~~

~~(2)~~*(1)* "Capital base" means equity capital raised by a certified Montana capital company for which tax credits were claimed under this chapter.

~~(3)~~*(2)* "Certified Montana capital company" means:

(a) a development credit corporation created pursuant to Title 32, chapter 4; or

(b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the ~~board~~ *department.*

(3) "Department" means the department of commerce.

(4) "Montana business" means a business which is located or principally based within Montana.

(5) "Qualified investment" means *an investment that does not violate any of the provisions of this chapter, does not displace other sources of equity or debt financing that are available to the project unless the department determines that the investment furthers the purposes of this chapter, and is*:

(a) a debt or equity financing of a Montana business that meets both of the following criteria:

(i) the business is engaged in one or more of the following activities:

(A) manufacturing;

(B) agricultural, fishery, or forestry production and processing;

(C) mineral production and processing, except for conventional oil and gas exploration;

(D) recognized nonfossil forms of energy generation as defined in 15-32-102;

(E) transportation;

(F) research and development of products or processes associated with any of the activities enumerated in (A) through (E) above;

(G) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts;

(H) any activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services outside Montana; and

(I) tourism; and

(ii) the business is a small business as defined in rules adopted by the ~~board~~ *department*; ~~or~~

(b) a debt or equity financing of a business outside Montana if such investment is likely to produce a qualified investment in Montana, as long as such investment does not exceed 25% of the capital base of the capital company*; or*

(c) a debt or equity financing of an acquisition of a non-Montana business that will be relocated in Montana.

(6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202."

Section 2. Section 90-8-105, MCA, is amended to read:

"**90-8-105. Rulemaking.** The ~~board~~ *department* may adopt rules to implement the provisions of this chapter."

Section 3. Section 90-8-201, MCA, is amended to read:

"**90-8-201. Certification of Montana capital companies.** (1) From time to time the ~~board~~ *department* shall certify Montana capital companies. A company seeking to be certified as a Montana capital company must make written application to the ~~board~~ *department* on forms provided by the ~~board~~ *department*. The application must contain the information required by 90-8-204 and such other information as the ~~board~~ *department* requires. The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in 90-8-202.

(2) The application must show that the applicant's purpose is to increase the general economic welfare of the state of Montana by:

(a) making investment capital available to businesses in Montana; and

(b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there is a substantial likelihood that such investment will produce a qualified investment in Montana.

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration 503 corporations, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company."

Section 4. Section 90-8-202, MCA, is amended to read:

"**90-8-202. Designation of qualified Montana capital companies — tax credit.** (1) The ~~board~~ *department* shall designate as qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of $200,000. A certified company seeking designation as a qualified Montana capital company must make written application to the ~~board~~ *department* on forms provided by the ~~board~~ *department*. The application must contain the information required by 90-8-204 and such other information as the ~~board~~ *department* requires.

(2) (a) The total amount of tax credits authorized for a single qualified company may not exceed $1,500,000. In the event the capitalization of the company is later increased, the company may apply for authorization of additional tax credits within the foregoing limitation.

(b) The total credits authorized for all companies may not exceed a total of $1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed $1 million plus any portion of the $1 million available for authorization before June 30, 1985, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1987, and June 30, 1989, may not exceed $3 million plus any portion of the credits available for authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1989, and June 30, 1991, may not exceed $3 million plus any portion of the credits available for authorization before June 30, 1989, that is allocated to qualified companies.

(3) The credits shall be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the ~~board~~ *department*, and the ~~board~~ *department* shall certify to each such company its appropriate allocation.

(4) Investors in a qualified Montana capital company are entitled to the tax credits provided for in subsection (5). Funds invested in a certified company prior to designation as a qualified Montana capital company may, at the discretion of the investor, be placed in an escrow account in a Montana financial institution pending designation of the company as a qualified Montana capital company.

(5) Subject to the provisions of subsections (2) and (8), an individual, small business corporation, partnership, trust, decedent's estate, or corporate taxpayer that makes a capital investment in a qualified Montana capital company is entitled to a tax credit equal to 50% of the investment, up to a maximum credit *for investments in all qualified Montana capital companies* of $150,000 per taxpayer. The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30, 31, or 35. The credit for investments by a small business corporation electing

to be taxed under 15-31-202 or a partnership may be claimed by the small business corporation shareholders or the partners.

(6) The tax credit allowed under subsection (5) is to be credited against the taxpayer's income tax liability or coal severance tax liability for the taxable year in which the investment in a qualified Montana capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in the following manner:

(a) If the sum of the amount of credit for the current taxable year plus the amount of credit, if any, carried forward from a previous taxable year exceeds the taxpayer's tax liability for the current taxable year, the excess must be carried back as a credit to the 3 preceding taxable years and, if the full credit remains unused, carried forward as a credit to the 15 succeeding taxable years.

(b) The amount of unused credit must be used to offset the entire tax liability of each of the 18 taxable years, beginning with the earliest and commencing to the next succeeding year until the credit is exhausted.

(7) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 4 years of July 1, 1987.

(8) An individual, small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (5) may not obtain credits in excess of the $150,000 limit contained in subsection (5) by making investments as more than one entity. A partner or shareholder in a small business corporation may not obtain more than $150,000 in credits as an individual and as the partnership or small business corporation. A corporate taxpayer that obtains the maximum $150,000 credit may not obtain additional credits through investments by wholly owned subsidiaries or affiliates."

Section 5. Section 90-8-203, MCA, is amended to read:

"**90-8-203. No recapture — unqualified investments —** ***penalty.*** *(1)* If the amount invested by a taxpayer in a qualified Montana capital company is not used by the company for qualified investments as provided in 90-8-301, the taxpayer is not subject to a recapture provision for any tax credit claimed by him but the company is subject to the penalty provided for in 90-8-301(3).

(2) If a capital company does not invest its capital base in accordance with 90-8-301 and has paid or otherwise distributed funds to an investor or subsequent holder of the investment, the department of revenue may recover from the person receiving the distributed funds a penalty in an amount not to exceed the lesser of:

(a) the amount of the tax credit received by the original investor; or

(b) the amount of funds paid or otherwise distributed to the investor or the subsequent holder of the investment. Dividends or distributions made in accordance with applicable law may not be included in the amount specified in this subsection (b) unless the capital company has not invested its capital base in accordance with 90-8-301."

Section 6. Section 90-8-301, MCA, is amended to read:

"**90-8-301. Qualified investments — penalty — extension permissible.** (1) A qualified Montana capital company receiving investments for which a taxpayer has applied and received a tax credit must use its capital base to make qualified investments according to the following schedule:

(a) at least 30% of its capital base raised through investments for which tax credits were taken within 3 years of the date on which the certified company was designated as a qualified capital company by the ~~board~~ *department* and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 30% of its capital base raised through investments for which tax credits were taken within 3 years of the date on which the ~~board~~ *department* approves the amended application;

(b) at least 50% of its capital base raised through investments for which tax credits were taken within 4 years of the date on which the certified company was designated as a qualified capital company by the ~~board~~ *department* and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 50% of its capital base raised through investments for which tax credits were taken within 4 years of the date on which the ~~board~~ *department* approves the amended application; and

(c) at least 70% of its capital base raised through investments for which tax credits were taken within 5 years of the date on which the certified company was designated as a qualified capital company by the ~~board~~ *department* and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 70% of its capital base raised through investments for which tax credits were taken within 5 years of the date on which the ~~board~~ *department* approves the amended application.

(2) Following each annual examination, the ~~commissioner of financial institutions~~ *department* shall notify the department of revenue of any companies that are not in compliance with this section.

(3) A qualified Montana capital company that fails to make qualified investments pursuant to subsection (1) shall pay to the department of revenue a penalty equal to all of the tax credits allowed to the ~~taxpayers~~ *investors* investing in that company during that time period, with interest at 1% a month from the date the tax credits were certified as allocated to

the qualified Montana capital company. The department of revenue may abate the penalty if the capital company establishes reasonable cause for the failure to make qualified investments pursuant to subsection (1) and if the failure was not due to neglect on the part of the company.

(4) The department of revenue may grant an extension of time in which to make qualified investments pursuant to subsection (1) upon application by a capital company showing reasonable cause for an extension.

(5) The department of revenue shall deposit any amount received under this subsection to the credit of the state general fund.

(6) A capital company may invest tax credit funds in an existing profitable business only if a substantial portion of the investment is to be used for expansion of the business. The department may limit the amount of the investment to be counted toward the investment percentage criteria set forth in this section to the amount to be used for the expansion of the business."

Section 7. Section 90-8-303, MCA, is amended to read:

"**90-8-303. Conflict of interest.** (1) ~~(a) The members of the board, the commissioner of financial institutions, or a bank examiner may not have a monetary interest in or be a borrower from any Montana capital company, either directly or indirectly.~~

~~(b) These restrictions do not prohibit the board, acting as a whole, from purchasing debentures issued by a Montana capital company.~~ *A capital company may not invest in any business venture in which the combined ownership of the business venture for all investors in the capital company exceeds 49% at the time of the investment decision.*

(2) A member of the investment committee of a Montana capital company who has an interest in a venture that comes before the committee for a vote shall disclose such interest and abstain from voting on investment in the venture."

Section 8. Section 90-8-311, MCA, is amended to read:

"**90-8-311. Legislative review and oversight.** The ~~board~~ *department* shall report on an annual basis to the revenue oversight committee of the legislature concerning Montana capital companies."

Section 9. Section 90-8-312, MCA, is amended to read:

"**90-8-312. Investment reporting and recordkeeping.** (1) Each qualified Montana capital company shall report to the ~~board~~ *department* on a quarterly basis:

(a) the name of each investor in the qualified Montana capital company who has applied for a tax credit;

(b) the amount of each investor's investment; ~~and~~

(c) the amount of the tax credit allowed to the investor and the date on which the investment was made*; and*

(d) any other information determined by the department.

(2) The ~~board~~ *department* shall provide the information contained in subsection (1) to the department of revenue on a quarterly basis.

(3) The ~~board~~ *department* shall provide each investor in a qualified Montana capital company with a certificate authorizing the tax credit, and the certificate shall be submitted with each tax return requesting a credit under 90-8-202.

(4) Each qualified Montana capital company shall report to the ~~board~~ *department* on a quarterly basis all qualified investments that the company has made. The ~~board~~ *department* shall share the information with the department of revenue, in order that the provisions of 90-8-301 may be complied with.

(5) Each qualified Montana capital company shall report to the department all proposed investments to be made from its capital base. The capital company may not make the proposed investment unless the department determines, within 10 days of submission of a report satisfactory to the department, that the proposed investment is qualified under this chapter."

Section 10. Section 90-8-313, MCA, is amended to read:

"**90-8-313. Examination.** (1) At least once a year ~~the bank examiners of~~ the department ~~of commerce~~ shall examine the books and affairs of each Montana capital company. The examination must address the methods of operation and conduct of the business of the Montana capital company to determine if the company is abiding by the purposes of this chapter and that the funds received by the company have been invested within the time limits required for a qualified Montana capital company in 90-8-301.

(2) The department ~~of commerce~~ may examine under oath any of the officers, directors, agents, employees, or investors of a Montana capital company regarding the affairs and business of the company. The department ~~of commerce~~ may issue subpoenas and administer oaths. Refusal to obey such a subpoena may at once be reported to the district court of the district in which the company is located, and the court shall enforce obedience to the subpoena in the manner provided by law.

(3) The cost of the annual review must be paid by each Montana capital company in accordance with reasonable fees assessed by the department."

Section 11. Section 90-8-321, MCA, is amended to read:

"**90-8-321. Decertification.** (1) If the examination conducted pursuant to 90-8-313 discloses that a Montana capital company is not in compliance with the provisions of this chapter, the department ~~of commerce~~ may exercise any of the powers with regard to banks granted in Title 32, chapter 1, part 5, and may seize the assets of the company and liquidate it. In the event of liquidation of the assets, any penalty imposed pursuant to 90-8-301 shall be included in the claims to be paid.

(2) If in the discretion of the department ~~of commerce~~ the action allowed under subsection (1) is not required to protect the company's investors, the department may place the company on notice that it will lose its certification as a Montana capital company within a specified period of time if the company does not come into compliance with the provisions of this chapter. The department shall automatically decertify a Montana capital company that is assessed a penalty under 90-8-301(3).

(3) As long as the department acts in good faith, the department and its employees and agents may not be held civilly or criminally liable or liable upon their official bonds for action taken under this section or for any failure to act under it.

(4) A Montana capital company may apply to the department for decertification.

(5) The department has the power to decertify any capital company not in compliance with this chapter.

(6) The department shall decertify a capital company once the capital company has met the investment schedule outlined in 90-8-301 and over 70% of the capital base of the capital company has been invested in qualified investments and after at least 5 years have elapsed since the date the capital company was qualified."

Section 12. **Fees.** The department may charge fees commensurate with costs for the administration of this chapter. Fees for the administration of this chapter must be assessed to each qualified Montana capital company in a ratio proportionate to the tax credits allocated to the capital company divided by the total tax credits allocated to all qualified Montana capital companies.

Section 13. **Coordination instruction.** If House Bill No. 863 is passed and approved and if it contains new language referring to the board, defined as the board of investments, then the code commissioner is instructed to substitute the term "department", defined as the department of commerce, for the term "board" in House Bill No. 863.

Section 14. **Codification instruction.** [Section 12] is intended to be codified as an integral part of Title 90, chapter 8, and the provisions of Title 90, chapter 8, apply to [section 12].

Section 15. **Effective date.** [This act] is effective on passage and approval.

Approved April 23, 1991.

CHAPTER NO. 577

[HB 906]

AN ACT INCREASING THE FEES PAID UNDER FIRE HAZARD REDUCTION AGREEMENTS AND MASTER FIRE HAZARD REDUCTION AGREEMENTS; ESTABLISHING A FORESTRY EXTENSION SERVICE SPECIAL REVENUE ACCOUNT FOR THE MONTANA UNIVERSITY SYSTEM; AMENDING SECTIONS 76-13-408 AND 76-13-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

The legislature has committed the state of Montana to a course of voluntary compliance with best management practices for forestry. The educational programs and expertise of the Montana state university forestry extension program are critical to the effectiveness and success of this approach. However, the forestry extension program requires the addition of a second extension forester to serve the needs of the state's commercial and 11,000 nonindustrial private forest landowners and to ensure protection of water quality and proper management of the state's forested lands.

The legislature believes that the extension service and the forest products industry should be equal partners in the continuation and the expansion of the forestry extension program. The forest products industry, as provided in 76-13-408 and 76-13-414, has committed $60,000 annually for the purpose of funding one additional extension forester position and one administrative position. This additional funding is intended to supplement the existing federal funding for extension forestry, and the legislature strongly urges the Montana state university extension program to match these commitments by earmarking $54,000 annually for the extension service's forestry and natural resources program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-408, MCA, is amended to read:

"**76-13-408. Fire hazard reduction agreement and bond.** (1) Before cutting any forest product, constructing or reconstructing any road in contemplation of cutting any forest product, or conducting timber stand improvement, such as but not limited to thinning, weeding, or pruning, upon private lands within the state, the person conducting the work shall provide for the reduction or management of the fire hazard to be created by entering into a fire hazard reduction agreement or a master fire hazard reduction agreement with the department, providing for the full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted by the board.

(2) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall post a bond to the state in a form and for an amount

as may be prescribed by the department, but the amount may not exceed $6 for each 1,000 board feet (log scale) or the equivalent if forest products other than logs are cut.

(3) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall pay 15 cents for each 1,000 board feet (log scale) or equivalent measure if forest products other than logs are cut. The assessment may not exceed $20,000 a year. The full amount of this money must be deposited in the forestry extension service account provided for in [section 3].

~~(3)~~*(4)* The agreement must provide that:

(a) all fire hazard reduction or management work comprising nonburning methods and preparations for burning must be completed within 18 months of commencement of cutting in the area covered by the agreement; and

(b) all burning work must be completed as specified in the agreement and in compliance with rules adopted by the board.

~~(4)~~*(5)* The bond must be released upon the issuance of the certificate of clearance."

Section 2. Section 76-13-414, MCA, is amended to read:

"**76-13-414. Fees.** (1) In addition to any bond, the department shall charge the contractor fees for administration, inspections, and enforcement work conducted in the exercise of its duties under this part. The fees must be deposited in the state special revenue fund to the credit of the department.

(2) (a) The fee for a fire hazard reduction agreement is $25 and must be collected by the department upon issuance of the agreement.

(b) In addition, a fee of 60 cents for each 1,000 board feet (log scale) must be charged or an equivalent fee must be charged if products other than logs are cut. This fee must be withheld by the purchaser as provided in 76-13-409(2), except that any fee money withheld for product volumes exceeding 500,000 board feet per agreement in a calendar year must be returned to the contractor by the department.

(3) *(a)* ~~Fees~~ *The fee* for master fire *hazard* reduction agreements must be equal to 100% of the department's actual costs incurred in the administration, inspection, and enforcement of each agreement, and the department shall bill the contractor annually to collect such fees.

(b) In addition, each contractor with a master fire hazard reduction agreement shall pay to the department 15 cents for each 1,000 board feet (log scale) or equivalent measure if forest products other than logs are cut. The assessment may not exceed $20,000 a year for each master fire hazard attachment. The full amount of this money must be deposited in the forestry extension service account provided for in [section 3].

(c) The fee required under subsection (3)(b) must be paid annually in conjunction with the fee paid under subsection (3)(a). The board may, in its discretion, conduct an audit to determine the volume of forest products harvested by a contractor. If the board conducts an audit, the contractor shall cooperate and make available to the board all requested records, inventories, and other information relevant to the audit."

Section 3. **Forestry extension service account — purpose — appropriation.** (1) There is a forestry extension service account in the current restricted fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue from the fire hazard reduction agreement provided for in 76-13-408(3);

(b) all revenue from the master fire hazard reduction agreement provided for in 76-13-414(3)(b); and

(c) money received by the department of state lands in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money in the account is available to the Montana university system by appropriation for the uses set forth in subsection (4). Any unencumbered and unexpended balance of this account remaining at the end of a fiscal year does not lapse but must be carried forward for the purposes of this section until expended or appropriated.

(4) Except as provided in subsection (5), money in the account may be used by the university system only to fund forestry services through the Montana cooperative extension service of Montana state university. The forestry services must be conducted at Montana state university, the university of Montana, and Flathead Valley community college.

(5) The use of money in this account by the Montana university system is contingent upon the university system funding the extension service's forestry and natural resources program at a biennial level of at least $108,000 from sources other than the account.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Section 5. **Applicability.** [This act] applies to forest products cut after June 30, 1991.

Approved April 23, 1991.

CHAPTER NO. 578

[HB 927]

AN ACT TO REVISE THE LAWS RELATING TO GENERAL RELIEF; TO REQUIRE A VOCATIONAL SPECIALIST TO CONDUCT A REASSESSMENT TO DETERMINE THE EMPLOYABILITY OF EACH APPLICANT FOR GENERAL RELIEF; AMENDING SECTION 53-3-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-3-109, MCA, is amended to read:

"**53-3-109. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Basic necessities" means food, shelter, utilities, and personal needs.

(2) "Children" means minor and adult children who reside in the same household with their parents. The term includes both adoptive and natural children.

(3) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(4) "Employable" means the condition of a person who is not unemployable, *as determined by a vocational specialist*. A person who is employable is transitionally needy and is not eligible for general relief for basic necessities except as provided in 53-3-215.

(5) "General relief" or "general relief assistance" means a program of public assistance for basic necessities and medical needs for those persons determined to be eligible for such assistance.

(6) "Household" means:

(a) a collective body of persons consisting of spouses or parents and their children who reside together in the same residence; or

(b) all other persons who by choice or necessity are mutually dependent upon each other for basic necessities and who reside in the same residence.

(7) "Income" means the value of all property of any nature, earned, unearned, or in-kind, including benefits, that is reasonably certain to be received or is actually received during the month by members of a household.

(8) "Lump-sum income" means a nonrecurring source of income received in a single payment by a household during any eligibility period, including but not limited to proceeds from a lawsuit, insurance settlement, inheritance, lump-sum retirement, veterans' or unemployment benefits;

benefits received under the federal Social Security Act; prizes; and tax refunds.

(9) "Presumptive income" means the amount of financial assistance that a person would have received under the aid to families with dependent children program, as provided for in Title 53, chapter 4, part 2, if the person had not been determined ineligible due to receipt of lump-sum income, overpayment, fraud, or failure or refusal to comply with requirements for continued participation in the program.

(10) "Resource" means all real and personal property retained after the calendar month of its receipt and which the household or a member of the household has a legal right to sell or liquidate.

(11) "Secure facility" means any facility in which a person may be lawfully held against his will by federal, state, or local authorities.

(12) "Serious barrier to employment" means a limitation in obtaining employment, *as determined by a vocational specialist,* that results from:

(a) a lack of work skills, experience, or training necessary to secure employment;

(b) the failure to attain a high school education or its equivalent; or

(c) illiteracy.

(13) "Serious medical condition" means a mental or physical condition, including pregnancy, that causes a serious health risk to a person and for which treatment is medically necessary. Diagnosis and determination of necessary treatment must be made by a licensed medical practitioner, and the department may confirm it through an expert medical review. Necessary treatment includes prenatal care and such other elective treatments as determined by department rule to be medically necessary.

(14) (a) "Unemployable" means the condition of a person who:

(i) is at least 55 years of age and has a limited ability to obtain or retain suitable employment because of advanced age, *as determined by a vocational specialist*;

(ii) has a serious physical, emotional, or mental handicap *that is medically certified and* that prevents him from being employed in any substantial, gainful employment, *as determined by a vocational specialist*; or

(iii) suffers from a permanent or temporary illness, injury, or incapacity *that is medically certified and* that prevents the person from working in any substantial, gainful employment, *as determined by a vocational specialist.*

(b) A person who is unemployable is chronically needy and must be provided general relief as provided in 53-3-215.

(15) "Vocational specialist" means an employment counselor or other experienced personnel who are qualified to evaluate a recipient's ability to work in substantial, gainful employment."

Section 2. **Employability determination — reassessment of additional eligibility.** During the final month of eligibility, a vocational specialist shall conduct a reassessment of each applicant for nonmedical general relief to determine whether the applicant should be reclassified as employable or unemployable or should remain classified as having serious barriers to employment and benefits extended according to 53-3-321(3). The reassessment must include an evaluation of the applicant's education, training, experience, and ability to work in substantial, gainful employment.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 53, chapter 3, part 3, and the provisions of Title 53, chapter 3, part 3, apply to [section 2].

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 579

[HB 930]

AN ACT INCORPORATING INTO MONTANA LAW THE FEDERAL PROVISIONS REGARDING PROTECTION AND ADVOCACY FOR THE MENTALLY ILL; OUTLINING THE GOALS AND AUTHORITY OF AN ELIGIBLE PROTECTION AND ADVOCACY SYSTEM FOR THE MENTALLY ILL IN MONTANA; AND AMENDING SECTIONS 53-21-141, 53-21-142, 53-21-144, 53-21-146, 53-21-147, 53-21-162, 53-21-166, AND 53-21-181, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Protection and advocacy system — designation and authority.** (1) A protection and advocacy system for individuals with a significant mental illness or emotional impairment is designated by the governor and may be administered in the state under the provisions of 42 U.S.C. 10801 through 10851. An eligible mental health protection and advocacy system under the provisions of 42 U.S.C. 10801 through 10851 must have as its primary goals:

(a) the protection and advocacy of the rights of mentally ill individuals who are defined in 42 U.S.C. 10802 as individuals with a significant mental illness or emotional impairment; and

(b) the investigation of incidents of abuse and neglect, as defined in 42 U.S.C. 10802, of mentally ill individuals.

(2) Pursuant to 42 U.S.C. 10801 through 10802, the protection and advocacy system may:

(a) investigate incidents of abuse and neglect of mentally ill individuals;

(b) pursue administrative, legal, and other appropriate remedies to ensure the protection of mentally ill individuals who are residents of the state and are receiving care or treatment in the state;

(c) have access to all mentally ill individuals and all facilities, wards, and living quarters as necessary to fulfill the goals described in subsection (1); and

(d) pursuant to 42 U.S.C. 10801 through 10851 and Title 50, chapter 16, part 5, have access to records, including:

(i) reports prepared by the staff of a mental health care and treatment facility;

(ii) reports prepared by an agency investigating reports of abuse, neglect, and injury occurring at a facility and that describe the incidents and the steps taken to investigate the reports; and

(iii) discharge planning records.

(3) All information obtained under this section must be kept confidential pursuant to 42 U.S.C. 10806.

(4) The protection and advocacy system described in this section is independent of any public or private agency that provides treatment or services to the mentally ill.

Section 2. Section 53-21-141, MCA, is amended to read:

"**53-21-141. Civil and legal rights of person committed.** (1) Unless specifically stated in an order by the court, a person involuntarily committed to a facility for a period of evaluation or treatment does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part except insofar as it may be necessary to detain the person for treatment, evaluation, or care. All communication between an alleged mentally ill person and a professional person is privileged under normal privileged communication rules unless it is clearly explained to the person in advance that the purpose of an interview is for evaluation and not treatment.

(2) Whenever a person is committed to a mental health facility for a period of 3 months or longer, the court ordering the commitment may make an order stating specifically any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the involuntary commitment if not sooner terminated by the court. A conservatorship or guardianship extend-

ing beyond the period of involuntary commitment may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally. *In the case of a person admitted to a program or facility for the purpose of receiving mental health services, an individual employed by or receiving remuneration from the program or facility may not act as the person's guardian or representative unless the program or facility can demonstrate that no other person is available or willing to act as the person's guardian or representative.*

(3) A person who has been committed to a mental health facility pursuant to this part is automatically restored upon the termination of the commitment to all of his civil and legal rights which may have been lost when he was committed. This subsection does not affect, however, a guardianship or conservatorship created independently of the commitment proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. A person who leaves a mental health facility following a period of evaluation and treatment shall be given a written statement setting forth the substance of this subsection.

(4) A person committed to a mental health facility prior to July 1, 1975, enjoys all the rights and privileges of a person committed after that date."

Section 3. Section 53-21-142, MCA, is amended to read:

"53-21-142. **Rights of persons admitted to facility.** Patients admitted to a mental health facility, whether voluntarily or involuntarily, shall have the following rights:

(1) Patients have a right to privacy and dignity.

(2) Patients have a right to the least restrictive conditions necessary to achieve the purposes of commitment. *Patients must be accorded the right to appropriate treatment and related services in a setting and under conditions that:*

(a) are the most supportive of the patient's personal liberty; and

(b) restrict the patient's liberty only to the extent necessary and consistent with the patient's treatment need, applicable requirements of law, and judicial orders.

(3) Patients shall have the same rights to visitation and reasonable access to ~~private~~ telephone communications, *including the right to converse with others privately,* ~~as patients at any public hospitals~~ except to the extent that the professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued. Patients shall have an unrestricted right to visitation with attorneys, with spiritual counselors, and with private physicians and other professional persons.

(4) Patients shall have an unrestricted right to send sealed mail. Patients shall have an unrestricted right to receive sealed mail from their

attorneys, private physicians and other professional persons, the mental disabilities board of visitors, courts, and government officials. Patients shall have a right to receive sealed mail from others except to the extent that a professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions on receipt of sealed mail. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued.

(5) Patients have an unrestricted right to have access to letter-writing materials, including postage, and have a right to have staff members of the facility assist persons who are unable to write, prepare, and mail correspondence.

(6) Patients have a right to wear their own clothes and to keep and use their own personal possessions, including toilet articles, except insofar as such clothes or personal possessions may be determined by a professional person in charge of the patient's treatment plan to be dangerous or otherwise inappropriate to the treatment regimen. The facility has an obligation to supply an adequate allowance of clothing to any patients who do not have suitable clothing of their own. Patients shall have the opportunity to select from various types of neat, clean, and seasonable clothing. Such clothing shall be considered the patient's throughout his stay at the facility. The facility shall make provision for the laundering of patient clothing.

(7) Patients have the right to keep and be allowed to spend a reasonable sum of their own money.

(8) Patients have the right to religious worship. Provisions for such worship shall be made available to all patients on a nondiscriminatory basis. No individual shall be required to engage in any religious activities.

(9) Patients have a right to regular physical exercise several times a week. Moreover, it shall be the duty of the facility to provide facilities and equipment for such exercise. Patients have a right to be outdoors at regular and frequent intervals in the absence of contrary medical considerations.

(10) Patients have the right to be provided, with adequate supervision, suitable opportunities for interaction with members of the opposite sex except to the extent that a professional person in charge of the patient's treatment plan writes an order stating that such interaction is inappropriate to the treatment regimen.

(11) Patients have a right to receive prompt and adequate medical treatment for any physical ailments. In providing medical care, the mental health facility shall take advantage of whatever community-based facilities are appropriate and available and shall coordinate the patient's treatment for mental illness with his medical treatment.

(12) Patients have a right to a diet that will provide at a minimum the recommended daily dietary allowances as developed by the national academy of sciences. Provisions shall be made for special therapeutic diets and for substitutes at the request of the patient or the friend of respondent in

accordance with the religious requirements of any patient's faith. Denial of a nutritionally adequate diet shall not be used as punishment.

(13) Patients have a right to a humane psychological and physical environment within the mental health facilities. These facilities shall be designed to afford patients with comfort and safety, promote dignity, and ensure privacy. The facilities shall be designed to make a positive contribution to the efficient attainment of the treatment goals set for the patient. In order to assure the accomplishment of this goal:

(a) regular housekeeping and maintenance procedures which will ensure that the facility is maintained in a safe, clean, and attractive condition shall be developed and implemented;

(b) there must be special provision made for geriatric and other nonambulatory patients to assure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision shall be made to permit nonambulatory patients to communicate their needs to the facility staff.

(c) pursuant to an established routine maintenance and repair program, the physical plant of every facility shall be kept in a continuous state of good repair and operation in accordance with the needs of the health, comfort, safety, and well-being of the patients;

(d) every facility must meet all fire and safety standards established by the state and locality. In addition, any hospital shall meet such provisions of the life safety code of the national fire protection association as are applicable to hospitals. Any hospital shall meet all standards established by the state for general hospitals insofar as they are relevant to psychiatric facilities.

(14) A patient at a facility has the right:

(a) to be informed of the rights described in this section at the time of his admission and periodically thereafter, in language and terms appropriate to the patient's condition and ability to understand;

(b) to assert grievances with respect to infringement of the rights described in this section, including the right to have a grievance considered in a fair and timely manner according to an impartial grievance procedure that must be provided for by the facility; and

(c) to exercise the rights described in this section without reprisal and may not be denied admission to the facility as reprisal for the exercise of the rights described in this section.

(15) In order to assist a person admitted to a program or facility in the exercise or protection of the patient's rights, the patient's attorney, advocate, or legal representatives shall have reasonable access to:

(a) the patient;

(b) the program or facility areas where the patient has received treatment or has resided or the areas to which he has had access; and

(c) pursuant to the written authorization of the patient, records and information pertaining to the patient's diagnosis, treatment, and related services.

(16) A person admitted to a facility shall have access to any available individual or service that provides advocacy for the protection of the person's rights and that assist the person in understanding, exercising, and protecting his rights as described in this section.

(17) This section may not:

(a) obligate a professional person to administer treatment contrary to the professional's clinical judgment;

(b) prevent a facility from discharging a patient for whom appropriate treatment, consistent with the clinical judgment of a professional person responsible for the patient's treatment, is or has become impossible to administer because of the patient's refusal to consent to the treatment;

(c) require a facility to admit a person who has, on prior occasions, repeatedly withheld consent to appropriate treatment; or

(d) obligate a facility to treat a person admitted to the facility solely for diagnostic evaluation."

Section 4. Section 53-21-144, MCA, is amended to read:

"**53-21-144. Rights concerning photographs.** (1) A person admitted to a mental health facility may be photographed upon admission for identification and the administrative purposes of the facility. Such photographs shall be confidential and shall not be released by the facility except pursuant to court order.

(2) No other nonmedical photographs shall be taken or used without consent of *the patient or, if applicable,* the patient's legal guardian ~~or the friend of respondent appointed by the court~~."

Section 5. Section 53-21-146, MCA, is amended to read:

"**53-21-146. Right to be free from physical restraint and isolation.** Patients have a right to be free from physical restraint and isolation. Except for emergency situations in which it is likely that patients could harm themselves or others and in which less restrictive means of restraint are not feasible, patients may be physically restrained or placed in isolation only on a professional person's written order which explains the rationale for such action. The written order may be entered only after the professional person has personally seen the patient concerned and evaluated whatever episode or situation is said to call for restraint or isolation. Emergency use of restraints or isolation shall be for no more than 1 hour, by which time a professional person shall have been consulted and shall have entered an appropriate order in writing. Such written order shall be effective for no more than 24 hours and must be renewed if restraint and isolation are to be continued. Whenever a patient is subject to restraint or isolation, adequate care shall be taken to monitor his physical and psychiatric condition and to provide for his physical needs and comfort. *Physical restraint may not be used as punishment, for the convenience of the staff, or as a substitute for a treatment program.*"

Section 6. Section 53-21-147, MCA, is amended to read:

"**53-21-147. Right not to be subjected to experimental research.** (1) Patients shall have a right not to be subjected to experimental research without the express and informed consent of the patient, if the patient is able to give such consent, and of his guardian, if any, and the friend of respondent appointed by the court after opportunities for consultation with independent specialists and with legal counsel. If there is no friend of respondent or if the friend of respondent appointed by the court is no longer available, then a friend of respondent who is in no way connected with the facility, the department, or the research project shall be appointed prior to the involvement of the patient in any experimental research. At least 10 days prior to the commencement of such experimental research, the facility shall send notice of intent to involve the patient in experimental research to the patient, his next of kin, if known, his legal guardian, if any, the attorney who most recently represented him, and the friend of respondent appointed by the court.

(2) Such proposed research shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought. Prior to such approval, the board shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare for projects supported by that agency.

(3) A patient has the right to appropriate protection before participating in an experimental treatment, including the right to a reasonable explanation of the procedure to be followed, expected benefits, relative advantages, and the potential risks and discomforts of any experimental treatment. A patient has the right to revoke at any time consent to an experimental treatment."

Section 7. Section 53-21-162, MCA, is amended to read:

"**53-21-162. Establishment of patient treatment plan** — ***patient's rights.*** (1) Each patient admitted as an inpatient to a mental health facility shall have a comprehensive physical and mental examination and review of behavioral status within 48 hours after admission to the mental health facility.

(2) Each patient shall have an individualized treatment plan. This plan shall be developed by appropriate professional persons, including a psychiatrist, and shall be implemented no later than 10 days after the patient's admission. Each individualized treatment plan shall contain:

(a) a statement of the nature of the specific problems and specific needs of the patient;

(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of commitment;

(c) a description of intermediate and long-range treatment goals, with a projected timetable for their attainment;

(d) a statement and rationale for the plan of treatment for achieving these intermediate and long-range goals;

(e) a specification of staff responsibility and a description of proposed staff involvement with the patient in order to attain these treatment goals;

(f) criteria for release to less restrictive treatment conditions and criteria for discharge; and

(g) a notation of any therapeutic tasks and labor to be performed by the patient.

(3) As part of his treatment plan, each patient shall have an individualized after-care plan. This plan shall be developed by a professional person as soon as practicable after the patient's admission to the facility.

(4) In the interests of continuity of care, whenever possible one professional person (who need not have been involved with the development of the treatment plan) shall be responsible for supervising the implementation of the treatment plan, integrating the various aspects of the treatment program, and recording the patient's progress. This professional person shall also be responsible for ensuring that the patient is released, where appropriate, into a less restrictive form of treatment.

(5) The treatment plan shall be continuously reviewed by the professional person responsible for supervising the implementation of the plan and shall be modified if necessary. Moreover, at least every 90 days each patient shall receive a mental examination from and his treatment plan shall be reviewed by a professional person other than the professional person responsible for supervising the implementation of the plan.

(6) A patient has the right:

(a) to ongoing participation, in a manner appropriate to the patient's capabilities, in the planning of mental health services to be provided and in the revision of the plan;

(b) to a reasonable explanation of the following, in terms and language appropriate to the patient's condition and ability to understand:

(i) the patient's general mental condition and, if given a physical examination, the patient's physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, or providers of mental health services; and

(c) not to receive treatment established pursuant to the treatment plan in the absence of the patient's informed, voluntary, and written consent to the treatment, except treatment:

(i) during an emergency situation if the treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) permitted under the applicable law in the case of a person committed to a facility by a court.

(7) In the case of a patient who lacks the capacity to exercise the right to consent to treatment described in subsection (6)(c), the right must be exercised on behalf of the patient by a guardian appointed pursuant to the provisions of Title 72, chapter 5.

(8) The department shall develop procedures for initiating limited guardianship proceedings in the case of a patient who appears to lack the capacity to exercise the right to consent described in subsection (6)(c)."

Section 8. Section 53-21-166, MCA, is amended to read:

"**53-21-166. Records to be confidential — exceptions.** All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part shall be confidential and privileged matter *and shall remain confidential and privileged after the individual is discharged from the facility.* Except as provided in Title 50, chapter 16, part 5, information and records may be disclosed only:

(1) in communications between qualified professionals in the provision of services or appropriate referrals;

(2) when the recipient of services designates persons to whom information or records may be released, provided that if a recipient of services is a ward and his guardian or conservator designates in writing persons to whom records or information may be disclosed, such designation shall be valid in lieu of the designation by the recipient; except that nothing in this section shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of a patient's family;

(3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he may be entitled;

(4) for research if the department has promulgated rules for the conduct of research; such rules shall include but not be limited to the requirement that all researchers must sign an oath of confidentiality;

(5) to the courts as necessary to the administration of justice;

(6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the rules of civil procedure;

(7) to members of the mental disabilities board of visitors or their agents when necessary to perform their functions as set out in 53-21-104."

Section 9. Section 53-21-181, MCA, is amended to read:

"**53-21-181. Discharge during or at end of initial commitment period — *patient's right to referral.*** *(1)* At any time within the 3-month period provided for in 53-21-127(2), the patient may be discharged on the written order of the professional person in charge of him. In the event the patient is not discharged within the 3-month period and if the term is not extended as provided for in 53-21-128, he shall be discharged by the facility at the end of 3 months without further order of the court. Notice of the discharge shall be filed with the court and the county attorney at least 5 days prior to the discharge.

(2) Upon being discharged, each patient has a right to be referred, as appropriate, to other providers of mental health services."

Section 10. **Report to legislature.** The department of institutions shall submit a report to the 53rd legislature concerning implementation of [section 7(6)(c) through (8)].

Section 11. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [section 1].

Approved April 23, 1991.

CHAPTER NO. 580

[HB 942]

AN ACT CREATING A STATUTORY SHORT FORM POWER OF ATTORNEY; PROVIDING FOR THE FORM, CONSTRUCTION, AND MODIFICATION OF THE POWER OF ATTORNEY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Statutory short form of general power of attorney — formal requirements — joint agents.** (1) The use of the following form, or a form substantially similar to the following form, in the creation of a power of attorney is lawful, and when used, the form must be construed in accordance with the provisions of [sections 1 through 16]:

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN [SECTIONS 2 THROUGH 16]. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT ADVICE. THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES IS ALSO PERMITTED. THIS POWER OF ATTORNEY MAY BE REVOKED BY YOU IF YOU LATER WISH TO DO SO. THIS POWER OF ATTORNEY AUTHORIZES BUT DOES NOT REQUIRE THE ATTORNEY-IN-FACT TO ACT FOR YOU.

Know all by these presents, which are intended to constitute a STATUTORY SHORT FORM POWER OF ATTORNEY pursuant to this section:

That I .... (insert name and address of the principal) do hereby appoint .... (insert name and address of the attorney-in-fact or each attorney-in-fact if more than one is designated) my attorney(s)-in-fact to act (jointly):

(NOTE: If more than one attorney-in-fact is designated and the principal wishes each attorney-in-fact alone to be able to exercise the power conferred, delete the word "jointly". Failure to delete the word "jointly" will require the attorneys-in-fact to act unanimously.)

First: in my name, place, and stead in any way that I myself could do, if I were personally present, with respect to the following matters as each of them is defined in [sections 2 through 16]:

(To grant to the attorney-in-fact any of the following powers, make a check or "X" in the line in front of each power being granted. To delete any of the following powers, do not make a check or "X" in the line in front of the power. You may, but need not, cross out each power being deleted with a line drawn through it (or in similar fashion). Failure to make a check or "X" in the line in front of the power will have the effect of deleting the power unless the line in front of the power of (O) is checked or X-ed.)

Check or "X"

.... (A) real property transactions;

.... (B) tangible personal property transactions;

.... (C) bond, share, and commodity transactions;

.... (D) banking transactions;

.... (E) business operating transactions;

...... (F) insurance transactions;

...... (G) beneficiary transactions;

...... (H) gift transactions;

...... (I) fiduciary transactions;

...... (J) claims and litigation;

...... (K) family maintenance;

...... (L) benefits from military service;

...... (M) records, reports, and statements;

...... (N) all other matters;

...... (O) all of the powers listed in (A) through (N).

Second: (You must indicate below whether or not this power of attorney will be effective if you become incompetent. Make a check or "X" in the line in front of the statement that expresses your intent.)

..... This power of attorney shall continue to be effective if I become incompetent. It shall not be affected by my later disability or incompetency.

..... This power of attorney shall not be effective if I become incompetent.

Third: (You must indicate below whether or not this power of attorney authorizes the attorney-in-fact to transfer your property directly to the attorney-in-fact. Make a check or "X" in the line in front of the statement that expresses your intent.)

..... This power of attorney authorizes the attorney-in-fact to receive the transfer directly.

..... This power of attorney does not authorize the attorney-in-fact to receive the transfer directly.

In witness whereof I have hereunto signed my name this .... day of ...., 19...

....
(Signature of Principal)

(Acknowledgment)

Specimen Signature of Attorney(s)-in-Fact
....
....

(2) Any of the powers of the form in subsection (1) that are not checked or X-ed are withheld by the principal from the attorney-in-fact unless the power of (O) on the form in subsection (1) is checked or X-ed. The withholding by the principal from the attorney-in-fact of any of the powers of (A)

through (M), in addition to the withholding of the power of (O), on the form in subsection (1) automatically constitutes withholding of the powers of (N).

(3) To constitute a "statutory short form power of attorney", as this phrase is used in [sections 1 through 16], the wording and content of the form in subsection (1) must be duplicated on a form substantially similar to the form provided in subsection (1), the notices must appear in a conspicuous place and manner, the second and third parts must be properly completed, and the signature of the principal must be acknowledged.

(4) All powers enumerated in [sections 2 through 16] may be legally performed by an attorney-in-fact acting on behalf of a principal.

Section 2. **Real property transactions.** (1) In a statutory short form power of attorney, the language conferring general authority with respect to real property transactions means that the principal authorizes the attorney-in-fact:

(a) to accept as a gift or as security for a loan or to reject, demand, buy, lease, receive, or otherwise acquire either ownership or possession of any estate or interest in real property;

(b) to sell, exchange, convey either with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition or consent to the partitioning, plat or consent to platting, grant options concerning, lease or sublet, or otherwise dispose of any estate or interest in real property;

(c) to release in whole or in part, assign the whole or a part of, satisfy in whole or in part, and enforce by action, proceeding, or otherwise any mortgage, encumbrance, lien, or other claim to real property that exists or is claimed to exist in favor of the principal;

(d) to do any act of management or of conservation with respect to any estate or interest in real property owned or claimed to be owned by the principal, including, by way of illustration but not of restriction, power to insure against any casualty, liability, or loss; to obtain or regain possession or protect the estate or interest by action, proceeding, or otherwise; to pay, compromise, or contest taxes or assessments; to apply for and receive refunds in connection with taxes or assessments; and to purchase supplies, hire assistance or labor, and make repairs or alterations in the structures or lands;

(e) to use in any way, develop, modify, alter, replace, remove, erect, or install structures or other improvements upon any real property in which the principal has or claims to have any estate or interest;

(f) to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of an interest in real property or of one or more of the transactions enumerated in this section; to conserve, invest, disburse, or utilize anything received for purposes enumerated in this section; and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney;

(g) to participate in any reorganization with respect to real property and receive and hold any shares of stock or instrument of similar character received in accordance with a plan of reorganization and to act with respect to the shares, including, by way of illustration but not of restriction, power to sell or to otherwise dispose of the shares; to exercise or sell any option, conversion, or similar right with respect to the shares, and to vote on the shares in person or by the granting of a proxy;

(h) to agree and contract, in any manner, with any person, and on any terms that the attorney-in-fact may select, for the accomplishment of any of the purposes enumerated in this section and to perform, rescind, reform, release, or modify an agreement, contract, or any other similar agreement or contract made by or on behalf of the principal;

(i) to execute, acknowledge, seal, and deliver any deed, revocation, mortgage, lease, notice, check, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(j) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any real estate transaction or to intervene in any action or proceeding relating to the claim;

(k) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution of any of the powers described in this section and for the keeping of needed records; and

(l) in general and in addition to all the specific acts in this section, to do any other act with respect to any estate or interest in real property.

(2) All powers described in this section are exercisable equally with respect to any estate or interest in real property owned by the principal at the giving of the power of attorney or acquired after that time, whether located in Montana or elsewhere.

Section 3. **Tangible personal property transactions.** (1) In a statutory short form power of attorney, the language conferring general authority with respect to tangible personal property transactions means that the principal authorizes the attorney-in-fact:

(a) to accept as a gift or as security for a loan or to reject, demand, buy, receive, or otherwise acquire either ownership or possession of any tangible personal property or any interest in tangible personal property;

(b) to sell, exchange, convey either with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, pawn, grant options concerning, lease or sublet to others, or otherwise dispose of any tangible personal property or any interest in any tangible personal property;

(c) to release in whole or in part, assign the whole or a part of, satisfy in whole or in part, and enforce by action, proceeding, or otherwise any mortgage, encumbrance, lien, or other claim that exists or is claimed to exist in favor of the principal with respect to any tangible personal property or any interest in tangible personal property;

(d) to do any act of management or of conservation with respect to any tangible personal property or to any interest in any tangible personal property owned or claimed to be owned by the principal, including, by way of illustration but not of restriction, power to insure against any casualty, liability, or loss; to obtain or regain possession or protect the tangible personal property or interest in any tangible personal property by action, proceeding, or otherwise; to pay, compromise, or contest taxes or assessments; and to apply for and receive refunds in connection with taxes or assessments, move from place to place, store for hire or on a gratuitous bailment, use, alter, and make repairs or alterations of any tangible personal property or interest in any tangible personal property;

(e) to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any tangible personal property or of any interest in any tangible personal property or of one or more of the transactions enumerated in this section; to conserve, invest, disburse, or utilize anything received for purposes enumerated in this section; and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney;

(f) to agree and contract, in any manner, with any person, and on any terms that the attorney-in-fact may select, for the accomplishment of any of the purposes enumerated in this section and to perform, rescind, reform, release, or modify any agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

(g) to execute, acknowledge, seal, and deliver any conveyance, mortgage, lease, notice, check, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(h) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any tangible personal property transaction or to intervene in any action or proceeding relating to a claim;

(i) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section and for the keeping of needed records; and

(j) in general and in addition to all the specific acts listed in this section, to do any other acts with respect to any tangible personal property or interest in any tangible personal property.

(2) All powers described in this section are exercisable equally with respect to any tangible personal property or interest in any tangible personal property owned by the principal at the giving of the power of attorney or acquired after that time, whether located in Montana or elsewhere.

Section 4. **Bond, share, and commodity transactions.** (1) In a statutory short form power of attorney, the language conferring general authority with respect to bond, share, and commodity transactions means that the principal authorizes the attorney-in-fact:

(a) to accept as a gift or as security for a loan or to reject, demand, buy, receive, or otherwise acquire either ownership or possession of any bond, share, instrument of similar character, commodity interest, or any instrument with respect to the bond, share, or interest, together with the interest, dividends, proceeds, or other distributions connected with any of those instruments;

(b) to sell or sell short and to exchange, transfer either with or without a guaranty, release, surrender, hypothecate, pledge, grant options concerning, loan, trade in, or otherwise to dispose of any bond, share, instrument of similar character, commodity interest, or any instrument with respect to the bond, share, or interest;

(c) to release in whole or in part, assign the whole or a part of, satisfy in whole or in part, and enforce by action, proceeding, or otherwise any pledge, encumbrance, lien, or other claim as to any bond, share, instrument of similar character, commodity interest, or any interest with respect to the bond, share, or interest when the pledge, encumbrance, lien, or other claim is owned or claimed to be owned by the principal;

(d) to do any act of management or of conservation with respect to any bond, share, instrument of similar character, commodity interest, or any instrument with respect to the interest owned or claimed to be owned by the principal or in which the principal has or claims to have an interest, including, by way of illustration but not of restriction, power to insure against any casualty, liability, or loss; to obtain or regain possession or protect the principal's interest by action, proceeding, or otherwise; to pay, compromise, or contest taxes or assessments; to apply for and receive refunds in connection with taxes or assessments; to consent to and participate in any reorganization, recapitalization, liquidation, merger, consolidation, sale, lease, or other change in or revival of a corporation or other association, in the financial structure of any corporation or other association, or in the priorities, voting rights, or other special rights with respect to the corporation or association; to become a depositor with any protective, reorganization, or similar committee of the bond, share, other instrument of similar character, commodity interest, or any instrument with respect to the bond, share, or interest belonging to the principal; to make any payments reasonably incident to the foregoing; to exercise or sell any option, conversion, or similar right; to vote in person or by the granting of a proxy with or without the power of substitution, either discretionary, general, or otherwise, for the accomplishment of any of the purposes enumerated in this section;

(e) to carry in the name of a nominee selected by the attorney-in-fact any evidence of the ownership of any bond, share, other instrument of similar character, commodity interest, or instrument with respect to the bond, share, or interest, belonging to the principal;

(f) to employ, in any way believed to be desirable by the attorney-in-fact, any bond, share, other instrument of similar character, commodity interest, or any instrument with respect to the bond, share, or interest in which the principal has or claims to have any interest for the protection or continued operation of any speculative or margin transaction personally begun or personally guaranteed, in whole or in part, by the principal;

(g) to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any interest in a bond, share, other instrument of similar character, commodity interest, or any instrument with respect to the bond, share, interest, or of one or more of the transactions enumerated in this section; to conserve, invest, disburse, or utilize anything received for purposes enumerated in this section; and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney;

(h) to agree and contract, in any manner, with any broker or other person, and on any terms that the attorney-in-fact selects, for the accomplishment of any of the purposes enumerated in this section and to perform, rescind, reform, release, or modify the agreement or contract or any other similar agreement made by or on behalf of the principal;

(i) to execute, acknowledge, seal, and deliver any consent, agreement, authorization, assignment, revocation, notice, waiver of notice, check, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(j) to execute, acknowledge, and file any report or certificate required by law or governmental regulation;

(k) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any bond, share, or commodity transaction or to intervene in any related action or proceeding;

(l) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution of any of the powers described in this section and for the keeping of needed records; and

(m) in general and in addition to all the specific acts listed in this section, to do any other acts with respect to any interest in any bond, share, other instrument of similar character, commodity interest, or instrument with respect to a commodity.

(2) All powers described in this section are exercisable equally with respect to any interest in any bond, share, instrument of similar character, commodity interest, or instrument with respect to a commodity owned by the principal at the giving of the power of attorney or acquired after that time, whether located in Montana or elsewhere.

Section 5. **Banking transactions.** (1) In a statutory short form power of attorney, the language conferring general authority with respect to banking transactions means that the principal authorizes the attorney-in-fact:

(a) to continue, modify, and terminate any deposit account or other banking arrangement made by or on behalf of the principal prior to the execution of the power of attorney;

(b) to open in the name of the principal alone or in a way that clearly evidences the principal and attorney-in-fact relationship a deposit account of any type with any bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other institution that serves as a depository for funds selected by the attorney-in-fact; to hire safe deposit box or vault space; and to make other contracts for the procuring of other services made available by the banking institution as the attorney-in-fact considers desirable;

(c) to make, sign, and deliver checks or drafts for any purpose and to withdraw by check, order, or otherwise any funds or property of the principal deposited with or left in the custody of any banking institution, wherever located, either before or after the execution of the power of attorney;

(d) to prepare any necessary financial statements of the assets and liabilities or income and expenses of the principal for submission to any banking institution;

(e) to receive statements, vouchers, notices, or other documents from any banking institution and to act with respect to them;

(f) to enter at any time any safe deposit box or vault that the principal could enter if personally present;

(g) to borrow money at any interest rate the attorney-in-fact selects; to pledge as security any assets of the principal the attorney-in-fact considers desirable or necessary for borrowing; and to pay, renew, or extend the time of payment of any debt of the principal;

(h) to make, assign, draw, endorse, discount, guarantee, and negotiate all promissory notes, bills of exchange, checks, drafts, or other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order; to receive the cash or other proceeds of any of those transactions; and to accept any bill of exchange or draft drawn by any person upon the principal and pay it when due;

(i) to receive for the principal and to deal in and to deal with any sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument in which the principal has or claims to have an interest;

(j) to apply for and to receive letters of credit from any banking institution selected by the attorney-in-fact, giving indemnity or other agreement in connection with the letters of credit that the attorney-in-fact considers desirable or necessary;

(k) to consent to an extension in the time of payment with respect to any commercial paper or any banking transaction in which the principal has an interest or by which the principal is or might be affected in any way;

(l) to demand, receive, obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any banking transaction and to reimburse the attorney-in-fact for any expenditures properly made in the execution of the powers conferred upon the attorney-in-fact by the statutory short form power of attorney;

(m) to execute, acknowledge, and deliver any instrument of any kind, in the name of the principal or otherwise, that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(n) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any banking transaction or to intervene in any related action or proceeding;

(o) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution of any of the powers described in this section and for the keeping of needed records; and

(p) in general and in addition to all the specific acts listed in this section, to do any other acts in connection with any banking transaction that does or may in any way affect the financial or other interests of the principal.

(2) All powers described in this section are exercisable equally with respect to any banking transaction engaged in by the principal at the giving of the power of attorney or engaged in after that time, whether conducted in Montana or elsewhere.

Section 6. **Business operating transactions.** (1) In a statutory short form power of attorney, the language conferring general authority with respect to business operating transactions means that the principal authorizes the attorney-in-fact:

(a) to discharge and perform any duty or liability and also to exercise any right, power, privilege, or option that the principal has or claims to have under any partnership agreement whether the principal is a general or limited partner; to enforce the terms of a partnership agreement for the protection of the principal, by action, proceeding, or otherwise, as the attorney-in-fact considers desirable or necessary; and to defend, submit to arbitration, settle, or compromise any action or other legal proceeding to which the principal is a party because of membership in the partnership;

(b) to exercise in person or by proxy or to enforce by action, proceeding, or otherwise, any right, power, privilege, or option that the principal has as the holder of any bond, share, or other instrument of similar character and to defend, submit to arbitration, settle, or compromise any action or other legal proceeding to which the principal is a party because of a bond, share, or other instrument of similar character;

(c) with respect to any business enterprise that is owned solely by the principal:

(i) to continue, modify, renegotiate, extend, and terminate any contractual arrangements made with any person, entity, firm, association, or corporation by or on behalf of the principal with respect to the business enterprise prior to the granting of the power of attorney;

(ii) to determine the policy of the business enterprise as to the location of the site or sites to be used for its operation; the nature and extent of the business to be undertaken by it; the methods of manufacturing, selling, merchandising, financing, accounting, and advertising to be employed in its operation; the amount and types of insurance to be carried; the mode of securing, compensating, and dealing with accountants, attorneys, servants, and other agents and employees required for its operation; and to agree and to contract in any manner, with any person, and on any terms that the attorney-in-fact considers desirable or necessary for effectuating any or all of the decisions of the attorney-in-fact as to policy and to perform, rescind, reform, release, or modify the agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

(iii) to change the name or form of organization under which the business enterprise is operated and to enter into a partnership agreement with other persons or to organize a corporation to take over the operation of the business or any part of the business, as the attorney-in-fact considers desirable or necessary; and

(iv) to demand and receive all money that is or may become due to the principal or that may be claimed by or for the principal in the operation of the business enterprise; to control and disburse the funds in the operation of the enterprise in any way that the attorney-in-fact considers desirable or necessary, and to engage in any banking transactions that the attorney-in-fact considers desirable or necessary for effectuating the execution of any of the powers of the attorney-in-fact described in this subsection (1)(c);

(d) to prepare, sign, file, and deliver all reports, compilations of information, returns, or other papers with respect to any business operating transaction of the principal that are required by any governmental agency, department, or instrumentality or that the attorney-in-fact considers desirable or necessary for any purpose and to make any related payments;

(e) to pay, compromise, or contest taxes or assessments and to do any act or acts that the attorney-in-fact considers desirable or necessary to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments in connection with the principal's business operations, including power to attempt to recover, in any manner permitted by law, sums paid before or after the execution of the power of attorney as taxes, fines, penalties, or assessments;

(f) to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any business operation of the principal; to conserve, invest, disburse, or use anything so received for purposes enumerated in this section; and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred upon the attorney-in-fact by the statutory short form power of attorney;

(g) to execute, acknowledge, seal, and deliver any deed, assignment, mortgage, lease, notice, consent, agreement, authorization, check, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(h) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any business operating transaction or to intervene in any related action or proceeding;

(i) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section and for the keeping of needed records; and

(j) in general and in addition to all the specific acts listed in this section, to do any other act that the attorney-in-fact considers desirable or necessary for the furtherance or protection of the interests of the principal in any business.

(2) All powers described in this section are exercisable equally with respect to any business in which the principal is interested at the time of giving of the power of attorney or in which the principal becomes interested after that time, whether operated in Montana or elsewhere.

Section 7. **Insurance transactions.** (1) In a statutory short form power of attorney, the language conferring general authority with respect to insurance transactions means that the principal authorizes the attorney-in-fact:

(a) to continue, pay the premium or assessment on, modify, rescind, release, or terminate any contract of life, accident, health, or disability insurance or any contract for the provision of health care services or any combination of these contracts procured by or on behalf of the principal prior to the granting of the power of attorney that insures either the principal or any other person, without regard to whether the principal is or is not a beneficiary under the contract;

(b) to procure new, different, or additional contracts of life, accident, health, or disability insurance for the principal or contracts for provision of health care services for the principal; to select the amount, the type of insurance, and the mode of payment under each contract; to pay the premium or assessment on, modify, rescind, release, or terminate any contract procured by the attorney-in-fact; and to designate the beneficiary of the contract, provided, however, that the attorney-in-fact may not be named a beneficiary, except if permitted under [section 8], the attorney-in-fact may be named the beneficiary of death benefit proceeds under an insurance contract or if the attorney-in-fact was named as a beneficiary under the contract that was procured by the principal prior to the granting of the power of attorney, the attorney-in-fact may continue to be named as the beneficiary under the contract or under any extension or renewal of or substitute for the contract;

(c) with respect to any contract of life, accident, health, disability, or liability insurance as to which the principal has or claims to have any one or more of the powers described in this section, to apply for and receive any available loan on the security of the contract of insurance, whether for the payment of a premium or for the procuring of cash, to surrender and then to receive the cash surrender value, to exercise any election as to beneficiary or mode of payment, to change the manner of paying premiums, to change or convert the type of insurance contract, and to change the beneficiary of the contract of insurance, provided, however, that the attorney-in-fact may not be a new beneficiary, except if permitted under [section 8], the attorney-in-fact may be the beneficiary of death benefit proceeds under an insurance contract or if the attorney-in-fact was named as a beneficiary under the contract that was procured by the principal prior to the granting of the power of attorney, the attorney-in-fact may continue to be named as the beneficiary under the contract or under any extension or renewal of or substitute for the contract;

(d) to demand, receive, or obtain by action, proceeding, or otherwise any money, dividend, or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any contract of insurance or of one or more of the transactions enumerated in this section; to conserve, invest, disburse, or utilize anything received for purposes enumerated in this section; and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney;

(e) to apply for and procure any available governmental aid in the guaranteeing or paying of premiums of any contract of insurance on the life of the principal;

(f) to sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in any contract of insurance;

(g) to pay from any proceeds or otherwise, compromise, contest, or to apply for refunds in connection with any tax or assessment levied by a taxing authority with respect to any contract of insurance or the proceeds of the refunds or liability accruing by reason of the tax or assessment;

(h) to agree and contract, in any manner, with any person, and on any terms that the attorney-in-fact selects, for the accomplishment of any of the purposes enumerated in this section and to perform, rescind, reform, release, or modify the agreement or contract;

(i) to execute, acknowledge, seal, and deliver any consent, demand, request, application, agreement, indemnity, authorization, assignment, pledge, notice, check, receipt, waiver, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(j) to continue, procure, pay the premium or assessment on, modify, rescind, release, terminate, or otherwise deal with any contract of insurance, other than those enumerated in subsection (1)(a) or (1)(b), whether fire, marine, burglary, compensation, liability, hurricane, casualty, or other type, or any combination of insurance or to do any act or acts with respect to the contract or with respect to its proceeds or enforcement that the attorney-in-fact considers desirable or necessary for the promotion or protection of the interests of the principal;

(k) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any insurance transaction or to intervene in any related action or proceeding;

(l) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers the action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section and for the keeping of needed records; and

(m) in general and in addition to all the specific acts listed in this section, to do any other acts in connection with procuring, supervising, managing, modifying, enforcing, and terminating contracts of insurance or for the provisions of health care services in which the principal is the insured or is otherwise in any way interested.

(2) All powers described in this section are exercisable with respect to any contract of insurance or for the provision of health care service in which the principal is in any way interested, whether made in Montana or elsewhere.

Section 8. **Beneficiary transactions.** (1) In the statutory short form power of attorney, the language conferring general authority with respect to beneficiary transactions means that the principal authorizes the attorney-in-fact:

(a) to represent and act for the principal in all ways and in all matters affecting any trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund out of which the principal is entitled or claims to be entitled as a beneficiary to some share or payment, including but not limited to the following:

(i) to accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of any share in or payment from the fund;

(ii) to demand or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled by reason of the fund; to initiate, participate in, and oppose any proceeding, judicial, or otherwise, for the ascertainment of the meaning, validity, or effect of any deed, declaration of trust, or other transaction affecting in any way the interest of the principal; to initiate, participate in, and oppose any proceeding, judicial or otherwise, for the removal, substitution, or surcharge of a fiduciary; to conserve, invest, disburse, or use anything received for purposes listed in this section; and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney;

(iii) to prepare, sign, file, and deliver all reports, compilations of information, returns, or papers with respect to any interest had or claimed by or on behalf of the principal in the fund; to pay, compromise, contest, or apply for and receive refunds in connection with any tax or assessment, with respect to any interest had or claimed by or on behalf of the principal in the fund or with respect to any property in which an interest is had or claimed;

(iv) to agree and contract in any manner, with any person, and on any terms the attorney-in-fact selects, for the accomplishment of the purposes listed in this section and to perform, rescind, reform, release, or modify the agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

(v) to execute, acknowledge, verify, seal, file, and deliver any deed, assignment, mortgage, lease, consent, designation, pleading, notice, demand, election, conveyance, release, assignment, check, pledge, waiver, admission of service, notice of appearance, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(vi) to submit to arbitration, settle, and propose or accept a compromise with respect to any controversy or claim that affects the administration of the fund, in any one of which the principal has or claims to have an interest and to do any and all acts that the attorney-in-fact considers to be desirable or necessary in effectuating the compromise;

(vii) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section and for the keeping of needed records;

(viii) to transfer any part or all of any interest that the principal may have in any interests in real estate, stocks, bonds, bank accounts, insurance, and any other assets of any kind and nature to the trustee of any revocable trust created by the principal as grantor.

(b) in general and in addition to all the specific acts listed in this section, to do any other acts with respect to the administration of a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund in which the principal has or claims to have an interest as a beneficiary.

(2) For the purposes of subsection (1), "fund" means any trust, probate estate, guardianship, conservatorship, escrow, custodianship, or any other fund in which the principal has or claims to have an interest.

(3) All powers described in this section are exercisable equally with respect to the administration or disposition of any trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund in which the principal is interested at the giving of the power of attorney or becomes interested after that time as a beneficiary, whether located in Montana or elsewhere.

Section 9. **Gift transactions.** (1) In the statutory short form power of attorney, the language conferring general authority with respect to gift transactions means that the principal authorizes the attorney-in-fact:

(a) to make gifts to organizations, whether charitable or otherwise, to which the principal has made gifts and to satisfy pledges made to organizations by the principal;

(b) to make gifts on behalf of the principal to the principal's spouse, children, and other descendants or the spouse of any child or other descendant, either outright or in trust, for purposes that the attorney-in-fact considers to be in the best interest of the principal, specifically including minimization of income, estate, inheritance, or gift taxes, provided that the attorney-in-fact or anyone the attorney-in-fact has a legal obligation to support may not be the recipient of any gifts in any 1 calendar year that, in the aggregate, exceed $10,000 in value to each recipient;

(c) to prepare, execute, consent to on behalf of the principal, and file any return, report, declaration, or other document required by the laws of the United States, any state or subdivision of a state, or any foreign government that the attorney-in-fact considers to be desirable or necessary with respect to any gift made under the authority of this section;

(d) to execute, acknowledge, seal, and deliver any deed, assignment, agreement, authorization, check, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(e) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any gift transaction or to intervene in any related action or proceeding;

(f) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section and for the keeping of needed records; and

(g) in general and in addition to but not in contravention of all the specific acts listed in this section, to do any other acts that the attorney-in-fact considers desirable or necessary to complete any gift on behalf of the principal.

(2) All powers described in this section are exercisable equally with respect to a gift of any property in which the principal is interested at the giving of the power of attorney or becomes interested after that time, whether located in Montana or elsewhere.

Section 10. **Fiduciary transactions.** (1) In a statutory short form power of attorney, the language conferring general authority with respect to fiduciary transactions means that the principal authorizes the agent:

(a) to apply for and procure, in the name of the principal, letters of administration, letters testamentary, letters of guardianship or conservatorship, or any other type of authority, either judicial or administrative and to act as a fiduciary of any sort;

(b) to represent and act for the principal in all ways and in all matters affecting any fund with respect to which the principal is a fiduciary;

(c) to initiate, participate in, and oppose any proceeding, judicial or otherwise, for the removal, substitution, or surcharge of a fiduciary; to conserve, invest, or disburse anything received for the purposes of the fund for which it is received; and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney;

(d) to agree and contract, in any manner, with any person, and on any terms that the attorney-in-fact selects, for the accomplishment of the purposes enumerated in this section and to perform, rescind, reform, release, or modify the agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

(e) to execute, acknowledge, verify, seal, file, and deliver any consent, designation, pleading, notice, demand, election, conveyance, release, assignment, check, pledge, waiver, admission of service, notice of appearance, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(f) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section and for the keeping of needed records; and

(g) in general and in addition to all the specific acts listed in this section, to do any other acts with respect to a fund of which the principal is a fiduciary.

(2) For the purposes of subsection (1), "fund" means any trust, probate estate, guardianship, conservatorship, escrow, custodianship, or any other fund in which the principal has or claims to have an interest as a fiduciary.

(3) All powers described in this section are exercisable equally with respect to any fund of which the principal is a fiduciary to the giving of the power of attorney or becomes a fiduciary after that time, whether located in Montana or elsewhere.

Section 11. **Claims and litigation.** (1) In a statutory short form power of attorney, the language conferring general authority with respect to claims and litigation means that the principal authorizes the attorney-in-fact:

(a) to assert and prosecute before any court, administrative board, department, commissioner, or other tribunal any cause of action, claim, counterclaim, offset, or defense, that the principal has or claims to have against any individual, partnership, association, corporation, government, or other person or instrumentality, including, by way of illustration and not of restriction, power to sue for the recovery of land or of any other thing of value, for the recovery of damages sustained by the principal in any manner, for the elimination or modification of tax liability, for an injunction, for specific performance, or for any other relief;

(b) to bring an action of interpleader or other action to determine adverse claims, to intervene or interplead in any action or proceeding, and to act in any litigation as amicus curiae;

(c) in connection with any action or proceeding or controversy at law or otherwise, to apply for and, if possible, procure a libel judgment, an attachment, a garnishment, an order of arrest, or other preliminary, provisional, or intermediate relief and to resort to and to utilize in all ways permitted by law any available procedure for the effectuation or satisfaction of the judgment, order, or decree obtained;

(d) in connection with any action or proceeding, at law or otherwise, to perform any act that the principal might perform, including, by way of illustration and not of restriction, acceptance of tender, offer of judgment, admission of any facts, submission of any controversy on an agreed statement of facts, and consent to examination before trial and generally to bind the principal in the conduct of any litigation or controversy as seems desirable to the attorney-in-fact;

(e) to submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal or any litigation to which the principal is, may become, or may be designated a party;

(f) to waive the issuance and service of a summons, citation, or other process upon the principal, to accept service of process, to appear for the principal, to designate persons upon whom process directed to the principal may be served, to execute and file or deliver stipulations on the principal's behalf, to verify pleadings, to appeal to appellate tribunals, to procure and give surety and indemnity bonds at the times and to the extent the attorney-in-fact considers desirable or necessary, to contract and pay for the preparation and printing of records and briefs, or to receive and execute and file or deliver any consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument that the attorney-in-fact considers desirable or necessary in connection with the prosecution, settlement, or defense of any claim by or against the principal or of any litigation to which the principal is, may become, or may be designated a party;

(g) to appear for, represent, and act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, whether of the principal or of some other person, with respect to any reorganization proceeding or with respect to any receivership or application for the appointment of a receiver or trustee that in any way affects any interest of the principal in any real property, bond, share, commodity interest, tangible personal property, or other thing of value;

(h) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution of any of the powers described in this section;

(i) to pay, from funds in the control of the attorney-in-fact or for the account of the principal, any judgment against the principal or any settlement that may be made in connection with any transaction enumerated in this section, to receive and conserve any money or other things of value paid in settlement of or as proceeds of one or more of the transactions enumerated in this section, and to receive, endorse, and deposit checks; and

(j) in general and in addition to all the specific acts listed in this section, to do any other acts in connection with any claim by or against the principal or with litigation to which the principal is, may become, or may be designated a party.

(2) All powers described in this section are exercisable equally with respect to any claim or litigation existing at the giving of the power of attorney or arising after that time, whether arising in Montana or elsewhere.

Section 12. **Family maintenance.** (1) In a statutory short form power of attorney, the language conferring general authority with respect to family maintenance means that the principal authorizes the attorney-in-fact:

(a) to do all acts necessary for maintaining the customary standard of living of the spouse, children, and other dependents, including, by way of illustration and not of restriction, power to provide living quarters by purchase, lease, or other contract or by payment of the operating costs, including interest, amortization payments, repairs, and taxes of premises owned by the principal and occupied by the principal's family or dependents; to provide normal domestic help for the operation of the household; to provide usual vacations and usual travel expenses; to provide usual educational facilities; and to provide funds for all the current living costs of the spouse, children, and other dependents, including, among other things, shelter, clothing, food, and incidentals;

(b) to pay for necessary medical, dental, and surgical care, hospitalization, and custodial care for the spouse, children, and other dependents of the principal;

(c) to continue whatever provision has been made by the principal, either prior to or after the execution of the power of attorney, for the principal's spouse, children, and other dependents with respect to automobiles or other means of transportation, including, by way of illustration but not of restriction, power to license, insure, and replace any automobiles owned by the principal and customarily used by the spouse, children, or other dependents;

(d) to continue whatever charge accounts have been operated by the principal prior to the execution of the power of attorney or after execution of the power of attorney for the convenience of the principal's spouse, children, or other dependents; to open new accounts the attorney-in-fact considers to be desirable for the accomplishment of any of the purposes enumerated in this section; and to pay the items charged on those accounts by any person authorized or permitted by the principal to make charges prior to the execution of the power of attorney;

(e) to continue payments incidental to the membership or affiliation of the principal in any church, club, society, order, or other organization or to continue contributions to those organizations;

(f) to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled to as salary, wages, commission, or other remuneration for services performed, as a dividend or distribution upon any stock, or as interest or principal upon any indebtedness or any periodic distribution of profits from any partnership or business in which the principal has or claims an interest and to endorse, collect, or otherwise realize upon any instrument for the payment received;

(g) to use any asset of the principal for the performance of the powers enumerated in this section, including, by way of illustration and not of restriction, power to draw money by check or otherwise from any bank deposit of the principal; to sell any interest in real property, bonds, shares, commodity interests, tangible personal property, or other assets of the principal; and to borrow money and pledge as security for a loan, any asset, including insurance, that belongs to the principal;

(h) to execute, acknowledge, verify, seal, file, and deliver any application, consent, petition, notice, release, waiver, agreement, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(i) to hire, discharge, and compensate any attorney, accountant, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution by any of the powers described in this section and for the keeping of needed records; and

(j) in general and in addition to all the specific acts listed in this section, to do any other acts for the welfare of the spouse, children, or other dependents or for the preservation and maintenance of the other personal relationships of the principal to parents, relatives, friends, and organizations as are appropriate.

(2) All powers described in this section are exercisable equally whether the acts required for their execution relate to real or personal property owned by the principal at the giving of the power of attorney or acquired after that time, whether those acts are performable in Montana or elsewhere.

Section 13. **Benefits from military service.** (1) In a statutory short form power of attorney, the language conferring general authority with respect to benefits from military service means that the principal authorizes the attorney-in-fact:

(a) to execute vouchers in the name of the principal for any and all allowances and reimbursements payable by the United States or by any state or subdivision of a state to the principal, including, by way of illustration and not of restriction, all allowances and reimbursements for transportation of the principal and of the principal's dependents and for shipment of household effects, and to receive, endorse, and collect the proceeds of any check payable to the order of the principal drawn on the treasurer or other fiscal officer or depository of the United States or of any state or subdivision of a state;

(b) to take possession and order the removal and shipment of any property of the principal from any post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and to execute and deliver any release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument that the attorney-in-fact considers desirable or necessary for that purpose;

(c) to prepare, file, and prosecute the claim of the principal to any benefit or assistance, financial or otherwise, to which the principal is or claims to be entitled under the provisions of any statute or regulation existing at the execution of the power of attorney or enacted after that time by the United States, by any state or subdivision of a state, or by any foreign government, which benefit or assistance arises from or is based upon military service performed prior to or after the execution of the power of attorney by the principal or by any person related by blood or marriage to the principal, and to execute any receipt or other instrument that the attorney-in-fact considers desirable or necessary for the enforcement or for the collection of that claim;

(d) to receive the financial proceeds of any claim of the type described in this section; to conserve, invest, disburse, or use anything so received for purposes enumerated in this section; and to reimburse the attorney-in-fact for any expenditures properly made in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney;

(e) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any benefits from military service or to intervene in any related action or proceeding;

(f) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section; and

(g) in general and in addition to all the specific acts listed in this section, to do any other acts that the attorney-in-fact considers desirable or necessary to assure to the principal and to the dependents of the principal the maximum possible benefit from the military service performed prior to or after the execution of the power of attorney by the principal or by any person related by blood or marriage to the principal.

(2) All powers described in this section are exercisable equally with respect to any benefits from military service existing at the giving of the power of attorney or accruing after that time, whether accruing in Montana or elsewhere.

Section 14. **Records, reports, and statements.** (1) In a statutory short form power of attorney, the language conferring general authority with respect to records, reports, and statements means that the principal authorizes the attorney-in-fact:

(a) to keep records of all cash received and disbursed for or on account of the principal, of all credits and debits to the account of the principal, and of all transactions affecting in any way the assets and liabilities of the principal;

(b) to prepare, execute, and file all tax and tax information returns, for all periods, required by the laws of the United States, any state or subdivision of a state, or any foreign government; to prepare, execute, and file all other tax-related documents for all tax periods, including requests for extension of time, offers, waivers, consents, powers of attorney, closing agreements, and petitions to any tax court regarding tax matters; and to prepare, execute, and file all other instruments that the attorney-in-fact considers desirable or necessary for the safeguarding of the principal against excessive or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation, it being the intent of this provision that it is sufficiently definite to permit the attorney-in-fact to represent the principal respecting all taxes that the principal has paid and all tax returns that the principal has filed, either personally or through an agent, with the internal revenue service or any other agency of the United States government, any state department of revenue, any political subdivision of a state, and any foreign country or political subdivision of a foreign country;

(c) to prepare, execute, and file any return, report, declaration, or other document required by the laws of the United States, any state or subdivision of a state, or any foreign government, including, by way of illustration but not of restriction, any report or declaration required by the social security administration, the commissioner of jobs and training, or other similar governmental agency that the attorney-in-fact considers to be desirable or necessary for the safeguarding or maintenance of the principal's interest;

(d) to prepare, execute, and file any record, report, or statement that the attorney-in-fact considers desirable or necessary for the safeguarding or maintenance of the principal's interest with respect to price, rent, wage, or rationing control or other governmental activity;

(e) to hire, discharge, and compensate any attorney, accountant, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section; and

(f) in general and in addition to all the specific acts listed in this section, to do any other acts in connection with the preparation, execution, filing, storage, or other use of any records, reports, or statements of or concerning the principal's affairs.

(2) All powers described in this section are exercisable equally with respect to any records, reports, or statements of or concerning the affairs of the principal existing at the giving of the power of attorney or arising after that time, whether arising in Montana or elsewhere.

Section 15. **All other matters.** In a statutory short form power of attorney, the language conferring general authority with respect to all other matters means that the principal authorizes the attorney-in-fact to act as an alter ego of the principal with respect to any and all possible matters and affairs affecting property owned by the principal that are not enumerated in [sections 2 through 14] and that the principal can do through an agent.

Section 16. **Modification to statutory short form power of attorney.** A power of attorney that satisfies the requirements of [section 1(1)] is not prevented from being a statutory short form power of attorney by the fact that:

(1) it creates a nondurable power of attorney instead of a durable power of attorney;

(2) it provides for one or more named successors to the attorney-in-fact originally named;

(3) it provides that the attorney-in-fact shall render an accounting to the principal or other designated person; or

(4) it provides for an effective date or expiration date, or both.

Section 17. **Effective date.** [This act] is effective on passage and approval.

Approved April 23, 1991.

CHAPTER NO. 581

[HB 968]

AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT A STANDARD MEANS OF IDENTIFICATION FOR PERSONS FOR WHOM A MEDICAL ORDER NOT TO PERFORM CARDIOPULMONARY RESUSCITATION EXISTS IN ORDER TO PREVENT THE APPLICATION OF LIFE-SUSTAINING PROCEDURES; PROVIDING FOR CIVIL AND CRIMINAL IMMUNITY FOR HEALTH CARE PROFESSIONALS WITHHOLDING LIFE-SUSTAINING PROCEDURES PURSUANT TO A DO NOT RESUSCITATE ORDER OR TO PERSONS POSSESSING THE IDENTIFICATION; REQUIRING THE TRANSFER TO ANOTHER CAREGIVER UNDER CERTAIN CIRCUMSTANCES OF PATIENTS POSSESSING THE STANDARD IDENTIFICATION; REQUIRING EMERGENCY MEDICAL PERSONNEL OTHER THAN PHYSICIANS TO COMPLY WITH DO NOT RESUSCITATE ORDERS; PROVIDING FOR THE EFFECT ON INSURANCE POLICIES; REQUIRING THE DEPARTMENT TO ADOPT RULES; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 5] grants the department of health and environmental sciences authority to adopt rules implementing the bill. It is intended that the rules adopt by reference the board of medical examiners' do not resuscitate protocol and address, among other things, a standard form of statewide do not resuscitate identification, a form for a do not resuscitate order, training for emergency medical services personnel to inform them of the provisions of the bill and its implementing rules, and standards that emergency medical personnel shall follow when presented with do not resuscitate identification. It is also the intent of the legislature that the do not resuscitate identification adopted pursuant to this bill may be identical to that adopted pursuant to

Title 50, chapter 9, and that the rules adopted pursuant to this bill may be correlated and intermingled with the rules adopted pursuant to 50-9-110.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 6], unless the context clearly requires otherwise, the following definitions apply:

(1) "Attending physician" has the meaning provided in 50-9-102.

(2) "Board" means the state board of medical examiners.

(3) "Department" means the department of health and environmental sciences.

(4) "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the department, that signifies that the possessor has executed a declaration, as provided in 50-9-103, that has not been revoked or that the possessor's attending physician has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor's medical file.

(5) "Do not resuscitate order" means a directive from a licensed physician that emergency life-sustaining procedures should not be administered to a particular person.

(6) "Do not resuscitate protocol" means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians and emergency medical services personnel.

(7) "Emergency medical services personnel" has the meaning provided in 50-9-102.

(8) "Health care facility" has the meaning provided in 50-5-101.

(9) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

(10) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state.

Section 2. **Immunities.** (1) The following are not subject to civil or criminal liability and are not guilty of unprofessional conduct upon discovery of DNR identification upon a person:

(a) a physician who causes the withholding or withdrawal of life-sustaining procedure from that person;

(b) a person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures from that person;

(d) a health care facility in which withholding or withdrawal of life-sustaining procedures from that person occurs;

(e) physicians, persons under the direction or authorization of a physician, emergency medical services personnel, or health care facilities that provide life-sustaining procedures pursuant to an oral or written request communicated to them by a person who possesses DNR identification.

(2) The provisions of subsections (1)(a) through (1)(d) apply when a life-sustaining procedure is withheld or withdrawn in accordance with the do not resuscitate protocol.

(3) Emergency medical services personnel who follow a do not resuscitate order from a licensed physician are not subject to civil or criminal liability and are not guilty of unprofessional conduct.

Section 3. **Adherence to do not resuscitate protocol — transfer of patients.** (1) Emergency medical services personnel other than physicians shall comply with the do not resuscitate protocol when presented with either do not resuscitate identification, an oral do not resuscitate order issued directly by a physician, or a written do not resuscitate order entered on a form prescribed by the department.

(2) An attending physician or a health care facility unwilling or unable to comply with the do not resuscitate protocol shall take all reasonable steps to transfer a person possessing DNR identification to another physician or to a health care facility in which the do not resuscitate protocol will be followed.

Section 4. **Effect on insurance — patient's decision.** (1) Death resulting from the withholding or withdrawal of emergency life-sustaining procedures pursuant to the do not resuscitate protocol and in accordance with [sections 1 through 6] is not, for any purpose, a suicide or homicide.

(2) The possession of DNR identification pursuant to [sections 1 through 6] does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor does it modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of emergency life-sustaining procedures from an insured person possessing DNR identification, notwithstanding any term of the policy to the contrary.

(3) A physician, health care facility, or other health care provider and a health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan may not require a person to possess DNR identification as a condition for being insured for or receiving health care services.

(4) [Sections 1 through 6] do not create a presumption concerning the intention of an individual who does not possess DNR identification with respect to the use, withholding, or withdrawal of emergency life-sustaining procedures.

(5) [Sections 1 though 6] do not increase or decrease the right of a patient to make decisions regarding the use of emergency life-sustaining procedures if the patient is able to do so, nor do [sections 1 through 6] impair or supersede any right or responsibility that a person has to effect the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of [sections 1 through 6] are cumulative.

(6) [Sections 1 through 6] do not authorize or approve mercy killing.

Section 5. **Rulemaking authority.** (1) Upon the adoption of a do not resuscitate protocol by the board, the department may adopt a standard form of DNR identification to be used statewide.

(2) The department shall adopt rules to administer the provisions of [sections 1 through 6].

Section 6. **Penalties.** (1) A physician who willfully fails to transfer a patient in accordance with [section 3] is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(2) A person who purposely conceals, cancels, defaces, or obliterates the DNR identification of another without the consent of the possessor or who falsifies or forges a revocation of the DNR identification of another is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(3) A person who falsifies or forges the DNR identification of another or purposely conceals or withholds personal knowledge of a revocation of DNR identification with the intent to cause the use, withholding, or withdrawal of life-sustaining procedures is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved April 23, 1991.

CHAPTER NO. 582

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC GRANT AWARDS; APPROPRIATING MONEY FOR CUL-

TURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation of cultural and aesthetic grant money — priority of disbursement.** (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by this section. Money must be disbursed in priority order, first to projects covered under subsection (2), and second to projects listed in subsection (3). The Montana arts council shall disburse money to projects authorized by [sections 1 through 4] through grant contracts between the Montana arts council and the grant recipient. The award contract must bind the parties to conditions, if any, listed with the appropriation in subsection (3).

(2) If the money in the cultural and aesthetic projects account is insufficient in the biennium ending June 30, 1991, to fund projects in the amount for which they were approved, the approved amount for the projects is reappropriated from the account until money has been disbursed to fully cover appropriations or until October 1, 1992, whichever comes first.

(3) The following projects are approved and the following amounts are appropriated to the Montana arts council for the biennium ending June 30, 1993, from the cultural and aesthetic projects account:

Benefiting Organization	Project	Amount
MSU Shakespeare in the Parks	Operational Support	$27,500
Montana Arts Council	Montana Folklife Programs	50,000

Conditions: For projects dealing with Native American culture, the relevant tribal cultural committees or nonreservation organizations should be contacted and involved in project planning.

Benefiting Organization	Project	Amount
Montana Institute of the Arts Foundation	Operational Support	15,000
Helena Presents	Expansion of Programs & Staff for Myrna Loy Center	30,000
Vigilante Theatre Company	Operational Support	15,500
Montana Performing Arts Consortium	Dance on Tour/Underwriting Assist./Admin. Support	40,000

Conditions: Grant funds may be used as follows: $25,000 for operations and $15,000 for dance on tour. No grant funds may be used to support tour coordinators.

Benefiting Organization	Project	Amount
Yellowstone Art Center	Facility Expansion	50,000

Conditions: In view of this major fundraising task, the organization shall contact the state historic preservation office early in the process, as use of federal funds will require review of the project according to the secretary of the interior's standards on historical rehabilitation. Funds may not be released until documentation of consultation with the state historic preservation office is received by the Montana arts council.

Benefiting Organization	Project	Amount
UM Montana Repertory Theatre	Montana Repertory Theatre Tour	50,000

Conditions: Grant funds may be used only to support in-state touring to help build up the Montana repertory theatre's in-state constituency.

MSU KUSM Public Television	Native Voices Public Television Workshop	32,500
Native American Cultural Institute	Big Sky Indian Market	9,000
Alberta Bair Theater Corporation	Development of Programming and Marketing	10,000
Montana Historical Society	Oral History Office	73,400
Hockaday Center for the Arts	Operational Support	15,000
Montana Arts Council	Rural Arts Org. Development & Artists in Schools	35,000
Young Audiences of Western MT	Young Audiences Outreach	10,000
Missoula Children's Theatre	Building Capital Campaign	35,000
Montana Art Gallery Director's Association	Exhibition Fee Support for Montana Art Galleries	25,000

Conditions: Grant funds may not be used for board travel.

International Choral Festival	Development and Marketing for 1993 Choral Festival	5,000
Montana Committee for the Humanities	Speakers Bureau	25,000
Watershed Foundation	The Sacred Bear in Two Worlds	27,500
Town of Sunburst	Film - The Invisible Border	10,000

Conditions: Grant funds may not be released until receipt of documentation of governmental status by the Montana arts council. Grant funds may be used only for post-production work to complete the film. Grant funds may not be used for marketing.

Dull Knife Memorial College Library	Northern Cheyenne Photographic Art/Archive Project	20,000

Conditions: Grant funds may not be released until receipt of documentation of governmental status by the Montana arts council.

Aleph Movement Theatre	Leonardo Project	10,000
Beall Park Art Center	Exhibition/Performance Space Development	3,500

Conditions: Each dollar in grant funds must be matched by three dollars in cash or in-kind goods and services, or both.

Custer County Art Center	Operational Support	15,000
Bigfork Center for the Performing Arts	The 3rd and 4th Annual Gathering at Bigfork	15,000
Lewistown Arts Center	Operational Support	1,500
Missoula Children's Theatre	Operational Support	15,000

Conditions: Grant funds may be used only to support in-state touring.

Northern Lights Institute	Support for Artists and Writers	10,000

Conditions: Grant funds may be used only for Montana artists and writers.

Helena Civic Center	Auditorium Renovation Program	10,000

Conditions: Documentation of discussion with state historic preservation office regarding resolution of any design problems must be submitted to the Montana arts council prior to release of funds.

Western Heritage Center	The Real West: Farming & Ranching Families	15,000
Paris Gibson Square	Exterior Sculpture	5,000
Montanans for Quality TV	Animal of the Mind Series	10,000
Fort Peck Fine Arts Council	Northeastern Montana Satellite Development Project	20,000

Conditions: Grant funds may be used only for strengthening the Fort Peck fine arts council's satellite network—performing arts series and touch project. The council shall endeavor to include more Native Americans in its decisionmaking process.

Montana Indian Art & Cultural Association	American Indian Contemporary Arts Symposium 3 & 4	10,000

Conditions: Grant funds are to be used to support honorarium and travel. Funds may not be used for videotaping.

Great Falls Symphony Association	Cascade Quartet Outreach	10,000
String Orchestra of the Rockies	Small Community Tour	10,000
Yellowstone Chamber Players	Concerts for Outlying Communities in Montana	10,000
Blackfeet Community College	Revival of Blackfeet & Plains Indian Games	2,000
Fox Comm. for the Performing Arts	Operational Support	10,000

Conditions: Grant funds may be used solely for educational programs and personnel. Clerical staff may not be supported with these funds.

Hellgate Writers, Inc.	Literary Center, Phase II	13,000

Conditions: Grant funds may not be used for printing and mailing of the corporation's newsletter or to support travel for fundraising purposes.

Alberta Bair Theater Corporation	Expansion of a Permanent Endowment	8,767
Bigfork Center for the Performing Arts	Permanent Endowment Expansion	17,534
Glacier Orchestra and Chorale	Establish Permanent Endowment	21,917
Beall Park Art Center	Challenge Grant	8,767
Billings Symphony Society	Expansion of Endowment	13,150
Yellowstone Art Center	Endowment Expansion	17,534
Clack Museum Foundation	Establish Endowment	13,150
Gallatin County Historical Society	Endowment Expansion	8,767
MSU Shakespeare in the Parks	Expansion of Permanent Endowment	17,534

Conditions: Release of grant funds is contingent upon obtaining all matching funds for the FY 1990-91 challenge grant.

Great Falls Symphony Association	Endowment Expansion	21,918
Bitterroot Public Library Foundation	Establishment of a Permanent Endowment	17,332

Conditions: Income from the endowment may not be used to reduce county mill levy support. The income must be used to fund additional services not otherwise available.

Carbon County Arts Guild	Special Expansion Project	5,000

Conditions: Grant funds may not be used to purchase a computer.

Montanans for Quality TV	The Montana Media Catalog	10,000

Grandstreet Theatre	Lighting Expansion and Update	10,000
Powder River Historical Society	Preservation of Powder River County History	2,000
Livingston Depot Foundation	Education Coordinator for Depot Center	12,000

Conditions: Grant funds may be used only for staff involved with arts education. Clerical staff may not be supported with these funds.

Montana Ballet Company	Operational Support for Montana Ballet Company	7,500
Garden City Ballet	Administrative & Artistic Support	7,500
Montana Agriculture Center of Ft. Benton	Harvest Time in Those Early Years	4,000

Conditions: An original application must be received prior to release of funds.

Garfield County Library	Preservation and Usage of County Newspapers	5,000
Custer County Art Center	Artist-in-Residence/Schools Pilot Program	7,000
Helena Symphony Society	Director of Development	10,000
Missoula Symphony Association	Professional Manager, Office Space, Software	5,000

Conditions: Grant funds may be used only for the manager's salary.

Montana Assn. of Symphony Orchestras	Artistic Leadership Project	10,000

Conditions: Grant funds may be used as follows: $7,500 for conference and $2,500 for musicians.

Montana State Theatre Association	Operational Support	3,000

Conditions: Grant funds may not be used to pay for meals.

Montana Public TV Association	Community Video Production Project	10,000
Montana Dance Arts Association	Operational Support	5,000
Billings Preservation Society	Moss Mansion Kitchen Restoration	30,000
Daly Mansion Preservation Trust	Administrative & Financial Development Project	15,000
Blackfeet Community College	Pottery/Ceramics Art Lab	2,000
Growth Thru Art, Inc.	Stabilize Organization by Increasing/Adding Staff	10,000
Broadway 215	Administrative Support	4,000

Conditions: Grant funds must be used for the facility manager's first year's salary. The organization shall submit a fundraising plan by June 30, 1992.

Very Special Arts Montana	Administrative & Artistic Support	10,000
Celebrate Missoula	Administrative & Artistic Support	10,000
Copper Village Museum	Director of Programming & Education	5,000
Custer County Art Center	Architectural Plans	3,000

Conditions: Grant funds may be used only to fund half of architectural and structural engineering services.

Gallatin County Historical Society	Photographic Archives	2,500
Treasure County 89ers	Folklife Addition	3,000

Conditions: The state historic preservation office shall evaluate plans for soda fountain restoration prior to release of funds.

Granite County Museum/Cultural Center	Rehabilitate Historic Building for Center	5,000

Conditions: Grant funds may be released only upon receipt of documentation that the organization is working with the state historic preservation office as they develop their construction plan.

Montana Alliance for Arts Education	General Manager	5,000
Stevensville Museum	Stevensville Museum	2,500
Bitterroot Community Band	Purchase Music and Equipment	1,000
Montana Puppet Guild	Blanche Harding - Montana's Puppet Lady	4,000

Conditions: Grant funds may be used only to support the documentation of Harding's personal and professional life and her artistry as a teacher and puppeteer. Funds may not be used to support production of "Lewis and Clark's Adventures".

Daly Mansion Preservation Trust	Restoration & Stabilization Project	15,000

Conditions: Grant funds must be used for restoration of aspects of building directly related to public safety.

MSU School of Art	Backgrounds - Interaction of Culture & Visual Arts	18,000

Conditions: Grant funds may be used to support six visiting artist lectures. Grant funds may be released only upon documentation that the lectures are significantly marketed to the general public and held at a time and place convenient to the general public.

Garnet Preservation Association	Restoration - Kelley Saloon & Hannifen House or Director	5,000
Big Sky Association for the Arts	Artistic Support for Big Sky Music Festival	10,000
Dillon Depot Restoration Committee	Railroad Depot Restoration	2,000
UM KUFM Radio	Music Library Enhancement	3,000
Biddle Community Heritage Center	Construction of Community Hall	1,000
Prairie County Museum	Restore Burlington Northern Depot	3,000

Conditions: The recipient shall submit the project director's resume, budget narrative, and a letter from the state historic preservation office prior to release of funds.

Bannack State Park	Oral History Program at Bannack State Park	2,310
Milwaukee Rode Cultural Project	Montana Memories - Volume II	4,000
Museum of the Northern Great Plains	Visions From the Land	10,000
Old Trail Museum	Jesse Gleason Studio Acquisition	5,000
Helena Arts Council	Expansion of Holter Museum of Art Education Program	5,000
Helena Arts Council	Expansion of Holter Museum Endowment Project	5,000

Archie Bray Foundation	Save the Beehives - Historic Renovation Project	5,000
Archie Bray Foundation	Endowment Establishment	5,000
Big Fork Village Art and Cultural Center	Regional Wood Art Show	1,000

(4) The amount of $11,000 is appropriated from money that may revert from appropriations made in subsection (3) to the Montana arts council for project evaluations. The evaluations must be performed after July 1, 1992, and the results must be included in a report on projects funded by [sections 1 through 4] to be submitted to the 53rd legislature.

(5) The amount of $150,000 is appropriated to the Montana arts council from money that may revert from appropriations made in [section 1(2)] to match national endowment for the arts funds. The appropriation in this subsection may be used only for rural and other underserved programs throughout the state.

Section 2. **Reversion of granted money.** (1) On October 1, 1992, money reappropriated in [section 1(2)] less money appropriated in [section 1(5)], but not disbursed, reverts to the cultural and aesthetic projects account provided for in 15-35-108.

(2) On July 1, 1993, the unencumbered balance of the 1993 biennium grants reverts to the cultural and aesthetic projects account provided for in 15-35-108.

Section 3. **Pro rata reduction of grant awards.** If money in the cultural and aesthetic project account is insufficient to fund projects at the appropriation levels contained in [section 1(3)], the Montana arts council shall allocate the available money on a pro rata basis to the authorized projects.

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 583

[HB 498]

AN ACT AUTHORIZING USE OF UNEXPENDED PROCEEDS FROM 1985 SERIES C RENEWABLE RESOURCE DEVELOPMENT BONDS FOR WATER DEVELOPMENT LOANS TO PRIVATE PERSONS; AUTHORIZING DEPOSIT OF LOAN PAYMENTS IN THE RENEWABLE RESOURCE DEVELOPMENT DEBT SERVICE FUND; INCREASING THE LOAN LIMIT ON RENEWABLE RESOURCE DEVELOPMENT LOANS; AMENDING SECTION 90-2-108, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, Title 85, chapter 1, part 6, establishes the state's water development program for the purpose of making loans to private persons to finance water development projects and authorizes the issuance of up to $10 million of general obligation bonds of the state to fund the loans; and

WHEREAS, Title 90, chapter 2, part 1, establishes the renewable resource development program for the purpose of making loans or grants to state and local government agencies or entities to finance renewable resource projects as approved by the Legislature; and

WHEREAS, the state issued renewable resource development bonds, 1985 series c, in 1985 in the principal amount of $1,100,000 and $678,526 of the proceeds remain unexpended; and

WHEREAS, subsequent to the enactment of Title 85, chapter 1, part 6, federal legislation has made it difficult to obtain tax-exempt interest rates on water development bonds issued to finance water development loans to private persons; and

WHEREAS, it is the state's goal and objective under both the water development and renewable resource development programs to provide low-cost financing for water development and renewable resource development projects.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authorization to use unexpended proceeds of renewable resource development bonds.** The department of natural resources and conservation may use any unexpended proceeds of the state's $1,100,000 general obligation renewable resource development bonds, 1985 series c, for the purpose of making loans to qualified private persons for water development projects approved by the legislature in accordance with the provisions of Title 85, chapter 1, part 6. Any loan made from the proceeds of the renewable resource development bonds, 1985 series c, must conform in all respects to the requirements of Title 85, chapter 1, part 6.

Section 2. **Loan repayments.** Payments received on loans funded from the proceeds of the renewable resource development bonds pursuant to [section 1] must be deposited in the debt service fund established in 90-2-123.

Section 3. Section 90-2-108, MCA, is amended to read:

"**90-2-108. Terms of loans.** (1) The board of natural resources and conservation ~~shall~~ *may not* make ~~no~~ *a* renewable resource development loan ~~which~~ *that* exceeds the lesser of ~~$100,000~~ *$200,000* or 80% of the fair market value of the security given ~~therefor~~ *for it.* In determining the fair market value for the security given for any loan, the department of natural resources and conservation shall consider appraisals made by qualified appraisers and such other factors it considers important.

(2) The period for repayment of loans pursuant to this part may not exceed 30 years.

(3) The board shall from time to time establish by rule the interest rate at which loans may be made under this part, provided that in no case may the rate be greater than one percentage point greater than the prevailing interest rate on the renewable resource development bonds provided for in this part.

(4) The board may adopt rules as required to govern the terms and conditions for making loans, security instruments, and agreements pursuant to this part."

Section 4. **Effective dates.** (1) [Sections 1, 2, and this section] are effective on passage and approval.

(2) [Section 3] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 584

[HB 560]

AN ACT TO CREDIT REVENUE FROM THE DRIVER'S LICENSE MOTORCYCLE ENDORSEMENT FEE TO THE MOTORCYCLE SAFETY TRAINING ACCOUNT ADMINISTERED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION; AMENDING SECTIONS 61-2-406 AND 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-2-406, MCA, is amended to read:

"**61-2-406.** *(Temporary)* **Motorcycle safety training account — source of funds — statutory appropriation.** (1) There is a motorcycle safety training account in the special revenue fund of the state treasury. All revenue collected pursuant to 61-2-404 ~~and~~, 61-2-405, *and 61-5-121* must be credited to this account.

(2) The money in the motorcycle safety training account is statutorily appropriated, as provided in 17-7-502, to the superintendent of public instruction to administer motorcycle safety training. *(Terminates June 30, 1993—sec. 10, Ch. 324, L. 1989.)*"

Section 2. Section 61-5-121, MCA, is amended to read:

"**61-5-121. Disposition of fees.** (1) The disposition of the fees from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), commercial vehicle operator's endorsements provided for in 61-5-111(7)(c), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 33 1/3% of each driver's license fee and of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. Funds transferred from the account are statutorily appropriated, as provided in 17-7-502, to the pension trust fund.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 5% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing licenses or duplicate licenses.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing motorcycle endorsements.

(d) The amount of 23 1/3% of each driver's license fee and of each duplicate driver's license fee ~~and the amount of 35% of each motorcycle endorsement fee~~ must be deposited into the state traffic education account.

(e) The amount of 38 1/3% of each driver's license fee and of each duplicate driver's license fee ~~and the amount of 60% of each motorcycle endorsement fee~~ must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 5% of each commercial vehicle operator's endorsement fee must be deposited into the county general fund, otherwise all of the fee must be deposited in the state general fund.

(g) The amount of 95% of each motorcycle endorsement fee must be deposited into the motorcycle safety training account in the state special revenue fund.

(2) (a) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, he shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. He shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state traffic education account, *the motorcycle safety training account,* and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(d), (1)(e), ~~and~~ (1)(f), *and (1)(g).*

(b) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, the state traffic education account, *the motorcycle safety training account,* and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), (1)(d), (1)(e), ~~and~~ (1)(f), *and (1)(g).*"

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved April 23, 1991.

CHAPTER NO. 585

[HB 645]

AN ACT PROVIDING FOR LONG-TERM LOANS TO SCHOOL DISTRICTS THAT EXPERIENCE A DISASTER THAT DESTROYS SCHOOL PROPERTY TO THE EXTENT OF RENDERING THE PROPERTY UNFIT FOR ITS PRESENT SCHOOL USE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Long-term loans.** School districts that experience a disaster that destroys school property to the extent of rendering the property unfit for its present school use may apply for long-term loans for use in replacing school property under the provisions of Title 17, chapter 5, part 16.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 23, 1991.

CHAPTER NO. 586

[HB 651]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO FRATERNAL BENEFIT SOCIETIES; AMENDING SECTIONS 31-2-106 AND 33-22-1703, MCA; REPEALING SECTIONS 33-7-101, 33-7-102, 33-7-103, 33-7-104, 33-7-111, 33-7-112, 33-7-113, 33-7-114, 33-7-115, 33-7-116, 33-7-201, 33-7-202, 33-7-203, 33-7-204, 33-7-205, 33-7-206, 33-7-207, 33-7-211, 33-7-212, 33-7-213, 33-7-301, 33-7-302, 33-7-303, 33-7-304, 33-7-305, 33-7-401, 33-7-402, 33-7-403, 33-7-404, 33-7-405, 33-7-406, 33-7-407, 33-7-501, 33-7-502, 33-7-503, 33-7-504, 33-7-505, 33-7-506, 33-7-507, 33-7-508, 33-7-509, 33-7-510, 33-7-511, 33-7-512, 33-7-513, 33-7-514, 33-7-515, 33-7-516, 33-7-517, 33-7-518, AND 33-7-519, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Fraternal benefit societies.** Any incorporated or unincorporated society, order, or supreme lodge, without capital stock, including a society exempted under the provisions of [section 38(1)(b)], that is conducted solely for the benefit of its members and their beneficiaries and not for profit, that is operated on a lodge system with ritualistic forms of work, that has a representative form of government, and that provides benefits in accordance with [sections 1 through 38], is a fraternal benefit society.

Section 2. **Lodge system.** (1) A society is operating on the lodge system if it has a supreme governing body and subordinate lodges into which members are elected, initiated, or admitted in accordance with its laws, rules, and ritual. Subordinate lodges must be required by the laws of the society to hold regular meetings at least once a month in furtherance of the purposes of the society.

(2) A society may organize and operate lodges for children under the minimum age for adult membership. Membership and initiation in local lodges may not be required of children, and children may not have a voice or vote in the management of a society.

Section 3. **Representative form of government.** (1) A society has a representative form of government if it has a supreme governing body organized as provided in subsection (2) or (3).

(2) (a) The supreme governing body may be an assembly composed of delegates who meet the criteria of subsection (5) and who are elected either by the members directly or at intermediate assemblies or conventions of members or their representatives, together with other delegates as may be prescribed in the society's laws. A society may provide for election of delegates by mail.

(b) The delegates elected must be a majority of delegates and may not have less than a majority of the votes and not less than the number of votes required to amend the society's laws. The assembly must be elected and shall meet at least once every 4 years and shall elect a board of directors to conduct the business of the society between meetings of the assembly.

(c) Vacancies on the board of directors may be filled in the manner prescribed by the society's laws.

(3) (a) (i) The supreme governing body may be:

(A) a board composed of persons who meet the criteria of subsection (5) and who are elected by the members, either directly or by their representatives in intermediate assemblies; and

(B) any other persons prescribed in the society's laws.

(ii) A society may provide for election of the board by mail.

(b) The term of a board member may not exceed 4 years. Vacancies on the board may be filled in the manner prescribed in the society's laws.

(c) The persons elected to the board must be a majority of the board and may not be less than the number of votes required to amend the society's laws. A person filling an unexpired term of an elected board member is considered to be an elected board member.

(d) The board shall meet at least quarterly to conduct the business of the society.

(4) The officers of the society must be elected either by the assembly or by the board of directors, either of which constitutes the supreme governing body.

(5) Only benefit members are eligible for election to the assembly, the board of directors, or an intermediate assembly.

(6) Each voting member shall have one vote. A vote may not be cast by proxy.

Section 4. **Definitions.** As used in [sections 1 through 38], unless the context requires otherwise, the following definitions apply:

(1) "Benefit contract" means the agreement for provision of authorized benefits described in [section 16].

(2) "Benefit member" means an adult member who is designated by the laws or rules of the society to be a benefit member under a benefit contract.

(3) "Certificate" means the document issued as written evidence of the benefit contract.

(4) "Laws" means the society's articles of incorporation, charter, constitution, and bylaws.

(5) "Lodge" means subordinate member units of the society, known as camps, courts, councils, or branches or by any other designation.

(6) "Premiums" means premiums, rates, dues, or other required contributions that are payable under the certificate.

(7) "Rules" means all rules, regulations, or resolutions that are adopted by the supreme governing body or board of directors and that are intended to have general application to the members of the society.

(8) "Society" means a fraternal benefit society described in [section 1]. The term includes an order or supreme lodge.

Section 5. **Purposes and powers.** (1) A society shall operate for the benefit of members and their beneficiaries by:

(a) providing benefits as provided in [section 16]; and

(b) providing for one or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purposes, which may be extended to others. The purposes may be carried out directly by the society or indirectly through subsidiary corporations or affiliated organizations.

(2) A society may adopt laws and rules for the government of the society, the admission of its members, and the management of its affairs. It may amend laws and rules and exercise powers necessary and incidental to the objectives and purposes of the society.

Section 6. **Qualification for membership.** (1) A society shall specify in its laws or rules:

(a) eligibility standards for each class of membership. However, if benefits are provided on the lives of children, the minimum age for adult membership must be set at not less than 15 years of age and not more than 21 years of age.

(b) the process for admission to each membership class; and

(c) the rights and privileges of each membership class. However, only benefit members may vote on the management of the insurance affairs of the society.

(2) A society may admit social members who have no voice or vote in the management of the insurance affairs of the society.

(3) Membership rights in the society are personal to the member and are not assignable.

Section 7. **Location of office — meetings — communication to members — grievance procedures.** (1) The principal office of a domestic society must be located in this state. The meetings of its supreme governing body may be held in any state, district, province, or territory where the society has at least five subordinate lodges or in a location determined by the supreme governing body. All business transacted at meetings is valid. The minutes of the proceedings of the supreme governing body and of the board of directors must be in English.

(2) (a) A society may provide in its laws for an official publication in which any notice, report, or statement required by law to be given to members, including notice of election, may be published. Required reports, notices, and statements must be printed conspicuously in the publication. If the records of a society show that two or more members have the same mailing address, an official publication mailed to one member is considered

to be mailed to all members at the same address unless a member requests a separate copy.

(b) Not later than June 1 of each year, a synopsis of the society's annual statement, providing an explanation of the facts concerning the condition of the society, must be printed and mailed to each benefit member of the society, or the synopsis may be published in the society's official publication.

(3) A society may provide in its laws or rules for grievance or complaint procedures for members.

Section 8. **No personal liability.** (1) The officers and members of the supreme governing body or any subordinate body of a society are not personally liable for any benefits provided by a society.

(2) A person may be indemnified and reimbursed by a society for expenses reasonably incurred by and liabilities imposed upon him in connection with or arising out of an action, suit, or proceeding (whether civil, criminal, administrative, or investigative) or threat thereof in which the person may be involved by reason of the fact that he is or was a director, officer, employee, or agent of the society or of a firm, corporation, or organization that he served in any capacity at the request of the society.

(3) (a) A person may not be indemnified or reimbursed in relation to any matter in an action, suit, or proceeding:

(i) in which he is finally found to be guilty of breach of a duty as a director, officer, employee, or agent of the society; or

(ii) that is the subject of a compromise settlement.

(b) A person may be indemnified or reimbursed if he acted in good faith for a purpose he reasonably believed to be in, or not opposed to, the best interests of the society and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that his conduct was unlawful.

(4) The determination of whether the person's conduct met the standard required in order to justify indemnification or reimbursement in relation to any matter described in subsection (3) may be made only by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to the action, suit, or proceeding or by a court of competent jurisdiction. The termination of an action, suit, or proceeding by a judgment, order, settlement, or conviction or upon a plea of no contest, does not create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification or reimbursement. The right of indemnification or reimbursement is not exclusive of other rights to which the person may be entitled as a matter of law, and the right inures to the benefit of his heirs, executors, and administrators.

(5) A director, officer, employee, member, or volunteer of a society who serves without compensation may not be held liable, and a cause of action may not be brought, for damages resulting from the exercise of judgment

or discretion in connection with the person's duties or responsibilities for the society unless the act or omission involved willful or wanton misconduct.

(6) A society may purchase and maintain liability insurance for acts incurred in the course and scope of the position for a person who is or was a director, officer, employee, or agent of the society or who is or was serving at the request of the society as a director, officer, employee, or agent of any other firm, corporation, or organization.

Section 9. **Waiver.** The laws of the society may provide that a subordinate body or any of its subordinate officers or members may not waive any of the provisions of the laws of the society. The provision is binding on the society and every member and beneficiary of a member.

Section 10. **Organization.** A domestic society organized on or after January 1, 1992, must be formed as follows:

(1) Ten or more citizens of the United States, a majority of whom are residents of this state, who desire to form a fraternal benefit society, may make, sign, and acknowledge before a notary public, an application for articles of incorporation that states:

(a) the proposed corporate name of the society, which may not so closely resemble the name of any society or insurance company as to be misleading or confusing;

(b) the purposes for which it is being formed and the mode in which its corporate powers are to be exercised. The purposes may not include more liberal powers than are granted by [sections 1 through 38].

(c) the names and residences of the incorporators and the names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all officers are elected by the supreme governing body. The election must be held not later than 1 year from the date of issuance of the permanent certificate of authority.

(2) The application for articles of incorporation, certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications for certificates, and circulars to be issued by the society, and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within 1 year must be filed with the commissioner, who may require further information considered necessary. The bond, with sureties approved by the commissioner, must be in an amount, not less than $300,000 or more than $1,500,000, required by the commissioner. All documents filed must be in English. If the purposes of the society conform to the requirements of [sections 1 through 38] and all provisions of law have been complied with, the commissioner shall certify, retain, and file the articles of incorporation and furnish to the incorporators a preliminary certificate of authority authorizing the society to solicit members.

(3) A preliminary certificate of authority granted under the provisions of this section is not valid after 1 year from its date of issuance or after an extended period, not exceeding 1 year, as may be authorized by the commissioner upon good cause shown, unless the 500 applicants required under subsection (4) have been secured and the organization has been completed. The charter and all other proceedings under the charter are void 1 year from the date of issuance of the preliminary certificate of authority or at the expiration of the extended period, unless the society has completed its organization and received a certificate of authority to do business.

(4) Upon receipt of a preliminary certificate of authority from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each applicant a receipt for the amount collected. A society may not incur a liability other than for the return of an advance premium, issue any certificate, or pay, allow, offer, or promise to pay or allow any benefit to a person until:

(a) actual applications for benefits have been secured, aggregating at least $500,000, on not less than 500 applicants, and any necessary evidence of insurability has been furnished to and approved by the society;

(b) at least 10 subordinate lodges have been established into which the 500 applicants have been admitted;

(c) there has been submitted to the commissioner, under oath of the president, secretary, or corresponding officer of the society, a list of the applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted, and premiums for benefits; and

(d) it has been shown to the commissioner, by sworn statement of the treasurer or the corresponding officer of the society, that at least 500 applicants have each paid in cash at least one regular monthly premium. The aggregate premiums must amount to at least $150,000. The advance premiums must be held in trust during the period of organization. If the society has not qualified for a certificate of authority within 1 year, unless extended as provided in subsection (3), the premiums must be returned to the applicants.

(5) The commissioner may in his discretion require and examine additional information he considers advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the commissioner shall issue a certificate of authority to the society, authorizing it to transact business pursuant to the provisions of [sections 1 through 38]. The certificate of authority is prima facie evidence of the existence of the society at the date of the certificate. The commissioner shall record the certificate of authority.

(6) A society authorized to transact business in this state on January 1, 1992, is not required to reincorporate.

(7) An unincorporated or voluntary association may not transact business in this state as a society. Every voluntary association incorporated as provided in section 629(2), Chapter 286, Laws of 1959, may incur the obligations and enjoy the benefits of a society as if it were originally incorporated, and the corporation is considered a continuation of the original voluntary association. The officers must be elected and serve as provided in its articles of incorporation. Incorporation of a voluntary association does not affect existing suits, claims, or contracts.

Section 11. **Amendments to laws.** (1) A domestic society may amend its laws in accordance with the provisions of its laws by action of its supreme governing body at any regular or special meeting or, if its laws provide, by referendum. The referendum may be held in accordance with the provisions of its laws by a vote of the voting members of the society, by a vote of delegates or representatives of voting members, or by a vote of local lodges. A society may provide for voting by mail. An amendment submitted by referendum may not be adopted unless, within 6 months from the date of submission, a majority of the members voting have signified their consent to the amendment.

(2) An amendment to the laws of a domestic society does not take effect unless approved by the commissioner of insurance, who shall approve the amendment if he finds that it has been adopted and is not inconsistent with any requirement of the laws of this state or with the character, objectives, and purposes of the society. Unless the commissioner disapproves an amendment within 60 days after its filing, the amendment is considered approved. The approval or disapproval of the commissioner must be in writing and mailed to the secretary or corresponding officer of the society at its principal office. If the commissioner disapproves an amendment, the reasons for the disapproval must be stated in the written notice.

(3) Within 90 days of approval by the commissioner, all amendments or a synopsis of the amendments must be furnished to all members of the society, either by mail or by publication in full in the official publication of the society.

(4) A foreign or alien society authorized to do business in this state shall file with the commissioner a certified copy of all amendments of or additions to its laws within 90 days after their enactment.

(5) Printed copies of the laws, as amended, that are certified by the secretary or a corresponding officer of the society are prima facie evidence of their legal adoption.

Section 12. **Institutions.** (1) A society may create, maintain, and operate, or may establish organizations to operate, not-for-profit institutions to further the purposes permitted by [section 5(1)(b)]. The institutions may furnish services free or at a reasonable charge. Any real or personal property owned, held, or leased by the society for these purposes must be reported in every annual statement but may not be allowed as an admitted asset of the society.

(2) A society may not own or operate funeral homes or undertaking establishments.

Section 13. **Reinsurance.** (1) A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make the reinsurance and authorized to do business in this state or, if not authorized to do business in this state, an insurer that is approved by the commissioner of insurance. A society may not reinsure substantially all of its insurance in force without the written permission of the commissioner. A society may take credit for the reserves on the ceded risks to the extent reinsured. A credit may not be allowed as an admitted asset or as a deduction from liability to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective on or after July 1, 1992, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

(2) Notwithstanding the limitation in subsection (1), a society may reinsure the risks of another society in a consolidation or merger approved by the commissioner under [section 14].

Section 14. **Consolidations and mergers.** (1) A domestic society may consolidate or merge with any other society by complying with the provisions of this section. The consolidated or merged society shall file with the commissioner of insurance:

(a) a certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(b) a sworn statement by the president and secretary or corresponding officers of each society showing the financial condition of each society on a date fixed by the commissioner, but not earlier than December 31 preceding the date of the contract;

(c) a certificate of the officers of each society, verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme governing body of each society, held at a regular or special meeting of each body or, if the society's laws permit, by mail; and

(d) evidence that at least 60 days prior to the action of the supreme governing body of each society, the text of the contract was furnished to all members of each society, either by mail or by publication in full in the official publication of each society.

(2) If the commissioner finds that the contract containing the terms and conditions of the proposed consolidation or merger is in conformity with this section, that the financial statements are correct, and that the consolidation or merger is just and equitable to the members of each society, the commissioner shall approve the contract and issue a certificate approving the contract.

(3) Upon approval, the contract is in full force and effect unless a society that is a party to the contract is incorporated under the laws of any other state, district, territory, province, or country. In that event, the consolidation or merger is not effective until it is approved as provided by the laws of that state, district, territory, province, or country and a certificate of approval has been filed with the commissioner of insurance of this state.

(4) When the consolidation or merger becomes effective, all the rights, franchises, and interests of the consolidated or merged societies in and to every type of property, real, personal, or mixed, and things in action pertaining to the property are vested in the society resulting from or remaining after the consolidation or merger without any other instrument, except that conveyances of real property may be evidenced by deeds. The title to any real property or interest in real property vested under the laws of this state in any of the societies consolidated or merged may not revert or be impaired by reason of the consolidation or merger, but the title vests in the society resulting from or remaining after the consolidation or merger.

(5) The affidavit of any officer of the society or of anyone authorized by the society to mail a notice or document, stating that the notice or document has been addressed and mailed, is prima facie evidence that the notice or document has been furnished to the addressees.

Section 15. **Conversion of a society into a mutual life insurance company.** A domestic society may be converted and licensed as a mutual life insurance company by compliance with all the applicable requirements of Title 33 if the plan of conversion has been approved by the commissioner of insurance. The board of directors shall prepare a written plan of conversion that sets forth in full the terms and conditions of conversion. An affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting is necessary for the approval of the plan. A conversion may not take effect unless approved by the commissioner, who may approve the conversion if he finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society.

Section 16. **Benefits.** (1) A society may provide the following contractual benefits in any form:

(a) death benefits;

(b) endowment benefits;

(c) annuity benefits;

(d) temporary or permanent disability benefits;

(e) hospital, medical, or nursing benefits;

(f) monument or tombstone benefits to the memory of deceased members; and

(g) other benefits authorized for life insurers that are not inconsistent with [sections 1 through 38].

(2) A society shall specify in its rules those persons who may be issued or covered by the contractual benefits in subsection (1), consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult person.

Section 17. **Beneficiaries.** (1) The owner of a benefit contract may change the beneficiary or beneficiaries in accordance with the laws or rules of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary designations and shall provide that a revocable beneficiary may not have or obtain a vested interest in the proceeds of a certificate until the certificate becomes due and payable under the provisions of the benefit contract.

(2) A society may make provision for the payment of funeral benefits of up to $500 under a certificate due to a person equitably entitled to payment for the burial of a member.

(3) If, at the death of any person insured under a benefit contract, there is no lawful beneficiary to whom the proceeds are payable, the amount of the benefit, except to the extent that funeral benefits may be paid as provided in subsection (2), is payable to the estate of the deceased. If the owner of the certificate is a person other than the insured, the proceeds are payable to the owner.

Section 18. **Benefits not attachable.** Money or other benefits, charity, relief, or aid to be paid, provided, or rendered by a society is not liable to attachment, garnishment, or other process and may not be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member, a beneficiary, or any other person who may have a right to the benefit, either before or after payment by the society.

Section 19. **Benefit contract.** (1) A society authorized to do business in this state shall issue to the owner of a benefit contract a certificate specifying the amount of benefits provided. The certificate must state that the certificate, together with any attached riders or endorsements, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each, constitutes the benefit contract, as of the date of issuance, between the society and the owner. A copy of the application for insurance and declaration of insurability, if any, must be endorsed upon or attached to the certificate. All statements on the application must be representations and not warranties. Any waiver of this provision is void.

(2) Any changes, additions, or amendments to the laws of the society made or enacted after the issuance of the certificate bind the owner and the beneficiaries and control the benefit contract in all respects as if the changes, additions, or amendments were in force at the time of the application for insurance. However, a change, addition, or amendment does not

destroy or diminish benefits that the society contracted to give the owner as of the date of issuance.

(3) A person upon whose life a benefit contract is issued before attaining the age of majority is bound by the terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

(4) A society shall provide in its laws that if its reserves for one or more classes of certificates become impaired, its board of directors or corresponding body may require that the owner of a certificate pay to the society the amount of the owner's equitable proportion of the deficiency as ascertained by its board and that if the payment is not made either:

(a) it is an indebtedness against the certificate and draws interest not to exceed the rate specified for certificate loans under the certificates; or

(b) in lieu of or in combination with the provisions of subsection (4)(a), the owner of the certificate may accept a proportionate reduction in benefits under the certificate.

(5) The society may specify the manner of election and which alternative under subsection (4) is to be presumed if no election is made.

(6) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, must be received in evidence concerning the terms and conditions of the documents.

(7) A certificate may not be delivered or issued for delivery in this state unless a copy of the form has been filed with the commissioner of insurance in the manner provided for policies issued by life and disability insurers in this state. Certificates issued prior to July 1, 1993, must conform to the requirements provided by the laws applicable immediately prior to July 1, 1992. A life, disability, or annuity certificate issued on or after July 1, 1993, must meet the standard contract provision requirements not inconsistent with [sections 1 through 38] for policies issued by life and disability insurers in this state, except that a society may provide in its certificates for a grace period of 1 month for payment of premiums. The certificate must contain a provision stating the amount of premiums payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or rules in force at the time of issuance of the certificate that, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for the expulsion or suspension of a member, the certificate must contain a provision that a member expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, has the privilege of maintaining the certificate in force by continuing payment of the required premium.

(8) Benefit contracts issued on the lives of persons below the society's minimum age for adult membership may provide for transfer of control of ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this

transfer, and it may provide in all other respects for the regulation, government, and control of the certificates and all rights, obligations, and liabilities incident to and connected with the transfer. Ownership rights prior to the transfer must be specified in the certificate.

(9) A society may specify the terms and conditions on which benefit contracts may be assigned.

Section 20. **Nonforfeiture benefits, cash surrender values, certificate loans, and other options.** (1) For certificates issued prior to July 1, 1993, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted must comply with the provisions of law applicable immediately prior to July 1, 1992.

(2) For certificates issued on or after July 1, 1993, for which reserves are computed on the commissioner of insurance's 1941 standard ordinary mortality table, the commissioner's 1941 standard industrial mortality table, the commissioner's 1958 standard ordinary mortality table, the commissioner's 1980 standard mortality table, or any more recent table made applicable to life insurers, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted may not be less than the corresponding amount ascertained in accordance with the laws of this state applicable to life insurers issuing policies containing similar benefits based upon the tables.

Section 21. **Investments.** A society may invest its funds only in investments authorized by the laws of this state for the investment of assets of life insurers. A foreign or alien society that is permitted or seeking to do business in this state and that invests its funds in accordance with the laws of the state, district, territory, province, or country where it is incorporated meets the requirements of this section for the investment of funds.

Section 22. **Funds.** (1) All assets must be held, invested, and disbursed for the use and benefit of the society, and a member or beneficiary may not have or acquire individual rights in assets or become entitled to any apportionment on the surrender of any part of the assets except as provided in the benefit contract.

(2) A society may create, maintain, invest, disburse, and apply any special fund or funds necessary to carry out any purpose permitted by the laws of the society.

(3) Pursuant to a resolution of its supreme governing body, a society may establish and operate one or more separate accounts and issue contracts on a variable basis, subject to the provisions of law regulating life insurers establishing similar accounts and issuing similar contracts. To the extent the society considers it necessary in order to comply with any applicable federal or state laws or any rules issued under those laws, the society may adopt special procedures for administering a separate account and may, for persons having beneficial interests in a separate account, provide special voting and other rights, including without limitation special rights and procedures relating to investment policy, investment advisory

services, selection of certified public accountants, and selection of a committee to manage the business and affairs of the account. A society may issue contracts on a variable basis to which the provisions of [section 19(2) and (4)] do not apply.

Section 23. **Scope — provisions applicable.** (1) Except as provided in subsection (2), societies are governed by [sections 1 through 38] and are exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state but for every other purpose. The provisions of a law enacted after January 1, 1992, do not apply to fraternal benefit societies unless expressly made applicable by the provisions of the law.

(2) In addition to the provisions of [sections 1 through 38], the provisions of chapter 1, parts 1 through 4 and 7; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13; 33-3-308; 33-15-502; and chapters 17, 18, 20, and 22 apply to fraternal benefit societies to the extent applicable and to the extent not in conflict with the provisions of [sections 1 through 38] and the reasonable implications of [sections 1 through 38].

Section 24. **Taxation.** A society organized or licensed under [sections 1 through 38] is a charitable and benevolent institution, and all of its funds are exempt from all state, county, district, municipal, and school taxes other than taxes on real estate and office equipment.

Section 25. **Valuation.** (1) Standards of valuation for certificates issued prior to July 1, 1993, must be those provided by the laws applicable immediately prior to July 1, 1992.

(2) (a) The minimum standards of valuation for certificates issued on or after July 1, 1993, must be based on the following tables:

(i) for certificates of life insurance—the commissioner of insurance's 1941 standard ordinary mortality table, the commissioner's 1941 standard industrial mortality table, the commissioner's 1958 standard ordinary mortality table, the commissioner's 1980 standard ordinary mortality table, or any more recent table made applicable to life insurers;

(ii) for annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits and for noncancelable accident and health benefits—the tables authorized for use by life insurers in this state.

(b) All of the certificates must be valued under valuation methods and standards, including interest assumptions, that are in accordance with the laws of this state applicable to life insurers that issue policies containing similar benefits.

(3) The commissioner may accept other standards for valuation if he finds that the reserves produced by the valuation will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard prescribed in this section. The commissioner may vary the standards of mortality applicable to all benefit contracts on substandard

lives or other extrahazardous lives by a society authorized to do business in this state.

(4) A society, with the consent of the commissioner of insurance of the state of domicile of the society and under conditions, if any, that the commissioner may impose, may establish and maintain reserves on its certificates in excess of required reserves, but the contractual rights of a benefit member may not be affected by the excess reserves.

Section 26. **Reports — fee.** Reports must be filed in accordance with the provisions of this section.

(1) On or before March 1 of each year, unless for cause shown the time has been extended by the commissioner of insurance, a society that transacts business in this state shall file with the commissioner of insurance a statement of its financial condition, transactions, and affairs for the preceding calendar year and pay a filing fee of $25. The statement must be in the general form and context approved by the national association of insurance commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.

(2) As part of the annual statement, each society shall, on or before March 1, file with the commissioner a valuation of its certificates in force on the preceding December 31. The commissioner may, for cause shown, extend for not more than 2 calendar months the time for filing the valuation. The valuation must be done in accordance with the standards specified in [section 25]. The valuation and underlying data must be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(3) A society that fails to file the annual statement in the form and within the time provided by this section shall forfeit $100 for each day during which the failure continues, and, upon notice by the commissioner to that effect, its authority to do business in this state ceases while the default continues.

Section 27. **Annual certificate — fees.** (1) A society may not insure a risk in this state unless it holds a certificate of authority issued to it by the commissioner of insurance.

(2) A society's certificate of authority continues in force as long as the society is entitled to it under [sections 1 through 38] and until suspended, revoked, or otherwise terminated. However, continuance of the certificate by the society is conditioned upon payment before May 15 of each year of a continuation fee of $10. The fee must be deposited by the commissioner of insurance with the state treasurer to the credit of the state general fund.

(3) If a society does not continue its certificate of authority in accordance with subsection (2), its certificate of authority expires at midnight on the May 31 following its failure to continue it in force. In that case, the commissioner shall promptly notify the society of the impending expiration of its certificate of authority.

(4) The commissioner may reinstate a certificate of authority that a society has inadvertently permitted to expire, after the society has fully cured all failures that resulted in the expiration and upon payment by the society of a $25 fee for reinstatement in addition to the continuation fee provided for in subsection (2). If a certificate is not reinstated, the commissioner may grant a society another certificate of authority only after the society files an application for a certificate of authority and meets all other requirements for an original certificate of authority in this state.

(5) The commissioner may amend a certificate of authority at any time to conform to changes in a society's charter of insuring powers.

(6) A certified copy or duplicate of a certificate of authority is prima facie evidence that the society is a fraternal benefit society within the meaning of [sections 1 through 38].

Section 28. **Examination of societies.** (1) The commissioner of insurance or any person he may appoint may examine any domestic, foreign, or alien society transacting or applying for admission to transact business in this state in the same manner as authorized for examination of domestic, foreign, or alien insurers. Requirements of notice and an opportunity to respond before findings are made public, as provided in the laws regulating insurers, are applicable to the examination of societies.

(2) The expense of each examination and of each valuation, including compensation and actual expenses of examiners, must be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner.

Section 29. **Foreign or alien society — admission.** (1) A foreign or alien society may not transact business in this state without a license issued by the commissioner of insurance. A foreign or alien society desiring admission to this state shall comply substantially with the requirements and limitations of [sections 1 through 38] applicable to domestic societies. A society may be licensed to transact business in this state upon filing with the commissioner:

(a) a certified copy of its articles of incorporation;

(b) a copy of its bylaws, certified by its secretary or corresponding officer;

(c) a written appointment of the commissioner to be the society's agent, as prescribed in [section 35];

(d) a statement of its business, under oath of its president and secretary or corresponding officers, in a form prescribed by the commissioner, verified by an examination made by the supervising insurance official of its home state or other state, district, territory, province, or country satisfactory to the commissioner of this state;

(e) certification from the proper official of its home state, district, territory, province, or country that the society is legally incorporated and licensed to transact business in that jurisdiction;

(f) copies of its certificate forms; and

(g) other information the commissioner considers necessary.

(2) A foreign or alien society applying for authority to transact business in this state must have the qualifications required of domestic societies organized under [sections 1 through 38].

Section 30. **Injunction — liquidation — receivership of domestic society.** (1) The commissioner of insurance shall notify a domestic society of a deficiency or deficiencies and state in writing the reasons for his dissatisfaction, whenever the commissioner, upon investigation, finds that the society:

(a) has exceeded its powers;

(b) has failed to comply with any provision of [sections 1 through 38];

(c) is not fulfilling its contracts in good faith;

(d) has a membership of less than 400 after an existence of 1 year or more; or

(e) is conducting business fraudulently or in a manner hazardous to its members, creditors, the public, or the business.

(2) Whenever a deficiency or deficiencies are found, the commissioner shall issue to the society a written notice that requires the deficiency or deficiencies to be corrected. The society shall within 30 days comply with the commissioner's request for correction. If the society fails to comply, the commissioner shall notify the society of the noncompliance and require the society to show cause by a stated date why it should not be enjoined from transacting business until the violation complained of is corrected or why an action in quo warranto should not be commenced against the society.

(3) If the society does not present sufficient reasons why it should not be enjoined from transacting business or why the quo warranto action should not be commenced, the commissioner may present the facts relating to his determination to the attorney general who shall, if he finds that the circumstances warrant, commence an action to enjoin the society from transacting business or an action in quo warranto.

(4) The court shall notify the officers of the society of a hearing. If after a hearing it appears that the society should be enjoined or liquidated or that a receiver should be appointed, the court shall enter the necessary order. A society enjoined from transacting business may not do business until:

(a) the commissioner finds that the violation complained of has been corrected;

(b) the costs of the action have been paid by the society if the court finds that the society was in default as charged;

(c) the court has dissolved its injunction; and

(d) the commissioner has reinstated the certificate of authority.

(5) If the court orders the society liquidated, it is enjoined from transacting any further business. The receiver of the society shall proceed at once to take possession of the books, papers, money, and other assets of the society and, under the direction of the court, proceed to close the affairs of the society and distribute its funds to those entitled to the funds.

(6) An action under this section may not be recognized in any court of this state unless brought by the attorney general upon request of the commissioner. The court shall appoint the commissioner as the receiver for a domestic society.

(7) The provisions of this section relating to hearing by the commissioner, action by the attorney general at the request of the commissioner, hearing by the court, injunction, and receivership apply to a society that voluntarily decides to discontinue business.

Section 31. **Suspension, revocation, or refusal of license of foreign or alien society.** (1) The commissioner of insurance shall notify a foreign or alien society of a deficiency or deficiencies and state in writing the reasons for his dissatisfaction, whenever the commissioner, upon investigation, finds that the society transacting or applying to transact business in this state:

(a) has exceeded its powers;

(b) has failed to comply with any of the provisions of [sections 1 through 38];

(c) is not fulfilling its contracts in good faith; or

(d) is conducting its business fraudulently or in a manner hazardous to its members, creditors, or the public.

(2) Whenever a deficiency or deficiencies are found, the commissioner shall issue to the society a written notice that requires the deficiency or deficiencies to be corrected. The society shall within 30 days comply with the commissioner's request for correction. If the society fails to comply, the commissioner shall notify the society of the noncompliance and require the society to show cause by a stated date why its authority to do business in this state should not be suspended, revoked, or refused.

(3) If the society does not present sufficient reason why its authority to do business in this state should not be suspended, revoked, or refused, the commissioner may:

(a) suspend or refuse the authority of the society to do business in this state until satisfactory evidence is furnished to the commissioner that the suspension or refusal should be withdrawn; or

(b) revoke the authority of the society to do business in this state.

(4) Nothing in this section may be construed as preventing any society from continuing in good faith all contracts made in this state during the time the society was legally authorized to transact business in this state.

Section 32. **Injunction.** An application or petition for injunction against any domestic, foreign, or alien society or lodge of a society may not be recognized in any court of this state unless made by the attorney general upon request of the commissioner of insurance.

Section 33. **Producer licensing.** (1) A society's insurance producer must be considered to be an insurance producer and is subject to the same licensing requirements as insurance producers under Title 33, chapter 17, except that an examination is not required of an individual who is licensed in this state as an insurance producer for a society as to the kind of insurance to be transacted on or before October 1, 1981, and who continues to be licensed as an insurance producer.

(2) A society doing business in this state may not pay to a person who is not a licensed insurance producer of the society any commission or other compensation for any services in obtaining in this state any new contract of life, accident, or health insurance or any new annuity contract.

Section 34. **Unfair methods of competition and unfair or deceptive acts and practices.** A society authorized to do business in this state and its insurance producers are subject to the provisions of chapter 18 that relate to unfair or deceptive trade practices. However, nothing in chapter 18 may be construed as applying to or affecting the right of a society to determine its eligibility requirements for membership or be construed as applying to or affecting the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society.

Section 35. **Commissioner as agent — service of process — procedure — fee.** (1) A society authorized to do business in this state shall appoint in writing the commissioner of insurance as its agent upon whom all lawful process in any action or proceeding against it must be served. The society shall agree in writing that any lawful process against it that is served on the commissioner is of the same legal force and validity as if it had been served upon the society. The appointment continues in force as long as any liability remains outstanding in this state. Copies of the appointment, certified by the commissioner, may be admitted in evidence.

(2) Service may be made only upon the commissioner or, if absent, upon the person in charge of the commissioner's office. Service must be made in duplicate and constitutes service upon the society. When legal process against a society is served upon the commissioner, the commissioner shall forward one of the duplicate copies by certified mail to the secretary or

corresponding officer of the society. The service may not require a society to file its answer, pleading, or defense in less than 30 days from the date of mailing the copy of the service to the society.

(3) Legal process may not be served upon a society except in the manner provided in this section.

(4) At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner a fee of $2.

Section 36. **Review.** All decisions and findings of the commissioner of insurance made under the provisions of [sections 1 through 38] are subject to review by the court in accordance with the provisions of 33-1-711.

Section 37. **Penalties.** (1) A person who makes a false or fraudulent statement in or relating to an application for membership or for the purpose of obtaining money from a benefit in any society is guilty of a misdemeanor.

(2) A person who solicits membership for, or in any manner assists in procuring membership in, any society not authorized to transact business in this state is subject to an administrative fine, imposed by the commissioner of insurance, of not less than $25 or more than $500 for each violation.

(3) A person convicted of a willful violation of, or neglect or refusal to comply with, any provision of [sections 1 through 38] for which a penalty is not otherwise prescribed shall be punished by a fine of not more than $1,000 for each violation and not more than $10,000 for all related violations.

Section 38. **Exemption of certain societies.** (1) Nothing in [sections 1 through 38] may be construed to affect or apply to:

(a) grand or subordinate lodges of societies, orders, or associations doing business in this state on July 1, 1992, that provide benefits exclusively through local or subordinate lodges;

(b) (i) orders, societies, or associations that admit to membership only persons engaged in one or more crafts or hazardous occupations or in the same or similar lines of business and that insure only their own members and their families; and

(ii) the ladies' societies or ladies' auxiliaries to such orders, societies, or associations;

(c) domestic societies that limit their membership to employees of a particular city or town, designated firm, business house, or corporation and that provide for a death benefit of not more than $400 or disability benefits of not more than $350 to any person in any 1 year, or both; or

(d) domestic societies or associations of a purely religious, charitable, or benevolent description, which provide for a death benefit of not more than $400 or for disability benefits of not more than $350 to a person in any 1 year, or both.

(2) A society or association described in subsections (1)(c) or (1)(d) that provides for death or disability benefits for which benefit certificates are issued and a society or association included in subsection (1)(d) that has more than 1,000 members are not exempt from the provisions of [sections 1 through 38].

(3) A society that is exempt under this section from the requirements of [sections 1 through 38], except a society described in subsection (1)(b), may not give or allow or promise to give or allow to any person any compensation for procuring new members.

(4) A society that provides for benefits in case of death or disability resulting solely from accident and that does not obligate itself to pay natural death or sick benefits has all of the privileges and is subject to all the applicable provisions and regulations of [sections 1 through 38] except the provisions of [sections 1 through 38] that relate to medical examination, valuations of benefit certificates, and incontestability.

(5) The commissioner may require from a society or association, by examination or otherwise, any information that will enable the commissioner to determine whether the society or association is exempt from the provisions of [sections 1 through 38].

(6) A society that is exempt under the provisions of this section is also exempt from all other provisions of the insurance laws of this state.

Section 39. Section 31-2-106, MCA, is amended to read:

"**31-2-106. Exempt property — bankruptcy proceeding.** No individual may exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d). An individual may exempt from the property of the estate in any bankruptcy proceeding:

(1) that property exempt from execution of judgment as provided in 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1006, 19-10-504, 19-11-612, 19-13-1004, 19-21-212, Title 25, chapter 13, part 6, ~~33-7-511~~ *[section 18]*, 33-15-512 through 33-15-514, 35-10-502, 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter 32, and 80-2-245;

(2) the individual's right to receive unemployment compensation and unemployment benefits; and

(3) the individual's right to receive benefits from or interest in a private or governmental retirement, pension, stock bonus, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, excluding that portion of contributions made by the individual within 1 year before the filing of the petition in bankruptcy which exceeds 15% of the individual's gross income for that 1-year period, unless:

(a) the plan or contract was established by or under the auspices of an insider that employed the individual at the time the individual's rights under the plan or contract arose;

(b) the benefit is paid on account of age or length of service; and

(c) the plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(b), 408, or 409)."

Section 40. Section 33-22-1703, MCA, is amended to read:

"**33-22-1703. Definitions.** As used in this part, the following definitions apply:

(1) "Emergency services" means services provided after suffering an accidental bodily injury or the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that without immediate medical attention the subscriber or insured could reasonably expect that:

(a) his health would be in serious jeopardy;

(b) his bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(2) "Health benefit plan" means the health insurance policy or subscriber arrangement between the insured or subscriber and the health care insurer that defines the covered services and benefit levels available.

(3) "Health care insurer" means:

(a) an insurer that provides disability insurance as defined in 33-1-207;

(b) a health service corporation as defined in 33-30-101;

(c) a health maintenance organization as defined in 33-31-102;

(d) a fraternal benefit society as ~~defined~~ *described* in ~~33-7-102~~ *[section 1]*;

(e) an administrator as defined in 33-17-102; or

(f) any other entity regulated by the commissioner that provides health coverage.

(4) "Health care services" means health care services or products rendered or sold by a provider within the scope of the provider's license or legal authorization or services provided under Title 33, chapter 22, part 7.

(5) "Insured" means an individual entitled to reimbursement for expenses of health care services under a policy or subscriber contract issued or administered by an insurer.

(6) "Preferred provider" means a provider or group of providers who have contracted to provide specified health care services.

(7) "Preferred provider agreement" means a contract between or on behalf of a health care insurer and a preferred provider.

(8) "Provider" means an individual or entity licensed or legally authorized to provide health care services or services covered within Title 33, chapter 22, part 7.

(9) "Subscriber" means a certificate holder or other person on whose behalf the health care insurer is providing or paying for health care coverage."

Section 41. **Repealer.** Sections 33-7-101, 33-7-102, 33-7-103, 33-7-104, 33-7-111, 33-7-112, 33-7-113, 33-7-114, 33-7-115, 33-7-116, 33-7-201, 33-7-202, 33-7-203, 33-7-204, 33-7-205, 33-7-206, 33-7-207, 33-7-211, 33-7-212, 33-7-213, 33-7-301, 33-7-302, 33-7-303, 33-7-304, 33-7-305, 33-7-401, 33-7-402, 33-7-403, 33-7-404, 33-7-405, 33-7-406, 33-7-407, 33-7-501, 33-7-502, 33-7-503, 33-7-504, 33-7-505, 33-7-506, 33-7-507, 33-7-508, 33-7-509, 33-7-510, 33-7-511, 33-7-512, 33-7-513, 33-7-514, 33-7-515, 33-7-516, 33-7-517, 33-7-518, and 33-7-519, MCA, are repealed.

Section 42. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 43. **Codification instruction.** [Sections 1 through 38] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 38].

Section 44. **Effective date.** [This act] is effective January 1, 1992.

Approved April 23, 1991.

CHAPTER NO. 587

[HB 842]

AN ACT REVISING THE APPLICATION AND AWARD PROCEDURE FOR CULTURAL AND AESTHETIC PROJECT GRANTS; AND AMENDING SECTIONS 22-2-301 AND 22-2-308, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-2-301, MCA, is amended to read:

"**22-2-301. Cultural and aesthetic projects grants.** (1) Any person, association, or representative of a governing unit seeking a grant for a cultural or aesthetic project from the income of the trust fund created in 15-35-108 must submit a grant proposal to the cultural and aesthetic projects advisory committee, in care of the Montana ~~historical society~~ *arts* *council,* by ~~September~~ *August* 1 of the year preceding the convening of a regular legislative session.

(2) Grant proposals must be for the purpose of protecting works of art in the state capitol or other cultural and aesthetic projects."

Section 2. Section 22-2-308, MCA, is amended to read:

"**22-2-308. Application procedure — grant criteria.** (1) ~~As set forth in subsections (1)(a) and (1)(b), certain grants require local~~ *A grant for a facility owned by a county or municipality must require* financial ~~or~~ *and* in-kind support *for the facility from the county or municipality.* The grant application form, which must be prescribed by the Montana arts council, must request specific information about the level of local support for the project. ~~In the following circumstances, local support is required:~~

~~(a) To receive cultural and aesthetic grant funds, county or municipally owned facilities must obtain financial and in-kind support from their respective local governments.~~

~~(b) To receive grant funding for all grants except the first grant from the cultural and aesthetic grant program, private museums, art centers, and cultural facilities must obtain county or municipal financial or in-kind support.~~

(2) An applicant for a historic preservation project must cooperate with the state historic preservation office. A letter from the state historic preservation office, stating any agreements reached with the applicant, must be received by the Montana arts council before the grant funds may be released."

Approved April 23, 1991.

CHAPTER NO. 588

[HB 964]

AN ACT AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO DEPOSIT CERTAIN FEES IN THE STATE SPECIAL REVENUE FUND AND DIRECTING THE BOARD OF INVESTMENTS TO INVEST THE MONEY; ESTABLISHING A PESTICIDE MANAGEMENT ACCOUNT; CHANGING THE AMOUNTS OF PESTICIDE REGISTRATION FEES; AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO ISSUE COMPLIANCE ORDERS; TERMINATING THE SURCHARGE ON RETAIL SALES OF HERBICIDES; AMENDING SECTIONS 80-7-810, 80-7-812, 80-7-815, 80-8-116, 80-8-201, 80-8-212, 80-8-305, AND 80-15-302, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-8-116, MCA, is amended to read:

"80-8-116. ~~Deposit~~ *Pesticide management account — deposit* of fees and penalties ~~in general fund~~ — *investment.* *(1) There is a pesticide management account within the state special revenue fund established in 17-2-102.*

(2) (a) All licensing, permit, registration, and ~~equipment inspection~~ *devices and blending plant* fees collected under ~~part~~ *parts 1 and* 2 of this chapter ~~and any~~ *must be deposited in the pesticide management account for the purpose of administering this chapter, including but not limited to:*

(i) the cost of equipment and facilities;

(ii) the cost of inspecting, investigating, analyzing, and examining:

(A) pesticide products;

(B) applicators, operators, and other users of pesticides;

(C) dealers and retailers selling pesticides;

(D) pesticide equipment, storage, disposal, and operational facilities; and

(iii) related pest and pesticide activities authorized by Title 80, chapter 7, part 5, and 80-7-711 through 80-7-714 and 80-7-720.

(b) Any civil penalties collected under 80-8-306 must be deposited in the general fund.

(3) The department may direct the board of investments to invest the funds collected under this section, pursuant to the provisions of 17-6-201. The income from the investments must be credited to the pesticide management account within the state special revenue fund."

Section 2. Section 80-8-201, MCA, is amended to read:

"80-8-201. Registration. (1) Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state shall be registered with the department. The registration shall be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement including:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is so registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(3) Any pesticide imported into this state which is subject to the provisions of any federal act providing for the registration of pesticides and has been registered under the provisions of a federal act shall be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as outlined in subsection (8) of this section and 80-8-105(3). The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) The applicant shall pay an annual fee of ~~$75~~ *$70* for each pesticide registered. A registration fee is not required to register a federally approved experimental use permit. ~~Fees collected shall be deposited in the state treasury to the credit of the general fund.~~

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the article warrants the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of 80-8-202, it shall register the article.

(6) If it does not appear to the department that the article warrants the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with this chapter, it shall notify the applicant of the manner in which the article, labeling, or other material required to be submitted fails to comply with the chapter so as to afford the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the article. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the article or its labeling comply with this chapter or whenever scientific evidence proves that the article endangers man or the general environment afforded protection under 80-8-105(3)(a). When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

(7) Registration is not required in the case of a pesticide shipped from one plant in this state to another plant in this state by the same person.

(8) (a) The departments of health and environmental sciences, agriculture, and fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The applicant shall pay a one-time fee of ~~$75~~ *$70* for a special local need or experimental-use permit registration. The departments shall utilize the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted thereunder. The department of agriculture shall provide the departments of health and environmental sciences and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the department of agriculture's proposed action on the application. The departments of health and environmental sciences and fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application. If the departments of health and environmental sciences, agriculture, and fish, wildlife, and parks are in agreement with the proposed registration, the department of agriculture shall issue the registration.

(b) The department of agriculture shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department of agriculture shall issue the registration.

(c) The registrant applying for registration shall be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, health and environmental sciences, and fish, wildlife, and parks.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration shall be accepted by the departments and implemented by the department of agriculture.

(9) Pesticides registered under any federal law when canceled for sale and use in total or in part by a federal agency responsible for registration are considered canceled in total or in part for sale and use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or orders of the federal agency. If the federal cancellation allows existing stock to be used past the final date of cancellation, such sale or use in this state may not exceed 2 years. The department shall provide technical assistance to any person in possession of such products to insure their proper disposal, relabeling, or removal."

Section 3. Section 80-8-212, MCA, is amended to read:

"**80-8-212. Retail ~~noncommercial~~ sale of pesticides —** ***education program.*** *(1)* The department of agriculture is authorized to designate the pesticides that may be sold in this state at retail for home, yard, garden, and lawn use. Only pesticides so designated may be sold at retail. The department may also limit the retail sale of such designated pesticides to quantities up to a specific number of pounds or gallons and of such concentrations as would be sublethal to humans and animals if small amounts thereof were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(2) Subject to the availability of funds, the department and the Montana state university extension service shall enter into a cooperative agreement to establish an education program for retailers and the general public on pests, pesticides, and alternative control methods."

Section 4. Section 80-8-305, MCA, is amended to read:

"**80-8-305. General violations —** ***compliance orders.*** (1) Consistent with the provisions of Title 80, chapter 15, it is unlawful for any person:

(a) to discard any pesticide or pesticide container in such a manner as to cause injury to humans, domestic animals, or wildlife, or to pollute any waterway in a way harmful to any wildlife therein or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in such a manner as to endanger man or the environment or to endanger food or any other products that may be transported, stored, displayed, or distributed with such pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which he does not have an appropriate, complete, or legible label at hand;

(d) to apply or attempt to apply any registered pesticide in a manner inconsistent with the label, as defined in 80-8-102; or

(e) to use any unregistered chemical or biological agent that is required to be registered as a pesticide by the Montana Pesticides Act.

(2) It is unlawful for any person to manufacture, formulate, or store any registered pesticide or component or byproduct thereof in such a manner that the pesticide or any component or byproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. Odor is specifically exempted from the provisions of this subsection.

(3) The department may issue a compliance order to any person violating the provisions of this section, 80-8-211, or any other requirement established pursuant to this chapter. The compliance order may be issued to any person, including the person's employees, agents, or subcontractors.

(4) A compliance order may require the cleanup of any pesticide that a person has accidently or purposely dumped, spilled, misused, or unlawfully used in violation of this section. The department shall allow the recipient of a compliance order to spread, treat, or dispose of soils contaminated by a

pesticide if the person can document and prove to the satisfaction of the department that the soil will be beneficially used or that the pesticide in the soil will physically, chemically, or biologically degrade and that neither the beneficial use of the soil nor degradation of the pesticide in the soil will adversely affect agriculture, human health, or the environment. Prior to issuing a compliance order requiring cleanup of a pesticide, the department shall consult with the department of health and environmental sciences to ensure that the provisions of Title 75, chapter 10, part 4, are considered. If a pesticide or soil contaminated by a pesticide is subject to the provisions of Title 75, chapter 10, part 4, and there is no beneficial use of the soil as determined by the department, the department of health and environmental sciences is responsible for regulating the cleanup and disposal of the pesticide and the soil contaminated by the pesticide. The department may not allow a person to spread, treat, or dispose of soils contaminated by a canceled or suspended pesticide without the specific approval of the department of health and environmental sciences or the U.S. environmental protection agency, or both, as required on a case-by-case basis.

(5) When issuing a compliance order, the department may require a person who has violated a provision of this chapter to conduct monitoring to assist in determining the presence or level of concentration of pesticides in the environment and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(6) A compliance order must specify the requirement of this chapter that has been violated and establish a time schedule for compliance. In establishing a time schedule for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail."

Section 5. Section 80-15-302, MCA, is amended to read:

"**80-15-302. Special funding.** (1) A fee of ~~$15~~ *$80* is assessed for the registration of pesticides in addition to the fee imposed by 80-8-201(4).

(2) *The money collected from the registration fee established by subsection (1) must be deposited in the state special revenue fund as follows:*

(a) Each of the following state agencies must be credited $15,000 for purposes of administering or assisting the department in administering this chapter:

(i) department of health and environmental sciences; and

(ii) Montana state university extension service.

(b) The department must be credited with the remainder of the registration fee money to use in administering this chapter.

(3) A fee of $10 is assessed for the registration of fertilizers in addition to the fee imposed by 80-10-201(1). The additional fee must be used for the ground water protection responsibilities of the department relating to fertilizers. Revenues collected from this fee must be credited to the commercial fertilizer *agricultural chemical ground water* account within the state special revenue fund for the administration of this chapter.

(4) The department may direct the board of investments to invest the portion of the money collected under this section that is credited to the department pursuant to the provisions of 17-6-201. The income from the investments must be deposited in the state special revenue fund and credited to the department."

Section 6. Section 80-7-812, MCA, is amended to read:

"**80-7-812. Surcharge imposed on retail sales of herbicides — disposition of proceeds —** ***termination.*** (1) There is imposed a surcharge of 1 cent per dollar of the retail value of all registered herbicides sold for consumer use in the state. The volume of sales of each registered herbicide must be determined by the department from records required of pesticide dealers and retailers.

(2) The surcharge must be collected by the department on an annual calendar basis from the registrant of the herbicide and is due and payable within 30 days after notice of the amount has been given to the registrant.

(3) No registrant may be allowed to reregister a herbicide if he has failed to pay in full the surcharge on his product.

(4) The department may expend or commit not more than one-half of the annual proceeds of the surcharge as provided in 80-7-814(2) and (3). All remaining annual proceeds of the surcharge and any interest income collected must be deposited into the noxious weed management trust fund.

(5) The surcharge imposed on retail sales of herbicides in subsection (1) is terminated after the state treasurer has certified to the department that the noxious weed management trust fund has reached $2,500,000, subject to the applicable provisions of subsection (5)(a) or (5)(b).

(a) If the fund reaches $2,500,000 on or before December 31, 1993, the surcharge proceeds from the sale of herbicides for calendar year 1992 must be collected and deposited in the fund, and the surcharge is terminated on December 31, 1993.

(b) If the fund reaches $2,500,000 after December 31, 1993, the surcharge is terminated after the surcharge proceeds from the sale of herbicides for the calendar year preceding the year in which the fund reaches $2,500,000 have been collected and deposited in the fund.

(6) The termination of the surcharge on retail sales of herbicides does not:

(a) prevent the department from expending one-half of the annual herbicide surcharge proceeds as provided in this section within or for the fiscal year following the termination of the surcharge;

(b) prevent the department from expending the proceeds as provided in 80-7-814 within or for the fiscal year following the termination of the surcharge;

(c) prevent the deposit of other funds or proceeds authorized by this chapter into the noxious weed management trust fund; or

(d) prevent the department from expending the interest or revenue generated by the trust fund as provided in 80-7-814."

Section 7. Section 80-7-810, MCA, is amended to read:

"**80-7-810. Disposition of proceeds.** Three percent of the proceeds from the fee imposed in 61-3-510 may be retained by the county treasurer for costs of collection. The remainder must be deposited in the special revenue fund and must be expended as provided in 80-7-814~~(2) and (3)~~. Twenty-five percent of the money deposited in the special revenue fund under this section must be used for research and development of nonchemical methods of weed management."

Section 8. Section 80-7-815, MCA, is amended to read:

"**80-7-815. Noxious weed emergency — expenditure authorized.** (1) If a new and potentially harmful noxious weed is discovered growing in the state and is verified by the department, the governor may declare a noxious weed emergency. In the absence of necessary funding from other sources, this declaration authorizes the department to allocate up to $150,000 of the principal of the noxious weed *management* trust fund to government agencies for emergency relief to eradicate or confine the new noxious weed species.

(2) If such expenditure causes the principal of the trust fund to fall below $2,500,000, it must be replenished by proceeds of the surcharge imposed in 80-7-812 *or, if the surcharge has been terminated as provided in 80-7-812(5), by the interest or revenue generated by the trust fund, by the other revenues provided by this part, or by revenues obtained from the fee imposed by 61-3-510, as determined by the department."*

Section 9. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Effective dates.** (1) [Sections 1, 4, 6 through 9, and this section] are effective July 1, 1991.

(2) [Sections 2, 3, and 5] are effective January 1, 1992.

Approved April 23, 1991.

CHAPTER NO. 589

[SB 26]

AN ACT TO GENERALLY REVISE THE AUTHORITY OF THE BOARD OF INVESTMENTS TO INVEST THE PERMANENT COAL TAX TRUST FUND; ELIMINATING THE AUTHORITY OF THE BOARD OF INVESTMENTS TO GUARANTEE LOANS; ELIMINATING THE ECONOMIC DEVELOPMENT GUARANTY FUND AND THE IN-STATE INVESTMENT FUND; ALLOWING THE BOARD OF INVESTMENTS TO INVEST UP TO 25 PERCENT OF THE PERMANENT COAL TAX TRUST FUND IN THE MONTANA ECONOMY; REQUIRING THE BOARD OF INVESTMENTS TO REPORT BIENNIALLY TO THE LEGISLATURE; ELIMINATING THE LOAN LOSS RESERVE FUND; AUTHORIZING MONTANA CAPITAL COMPANIES TO ISSUE AND SELL DEBENTURES TO THE PERMANENT COAL TAX TRUST FUND; ALLOWING AN INTEREST RATE REDUCTION INCENTIVE FOR JOB CREATION BY SMALL BUSINESSES; ALLOWING AN ADDITIONAL SERVICE FEE DISCOUNT TO FINANCIAL INSTITUTIONS ON CERTAIN SMALL BUSINESS LOAN PARTICIPATIONS; AMENDING SECTIONS 17-5-1506, 17-5-1525, 17-5-1526, 17-5-1527, 17-6-302, 17-6-305, 17-6-308, 17-6-310, 17-6-311, 17-6-314, 17-6-322, 90-3-101, 90-3-525, 90-6-104, 90-8-102, AND 90-8-305, MCA; REPEALING SECTIONS 17-5-1519, 17-5-1520, 17-6-306, AND 17-6-315, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1506, MCA, is amended to read:

"**17-5-1506. Bonds and notes for projects and major projects.** (1) The board may by resolution issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 17-5-1515, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds or to pay notes, including interest, and whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, or issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its bonds is an obligation of the board payable out of any revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

(4) The notes and bonds ~~shall~~ *must* be authorized by resolutions of the board, bear a date, and mature at the times the resolutions provide. A note may not mature more than 5 years from the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination thereof. The notes and bonds ~~shall~~ *must* bear interest at a stated rate or rates or at a rate or rate determination as stated, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices above or below par, as determined by the board, and in a manner such that interest on the bonds is either exempt from or subject to federal income tax.

(5) The bonds issued under this part are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

(6) The total amount of bonds secured under 17-5-1515 ~~and 17-5-1519~~ outstanding at any one time, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed $75 million."

Section 2. Section 17-5-1525, MCA, is amended to read:

"**17-5-1525. Bonds as legal investment.** (1) Bonds issued by the board under the provisions of this part are securities in which all funds may be legally and properly invested, including capital in the control of or belonging to:

(a) public officers and public bodies of the state and its political subdivisions;

(b) insurance companies;

(c) credit unions, building and loan associations, investment companies, savings banks, banking associations, and trust companies;

(d) executors, administrators, trustees, and other fiduciaries; and

(e) pension, profit-sharing, and retirement funds.

(2) Bonds issued under 17-5-1505 through *17-5-1718 and 17-5-1521 through* 17-5-1529 are securities ~~which~~ *that* may properly and legally be deposited with and received by any state or municipal officer or any agency or municipality of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law."

Section 3. Section 17-5-1526, MCA, is amended to read:

"**17-5-1526. Procedure prior to financing projects.** (1) The board may finance projects, other than major projects, under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either $800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor~~, including but not limited to a guaranty by the board pursuant to 17-5-1519~~;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance ~~such~~ *the* project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county ~~must~~ *shall*, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government ~~must~~ *shall* notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time

and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the ~~board's guarantee under 17-5-1519 or the~~ capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with bonds the interest on which is subject to federal income taxes."

Section 4. Section 17-5-1527, MCA, is amended to read:

"**17-5-1527. Procedure prior to financing major projects.** (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either $10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than $1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over $1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor~~, including but not limited to a guaranty by the board pursuant to 17-5-1519~~;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance ~~such~~ *the* project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located ~~shall~~ *must* be notified, and within 14 days ~~must~~ *shall* advise the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government ~~must~~ *shall* notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by ~~the board's guarantee under 17-5-1519 or~~ the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with bonds the interest on which is subject to federal income taxes."

Section 5. Section 17-6-302, MCA, is amended to read:

"**17-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

(3) "Clean and healthful environment" means an environment that is relatively free from pollution ~~which~~ *that* threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(4) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

(5) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

(6) "Loan participation" means loans or portions thereof bought from a financial institution and does not include the purchase of debentures issued by a capital company.

(7) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests are owned and controlled by residents of Montana.

(8) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenues in the future to the people of Montana, either directly or indirectly.

(9) "Montana economy" means any business activity in the state of Montana, including those which continue existing jobs or create new jobs in Montana.

~~(10) "Montana in-state investment fund" means the fund established by 17-6-306.~~

~~(11)~~*(10)* "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

Section 6. Section 17-6-305, MCA, is amended to read:

"**17-6-305. Investment of *up to* twenty-five percent of the coal tax trust fund in the Montana economy — *report by the board.*** (1) ~~Twenty-five percent of all revenue deposited after June 30, 1983, into~~ *Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of* the permanent coal tax trust fund established in 17-6-203~~(5)~~*(6)* ~~and 15% of the annual income and earnings on the Montana in-state investment fund appropriated to the coal severance tax permanent fund by 17-5-704(2) shall be invested~~ in the Montana economy with special emphasis on investments in new or expanding locally owned enterprises.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy ~~shall~~ *must* be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) The board shall report biennially to the legislature on the investments made under this section."

Section 7. Section 17-6-308, MCA, is amended to read:

"**17-6-308. Authorized investments.** (1) Except as provided in ~~subsection (4)~~ *subsections (2) and (3) and subject to the provisions of 17-6-201,* the Montana ~~in-state investment~~ *permanent coal tax trust* fund must be invested as authorized by rules adopted by the board. ~~For purposes of this section, "investment" includes the guaranty of loans or bonds in consideration for a fee, in lieu of the actual acquisition of such loans or bonds.~~

~~(2) The board may use the in-state investment fund to guarantee loans or bonds issued under the provisions of 17-5-1501 through 17-5-1529, Title 17, chapter 5, part 16, or Title 90, chapter 7. Each guaranty must be given~~

~~in consideration of a fee. The fees must be paid to the board. The guaranty must provide directly or by separate agreement that the board is fully subrogated to the rights of the obligee under the loan or bond. The board shall by rule establish the maximum ratio between guaranty funds available and loans or bonds to be guaranteed. The board may covenant in bond issues to maintain such ratio. Unless bonds issued to finance a project are secured by a common capital reserve account and a common guaranty fund, the maximum amount of the guaranty authorized by this section may not exceed $3,000,000 with respect to the bonds or loans to finance the project.~~

~~(3)~~*(2)* The board may make loans from the ~~in-state investment~~ *permanent coal tax trust* fund to the capital reserve account created pursuant to 17-5-1515 ~~and the guaranty fund created pursuant to 17-5-1520~~ to establish balances or restore deficiencies ~~therein~~ *in the account*. The board may agree in connection with the issuance of bonds or notes secured by ~~such~~ *the* account or fund to make ~~such~~ *the* loans. Loans must be on ~~such~~ terms and conditions as the board determines and must be repaid from revenues of the board realized from the exercise of its powers under 17-5-1501 *through 17-5-1518 and 17-5-1521* through 17-5-1529, subject to the prior pledge of the revenues to the bonds and notes.

~~(4)~~*(3)* The board shall allow the Montana board of science and technology development provided for in 2-15-1818 to administer $7.5 million of the ~~in-state investment~~ *permanent coal tax trust* fund for seed capital project loans pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, 1994. Until such time as the Montana board of science and technology development makes a loan pursuant to those provisions, the funds under its administration must be invested by the board of investments pursuant to the provisions of 17-6-201."

Section 8. Section 17-6-310, MCA, is amended to read:

"**17-6-310. No direct loans.** (1) The state may not use this revenue to make direct loans.

(2) ~~No money from the Montana in-state investment~~ *The permanent coal tax trust* fund may *not* be used to make direct loans to individual borrowers. The purchase of debentures issued by a capital company and loans or portions ~~thereof~~ *of loans* originated by a financial institution that are sold to the trust are not direct loans."

Section 9. Section 17-6-311, MCA, is amended to read:

"**17-6-311. Limitation on size of investments.** (1) Except as provided in subsections (2) and (3), no investment may be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the ~~Montana in-state investment~~ *permanent coal tax trust* fund the total current accumulated amount of which exceeds ~~10%~~ *1%* of the ~~prior fiscal year's coal severance tax revenue deposited in the Montana in-state investment~~ *permanent coal tax trust* fund.

(2) Subsection (1) does not limit the board's authority to ~~guarantee loans or bonds or~~ make loans to the capital reserve account ~~and guaranty fund~~ as provided in 17-6-308(2) ~~and (3)~~.

(3) Subsection (1) does not apply to the purchase of debentures issued by a capital company; however, the total amount of such debentures purchased by the board may not exceed ~~10%~~ *1%* of the Montana ~~in-state investment~~ *permanent coal tax trust* fund at the time of purchase."

Section 10. Section 17-6-314, MCA, is amended to read:

"**17-6-314. Rate of return.** In calculating the rate of return for any *Montana* investment to be made from the ~~Montana in-state investment~~ *permanent coal tax trust* fund, the board shall consider the long-term benefit to the Montana economy *and the additional service fee discount provided for in [section 18]*."

Section 11. Section 17-6-322, MCA, is amended to read:

"**17-6-322. Report.** The board shall include in its annual report a section on the results of the previous year's operations of the ~~in-state~~ investment *in the Montana economy from the permanent coal tax trust* fund, *as required in 17-6-305*, including:

(1) financial statements audited by independent auditors;

(2) a summary report of loan activity; and

(3) a comparison of the ~~Montana in-state investment fund's~~ performance *of the investments in the Montana economy* in relation to the purposes contained in 17-6-303."

Section 12. Section 90-3-101, MCA, is amended to read:

"**90-3-101. Short title — findings — purpose.** (1) This chapter may be cited as the "Montana Science and Technology Financing Act".

(2) The legislature finds and declares that:

(a) it is the policy of the state of Montana to promote the health, safety, and general welfare of all the people of the state;

(b) this policy will be furthered through strengthening and diversifying the state's economy by facilitating a public sector-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a changing economic structure and to create new jobs and expand business opportunities;

(c) this strengthening and diversification will be fostered by assisting in the acceleration of development of technology in the state through participation with the private sector in the financing of science and technology development projects that have significant potential for commercialization in Montana;

(d) the ~~in-state investment~~ *permanent coal tax trust* fund created ~~through adoption of Initiative Measure No. 95 by the voters of Montana in 1982~~ *by Article IX, section 5, of the Montana constitution* is the appropriate source for providing financing programs for the development of new and expanding businesses in Montana;

(e) the Science and Technology Development Board Seed Capital Bond Act contained provisions that were found to be unconstitutional by the Montana supreme court, and the 51st legislature of the state of Montana must remedy those defects through legislation; and

(f) the Montana science and technology development board has demonstrated success in forging a partnership among the private sector, the university community, and government, and this success should be continued through an ongoing legislative commitment to the board's programs.

(3) The purposes of this chapter are to:

(a) strengthen and diversify Montana's economy by establishing a public-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a transforming economic structure and to create new jobs and expand small business opportunities;

(b) provide a funding source for the board to make seed capital project loans;

(c) provide a mechanism for the board to use in making seed capital project loans; and

(d) provide a mechanism for the board to use in making research and development project loans, the funding source of which will be provided by separate legislation."

Section 13. Section 90-3-525, MCA, is amended to read:

"**90-3-525. Deposit of payback — seed capital and research and development project loans.** (1) The payback of principal and earnings on a seed capital project loan executed under this chapter ~~must be administered pursuant to section 17-6-306.~~

~~(2) The~~ *or the* payback of principal and earnings on a research and development project loan must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305.

~~(3)~~*(2)* All paybacks of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989, must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305 for use by the board. The paybacks include all those received after January 1, 1989."

Section 14. Section 90-6-104, MCA, is amended to read:

"**90-6-104. General powers of the board.** The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this part, including rules concerning its mortgage, construction, and temporary lending programs;

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;

(5) enter into agreements or other transactions with any federal, state, or local governmental agency, any persons, and any domestic or foreign partnership, corporation, association, or organization in carrying out this part;

(6) enter into agreements under its rules with sponsors, mortgagors, or lending institutions for the purpose of regulating the analysis, planning, development, and management of housing developments financed in whole or in part by the proceeds of its loans or securities and mortgage purchase programs;

(7) enter into agreements or other transactions with, and accept grants and the cooperation of, any governmental agency in furtherance of this part, including but not limited to the development, leasing, maintenance, operation, and financing of any housing development;

(8) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

(9) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise; hold, sell, assign, lease, encumber, mortgage, or otherwise dispose thereof; hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody; release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption; do any of the foregoing by public or private sale, with or without public bidding; commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement; bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests and the holders of its bonds or notes and consistent with any agreement with such holders;

(10) service and contract and pay for the servicing of loans;

(11) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of housing developments for persons and families of lower income where these services are not otherwise available;

(12) provide general consultative services to housing developments for persons and families of lower income and the residents thereof with respect to counseling and training in management, home ownership, and maintenance where these services are not otherwise available;

(13) invest any funds not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except all investment income from funds of the board less the cost for investment as prescribed by law ~~shall~~ *must* be deposited in the housing authority enterprise fund;

(14) sell its loans or securities to the federal national mortgage association or any other agency or instrumentality of the United States and invest in the capital stock issued by the association or other agency or instrumentality to the extent, if any, required as a condition of ~~such~~ *the* sale;

(15) consent, whenever it ~~deems~~ *considers* it necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal or interest, security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness and in connection with providing technical, consultative, and project assistance services. Interest fees and charges ~~shall be~~ *are* limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses ~~which~~ *that* may be incurred.

(17) procure insurance against any loss in connection with its mortgages and mortgage loans and other assets or property in amounts and from insurers as the board considers desirable or necessary;

(18) act as agent for governmental agencies concerning acquisition, construction, leasing, operation, or management of a housing development;

(19) issue notes and bonds and replace lost, destroyed, or mutilated notes and bonds; *and*

(20) develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means~~; and~~

~~(21) lend money to the board of investments to establish the Montana economic development guaranty fund created by 17-5-1520~~."

Section 15. Section 90-8-102, MCA, is amended to read:

"**90-8-102. Declaration of policy.** (1) The legislature finds and declares that:

(a) economic insecurity due to unemployment is a serious menace to the health, safety, and general welfare of not only the affected people but of the people of the entire state;

(b) involuntary unemployment, with its resulting burden of indigency, falls with crushing force upon unemployed workers and ultimately on the state itself in the form of public assistance and unemployment compensation payments; and

(c) unemployment causes a migration of Montana workers and families seeking jobs and establishing homes elsewhere, which deprives the state of its most valuable resource, its people, and reduces the tax base of local governments, impairing their ability to provide basic services.

(2) (a) The legislature further finds that the best method of combating unemployment and protecting Montana against the loss of its people is by promoting, stimulating, developing, rehabilitating, and revitalizing the business prosperity and economic welfare of the state and its citizens.

(b) To accomplish this goal, the legislature seeks to encourage the formation of venture and equity capital in Montana for use in diversifying, strengthening, and stabilizing the Montana economy by increasing Montana employment and business opportunities while protecting the people's constitutional right to a clean and healthful environment.

(3) The legislature further finds that:

(a) private investment of venture and equity capital in the Montana economy will be encouraged and promoted by making tax credits available to taxpayers investing in Montana capital companies;

(b) demands on state revenues restrict the financial ability of the state to make unlimited tax credits available for investment purposes and require that the state place reasonable limits on the total amount of tax credits to be made available for investment incentive;

(c) establishment of a rational tax credit program ~~which~~ *that* gives priority to investments in capital companies in the order in which they are qualified will encourage prompt private investment in Montana businesses.

(4) The legislature further finds that use of money from the Montana ~~in-state investment fund established by 17-6-306~~ *permanent coal tax trust fund* to purchase debentures issued by a capital company will promote the business prosperity and economic welfare of the state and its citizens."

Section 16. Section 90-8-305, MCA, is amended to read:

"**90-8-305. Sale of debentures.** (1) A qualified Montana capital company is authorized to issue and sell debentures to the ~~in-state investment~~ *permanent coal tax trust* fund ~~established in 17-6-306~~.

(2) Proceeds received by a qualified Montana capital company from the sale of debentures authorized in subsection (1) must be invested in accordance with the provisions of 90-8-301, except that the time periods for

making qualified investments must be calculated from the date the company sells the debentures to the ~~in-state investment~~ *permanent coal tax trust* fund."

Section 17. **Job credit interest rate reduction for small business loan participations.** (1) A borrower who uses the proceeds of a small business loan participation funded under the provisions of this part to create jobs employing Montana residents is entitled to a job credit interest rate reduction for each job created over a 2-year period to employ a Montana resident. The date of the formal written interim or permanent loan application to the financial institution will be used as a beginning date for counting the number of jobs created. The job credit interest rate reduction may not apply to a loan participation of more than 1% of the total of the permanent coal tax trust fund determined at the end of the last completed fiscal year. The job credit interest rate reduction is equal to 0.05% for each job created to employ a Montana resident up to a maximum interest rate reduction of 2.5%.

(2) If the salary or wage of the job created:

(a) exceeds the average weekly wage, as defined in 39-71-116, the amount of the job credit interest rate reduction may be increased proportionately for each increment of 25% above the average weekly wage to a maximum of two times the average weekly wage; or

(b) is less than the average weekly wage, as defined in 39-71-116, the job credit interest rate reduction is reduced proportionately for each 25% increment below the average wage.

(3) A job credit interest rate reduction may not be allowed for a job created by the borrower using the proceeds of the loan for which the salary or wage is less than the minimum wage provided for in 39-3-409.

(4) No job credit will be given unless one whole job is created.

(5) To qualify for the job credit interest rate reduction, the borrower shall provide satisfactory evidence of the creation of jobs and make application in writing, through its financial institution, to the board when the loan is delivered to the board or not later than 45 days after the first and second anniversary dates of the loan.

Section 18. **Incentive to financial institution for small business loan participation.** A financial institution that originates a small business loan no larger than 0.05% of the balance of the Montana permanent coal tax trust fund at the end of the last completed fiscal year is entitled to an additional service fee in the form of a discount equal to 0.5% of the board's participation in the loan. The board shall consider the additional service fee discount to the financial institution as part of the rate of return provided in 17-6-314.

Section 19. **Repealer.** Sections 17-5-1519, 17-5-1520, 17-6-306, and 17-6-315, MCA, are repealed.

Section 20. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 21. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 22. **Codification instruction.** [Sections 17 and 18] are intended to be codified as an integral part of Title 17, chapter 6, part 3, and the provisions of Title 17, chapter 6, part 3, apply to [sections 17 and 18].

Section 23. **Effective date.** [This act] is effective July 1, 1991.

Approved April 24, 1991.

CHAPTER NO. 590

[SB 69]

AN ACT CLARIFYING THAT PARCELS OF LAND LARGER THAN 20 ACRES WITH STATED RESTRICTIONS EFFECTIVELY PROHIBITING USE FOR AGRICULTURAL PURPOSES MAY NOT BE CLASSIFIED OR VALUED AS AGRICULTURAL LAND; AMENDING SECTION 15-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-202, MCA, is amended to read:

"**15-7-202. Eligibility of land for valuation as agricultural.** (1) Contiguous parcels of land totaling 20 acres or more under one ownership shall be eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a commercial or industrial use.

(2) Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use shall be eligible for valuation, assessment, and taxation as herein provided each year the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of livestock, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) shall not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land ~~shall~~ *may* not be classified or valued as agricultural if it is subdivided *land* with stated restrictions *effectively* prohibiting its use for agricultural purposes. *For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes.*

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise shall not be considered a bona fide agricultural operation.

(6) If land has been valued, assessed, and taxed as agricultural land in any year, it shall continue to be so valued, assessed, and taxed until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(7) For the purposes of this part, growing timber is not an agricultural use. *(Subsection (7) terminates January 1, 1991—sec. 10, Ch. 681, L. 1985.)*
"

Section 2. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved April 24, 1991.

CHAPTER NO. 591

[SB 157]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO ELECTIONS; REVISING THE LAWS RELATING TO COUNTY WATER AND SEWER DISTRICT ELECTIONS; PROHIBITING INDEPENDENT CANDIDATES FROM BEING ASSOCIATED WITH A POLITICAL PARTY FOR 1 YEAR PRIOR TO SEEKING OFFICE; ALLOWING FOR INSPECTION OF BALLOTS DURING A CANVASS; PROVIDING FOR STAGGERED TERMS FOR FIRE DISTRICT TRUSTEES; AMENDING SECTIONS 7-4-2611, 7-13-2214, 7-13-2225, 7-13-2241, 7-13-2247, 7-33-2106, 13-4-106, 13-10-503, 13-13-114, 13-13-115, 13-13-212, 13-14-115, 13-15-111, 13-15-403, 13-19-106, 13-19-206, 13-19-306, 13-19-308, 13-19-311, 13-19-312, 13-37-201, AND 13-37-225, MCA; AND REPEALING SECTIONS 7-13-2237, 7-13-2238, 7-13-2239, 7-13-2240, 7-13-2242, 7-13-2244, AND 7-13-2245, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2611, MCA, is amended to read:

"**7-4-2611. Role and duties of county clerk *and election administrator*.** (1) The county clerk of any county is also clerk of the county commissioners and ex officio recorder. Any duty imposed by law upon such officer, either as county clerk, clerk of the county commissioners, or recorder, shall be performed by the county clerk, and any official act performed or certified by the county clerk shall be as valid and effectual as if performed and certified to by him as clerk of the county commissioners or as recorder.

(2) The county clerk must:

(a) take charge of and safely keep or dispose of according to law all books, papers, maps, and records which may be filed or deposited in his office;

(b) record all the proceedings of the board;

(c) make full entries of all its resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

(d) record the vote of each member on any question upon which there is a division or at the request of any member present;

(e) sign all orders made and warrants issued by order of the board for the payment of money and certify the same to the county treasurer;

(f) record the reports of the county treasurer of the receipts and disbursements of the county;

(g) preserve and file all accounts acted upon by the board;

(h) preserve and file all petitions and applications for franchises and record the action of the board thereon;

(i) record all orders levying taxes;

(j) designate upon every account allowed by the board the amount allowed and deliver to any person who may demand it a certified copy of any record in his office or any account on file therein;

(k) as often as a new township is organized or the boundaries of any township are altered, immediately make out and transmit to the secretary of state a certified statement of the names and boundaries and the boundaries of any township altered;

(l) keep such other records and books and perform such other duties as are prescribed by law or by rule or order of the board.

(3) ~~A county clerk and recorder~~ *An election administrator* shall file, code, and cross-index all reports and statements filed as prescribed by the commissioner of political practices.

(4) ~~A county clerk and recorder~~ *An election administrator* shall make statements and other information filed under the provisions of Title 13, chapters 35, 36, and 37, in his office available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost."

Section 2. Section 7-13-2214, MCA, is amended to read:

"**7-13-2214. Order creating district upon sufficient favorable vote.** (1) If at least 40% of all registered voters residing within the proposed district have voted and if a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed district shall be in favor of organizing such county district, said board of county commissioners of each such county shall, by an order entered on its minutes, declare the territory enclosed within the proposed boundaries duly organized as a county water and/or sewer district under the name theretofore designated.

(2) The ~~county clerk~~ *election administrator* of each such county shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the ~~county~~ *clerk and* recorder of the county or each county in which such district is situated a certificate stating that such a proposition was adopted."

Section 3. Section 7-13-2225, MCA, is amended to read:

"**7-13-2225. Combination of elections.** (1) The board of county commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, and the election on incurring a bonded indebtedness so that the electors of the district may vote on all of these matters on the same date and at the same time.

(2) If the elections are combined, the board of county commissioners shall so declare by resolution containing the provisions required by 7-13-2321. If the elections are combined, the notice of the election shall contain the names of the candidates and the details concerning the bonded indebtedness.

(3) Candidates for the office of director shall be nominated in the manner required by ~~7-13-2235 through 7-13-2247~~ *7-13-2241 and 7-13-2246.*"

Section 4. Section 7-13-2241, MCA, is amended to read:

"**7-13-2241. ~~Presentation~~ *Filing* of petition of nomination.** (1) A petition of nomination, ~~consisting of not less than five individual certificates~~ *signed by at least five electors of the district* for any one candidate, may be ~~presented to~~ *filed with* the election administrator not earlier than ~~90~~ *135* days or later than 75 days before the election. The election administrator shall endorse thereon the date upon which the petition was presented to him.

(2) If the district lies in more than one county, the petition for nomination shall be presented to the election administrator whose county contains the largest percentage of the territory of the district and the election administrator shall fulfill all duties assigned to election administrators in elections under this part and part 23.

(3) If the petition conforms to this section, the election administrator shall place the name of the petitioner on the ballot as a candidate for director of the district."

Section 5. Section 7-13-2247, MCA, is amended to read:

"**7-13-2247. Preservation of petitions ~~and certificates~~.** The county clerk shall preserve in his office for a period of 2 years all petitions of nomination ~~and all certificates belonging thereto~~ filed under ~~7-13-2244~~ *7-13-2241*."

Section 6. Section 7-33-2106, MCA, is amended to read:

"**7-33-2106. Details relating to board of trustees of fire district.** (1) *(a)* The five trustees initially appointed by the county commissioners shall hold *staggered terms of* office until their successors are elected or appointed and qualified as hereinafter provided.

(b) The initial trustees' terms of office shall be drawn by lot and include:

(i) 3 years for one trustee;

(ii) 2 years for two trustees; and

(iii) 1 year for two trustees.

(c) Upon expiration of the terms provided in subsection (1)(b), each trustee shall serve a 3-year term of office.

(2) Trustees shall be elected as provided in subsection (3) of this section, 13-1-104(3), and 13-1-401 or appointed as provided in subsection (4) of this section. The term of office shall be 3 years beginning at the first district meeting following their election or appointment and continuing until their successors are elected or appointed and qualified. Appointments to fill vacancies shall be made by the county governing body and appointees shall hold office until the next regular election. All electors, as defined in Title 13, who reside in the district are eligible to vote in the election, including any holder of title to lands within the district who presents a proof of interest in such land at the polling place, regardless of whether he is registered to vote.

(3) Candidates for the office of trustee of the fire district to be filled by election may be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election day and signed by at least five electors of the district.

(4) If no nominations are made for one or more trustee offices, the county governing body shall appoint one or more trustees as necessary to fill those offices.

(5) The trustees shall organize by choosing a chairman and appointing one member to act as secretary."

Section 7. Section 13-4-106, MCA, is amended to read:

"**13-4-106. Compensation of judges.** (1) ~~Election~~ *Except as provided in subsection (2), election* judges shall be paid at the prevailing federal minimum wage for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions. *Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter.*

(2) The chief election judge may be *paid at a rate higher than the other election judges and may be* reimbursed for the actual expenses of transporting election materials.

(3) The election administrator shall certify the amount due each election judge to the county governing body as soon after an election as all records necessary for such certification are received."

Section 8. Section 13-10-503, MCA, is amended to read:

"**13-10-503. Filing deadlines.** (1) A petition for nomination, accompanied by the required filing fee, shall be filed with the same officer with whom other nominations for the office sought are filed. Petitions must be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. In the event there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing.

(2) Except as provided in 13-10-504, each petition shall be filed ~~on or~~ before the ~~filing deadline for the~~ *scheduled* primary election or *the filing deadline* for the special or general election if no primary election is scheduled."

Section 9. **Independent candidates — association with political parties not allowed.** (1) A person seeking office as an independent candidate may not be associated with a political party for 1 year prior to the submission of his nomination petition.

(2) For the purposes of subsection (1), "associated with a political party" means having run for office as a partisan candidate or having held an office with a political party designation.

Section 10. Section 13-13-114, MCA, is amended to read:

"**13-13-114. Marking precinct register book before elector votes.** (1) Before an elector is permitted to receive a ballot or vote, he shall sign his name on the place designated in the precinct register. Before signing the register, the elector shall state his name and current address. If the name or address is not as listed in the precinct register, the elector must complete a transfer form or new registration form to correct the information. The election judges shall write "transfer form" or "registration form" beside the name of any elector submitting a form. No elector may sign the precinct register unless his name and address are the same as shown in the register or the proper corrections have been made.

~~(2) The election judges shall require an elector not able to sign his name to produce two electors who shall sign an affidavit stating that the elector is the individual whose name and address appears in the precinct register before one or more of the election judges on a form prescribed by the secretary of state. The affidavit shall be filed by the election judges and returned to the election administrator with the returns of the election. One of the judges shall write the elector's name, noting the fact of his inability to sign, and the names of the two electors signing the affidavit.~~

(2) If the elector is not able to sign his name to the precinct register, a fingerprint or other identifying mark may be used.

(3) If the elector fails or refuses to sign his name or, if unable to write, fails to ~~procure two electors who will take the oath required~~ *provide a fingerprint or other identifying mark,* he may not vote."

Section 11. Section 13-13-115, MCA, is amended to read:

"**13-13-115. Pollbooks.** (1) In precincts using paper ballots, the name of each elector who votes shall be entered in a pollbook and numbered in the order voting so that the number corresponds with the number on the stubs of the ballots given the elector *or an election judge may use a numbering device to stamp the number of the ballot stub next to the name of the elector in a precinct register/pollbook.*

(2) In precincts where machines or devices are used, a pollbook need be used only for paper ballots. The election administrator shall provide such precincts with some method of recording the number of individuals voting."

Section 12. Section 13-13-212, MCA, is amended to read:

"**13-13-212. Application for absentee ballot.** (1) Application for absentee ballots shall be made by a written request signed by the applicant and addressed to *or transmitted by facsimile to* the election administrator of the applicant's county of residence.

(2) Application for an absentee ballot may be made by any elector in the United States service by the federal post card application or by any written request signed by the applicant and addressed to *or transmitted by facsimile to* the election administrator of the applicant's county of residence.

(3) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time the ballot is delivered

in person by the special absentee election board provided for in 13-13-225. Such elector may request by telephone, *facsimile transmission,* or other means to have a ballot and application personally delivered to him by the special absentee election board at his place of confinement, hospitalization, or residence within the county. Such a request may be made no later than noon on election day."

Section 13. Section 13-14-115, MCA, is amended to read:

"**13-14-115. Preparation and distribution of nonpartisan primary ballots.** (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated "nonpartisan primary ballots". They shall be arranged as other primary ballots and be without political designation.

(2) The number of nonpartisan primary ballots and sample ballots furnished shall be the same as other primary ballots.

(3) *(a)* The ~~governing body~~ *election administrator* of a political subdivision may determine that a primary need not be held if:

~~(a)~~*(i)* the number of candidates for an office exceeds twice the number to be elected to that office in no more than one-half of the offices on the ballot; *and*

~~(b)~~*(ii)* the number of candidates in excess of twice the number to be elected is not more than one for any office on the ballot~~; and~~.

(b) If the election administrator determines that a primary need not be held pursuant to subsection (3)(a), he must give notice to the governing body that no primary election will be held.

~~(c)~~*(4)* ~~the~~ *The* governing body *may require that a primary election be held if it* passes a resolution not more than ~~7~~ *10* days after the close of filing by candidates for election, stating that a primary election ~~need not~~ *shall* be held."

Section 14. Section 13-15-111, MCA, is amended to read:

"**13-15-111. Write-in elections — general election.** (1) An individual elected by having his name written in at the general election and receiving the largest number of votes shall:

(a) file with the secretary of state or election administrator, not later than 10 days after the official canvass, a written declaration indicating his acceptance of the position for which he was elected; ~~and~~

(b) comply with the provisions of 13-37-225*; and*

(c) pay the required filing fee or comply with 13-10-203 if indigent.

(2) If an individual fails to file the declaration as required under subsection (1)(a), he may not assume the position for which he was elected."

Section 15. Section 13-15-403, MCA, is amended to read:

"**13-15-403. Canvass to be public — nonessentials to be disregarded — petition for recount.** (1) The canvass shall be public. It shall proceed by opening the returns, auditing the tally books or other records of votes cast, determining the vote for each individual and for and against each ballot issue from each precinct, compiling totals, and declaring or certifying the results.

(2) The board shall record all write-in votes shown in the returns from each precinct.

(3) The returns may not be rejected because of failure to show who administered the oath to the election judges, failure to complete all the certificates in a pollbook, or because of failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

(4) If during a canvass the board finds an error in a precinct or precincts affecting the accuracy of vote totals, the board immediately may petition for a recount of the votes cast in the precinct or precincts, as provided in 13-16-201, *or for an inspection of ballots, as provided in [section 16]*."

Section 16. **Misplaced or missing ballots.** If during a recount the county recount board discovers that ballots are misplaced or missing, it may petition the election administrator to inspect all sealed ballots within the county precincts to find the misplaced or missing ballots. Upon receiving the petition, the election administrator shall inspect the sealed ballots to find the misplaced or missing ballots. Upon completion of the recount, the misplaced or missing ballots must be placed in their proper precinct and sealed with the remaining ballots.

Section 17. Section 13-19-106, MCA, is amended to read:

"**13-19-106. General requirements for mail ballot election.** A mail ballot election must be conducted substantially as follows:

(1) Official ballots must be prepared and all other initial procedures followed as otherwise provided by law, *except that mail ballots are not required to have stubs.*

(2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(3) The elector shall mark the ballot at home and place it in a secrecy envelope.

(4) The elector shall then place the secrecy envelope containing his ballot in a return/verification envelope and shall return it by mailing it or delivering it in person to a place of deposit designated by the election administrator so that it is received prior to a specified time on election day.

(5) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted.

(6) If the ballot so qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.

(7) After the close of polls on election day, voted ballots must be counted and canvassed as otherwise provided by law."

Section 18. Section 13-19-206, MCA, is amended to read:

"**13-19-206. Distributing materials to electors — procedure.** For each election conducted under this chapter, the election administrator shall:

(1) mail a single packet to every qualified elector of the political subdivision conducting the election;

(2) ensure that each packet contains only one each of the following:

(a) an official ballot, *except that the election administrator may include separate ballots for each type of election being held concurrently*;

(b) a secrecy envelope;

(c) a return/verification envelope; and

(d) complete written instructions for voting and returning ballots; and

(3) ensure that each packet is:

(a) clearly marked on its face with ~~the~~ words ~~"DO NOT FORWARD. RETURN TO SENDER. RETURN POSTAGE GUARANTEED."~~ *stating the appropriate postal regulation language to prohibit forwarding of the packet*;

(b) addressed to a single individual elector at the most current address available from the official registration records; and

(c) deposited in the United States mail with sufficient prepaid postage for it to be delivered to the elector's address."

Section 19. Section 13-19-306, MCA, is amended to read:

"**13-19-306. Returning marked ballots — when — where.** (1) After complying with 13-19-301, an elector *or his designee* may return his ballot on or before election day by either:

(a) depositing the return/verification envelope in the United States mail, with sufficient postage affixed; or

(b) returning it ~~in person~~ to any place of deposit designated by the election administrator pursuant to 13-19-307.

(2) In order to have his ballot counted, each elector must return it in such a manner that it is received prior to 8 p.m. on election day."

Section 20. Section 13-19-308, MCA, is amended to read:

"**13-19-308. Disposition of ballots returned in person.** Ballots returned by the elector in person must be processed as follows:

(1) If returned to the election administrator's office directly, the ballot must be processed in the same manner provided for ballots returned by mail except that, while the elector is present, officials shall:

(a) verify the signature pursuant to 13-19-310;

(b) resolve any questions as to the validity of the ballot; and

(c) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If returned to a place of deposit other than the election administrator's office, the election official on location shall:

(a) keep a log of the names of all electors from whom he receives ballots *and the names of the people who deliver the ballots*;

~~(b) have the elector sign the log where his name has been entered;~~

~~(c) while the elector is present, compare the signature on the return/verification envelope with that entered in the log and resolve any discrepancies with the elector;~~

~~(d)~~*(b)* deposit the unopened return/verification envelope in the sealed ballot transport box provided for that purpose; and

~~(e)~~*(c)* securely retain all ballots until they are transported to the election administrator's office. The transport boxes must then be opened and the ballots disposed of in the same manner provided for ballots returned by mail."

Section 21. Section 13-19-311, MCA, is amended to read:

"**13-19-311. Valid ballots — requirements.** (1) Only valid ballots may be counted in an election conducted under this chapter.

(2) For the purpose of this chapter, a ballot is valid only if:

(a) it is sealed in the secrecy envelope and returned in the return/verification envelope;

(b) the elector's signature on the affidavit on the return/verification envelope is verified pursuant to 13-19-310; and

(c) it is received before 8 p.m. on election day.

(3) A ballot is invalid if:

(a) more than one ballot is enclosed in a single return/verification or secrecy envelope *unless there are multiple elections being held at the same time and there is only one ballot for each election in the envelope*; or

(b) any identifying marks are placed on the ballot by the elector."

Section 22. Section 13-19-312, MCA, is amended to read:

"**13-19-312. Procedure at close of voting.** *(1)* After the close of voting on election day, election officials shall:

~~(1)~~*(a)* open the official ballot boxes;

~~(2)~~*(b)* open each secrecy envelope, removing the ballot; and

~~(3)~~*(c)* proceed to count the votes as otherwise provided by law.

(2) On election day, the election administrator may begin the procedures described in subsection (1) before the polls close if he complies with the procedures described in 13-15-103."

Section 23. Section 13-37-201, MCA, is amended to read:

"**13-37-201. Campaign treasurer.** Except as provided in 13-37-206, each candidate and each political committee shall appoint one campaign treasurer and certify the full name and complete address of the campaign treasurer pursuant to this section. A candidate shall file the certification within 5 days after becoming a candidate. A political committee shall file the certification, which shall include an organizational statement and set forth the name and address of all other officers, if any, within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first. The certification of a candidate or political committee shall be filed with the commissioner and the appropriate ~~county clerk and recorder~~ *election administrator* as specified for the filing of reports in 13-37-225."

Section 24. Section 13-37-225, MCA, is amended to read:

"**13-37-225. Reports of contributions and expenditures required.** (1) Except as provided in 13-37-206, each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. All reports required by this chapter shall be filed with the commissioner and with the ~~county clerk and recorder~~ *election administrator* of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of all reports shall be filed with the ~~county clerk and recorder~~ *election administrator* of the county in which the election is to be held or, if the election is to be held in more than one county, with the ~~clerk and recorder~~ *election administrator* in the county that the commissioner specifies.

(2) In lieu of all contribution and expenditure reports required by this chapter, the commissioner shall accept copies of the reports filed by candidates for congress and president of the United States and their political committees pursuant to the requirements of federal law."

Section 25. **Repealer.** Sections 7-13-2237, 7-13-2238, 7-13-2239, 7-13-2240, 7-13-2242, 7-13-2244, and 7-13-2245, MCA, are repealed.

Section 26. **Codification instruction.** (1) [Section 9] is intended to be codified as an integral part of Title 13, chapter 10, part 5, and the provisions of Title 13, chapter 10, part 5, apply to [section 9].

(2) [Section 16] is intended to be codified as an integral part of Title 13, chapter 16, part 4, and the provisions of Title 13, chapter 16, part 4, apply to [section 16].

Approved April 24, 1991.

CHAPTER NO. 592

[SB 171]

AN ACT INCREASING CERTAIN FISHING AND HUNTING LICENSE FEES AND THE LICENSE AGENT COMMISSION; REVISING THE PROVISIONS OF THE CLASS B-10 NONRESIDENT BIG GAME COMBINATION LICENSE; AND AMENDING SECTIONS 87-2-113, 87-2-202, 87-2-301, 87-2-302, 87-2-304, 87-2-306, 87-2-402, 87-2-403, 87-2-501, 87-2-505, 87-2-508, 87-2-510, 87-2-701, 87-2-704, 87-2-708, 87-2-711, AND 87-2-903, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, an increase in Montana hunting and fishing license fees is necessary to raise revenue in order for the Department of Fish, Wildlife, and Parks to meet an anticipated revenue shortfall.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-113, MCA, is amended to read:

"**87-2-113. Drawing fee.** (1) When the department determines a drawing is necessary prior to issuance of hunting licenses for any game species during a hunting season, it shall collect a ~~$2~~ *$3* per species drawing fee with each application submitted.

(2) This fee must be deposited in the state special revenue fund to the credit of the department as set forth in 87-1-601.

(3) The payment of a drawing fee confers no hunting rights or privileges.

(4) The commission may waive the provisions of subsection (1) when a drawing is required for a special season under 87-1-304."

Section 2. Section 87-2-202, MCA, is amended to read:

"**87-2-202. Application — stamp attachment — fee — expiration.** (1) A wildlife conservation license shall be sold upon written application. The application shall contain the applicant's name, age, occupation, place of residence, post-office address, and length of time in the state of Montana;

state whether the applicant is a citizen of the United States or an alien; and be subscribed by the applicant. The applicant shall present a driver's license or other identification to substantiate the information.

(2) Hunting, fishing, or trapping licenses in the form of tags or stamps issued to a holder of a wildlife conservation license must be affixed to or recorded on the wildlife conservation license according to such rules as the department may prescribe.

(3) *(a)* Resident ~~and nonresident~~ wildlife conservation licenses may be purchased for a fee of ~~$2~~ *$4.*

(b) Nonresident wildlife conservation licenses may be purchased for a fee of $5.

(4) Licenses issued shall be void after the last day of February next succeeding their issuance."

Section 3. Section 87-2-301, MCA, is amended to read:

"**87-2-301. Class A—resident fishing license.** Any resident, as defined by 87-2-102, upon payment of a fee of ~~$9.50~~ *$11 beginning March 1, 1992, and $13 beginning March 1, 1994,* shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the department."

Section 4. Section 87-2-302, MCA, is amended to read:

"**87-2-302. Class B—nonresident fishing license.** Any person not a resident, as defined in 87-2-102, upon payment of the sum of ~~$36~~ *$40 beginning March 1, 1992, and $45 beginning March 1, 1994,* to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a Class B license which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the department."

Section 5. Section 87-2-304, MCA, is amended to read:

"**87-2-304. Class B-4—two-day nonresident fishing license.** Any person not a resident, as defined in 87-2-102, who is a holder of a valid wildlife conservation license, upon payment of the sum of ~~$8~~ *$10* to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a 2-day nonresident fishing license which shall authorize the holder to fish with hook and line, as prescribed by rules and regulations of the department, for 2 calendar days as indicated on the license."

Section 6. Section 87-2-306, MCA, is amended to read:

"**87-2-306. Paddlefish tags.** The department may issue paddlefish tags to holders of valid Class A, Class B, and Class B-4 fishing licenses for a fee of ~~$3~~ *$4 beginning March 1, 1992, and $5 beginning March 1, 1994,* for residents and ~~$10~~ *$15* for nonresidents. Each tag authorizes the holder to fish with hook and line for paddlefish as prescribed by rules of the department."

Section 7. Section 87-2-402, MCA, is amended to read:

"**87-2-402. Class B-1—nonresident upland game bird license.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of ~~$53~~ *$55* may receive a Class B-1 license which shall entitle the holder thereof to pursue, hunt, shoot, and kill upland game birds, cranes, rails, snipes, and mourning doves and possess the carcasses of upland game birds, cranes, rails, snipes, and mourning doves as authorized by department rules."

Section 8. Section 87-2-403, MCA, is amended to read:

"**87-2-403.** *(Temporary)* **Wild turkey tags and fee.** (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or Class B-1 license or as set out in subsection (3). Each tag shall entitle the holder to pursue, hunt, shoot, and kill one wild turkey and possess the carcass thereof, during such times and such places as the department shall authorize an open season on wild turkey.

(2) The fee for a wild turkey tag is ~~$3~~ *$4 beginning March 1, 1992, and $5 beginning March 1, 1994,* for residents and $13 for nonresidents. Turkey tags shall be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of his wildlife conservation license. *(Terminates March 1, 1994—sec. 12, Ch. 598, L. 1987.)*

87-2-403. *(Effective March 1, 1994)* **Wild turkey tags and fee.** (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or Class B-1 license or as set out in subsection (3). Each tag shall entitle the holder to pursue, hunt, shoot, and kill one wild turkey and possess the carcass thereof, during such times and such places as the department shall authorize an open season on wild turkey.

(2) The fee for a wild turkey tag shall be ~~$3~~ *$5*. Turkey tags shall be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of his wildlife conservation license."

Section 9. Section 87-2-501, MCA, is amended to read:

"**87-2-501. Class A-3, A-4, A-5, A-6, A-7—resident deer, elk, and bear licenses — special Class A-7 resident and nonresident license requirements and preference.** (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, or a nonresident who wishes to purchase a Class A-7 elk license only, who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the proper fee or fees, be entitled to purchase one each of the following licenses at the prescribed cost which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

(a) Class A-3, deer A tag, ~~$9~~ *$11 beginning March 1, 1992, and $13 beginning March 1, 1994*;

(b) Class A-4, deer B tag, ~~$6~~ *$7 beginning March 1, 1992, and $8 beginning March 1, 1994*;

(c) Class A-5, elk tag, ~~$10~~ *$13 beginning March 1, 1992, and $16 beginning March 1, 1994*;

(d) Class A-6, black or brown bear tag, ~~$8~~ *$11 beginning March 1, 1992, and $15 beginning March 1, 1994*;

(e) Class A-7, antlerless elk tag, ~~$10~~ *$13 beginning March 1, 1992, and $16 beginning March 1, 1994.*

(2) (a) The holder of a Class A-7 antlerless elk license is entitled to take antlerless elk in areas designated by the commission and at such times and upon such terms as set forth by the commission.

(b) No person may take more than one elk during any license year, and a person holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 license or nonresident elk tag. The use of Class A-7 antlerless elk licenses does not preclude the department's use of special elk permits.

(c) A nonresident shall hold a nonresident Class B-10 license as a prerequisite to application for a Class A-7 license.

(3) Subject to the limitation of subsection (5), a person who holds fee title to 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where Class A-7 licenses are awarded under this section shall be issued, upon application, a Class A-7 license.

(4) An applicant who receives a Class A-7 license under subsection (3) may designate that the license be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (3) may designate one of its shareholders to receive the license.

(5) Fifteen percent of the Class A-7 licenses available each year under this section in a hunting district must be available to landowners under subsection (3)."

Section 10. Section 87-2-505, MCA, is amended to read:

"**87-2-505.** *(Temporary)* **Class B-10—nonresident big game combination license.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the fee of ~~$450~~ *$462 beginning March 1, 1992, and $475 beginning March 1, 1994, or upon payment of the fee of $472 beginning March 1, 1992, and $485 beginning March 1, 1994, if the license is one of the 5,600 licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter* and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle the holder to all the privileges of Class B, Class B-1, *and* Class B-7~~, and black bear~~ licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any one license year. *(Terminates March 1, 1994—sec. 12, Ch. 598, L. 1987.)*

87-2-505. *(Effective March 1, 1994)* **Class B-10—nonresident big game combination license.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the fee of ~~$373~~ *$398 or upon payment of the fee of $408 if the license is one of the 5,600 licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter* and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle the holder to all the privileges of Class B, Class B-1, *and* Class B-7~~, and black bear~~ licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any one license year."

Section 11. Section 87-2-508, MCA, is amended to read:

"**87-2-508. Class D-2—resident mountain lion license.** Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older, upon payment of a fee of ~~$10~~ *$13 beginning March 1, 1992, and $15 beginning March 1, 1994,* may receive a Class D-2 license which shall entitle the holder thereof to pursue, hunt, shoot, and kill mountain lion and possess the carcass thereof as authorized by department rules. If a holder of a valid mountain lion license under this section kills a mountain lion, he must purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport such trophy."

Section 12. Section 87-2-510, MCA, is amended to read:

"**87-2-510.** *(Temporary)* **Class B-11—nonresident deer combination license.** (1) Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of a fee of ~~$200~~ *$238 beginning March 1, 1992, and $245* *beginning March 1, 1994, or upon payment of the fee of $248 beginning March 1, 1992, and $250 beginning March 1, 1994, if the license is one of the 4,000 reserved pursuant to 87-2-511 for applicants indicating their intent either to use the services of a licensed outfitter or to hunt with a resident sponsor on land owned by that sponsor* and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles the holder to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Six thousand Class B-11 licenses are authorized for sale each license year.

87-2-510. *(Effective March 1, 1994)* **Class B-11—nonresident deer combination license.** (1) Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of a fee of ~~$175~~ *$220 or upon payment of the fee of $225 if the license is one of the 4,000 reserved pursuant to 87-2-511 for applicants indicating their intent either to use the services of a licensed outfitter or to hunt with a resident sponsor on land owned by that sponsor* and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles the holder to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Six thousand Class B-11 licenses are authorized for sale each license year."

Section 13. Section 87-2-701, MCA, is amended to read:

"**87-2-701.** *(Temporary)* **Special licenses.** (1) Any applicant who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license which, in the judgment of the department, is to be issued and shall pay the following fees therefor:

(a) moose—resident, ~~$50~~ *$60 beginning March 1, 1992, and $75 beginning March 1, 1994*; nonresident, ~~$320~~ *$450 beginning March 1, 1992, and $475 beginning March 1, 1994*;

(b) mountain goat—resident, ~~$50~~ *$60 beginning March 1, 1992, and $75 beginning March 1, 1994*; nonresident, ~~$320~~ *$450 beginning March 1, 1992, and $475 beginning March 1, 1994*;

(c) mountain sheep—resident, ~~$50~~ *$60 beginning March 1, 1992, and $75 beginning March 1, 1994*; nonresident, ~~$320~~ *$450 beginning March 1, 1992, and $475 beginning March 1, 1994*;

(d) antelope—resident, ~~$6~~ *$9 beginning March 1, 1992, and $11 beginning March 1, 1994*; nonresident, ~~$120~~ *$145 beginning March 1, 1992, and $150 beginning March 1, 1994*;

(e) grizzly bear—resident, $50; nonresident, $300;

(f) black or brown bear—nonresident, $120;

(g) wild buffalo—resident, $200; nonresident, $1,000.

(2) In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of $25 within 10 days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

(3) Special licenses shall be issued in a manner prescribed by the department. *(Terminates March 1, 1994—sec. 12, Ch. 598, L. 1987.)*

87-2-701. *(Effective March 1, 1994)* **Special licenses.** (1) Any applicant who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license which, in the judgment of the department, is to be issued and shall pay the following fees therefor:

(a) moose—resident, ~~$50~~ *$75*; nonresident, ~~$300~~ *$455*;

(b) mountain goat—resident, ~~$50~~ *$75*; nonresident, ~~$300~~ *$455*;

(c) mountain sheep—resident, ~~$50~~ *$75*; nonresident, ~~$300~~ *$455*;

(d) antelope—resident, ~~$6~~ *$11*; nonresident, ~~$100~~ *$130*;

(e) grizzly bear—resident, $50; nonresident, $300;

(f) black or brown bear—nonresident, $100;

(g) wild buffalo—resident, $200; nonresident, $1,000.

(2) In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of $25 within 10 days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

(3) Special licenses shall be issued in a manner prescribed by the department."

Section 14. Section 87-2-704, MCA, is amended to read:

"**87-2-704. Regulation of special elk permits.** (1) The department may:

(a) provide for the refund of resident elk tag license fees to persons applying for special elk permits in hunting districts where there is no general elk hunting and set time limits and describe area restrictions;

(b) designate special elk permit areas where priority will be given to applicants who have not held special elk permits for a period of years to be determined by the department.

(2) The fee for a special elk permit is $2 beginning March 1, 1992, and $3 beginning March 1, 1994.

~~(2)~~*(3)* The department may adopt rules necessary to implement this section."

Section 15. Section 87-2-708, MCA, is amended to read:

"**87-2-708. Class A-2—special bow and arrow license.** A holder of a valid hunting license for which a special archery season is set by the department may receive, upon payment of an additional fee of ~~$7~~ *$8*, a Class A-2 license which shall authorize the holder thereof to pursue, hunt, shoot, and kill with bow and arrow the game animals so authorized by the licenses held and to possess the carcass thereof during seasons and in areas, as designated by the department."

Section 16. Section 87-2-711, MCA, is amended to read:

"**87-2-711.** *(Temporary)* **Class AAA—sportsman's license.** Any resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued, upon payment of the sum of ~~$45.50~~ *$54 beginning March 1, 1992, and $64 beginning March 1, 1994*, shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, A-6, and resident conservation licenses as prescribed in 87-2-202. The department shall furnish each holder of a sportsman's license an appropriate decal. *(Terminates March 1, 1994—sec. 12, Ch. 598, L. 1987.)*

87-2-711. *(Effective March 1, 1994)* **Class AAA—sportsman's license.** Any resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued, upon payment of the sum of ~~$38.50~~ *$64*, shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, A-6, and resident conservation licenses as prescribed in 87-2-202. The department shall furnish each holder of a sportsman's license an appropriate decal."

Section 17. Section 87-2-903, MCA, is amended to read:

"**87-2-903. Compensation and duties of agents — penalty for late submission of license money.** (1) License agents, except salaried employees of the department, shall receive for all services rendered the sum of ~~30 cents~~ *40 cents for the 1992 license year and 50 cents thereafter* for each license, permit, or certificate issued. Each license agent shall submit to the department all duplicates of each class of licenses sold and shall accompany the duplicate licenses with all moneys received for the sale of the licenses less ~~a fee of 30 cents for each license sold~~ *the appropriate fee.* The department may designate classes of license agents and may establish a deadline for submission of license money by each class of agent. Each license agent shall keep his license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

(2) For purposes of this section, the term "license" includes any license, permit, and certificate prescribed by the department.

(3) If a license agent fails to submit to the department all money received from the declared sale of licenses, less the appropriate fee, by the deadline established by the department, an interest charge equal to the rate charged on late corporation license tax payments under 15-31-502 must be assessed. Acceptance of late payments with interest does not preclude the department from summarily revoking the appointment of a license agent under 87-2-904."

Section 18. **Effective date.** [This act] is effective March 1, 1992.

Approved April 24, 1991.

CHAPTER NO. 593

[SB 238]

AN ACT REVISING THE MUNICIPAL FINANCE CONSOLIDATION ACT OF 1983 TO ALLOW PARTICIPATION BY THE MONTANA UNIVERSITY SYSTEM BOARD OF REGENTS; AMENDING SECTION 17-5-1604, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1604, MCA, is amended to read:

"**17-5-1604. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Department" means the department of commerce created in 2-15-1801.

(3) "Local government unit" means any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, ~~or~~ other special taxing district, *or the board of regents of the Montana university system*.

(4) "Reserve fund" means the municipal finance consolidation act reserve fund created in 17-5-1630."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved April 24, 1991.

CHAPTER NO. 594

[SB 242]

AN ACT PROVIDING FUNDING FROM THE IN-STATE INVESTMENT FUND FOR RESEARCH AND DEVELOPMENT PROJECT LOANS; PROVIDING FOR MEDICAL FACILITY RESEARCH AND DEVELOPMENT PROJECT LOANS; REQUIRING AT LEAST THREE MEMBERS OF THE BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO HAVE KNOWLEDGE OF EARLY STAGE FINANCING OF PRIVATE BUSINESSES; CHANGING MATCHING FUND REQUIREMENTS FOR RESEARCH AND DEVELOPMENT PROJECTS; REQUIRING THE UNIVERSITY SYSTEM TO ASSESS INTELLECTUAL PROPERTY MANAGEMENT; AMENDING SECTIONS 2-15-1818, 17-6-308, 17-6-310, 90-3-101, 90-3-102, 90-3-301, 90-3-305, 90-3-524, AND 90-3-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1818, MCA, is amended to read:

"**2-15-1818. Montana board of science and technology development — allocation — composition — quasi-judicial powers.** (1) There is a Montana board of science and technology development. The board is allocated to the department of commerce. The department shall select, prescribe the duties for, and supervise staff to administer board activities.

(2) The board consists of nine members appointed by the governor as prescribed in 2-15-124.

(3) In making appointments to the board, the governor shall consider people with extensive interest and experience in science and technology and the application of such interest and experience to economic development in Montana.

(4) The membership of the board must include:

(a) at least ~~two~~ *three* members with knowledge of early stage financing of private businesses;

(b) at least one member with expertise in applied technology development; and

(c) at least five members from the private sector.

(5) The board is designated a quasi-judicial board for purposes of 2-15-124."

Section 2. Section 17-6-308, MCA, is amended to read:

"**17-6-308. Authorized investments.** (1) Except as provided in subsection (4), the Montana in-state investment fund must be invested as authorized by rules adopted by the board. For purposes of this section, "investment" includes the guaranty of loans or bonds in consideration for a fee, in lieu of the actual acquisition of ~~such~~ *the* loans or bonds.

(2) The board may use the in-state investment fund to guarantee loans or bonds issued under the provisions of 17-5-1501 through 17-5-1529, Title 17, chapter 5, part 16, or Title 90, chapter 7. Each guaranty must be given in consideration of a fee. The fees must be paid to the board. The guaranty must provide directly or by separate agreement that the board is fully subrogated to the rights of the obligee under the loan or bond. The board shall by rule establish the maximum ratio between guaranty funds available and loans or bonds to be guaranteed. The board may covenant in bond issues to maintain ~~such~~ *the* ratio. Unless bonds issued to finance a project are secured by a common capital reserve account and a common guaranty fund, the maximum amount of the guaranty authorized by this section may not exceed ~~$3,000,000~~ *$3 million* with respect to the bonds or loans to finance the project.

(3) The board may make loans from the in-state investment fund to the capital reserve account created pursuant to 17-5-1515 and the guaranty fund created pursuant to 17-5-1520 to establish balances or restore deficiencies therein. The board may agree in connection with the issuance of bonds or notes secured by such account or fund to make such loans. Loans must be on such terms and conditions as the board determines and must be repaid from revenues of the board realized from the exercise of its powers under 17-5-1501 through 17-5-1529, subject to the prior pledge of the revenues to the bonds and notes.

(4) The board shall allow the Montana board of science and technology development provided for in 2-15-1818 to administer $7.5 million of the in-state investment fund for seed capital project loans *and $5.1 million of the in-state investment fund for research and development project loans* pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, 1994, *for seed capital project loans and for research and development project loans*. Until ~~such time as~~ the Montana board of science and technology development makes a loan pursuant to ~~those~~ *the* provisions *of Title 90, chapter 3*, the funds under its administration must be invested by the board of investments pursuant to the provisions of 17-6-201."

Section 3. **Allocation of funds.** Provided the loans contain the repayment requirements set forth in 90-3-522 and 90-3-524, the $5.1 million of the in-state investment fund to be used for research and development project loans is allocated as follows:

(1) $600,000 to meet state matching fund requirements for the national science foundation awards to the center for interfacial microbial process engineering;

(2) $3.5 million for loans relating to but not limited to the centers of excellence program and the Montana entrepreneurial center and to meet

state matching fund requirements for the national science foundation's experimental program to stimulate competitive research; and

(3) $1 million for medical facility research and development project loans provided that:

(a) a loan may not be less than $200,000 or more than $500,000; and

(b) a dollar-for-dollar matching requirement from federal or private sources is required.

Section 4. Section 17-6-310, MCA, is amended to read:

"**17-6-310. No direct loans.** (1) The state may not use this revenue to make direct loans.

(2) ~~No money from the~~ *The* Montana in-state investment fund may *not* be used *by the board of investments* to make direct loans to individual borrowers. The purchase of debentures issued by a capital company and loans or portions thereof originated by a financial institution that are sold to the trust are not direct loans."

Section 5. Section 90-3-101, MCA, is amended to read:

"**90-3-101. Short title — findings — purpose.** (1) This chapter may be cited as the "Montana Science and Technology Financing Act".

(2) The legislature finds and declares that:

(a) it is the policy of the state of Montana to promote the health, safety, and general welfare of all the people of the state;

(b) this policy will be furthered through strengthening and diversifying the state's economy by facilitating a public sector-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a changing economic structure and to create new jobs and expand business opportunities;

(c) this strengthening and diversification will be fostered by assisting in the acceleration of development of technology in the state through participation with the private sector in the financing of science and technology development projects that have significant potential for commercialization in Montana;

(d) the in-state investment fund created through adoption of Initiative Measure No. 95 by the voters of Montana in 1982 is the appropriate source for providing financing programs for the development of new and expanding businesses in Montana; *and*

(e) ~~the Science and Technology Development Board Seed Capital Bond Act contained provisions that were found to be unconstitutional by the Montana supreme court, and the 51st legislature of the state of Montana must remedy those defects through legislation; and~~

~~(f)~~ the Montana science and technology development board has demonstrated success in forging a partnership among the private sector, the university community, and government, and this success should be continued through an ongoing legislative commitment to the board's programs.

(3) The purposes of this chapter are to:

(a) strengthen and diversify Montana's economy by establishing a public-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a transforming economic structure and to create new jobs and expand small business opportunities;

(b) provide a funding source for the board to make seed capital project loans;

(c) provide a mechanism for the board to use in making seed capital project loans; and

(d) provide a mechanism *and a funding source* for the board to use in making research and development project loans~~, the funding source of which will be provided by separate legislation~~."

Section 6. Section 90-3-102, MCA, is amended to read:

"**90-3-102. Definitions.** As used in this chapter the following definitions apply:

(1) "Act" means the Montana science and technology financing act.

(2) "Board" means the Montana board of science and technology development provided for in 2-15-1818.

(3) "Company" means a firm, partnership, corporation, association, or any other entity authorized to conduct business in Montana.

(4) "Convertible debenture" means a debenture convertible into stock under certain conditions by any individual or company. The debenture may not be converted by the board.

(5) "Debenture" or "note" means a writing or certificate issued as evidence of debt.

(6) "Department" means the department of commerce created in 2-15-1801.

(7) "Expansion capital project" means a science and technology development project undertaken to enable a company to expand its manufacturing and marketing activities in order to move its products or services into new markets or to expand existing markets.

(8) "Innovative technology" means the involvement of a product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner

that departs from previous commercial developments, practices, or applications.

(9) "Matching funds" means the funds received in cash by the science and technology development project loan recipient from nonstate-appropriated sources and committed by the loan recipient to the project in an amount that is at least equal to the funds loaned to the recipient by the board for use in the science and technology development project.

(10) "Medical facility research and development project" means a research and development project designed to advance the development and operation of facilities that concentrate on fields of medical research involving advanced technology applied to national medical concerns through the financing of personnel, equipment, and operating costs with the goal of establishing the facilities as enduring research organizations in Montana.

~~(10)~~*(11)* "Portfolio company" means a startup or expansion stage company that has received a seed capital project loan from the board.

~~(11)~~*(12)* "Private sector" means any entity or individual, not principally a part of or associated with a governmental unit, that is associated with or involved in commercial activity.

~~(12)~~*(13)* "Research and development project" means a science and technology development project that falls into the category of research capability development, applied technology research, or technology transfer and assistance.

~~(13)~~*(14)* "Research and development project loan" means a science and technology development project loan entered into between the board and a loan recipient for a research and development project.

~~(14)~~*(15)* "Science and technology development project" means either a seed capital project or research and development project designed to discover, develop, transfer, utilize, or commercialize existing or new, innovative technology in order to strengthen and enhance economic development in Montana.

~~(15)~~*(16)* "Science and technology development project loan agreement" or "loan" means an agreement entered into between the board and the loan recipient of a seed capital project loan or a research and development project loan that:

(a) creates a debt relationship between the parties;

(b) provides for a financial return to the board;

(c) provides economic development potential to the state; and

(d) contains the applicable provisions and terms required by this chapter.

~~(16)~~*(17)* "Seed capital project" means a startup capital project or expansion capital project.

~~(17)~~*(18)* "Seed capital project loan" means a science and technology development project loan entered into between the board and a loan recipient for a seed capital project.

~~(18)~~*(19)* "Startup capital project" means a science and technology development project that assists a company in initiating commercial operations.

~~(19)~~*(20)* "State" means the state of Montana.

~~(20)~~*(21)* "Warrant" means an instrument issued by a corporation that gives a holder other than the board the right to purchase stock of a corporation either for a limited time or perpetually."

Section 7. Section 90-3-301, MCA, is amended to read:

"**90-3-301. Appropriation authority and funding — matching funds.** (1) The board has authority to accept and expend all funds received by it as grants, donations, or other private or public income. These funds are statutorily appropriated as provided in 17-7-502.

(2) The appropriations and loans made to and by the board are in addition to and separate from general fund appropriations to the university system and other state agencies.

(3) A loan may not be made for a *seed capital* project for which matching funds have not been received. Matching funds are required prior to any expenditure of board funds for ~~research and development projects or~~ *all* seed capital projects. The board may accept as matching funds those received by the loan recipient within 1 year prior to the execution of the loan agreement. The board may require additional matching funds, depending on the capital need and the degree of risk encountered in the ~~science and technology development~~ *seed capital* project.

(4) A loan may not be made for a research and development project for which matching funds have not been received unless the matching fund requirements are waived by the board pursuant to this section. Matching funds, when required, must be received before expenditure of board funds for a research and development project loan may be made. The board may waive the required match for up to 25% of the funding for research and development project loans if the board determines that the capital need and potential commercialization of the research and development project, in addition to its potential to strengthen the partnership between the public sector and private sector, warrant the waiver. The board may accept as matching funds those received by the loan recipient within 1 year prior to the execution of the loan agreement. The board may require additional matching funds depending on the capital need in the research and development project."

Section 8. Section 90-3-305, MCA, is amended to read:

"**90-3-305. Science and technology development account.** (1) There is a science and technology development account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the science and technology development account:

(a) the payback of principal and earnings on a research and development project loan, *made from a source other than the Montana in-state investment fund,* executed under this chapter; and

(b) all payback of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989."

Section 9. Section 90-3-524, MCA, is amended to read:

"**90-3-524. Research and development project loan agreement — specific requirements — payback.** In addition to the loan agreement provisions described in 90-3-522, a research and development project loan agreement must be structured as contracted debt with the following terms:

(1) The agreement must include provisions calling for a payback of *at least* two times the original loan amount paid as a percentage of the income stream derived from the sale or other commercialization of products or processes developed with the board's financing. This percentage rate may not exceed 5%.

(2) The payback on a research and development project loan for a technology transfer and assistance project may be made pursuant to subsection (1) or may be realized in terms of indirect benefits related to the goals and criteria of the program. No more than 10% of the board's annual allocation of research and development funds may be used for technology transfer and assistance projects. *The payback on a research and development project loan for a technology transfer and assistance project made from the in-state investment fund may not be repaid in terms of indirect benefits.*"

Section 10. Section 90-3-525, MCA, is amended to read:

"**90-3-525. Deposit of payback — seed capital and research and development project loans.** (1) The payback of principal and earnings on a seed capital project loan executed under this chapter *or on a research and development project loan from the Montana in-state investment fund* must be administered pursuant to section 17-6-306.

(2) The payback of principal and earnings on a research and development project loan *from a source other than the Montana in-state investment fund* must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305.

(3) All paybacks of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989, must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305 for use by the board. The paybacks include all those received after January 1, 1989."

Section 11. **Intellectual property assessment.** The university system shall conduct an assessment of its intellectual property management programs and policies. Based on the assessment, the board of regents shall consider the adoption of a system of intellectual property management that will provide a coordinated and effective method of meeting payback requirements for research and development project loans made to organizations, individuals, and other entities within the university system. The assessment must be coordinated with the Montana board of science and technology development, and a final report and recommendations must be presented to the board by January 1, 1992.

Section 12. **Coordination instruction.** If Senate Bill No. 26 is passed and approved, if it includes a section that amends 17-6-308, and if it includes amendments that replace references to the "in-state investment fund" with "permanent coal tax trust fund", then in [this act], the code commissioner shall make similar changes.

Section 13. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1991.

CHAPTER NO. 595

[SB 278]

AN ACT TO REPEAL CERTAIN NUISANCE TAXES; REPEALING THE EXPRESS COMPANY LICENSE TAX AND THE SLEEPING CAR COMPANY LICENSE TAX; REPEALING SECTIONS 15-54-101, 15-54-102, 15-54-103, 15-54-104, 15-54-105, 15-54-111, 15-54-112, 15-54-113, 15-56-101, 15-56-102, 15-56-103, 15-56-104, 15-56-105, 15-56-106, 15-56-107, 15-56-108, 15-56-111, 15-56-112, AND 15-56-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer of express company license tax.** Sections 15-54-101, 15-54-102, 15-54-103, 15-54-104, 15-54-105, 15-54-111, 15-54-112, and 15-54-113, MCA, are repealed.

Section 2. **Repealer of sleeping car company license tax.** Sections 15-56-101, 15-56-102, 15-56-103, 15-56-104, 15-56-105, 15-56-106, 15-56-107, 15-56-108, 15-56-111, 15-56-112, and 15-56-113, MCA, are repealed.

Section 3. **Applicability — postrepeal payment.** (1) (a) [Section 1] applies to tax years beginning after March 31, 1991.

(b) [Section 2] applies prospectively to tax years beginning after December 31, 1991.

(2) (a) All tax obligations that were accrued under the sections repealed in [section 1] remain due and owing for the tax year ending March 31, 1991, payable as if the sections in [section 1] had not been repealed.

(b) All tax obligations that were accrued under the sections repealed in [section 2] remain due and owing for the calendar year ending December 31, 1991, payable as if the sections in [section 2] had not been repealed.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1991.

CHAPTER NO. 596

[SB 288]

AN ACT TO CREATE AN ASBESTOS CONTROL ACCOUNT IN THE STATE SPECIAL REVENUE FUND; TO REQUIRE MONEY RECEIVED FROM THE COLLECTION OF CERTAIN FEES AND PENALTIES TO BE DEPOSITED IN THE ACCOUNT; TO ALLOCATE MONEY IN THE ACCOUNT TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO FUND ASBESTOS CONTROL PROGRAMS; AMENDING SECTION 75-2-514, MCA; REPEALING SECTION 75-2-512, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Asbestos control account.** (1) There is an asbestos control account in the state special revenue fund. There must be deposited in the account all money received from:

(a) fees collected under this part; and

(b) civil penalties collected pursuant to 75-2-514.

(2) Funds in the account are allocated to the department for the purpose of funding the costs of implementing and operating the asbestos control program established under this part.

Section 2. Section 75-2-514, MCA, is amended to read:

"**75-2-514. Criminal and civil penalties — disposition of civil penalties.** (1) The department may suspend, deny, or revoke the accreditation of or reprimand a person who:

(a) fraudulently or deceptively obtains or attempts to obtain accreditation;

(b) fails to meet the qualifications for accreditation or comply with the requirements of this part or any rule adopted by the department; or

(c) fails to meet any applicable federal or state standard for asbestos projects.

(2) Notwithstanding the provisions of any other law, a person who purposely or knowingly violates any provision of this part or an adopted rule or order issued pursuant to this part is guilty of a misdemeanor.

(3) If the department determines that a violation of this part or a rule promulgated pursuant to this part has occurred, it may issue an order compelling the person receiving the order to end the violation immediately.

(4) In addition to or instead of the remedies listed in subsections (1) through (3), an accredited person who purposely or knowingly violates this part or a rule adopted pursuant to this part that concerns the conduct of an asbestos project may be assessed a civil penalty by the district court of not more than $1,000 a day for an initial violation and $5,000 a day for each subsequent violation occurring within a 3-year period from the date of the initial violation.

(5) A district court may assess a civil penalty of not more than $25,000 a day upon a person who engages in an asbestos project without valid accreditation or a permit. In the case of a continuing violation, each day the violation continues constitutes a separate violation.

(6) Civil penalties collected under this part must be deposited into the ~~resource indemnity trust fund created in 15-38-201~~ *account established in [section 1].*"

Section 3. **Repealer.** Section 75-2-512, MCA, is repealed.

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 2, part 5, and the provisions of Title 75, chapter 2, part 5, apply to [section 1].

Section 5. **Effective date.** [This act] is effective July 1, 1991.

Approved April 24, 1991.

CHAPTER NO. 597

[SB 468]

AN ACT RELATING TO THE TAXATION OF OIL AND NATURAL GAS FOR STATE SEVERANCE TAX AND LOCAL GOVERNMENT SEVERANCE TAX PURPOSES; CLARIFYING THE DEFINITION OF GROSS VALUE FOR COMPUTATION OF THE LOCAL GOVERNMENT SEVERANCE TAX; CONFORMING THE ADMINISTRATION OF THE LOCAL GOVERNMENT SEVERANCE TAX TO THE STATE SEVERANCE TAX; AMENDING SECTIONS 15-23-603, 15-36-101, 15-36-105, 15-36-107, 15-36-108, 15-36-113, 15-36-114, AND 15-36-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-101, MCA, is amended to read:

"**15-36-101. Definitions and rate of tax — state severance tax — local government severance tax — assessment of nonworking interest owner — exemption.** (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced shall, except as provided in 15-36-121, each year when engaged in or carrying on the business in this state pay to the department of revenue a state severance tax for the exclusive use and benefit of the state of Montana plus a local government severance tax in lieu of a tax on net proceeds for the exclusive use and benefit of local government. Except as provided in subsection (3), the state severance tax and the local government severance tax are as follows:

(a) except as provided in subsections (1)(b), (1)(c), and (1)(d), a 5% state severance tax on the ~~total~~ gross taxable value of all the petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 8.4% on the gross taxable value, *as defined in subsection (6)(a)(ii),* of all the petroleum and other mineral or crude oil produced by the person other than ~~interim production and~~ new production, from each lease or unit; but in determining the amount of the state severance tax and local government severance tax, there must be excluded from consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;

(b) a 2.65% state severance tax on the ~~total~~ gross taxable value of all natural gas produced by the person, plus the local government severance tax of 15.25% on the ~~total~~ gross taxable value, *as defined in subsection (6)(a)(ii),* of all natural gas produced by the person other than ~~interim~~

~~production or~~ new production, from each lease or unit; but in determining the amount of the state severance tax and the local government severance tax, there must be excluded from consideration all gas produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the gas or petroleum or crude or mineral oil; and there must also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) a 2.5% state severance tax on the ~~total~~ gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 5% on the ~~total~~ gross taxable value, *as defined in subsection (6)(a)(ii),* of the incremental petroleum and other mineral or crude oil produced by the person other than ~~interim production and~~ new production, from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet the following requirements:

(i) the project must be approved as a tertiary recovery project by the *board of oil and gas conservation* ~~department of revenue~~. The approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) the property to be affected by the project must be adequately delineated according to the specifications required by the *board* ~~department~~; and

(iii) the project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the ~~department~~ *board* to be significant in light of all the facts and circumstances, in the amount of crude oil which may potentially be recovered. For purposes of this section, tertiary recovery methods include but are not limited to:

(A) miscible fluid displacement;

(B) steam drive injection;

(C) micellar/emulsion flooding;

(D) in situ combustion;

(E) polymer augmented water flooding;

(F) cyclic steam injection;

(G) alkaline or caustic flooding;

(H) carbon dioxide water flooding;

(I) immiscible carbon dioxide displacement; or

(J) any other method approved by the department as a tertiary recovery method.

(d) a 5% local government severance tax on the ~~total~~ gross taxable value, *as defined in subsection (6)(a)(ii),* of all petroleum and other mineral or crude oil produced by the person other than ~~interim and~~ new production produced by a stripper well, as defined in ~~15-36-121~~ *subsection (7).*

(2) For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the ~~department of revenue~~ *board,* to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the ~~department~~ *board* must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project.

(3) (a) A local government severance tax is imposed on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas subject to local government severance taxes imposed under this chapter. The local government severance tax on nonworking interest owners is computed at the following rates:

(i) 12.5% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum and other mineral or crude oil;

(ii) 15.25% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted or marketable natural gas.

(b) The amounts paid or apportioned in kind to nonworking interest owners are exempt from the local government severance taxes imposed under 15-36-121(2) and under subsections (1)(a) through (1)(d) of this section.

(4) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil or natural gas well or to work in or about any oil or natural gas well or prospect or explore for or do any work for the purpose of developing any petroleum, other mineral or crude oil, or natural gas to pay the severance tax, nor may work done or the drilling of a well or wells for the purpose of prospecting or exploring for petroleum, other mineral or crude oil, or natural gas or for the purpose of developing them be considered to be the engaging in or carrying on of the business. If, in the doing of any work, in the drilling of any oil or natural gas well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum, other mineral or crude oil, or natural gas in excess of the quantity required by the person for carrying on the operation is produced sufficient in quantity to justify the marketing of the petroleum, other mineral or crude oil, or natural gas, the work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of the business of producing petroleum, other mineral

or crude oil, or natural gas within this state within the meaning of this section.

(5) Every person required to pay the state or local government severance tax under this section shall pay the tax in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of the extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the interests that are owned by the federal, state, county, or municipal governments are exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(6) For purposes of this section, the following definitions apply:

(a) *(i) "Gross taxable value", for the purpose of computing the state severance tax, means the gross value of the product as determined in 15-36-103.*

(ii) "Gross taxable value", *for the purpose of computing the local government severance tax,* means the gross value of the product as determined in 15-36-103 less the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas.

(b) "Nonworking interest owner" means any interest owner who does not share in the development and operation costs of the lease or unit.

(7) For the purposes of this section, "stripper well" means a well that produces less than 10 barrels a day, determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365."

Section 2. Section 15-36-105, MCA, is amended to read:

"**15-36-105. Statement to accompany payment — records — collection of tax — refunds.** (1) Each person shall, within 60 days after the end of each following quarter, complete on forms prescribed by the department of revenue a statement showing the total number of barrels of merchantable or marketable petroleum and other mineral or crude oil or cubic feet of natural gas produced or extracted by the person in the state during each month of the quarter and during the whole quarter, the average value of the production during each month, and the total value of the production for the whole quarter, together with the total amount due to the state as severance taxes and local government severance taxes for the quarter, and shall within such 60 days deliver the statement and, except as provided in 15-36-102(2) and 15-36-121, pay to the department the amount of the taxes shown by the statement to be due to the state for the quarter for which the statement is made. The statement must be signed by the individual or the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company, or syndicate making the statement. Any person engaged in carrying on business at more than one place in this state or owning, leasing, controlling, or operating more than one oil or gas well in this state may include all operations in one statement. The department shall receive and file all statements and collect and receive from the person making and filing a statement the amount of tax payable by the person, if any, as appears in the statement.

(2) *(a)* It is the duty of the department to examine each of the statements and compute the taxes ~~thereon~~ *imposed under this chapter*, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer making the statement for the quarter for which the statement is filed.

(b) If the *state severance* tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 10 days after written notice of the amount of the deficiency is mailed by the department to the taxpayer. If the *state severance* tax imposed is less than the amount paid, the difference must be applied as a credit against tax liability for subsequent quarters or refunded if there is no subsequent tax liability.

(c) If the local government severance tax found to be due is greater than the amount paid, the excess is due at the time for payment provided for in 15-36-102(2). If the local government severance tax imposed is less than the amount paid, the difference must be applied as a credit against tax liability for subsequent quarters or refunded if there is no subsequent tax liability.

(3) If the *state severance* tax *or the local government severance tax* is not paid on or before the due date, there must be assessed a penalty of 10% of the amount of the tax *not paid*, unless it is shown that the failure was due to reasonable cause and not due to neglect. If ~~any~~ *the state severance* tax ~~under this chapter~~ *or the local government severance tax* is not paid when due, interest must be added to the tax at the rate of 1% a month or fraction thereof, computed on the total amount of *the state* severance tax *or local government severance tax* and penalty from the due date until paid."

Section 3. Section 15-36-107, MCA, is amended to read:

"**15-36-107. Procedure to compute tax in absence of statement — penalty and interest.** If ~~any such~~ *a* person ~~shall fail~~ *fails*~~, neglect, or refuse~~ to file any statement required by 15-36-105 within the time ~~therein~~ required, the department of revenue shall, immediately after such time has expired, ~~proceed to inform itself as best it may regarding~~ *ascertain* the number of barrels of petroleum and other mineral or crude oil or cubic feet of gas extracted and produced by ~~such~~ *the* person in this state during ~~such~~ *the* quarter and during each month ~~thereof~~ *of the quarter* and the average value ~~thereof~~ *of the barrels produced* during each ~~such~~ month *or the average value of cubic feet of gas extracted and produced during each month* and ~~shall determine and~~ fix the amount of the *state* severance taxes due to the state *or the amount of local government severance taxes due* from ~~such~~ *the* person for ~~such~~ *the* quarter ~~and shall add to the amount of such severance taxes~~ *plus* a penalty of 10% ~~thereof~~ *of the tax due* plus interest at the rate of 1% per month or fraction ~~thereof~~ *of a month* computed on the total amount of *state or local government* severance taxes and penalty. Interest ~~shall~~ *must* be computed from the date the severance taxes were due to the date of payment. The department shall mail to the person required to file a quarterly statement and pay ~~any~~ severance ~~tax~~ *taxes*~~,~~ a letter setting forth the amount of *state severance tax or local government* severance tax, penalty, and interest due~~, and~~. ~~the~~ *The* letter ~~shall further~~ *must* contain a statement that if payment is not made, a warrant for distraint may be filed. The *department may waive the* 10% penalty ~~herein provided may be waived by the department~~ if reasonable cause for the failure ~~and neglect~~ to file the statement required by 15-36-105 is provided to the department."

Section 4. Section 15-36-108, MCA, is amended to read:

"**15-36-108. Warrant for distraint.** If all or part of the *state severance tax or the local government severance* tax imposed by this part is not paid when due, the department *of revenue* may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded."

Section 5. Section 15-36-113, MCA, is amended to read:

"**15-36-113. Deficiency assessment — hearing — interest.** (1) When the department of revenue determines that the amount of *the state severance tax or local government severance* tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice of the additional *state severance tax or local government severance* tax proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional *state severance tax or local government severance* tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional *state severance tax or local government severance* tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) When a deficiency is determined and the *state severance tax or local government severance* tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a

month or fraction thereof, computed from the original due date of the return."

Section 6. Section 15-36-114, MCA, is amended to read:

"**15-36-114. Credit for overpayment — interest on overpayment.** (1) If the department of revenue determines that the amount of *state severance tax or local government severance* tax, penalty, or interest due for any ~~year~~ *taxable period* is less than the amount paid, the amount of the overpayment shall be credited against any *state severance tax or local government severance* tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-36-113 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable."

Section 7. Section 15-36-121, MCA, is amended to read:

"**15-36-121. Exemption from state severance tax — imposition of local government severance tax.** (1) It is the public policy of this state to promote a sufficient supply of natural gas to provide for the residents of this state, to lessen Montana's dependence on imported natural gas, and to encourage the exploration for and development and production of natural gas, petroleum, and other mineral and crude oil within the state.

(2) All the natural gas produced from any well that has produced 60,000 cubic feet or less of natural gas a day for the calendar year prior to the current year shall be taxed as provided in this section. Production must be determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365. The first 30,000 cubic feet of average daily production per well is exempt from all of the state severance tax imposed by 15-36-101. The

first 30,000 cubic feet of average daily production per well is subject to a local government severance tax of 10% *on the gross taxable value, as defined in 15-36-101(6)(a)(ii).* Everything over 30,000 cubic feet of gas produced is taxed at 1.59% *on the gross taxable value for the state severance tax* plus a local government severance tax of 10% *on the gross taxable value, as defined in 15-36-101(6)(a)(ii).*

~~(3) For the purposes of this section, "stripper well" means a well that produces less than 10 barrels per day, determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area, and by dividing the resulting quotient by 365.~~

~~(4)~~*(3)* Notwithstanding the provisions of subsection (2), all reporting requirements under the state severance tax remain in effect."

Section 8. Section 15-23-603, MCA, is amended to read:

"**15-23-603. Net proceeds — how computed.** (1) As provided in subsection (2), the department of revenue shall calculate and compute from the returns the gross sales proceeds of the product yielded from the well for the year covered by the statement and shall calculate the net proceeds of the well yielded to the producer, which net proceeds are determined by subtracting from the gross sales proceeds of the well all royalty paid in cash by the operator or producer and the gross value of all royalty apportioned in kind by the operator or producer determined by using as the value of a barrel of oil or a cubic foot of gas the average selling price for the calendar year of a barrel of oil or a cubic foot of gas from the well out of which the royalty was paid.

(2) For ~~interim production or~~ new production, net proceeds are the equivalent of the gross sales proceeds, without deduction for excise taxes, of the product yielded from the well for the quarter covered by the statement, except that in computing the total number of barrels of petroleum and other mineral or crude oil or cubic feet of natural gas produced, there must be deducted so much of the product as is used in the operation of the well from which the petroleum or other mineral or crude oil or natural gas is produced for pumping the petroleum or other mineral or crude oil or natural gas from the well to a tank or pipeline.

(3) In the statement of sales proceeds required under 15-23-602 for lease or unitized areas from which ~~interim or~~ new production and other production have been sold, the number of barrels of ~~interim and~~ new production of oil or cubic feet of ~~interim or~~ new production of gas must be segregated from and stated separately from the number of barrels of other production of oil or cubic feet of other production of gas.

~~(4) In calculating the deduction for money expended for necessary chemical supplies needed and used in a tertiary recovery project approved by the department of revenue, as provided in 15-36-101, the department shall require that the necessary chemical supplies, which include but are not limited to carbon dioxide supplies, be amortized over a 10-year period beginning with the year in which the money was expended.~~"

Section 9. **Effective date.** [This act] is effective on passage and approval.

Section 10. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to oil and gas production during quarters beginning after December 31, 1990.

Approved April 24, 1991.

CHAPTER 598

[HB 4]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1991, THAT WOULD USUALLY BE MADE BY BUDGET AMENDMENT; PROVIDING FOR CERTAIN APPROPRIATIONS TO CONTINUE FROM FISCAL YEAR 1991 TO FISCAL YEARS 1992 AND 1993; PROVIDING DIRECTION CONCERNING CONSIDERATION OF BUDGET AMENDMENT APPROPRIATIONS FOR FISCAL YEAR 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Time limits.** The appropriations contained in [section 5] are intended to provide only necessary and ordinary expenditures for the years for which the appropriations are made. The unspent balance of any appropriation must revert to the fund from which it was appropriated unless the appropriation is continued by [section 5].

Section 2. **Governor's power to reduce appropriations.** In the event of a shortfall in revenue, the governor may reduce any appropriation in [section 5] by not more than 15%.

Section 3. **Direction concerning certain fiscal year 1993 budget amendments.** The legislature intends that any request by the office of budget and program planning presented to the 53rd legislature for a bill to appropriate money to various state agencies that would usually be made by budget amendment include requests for fiscal year 1993 appropriations that may not continue beyond fiscal year 1994.

Section 4. **Totals not appropriations.** The totals shown in [section 5] are for informational purposes only and are not appropriations.

Section 5. **Appropriations.** The following money is appropriated, subject to the terms and conditions of [sections 1 through 6]:

Agency and Program	FY	Amount	Fund
GOVERNOR'S OFFICE			
Mental Disabilities Board of Visitors	1991	$ 2,500	Federal Special

MONTANA ARTS COUNCIL			
Promotion of the Arts			
NEA Rural LPTV Project	1992	5,000	Federal Special
Grants	1992	10,000	Federal Special
Arts in Education	1992	9,995	Federal Special
Arts Apprenticeships	1991-92	21,000	Federal Special
MONTANA STATE LIBRARY			
Natural Resource			
Information Services	1991-92	29,908	Federal Special
MONTANA HISTORICAL SOCIETY			
Magazine			
Museum Store Merchandise	1991	30,000	Proprietary Fund
DEPARTMENT OF JUSTICE			
Law Enforcement			
Criminal History Records	1991-92	92,664	Federal Special
Missing Children Grant	1991-92	4,523	Federal Special

CRIME CONTROL DIVISION

The unexpended fiscal year 1991 federal budget amendment authority for victim assistance, drug enforcement, and drug education is reappropriated for fiscal year 1992 and fiscal year 1993.

DEPARTMENT OF HIGHWAYS			
Right-of-Way Acquisition	1991	212,292	State Special
		787,708	Federal Special
OFFICE OF PUBLIC INSTRUCTION			
Central Services			
Common Core Data	1991	17,140	Federal Special
Educational Services			
Star Schools	1992	30,763	Federal Special
Homeless Adults Services	1992	1,719	Federal Special
Cooperative Purchasing	1991	13,000	State Special
Bilingual Education	1991	24,800	Federal Special
Adult Basic Education	1991	6,000	Federal Special
Migrant Ed Training	1991	12,970	Federal Special
Special Education	1991	125,322	Federal Special
Elementary Traffic Education	1991	15,453	Federal Special
Math/Science Education	1991	25,392	Federal Special
Distribution to Schools			
Homeless Adults	1992	23,811	Federal Special
Special Education	1991	275,000	Federal Special

English Literacy	1991	12,500	Federal Special
DEPARTMENT OF COMMERCE			
Transportation Division			
Rail Rehabilitation	1991	611,826	State Special
Drug Testing Kits	1991	75,000	Federal Special
Housing Assistance Bureau			
Section 8 Housing	1991	1,629,560	Federal Special
Community Development Bureau			
CDBG Housing/Facilities	1991	1,500,000	Federal Special
County Land Planning	1991	54,624	State Special
Business Development			
CDBG Development Projects	1991	1,037,770	Federal Special
International Affairs Coordinator	1991	10,000	Nonstate Special

The unexpended fiscal year 1991 international affairs coordinator private revenue authority is reappropriated for fiscal year 1992.

Indian Affairs Coordinator			
Native American Highway Contractors	1991	17,030	Federal Special
Small Business Development Center	1991	35,000	State Special
OFFICE OF THE LEGISLATIVE AUDITOR			
Audit and Examination			
Sunrise Reviews	1991	5,000	State Special
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES			
Centralized Services			
Social Security Contract	1991	12,000	Federal Special
Family/Maternal & Child Health			
WIC	1991	1,553,008	Federal Special
Health Services			
Primary Care	1991-92	95,694	Federal Special
Trauma Register	1991-92	11,126	Federal Special
Preventive Health			
AIDS In-Home Services	1991-92	30,000	Federal Special
Ryan White HIV Act	1991-92	100,000	Federal Special
DEPARTMENT OF LABOR AND INDUSTRY			
Job Service Division			
Targeted Jobs Tax Credit	1991	95,779	Federal Special
Food Stamp Job Search	1992	62,500	Federal Special
Human Rights Division			
Fair Housing/Opening Doors	1991-92	18,750	Federal Special

The unexpended fiscal year 1991 budget amendment authority for Fair Housing/Opening Doors is reappropriated for fiscal year 1992.

Research, Safety, and Training			
Onsite Safety Consultation	1991-92	7,369	Federal Special

The unexpended fiscal year 1991 budget amendment authority for coal mine safety is reappropriated for fiscal year 1992.

Coal Mine Funds

The unexpended fiscal year 1991 coal mine federal authority is reappropriated for fiscal year 1992.

World of Work	1991	41,637	Federal Special
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES			
Family Assistance			
Food Stamp Enhancement	1991	248,314	Federal Special
LIEAP	1991	1,894,033	Federal Special
Medicaid Services			
Indian Health Care	1991	1,942,792	Federal Special
Institutions	1991	1,848,025	Federal Special
Institutions 1985-89	1991	570,626	Federal Special
Developmental Disabilities			
Montana Youth Initiative	1991	69,868	Federal Special
Part H Carryover	1991	71,543	Federal Special
DEPARTMENT OF FAMILY SERVICES			
Community Services			
Child Justice Act	1991	37,430	Federal Special
Independent Living	1991	117,734	Federal Special
DDPAC Targeted Case Management	1991-92	75,000	Federal Special
Mountain View School			
Chapter I Special Education	1991	2,621	Federal Special
Chapter I Basic Grant	1991	6,434	Federal Special
Pine Hills School			
Chapter II	1991	1,072	Federal Special
Chapter I Special Needs	1991	2,709	Federal Special
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION			
Energy Division			
All States Energy Conference	1991-92	70,000	State Special
		151,000	Federal Special
DEPARTMENT OF AGRICULTURE			
Environmental Management			
Weed Program EIS	1992		State Special

The unexpended fiscal year 1991 weed program environmental impact statement (EIS) authority is reappropriated for fiscal year 1992.

Agricultural Development			
Target Export Assistance	1992		Federal Special

The unexpended fiscal year 1991 target export assistance federal authority is reappropriated for fiscal year 1992.

EPA Pesticide	1991	53,500	Federal Special
MONTANA UNIVERSITY SYSTEM			
Commissioner of Higher Education			
Group Insurance	1991	251,258	Proprietary Fund
Guaranteed Student Loan	1991	19,254	Federal Special
Commission of the 90s	1991	10,430	Nonstate Special
Montana State University			
Instruction	1991	393,000	Current Unrestricted
Institutional Support	1991	57,000	Current Unrestricted
Student Services	1991	25,000	Current Unrestricted
Scholarships and Fellowships	1991	182,000	Current Unrestricted
University of Montana			
Instruction	1991	439,107	Current Unrestricted
Academic Support	1991	71,775	Current Unrestricted
Institutional Support	1991	153,044	Current Unrestricted
Student Services	1991	97,863	Current Unrestricted
Scholarships and Fellowships	1991	16,123	Current Unrestricted
Eastern Montana College			
Instruction	1991	158,000	Current Unrestricted
Montana Tech	1991	60,000	Current Unrestricted
Western Montana College			
Instruction	1991	46,922	Current Unrestricted
Scholarships and Fellowships	1991	7,444	Current Unrestricted
Montana Agricultural Experiment Station			
Research - Hatch	1991	98,584	Current Unrestricted
Research - Regional Research	1991	37,525	Current Unrestricted
Montana Cooperative Extension Service			
Public Service	1991	25,500	Current Unrestricted
Missoula Vo-Tech			
Instruction	1991	54,700	Current Unrestricted
Student Services	1991	16,400	Current Unrestricted
Great Falls Vo-Tech			
Academic Support (FY89)	1991	42,906	Current Unrestricted

Instruction	1991	115,447	Current Unrestricted
Academic Support	1991	8,375	Current Unrestricted
Institutional Support	1991	18,141	Current Unrestricted
Physical Plant	1991	4,000	Current Unrestricted
Student Services	1991	12,000	Current Unrestricted
Fire Services Training School			
Hazardous Materials	1991-92	28,500	Federal Special
Sprinkler Technology	1991	10,050	Federal Special
Title IV Grant	1991	2,000	Federal Special
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Management Services			
Gas and Diesel Fuel	1991	71,000	Proprietary Fund
Wildlife			
BPA Habitat Protection	1991	500,000	Federal Special
BPA Mitigation Projects	1991	109,615	Federal Special
DEPARTMENT OF LIVESTOCK			
Inspection and Control			
Weapons/Brands Records	1991	75,600	State Special
DEPARTMENT OF ADMINISTRATION			
Procurement and Printing			
Federal Surplus Property	1991	100,000	Proprietary Fund
Supplies Inventory	1991	250,000	Proprietary Fund
Printing Workload	1991	60,000	Proprietary Fund
Information Services Division			
Student Long Distance	1991	285,000	Proprietary Fund
Mail and Distribution			
Central Mail Workload	1991	245,622	Proprietary Fund
Tort Claims			
Outside Legal Counsel	1991	1,000,000	Proprietary Fund
Teachers' Retirement Board			
Computer Processing	1991	21,404	Trust Account
DEPARTMENT OF STATE LANDS			
Air Operations			
Helicopter Repair and Fuel	1991	84,330	Proprietary Fund
DEPARTMENT OF INSTITUTIONS			
Mental Health			
Block Grant Carryover	1991	49,473	Federal Special
Conference - CSP	1992	28,175	Federal Special

Data System	1992	24,198	Federal Special
Human Resource Development	1991	141,686	Federal Special

The unexpended fiscal year 1991 federal special revenue authority from the above-cited mental health budget amendment is reappropriated for fiscal year 1992 and fiscal year 1993.

Child and Adolescent Services	1991		Federal Special
Community Support Services	1991		Federal Special

The unexpended fiscal year 1991 child and adolescent services grant and community support services grant is reappropriated for fiscal year 1992 and fiscal year 1993.

Chemical Dependency			
Data Collection System	1991	39,126	Federal Special
Substance Abuse Prevention	1991	166,397	Federal Special
Rural Halfway House	1991	327,540	Federal Special

The unexpended fiscal year 1991 federal special revenue authority from the above-cited chemical dependency budget amendments is reappropriated for fiscal year 1992 and fiscal year 1993.

Corrections Intensive Outpatient	1991-92	1,378	State Special
Program		3,822	Federal Special
Women's Corrections			
Adult Basic Education	1991	5,617	Federal Special
SWAN RIVER FOREST CAMP			
Care and Custody			
Vocational Training Program	1991	7,000	Proprietary Fund

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1991.

CHAPTER NO. 599

[HB 299]

AN ACT PROVIDING FOR PERMANENT PLACEMENT OF CHILDREN IN FOSTER CARE; AUTHORIZING PERMANENT DISPOSITION BY THE COURT WITHIN CERTAIN TIME LIMITS; IMPLEMENTING A PERMANENCY PLANNING PROJECT FOR CHILDREN IN FOSTER CARE; AMENDING SECTION 41-3-609, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Length of time in foster care — permanent disposition.** The court may terminate parental rights under 41-3-609(2) or order other permanent legal custody that will provide for the permanent placement of the child when legal custody of a youth has been transferred to the department under this part and:

(1) the child has been in an out-of-home placement for a cumulative total period of 1 year or longer pursuant to court order and the parent has substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement; or

(2) the child has been in an out-of-home placement for a cumulative total period of 2 years or longer pursuant to court order, the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement, and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

Section 2. Section 41-3-609, MCA, is amended to read:

"**41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal relationship upon a finding that ~~the circumstances contained in subsection (1)(a), (1)(b), or (1)(c), as follows,~~ *any of the following circumstances* exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by his parents as set forth in 41-3-102(3)(d); ~~or~~

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time~~.~~*; or*

(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under [section 1] unless it orders other permanent legal custody under [section 1].

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that such person cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and such treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred."

Section 3. **Permanency planning project.** The department of family services shall implement a 2-year permanency planning project, including a case review of all children in foster care over a 3-month period to:

(1) determine what needs to be done in each case to assure a permanent, stable home for each child; and

(2) assist the department social workers in effectively finding and using the resources to implement positive and realistic permanency plan options for the children.

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 1].

Section 5. **Effective date.** [This act] is effective July 1, 1991.

Approved April 24, 1991.

CHAPTER NO. 600

[HB 414]

AN ACT ESTABLISHING A WATER QUALITY REHABILITATION ACCOUNT; REQUIRING THAT FINES AND CIVIL PENALTIES COLLECTED FOR VIOLATIONS OF TITLE 75, CHAPTER 5, MCA, BE DEPOSITED IN THE WATER QUALITY REHABILITATION ACCOUNT; PROVIDING FOR A STATUTORY APPROPRIATION OF THE ACCOUNT TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; REQUIRING THAT CERTAIN COSTS AND EXPENSES RECOVERED BY THE DEPARTMENT FOR ACTIONS FINANCED BY THE WATER QUALITY REHABILITATION ACCOUNT BE DEPOSITED IN THE ACCOUNT; AMENDING SECTIONS 17-7-502, 75-5-634, AND 75-5-635, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the department of health and environmental sciences concerning its authority to make rules on the following subjects:

(1) the nature of water pollution prevention and water quality repair, restoration, and rehabilitation activities undertaken by the department;

(2) the nature of investigative and information-gathering activities the department may undertake to evaluate instances of pollution of state waters for purposes of implementing this bill; and

(3) the criteria the department may use to prioritize use of funds from the water quality rehabilitation account.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Water quality rehabilitation account — use — criteria.** (1) There is a water quality rehabilitation account within the state special revenue fund established in 17-2-102.

(2) Fines and civil penalties collected for violations of any provision of this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter must be deposited in the water quality rehabilitation account pursuant to 75-5-634. The account is statutorily appropriated, as provided in 17-7-502, to the department.

(3) The department may spend funds deposited in the water quality rehabilitation account for the following purposes:

(a) to respond if wastes have been placed in a location where they are likely to cause pollution of state waters;

(b) to respond to emergency water pollution events, including spills and accidents, in an effort to repair, restore, and rehabilitate the affected state waters;

(c) to repair, restore, and rehabilitate state waters that are chronically or periodically adversely affected as a result of past pollution-causing events or activities; and

(d) whenever the department discovers or suspects that a pollution problem exists, to investigate or gather information that is necessary and appropriate to identify the existence, nature, origin, and extent of the pollution and to identify an appropriate response.

(4) The department may draw upon the account in order to take action under subsection (3) only if:

(a) (i) wastes have been placed in a location where they are likely to cause pollution of state waters or an emergency water pollution event has occurred and the department is either unable to identify a responsible party or the responsible party fails to clean up the wastes or to repair, restore, or rehabilitate the adversely affected state waters in a timely manner; and

(ii) the department determines that prompt action is necessary to prevent pollution of state waters, protect public health, minimize the extent of environmental damage, or minimize the overall economic cost of appropriately responding to the emergency situation; or

(b) the department has made diligent, good faith efforts to determine the identity of the person responsible for pollution resulting from past events or activities and has been unable to identify the person or take enforcement action as provided in Title 75, chapter 5, part 6.

Section 2. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305;

19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; ~~and~~ section 13, House Bill No. 861, Laws of 1985*; and [section 1]*.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 3. Section 75-5-634, MCA, is amended to read:

"**75-5-634.** ~~**Fines to go to general fund**~~ ***Disposition of fines and civil penalties.*** ~~Fines~~ *(1) Except as provided in subsections (2) and (3), fines and civil penalties* collected, except those collected in a justice's court, ~~shall~~ *must* be deposited ~~to the state general fund~~ *into the water quality rehabilitation account provided in [section 1].*

(2) A maximum of $20,000 in fines and civil penalties may be deposited in the water quality rehabilitation account in any fiscal year. Fines and penalties in excess of $20,000 must be deposited in the general fund.

(3) Whenever the amount of money in the water quality rehabilitation account exceeds $100,000, all subsequent fines and civil penalties must be deposited in the general fund."

Section 4. Section 75-5-635, MCA, is amended to read:

"**75-5-635. Costs and expenses — recovery by department —** ***deposit in water quality rehabilitation account.*** *(1)* In a civil action initiated by the department under this chapter, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey which led to the establishment of the violation and any expense incurred by the state in removing, correcting, or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants.

(2) Any costs and expenses recovered by the department under subsection (1) for actions that the department financed with money from the water quality rehabilitation account authorized in [section 1] must be deposited in the water quality rehabilitation account."

Section 5. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 5, part 5, and the provisions of Title 75, chapter 5, part 5, apply to [section 1].

Section 6. **Effective date.** [This act] is effective July 1, 1991.

Approved April 24, 1991.

CHAPTER NO. 601

[HB 467]

AN ACT TO CREATE CRIMINAL PENALTIES FOR PERSONS ILLEGALLY CARRYING FIREARMS OR DANGEROUS DRUGS ON TRAINS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Carrying firearms on train — penalty.** (1) Except as authorized by the management of a railroad, it is unlawful for a person not authorized to carry a weapon in the course of his official duties to knowingly or purposely carry or transport firearms on a train in this state unless, prior to boarding, the person has delivered all firearms and ammunition, if any, to the operator of the train.

(2) A person violating this section shall be punished by a fine not exceeding $500 or imprisonment in the county jail for a period not exceeding 6 months, or both.

Section 2. **Carrying dangerous drugs on train.** A person commits the offense of carrying dangerous drugs on a train in this state if he is knowingly or purposely in criminal possession of a dangerous drug and boards any train.

Section 3. **Penalty for carrying dangerous drugs on train.** A person convicted of carrying dangerous drugs on a train in this state is subject to the penalties provided in 45-9-102.

Section 4. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45, chapter 8, part 3, apply to [section 1].

(2) [Sections 2 and 3] are intended to be codified as an integral part of Title 45, chapter 9, part 1, and the provisions of Title 45, chapter 9, part 1, apply to [sections 2 and 3].

Approved April 24, 1991.

CHAPTER NO. 602

[HB 477]

AN ACT ESTABLISHING THE MICROBUSINESS DEVELOPMENT ACT; CREATING THE MICROBUSINESS FINANCE PROGRAM; CREATING THE MICROBUSINESS ADVISORY COUNCIL; CREATING A NONVOTING LEGISLATIVE CONSULTING PANEL; PROVIDING A STATUTORY APPROPRIATION; PROVIDING AN APPROPRIATION FROM THE IN-STATE INVESTMENT FUND; PROVIDING AN APPROPRIATION FROM THE GENERAL FUND; AMENDING SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 4 and 7] authorize the department of commerce to adopt rules for the administration of the microbusiness finance program and for the nomination of candidates to the microbusiness advisory council. [This act] is intended to provide a significant portion of the capital for a network of institutions that will, taken together, provide access throughout Montana to small loans for economically sound and feasible microbusiness projects that because of the high costs and diseconomies of scale of small lending or unconventional collateral are unlikely to receive financing from conventional public or private sources. The rules must ensure that a certified microbusiness development corporation receiving funds under this program:

(1) is prepared and qualified to provide or furnish access to management training and technical assistance to loan applicants and to conduct credit investigation and analysis and revolving loan fund administration in a prudent and professional manner;

(2) has identified adequate sources of operating income and sufficient prospective business clients; and

(3) includes in the membership of its board of directors representation of minorities, women, and low-income persons.

Ensuring management training capability, prudent revolving loan fund administration, and adequate operating income and market base must be balanced against the requirement to achieve geographic and rural-to-urban equity and equity for minorities, women, and low-income persons.

The rules must require that applicants to be certified as microbusiness development corporations submit cooperative proposals that propose to serve a multicounty region of the state and incorporate as partners or have the explicit approval of a significant number of development institutions and service providers within the communities to be served, including but not limited to local governments, certified community lead organizations, financial institutions, business incubators, business assistance groups, women, and representatives of low-income and minority populations.

Interest rates paid to the department by certified microbusiness development corporations receiving development loans must be at least sufficient, when the development loan fund is fully invested in development loans, to cover the department's administrative costs of the microbusiness finance program. Rates generally must be kept at the minimum necessary to provide for the department's administrative costs in order to provide the corporations with an interest earnings spread to be used for their own operating expenses.

Development loans generally must be interest-only loans, renewable at terms not to exceed 8 years. When the department chooses not to renew an interest-only development loan that has come to term and the corporation receiving the loan has administered its funds according to the program's criteria, the department shall attempt to negotiate an amortization schedule for repaying the loan that does not disrupt the operations or earnings of the corporation.

For maximum interest rates that certified microbusiness development corporations may charge on microbusiness loans, the rules must attempt to ensure that microbusiness development corporations comply with federal and state usury laws and other federal and state statutes and regulations regarding maximum rates to be charged by financial institutions. The department shall develop guidelines designed to reflect prevailing market conditions and specific loan risk and portfolio risk and may establish specific rate limits based on standard industry benchmarks, such as the New York prime rate, with the objective of allowing modest interest premiums, on the order of 1% to 3% above prevailing market rates, to be charged.

For minimum interest rates on microbusiness loans, the rules must consider prevailing market conditions and established industry benchmarks, such as the New York prime rate, in attempting to ensure that microbusiness development corporations are charging at least a prevailing market rate for loans of similar nature, term, and risk.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 9] may be cited as the "Microbusiness Development Act".

Section 2. **Legislative findings and purpose.** (1) The legislature finds and declares that:

(a) it is the policy of the state to foster and encourage economic development within the state in order to promote the general welfare of the people;

(b) no program exists by which the state encourages and assists in the creation, development, and financing of businesses with fewer than 10 full-time equivalent employees and gross revenues of less than $500,000 a year, which represent a significant component of and potential for growth in the state's economy; and

(c) neither the public sector nor the private sector currently satisfies the financial needs of these businesses.

(2) The purpose of [sections 1 through 9] is to create a program to encourage and assist in the creation, development, and financing of businesses with fewer than 10 full-time equivalent employees and gross revenues of less than $500,000 a year.

(3) The process of certification of microbusiness development corporations and selection among competing proposals for development loans must be open and competitive and allow access to the competition to all interested communities and organizations and must provide for selecting for award of development loans those projects that are best qualified according to the criteria established under [sections 4 through 6].

Section 3. **Definitions.** As used in [sections 1 through 9], the following definitions apply:

(1) "Certified community lead organization" means an organization that has sponsored community certification under the certified communities program of the department.

(2) "Certified microbusiness development corporation" means a microbusiness development corporation certified pursuant to [section 6].

(3) "Council" means the microbusiness advisory council established in [section 7].

(4) "Department" means the department of commerce provided for in 2-15-1801.

(5) "Development loan" means money loaned to a certified microbusiness development corporation by the department for the purpose of making microbusiness loans under the provisions of [sections 1 through 9].

(6) "Microbusiness development corporation" means a nonprofit corporation organized and existing under the laws of the state to provide training, technical assistance, and access to capital for the startup or expansion of qualified microbusinesses.

(7) "Microbusiness loan" means a loan made from or guaranteed by a revolving loan fund contributed to by the microbusiness finance program.

(8) "Program" means the microbusiness finance program established in [section 4].

(9) "Qualified microbusiness" means a business enterprise located in the state that produces goods or provides services and has fewer than 10 full-time equivalent employees and annual gross revenues of less than $500,000.

(10) "Revolving loan fund" means a fund required to be established by a certified microbusiness development corporation that receives a development loan.

Section 4. **Microbusiness finance program — powers and duties of department.** There is a microbusiness finance program administered by the department. The department shall adopt rules to implement the provisions of [sections 1 through 9], including but not limited to:

(1) establishing criteria and procedures for certifying microbusiness development corporations;

(2) establishing criteria and procedures to select from competing development loan applications and to award development loans to certified microbusiness development corporations;

(3) establishing criteria and procedures to be followed by certified microbusiness development corporations that administer revolving loan funds supported by the program;

(4) determining the amount and method of computation and payment of interest rates charged to recipients of development loans and specifying amortization schedules and other terms and conditions for development loans as may be necessary. However, the rate of interest may not be less than 3% a year.

(5) establishing criteria for determining nonperformance and declaring default in the administration of development loans and requiring the refund of defaulted development loan funds to the microbusiness development loan account;

(6) establishing criteria for satisfactory performance in development loan administration to determine eligibility for renewal of development loans or for additional development loans;

(7) establishing guidelines for maximum and minimum interest rates that may be charged by certified microbusiness development corporations on microbusiness loans; and

(8) dividing the state into not more than 12 multicounty service regions within each of which not more than one microbusiness development corporation may be funded at any time. However, a corporation that is funded as a statewide microbusiness development corporation under [section 6] may offer specialized services to constituents within regions having a funded regional microbusiness development corporation.

Section 5. **Microbusiness development loan account and finance program administrative account — criteria — limitations.** (1) There is in the state special revenue fund a microbusiness development loan account into which the funds appropriated pursuant to [section 11] and money received in repayment of the principal of development loans must be deposited. The department may make development loans from the account in amounts not to exceed $250,000 a loan to a certified microbusiness development corporation.

(2) There is in the state special revenue fund a microbusiness finance program administrative account into which all interest received on devel-

opment loans, service charges or fees received from certified microbusiness development corporations, grants, donations, and private or public income must be deposited. Money in the administrative account may be transferred to the development loan account or be used to pay the costs of the program, including personnel, travel, equipment, supplies, consulting costs, and other operating expenses of the program.

(3) Subject to subsection (1), a certified microbusiness development corporation that receives a development loan may apply for an additional loan after 1 year following approval of the previous loan, if the applicant meets the performance criteria established by the department.

(4) To establish the criteria for making development loans, the department shall consider:

(a) the plan for providing services to microbusinesses;

(b) the scope of services to be provided by the certified microbusiness development corporation;

(c) geographic representation of all regions of the state, including both urban and rural communities;

(d) the plan for providing service to minorities, women, and low-income persons;

(e) the ability of the corporation to provide business training and technical assistance to microbusiness clients;

(f) the ability of the corporation, with its plan, to:

(i) monitor and provide financial oversight of recipients of microbusiness loans;

(ii) administer a revolving loan fund; and

(iii) investigate and qualify financing proposals and to service credit accounts;

(g) sources and sufficiency of operating funds for the certified microbusiness development corporation; and

(h) the intent of the corporation, with its plan and written indications of local institutional support, to provide services to a designated multicounty region of the state.

(5) Development loan funds may be used by a certified microbusiness development corporation to:

(a) satisfy matching fund requirements for other state, federal, or private grants;

(b) establish a revolving loan fund from which the certified microbusiness development corporation may make loans to qualified microbusinesses, provided that a single loan does not exceed $20,000 and the outstanding balance of all loans to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share does not exceed $20,000;

(c) establish a guarantee fund from which the certified microbusiness development corporation may guarantee loans made by financial institutions to qualified microbusinesses. However, a single guarantee may not exceed $20,000, and the aggregate of all guarantees to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share may not exceed $20,000.

(6) Development loan funds may not be:

(a) loaned for relending or investment in stocks, bonds, or other securities or for property not intended for use in production by the recipient of the loan; or

(b) used to:

(i) refinance a nonperforming loan held by a financial institution; or

(ii) pay the operating costs of a certified microbusiness development corporation. However, interest income earned from the proceeds of a development loan may be used to pay operating expenses.

(7) Certified microbusiness development corporations are required to match development loans from the program with contributions to their revolving loan fund from other sources on a ratio of at least $1 from other sources for each $3 from the program. Matching contributions may come from a public or private source other than the program and may be in the form of equity capital, loans, or grants.

(8) Development loans must be made pursuant to a development loan agreement and may be amortization or term loans, bear interest at less than the market rate, be renewable, be callable, and contain other terms and conditions considered appropriate by the department that are consistent with the purposes of and with rules promulgated to implement [sections 1 through 9].

(9) (a) Unless subject to federal law or rule, each certified microbusiness development corporation that receives a development loan under [sections 1 through 9] shall pay the cost of an audit of its operations to be conducted at least once every 2 years. The department shall designate an auditor to conduct the audit.

(b) If an audit is performed under a requirement of federal law or rule, the department shall waive the audit required in subsection (9)(a) with respect to all issues addressed by the federal audit report. However, the department may require an audit of matters that are not, in the department's judgment, addressed by the federal report—for example, verification of compliance with requirements specific to the program, such as job-generation standards and reporting.

(10) A certified microbusiness development corporation that is in default for nonperformance under rules established by the department may be required to refund the outstanding balance of development loans awarded prior to the default declaration. A development loan is secured by a first lien on the receivables of the corporation receiving the loan.

Section 6. **Certification of microbusiness development corporations.** The department may certify:

(1) a microbusiness development corporation when it determines that the corporation:

(a) has developed a viable plan for providing training, access to financing, and technical assistance for qualified microbusinesses;

(b) has broad-based community support in a designated multicounty region of the state, as reflected, for example, by the membership of its board of directors; and

(c) has an adequate source of operating capital; or

(2) a statewide microbusiness development corporation when the department determines that the corporation meets the conditions under subsection (1) and, in addition:

(a) has a viable plan to provide specialized services to constituents throughout the state;

(b) does not preempt or duplicate efforts of microbusiness development corporations within local communities; and

(c) obtains written indications of support from local development organizations in the communities in which it plans to offer its services.

Section 7. **Microbusiness advisory council — appointment of members — organization — nonvoting legislative consulting panel.** (1) Subject to the provisions of subsection (5), there is a microbusiness advisory council composed of 13 members appointed by the governor from a list of candidates submitted by the director of the department after the department provides by rule for a process of requesting and receiving nominations from the public. No more than seven of the council members may live in the same congressional district as the congressional districts existed on December 31, 1990. At least three members must be representatives of certified community lead organizations. At least two of the three community representatives shall reside in communities with a population of less than 15,000. At least three members must be owners of qualified microbusinesses as defined in [section 3]. At least two members must have expertise in administering revolving loan funds that primarily serve microbusinesses. The membership must include representation of minorities, women, and low-income persons.

(2) (a) At the first meeting of the council, members shall draw lots to determine six members whose terms expire June 30, 1992, and seven members whose terms expire June 30, 1993.

(b) Members serving terms beginning after the expiration of the terms set in subsection (2)(a) shall serve 2-year terms.

(c) A member appointed to fill an unexpired term shall serve until the term expires.

(3) The members of the council shall elect a chairman and other officers as they determine necessary.

(4) The council shall meet at least once each quarter and more often as the chairman or a majority of the members determine necessary.

(5) (a) There is a legislative consulting panel of four members. The panel:

(i) shall meet with the council, participate in deliberations of the council, and advise the council in performance of its functions under subsection (7) but may not vote on any motion before the council; and

(ii) consists of:

(A) two representatives, including one from each party, appointed by the speaker of the house of representatives; and

(B) two senators, including one from each party, appointed by the committee on committees.

(b) The members:

(i) must be appointed on or before the 10th day of each regular session of the legislature and shall serve until the convening of the next regular session of the legislature. If a vacancy on the panel occurs during a legislative interim, that vacancy must be filled in the same manner as the original appointment.

(ii) are entitled to compensation in the same manner as members of the council, as provided in subsection (6).

(6) Members of the council are not entitled to compensation for their services except for reimbursement of expenses as provided in 2-18-501 through 2-18-503.

(7) The function of the council is to advise the department regarding the creation, operation, and maintenance of the program and the policies and operations affecting the certified microbusiness development corporations.

Section 8. **Authority to accept funds — statutory appropriation — funding authorization.** (1) The department may accept grants, donations, and other private and public income, including payments of interest on loans made by the department under the provisions of [sections

1 through 9] and fees charged by the department. The department shall deposit all money received under this section in the microbusiness finance program administrative account established in [section 5].

(2) The money in the microbusiness finance program administrative account is statutorily appropriated to the department, as provided in 17-7-502, for the purposes stated in [sections 1 through 9].

Section 9. **Audit and evaluation of the microbusiness finance program — report to legislature.** An audit, an analysis of costs and benefits, and an evaluation of the microbusiness finance program must be conducted by the office of the legislative auditor, beginning October 1, 1994, and the findings of this audit, analysis, and evaluation must be reported to the legislature no later than January 15, 1995.

Section 10. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985*; and [section 8].*

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such pay-

ments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 11. **Appropriation — approval of three-fourths of members required — severability.** (1) (a) Notwithstanding the provisions of 17-6-308 and 17-6-309 and recognizing that the provisions of [sections 1 through 9] are consistent with 17-6-304 and 17-6-305 and that [sections 1 through 9] will result in long-term benefits to the economy of the state, there is appropriated, subject to the provisions of subsections (1)(b) and (1)(c), to the department of commerce from the in-state investment fund in 17-6-306 during the biennium beginning July 1, 1991, $3,250,000 for the microbusiness finance program established in [section 4]. Funds appropriated from the in-state investment fund must be deposited in the microbusiness development loan account and are appropriated to the department for the purpose of making development loans pursuant to [sections 1 through 9].

(b) The funds appropriated in subsection (1)(a) from the in-state investment fund to the department of commerce must remain in the in-state investment fund until the department has decided to make a loan to a certified microbusiness development corporation under the provisions of [section 5]. When the department has made the decision to make a loan to a certified microbusiness development corporation under the provisions of [section 5], the director of the department shall notify the state treasurer of the decision and direct him to transfer an amount equal to the amount of the loan from the in-state investment fund to the microbusiness development loan account created in [section 5].

(c) Funds may not be transferred from the in-state investment fund to the microbusiness development loan account for the purposes of [sections 1 through 9] except as provided in subsection (1)(b).

(2) Because subsection (1) appropriates money from the principal of the permanent coal tax trust fund, the appropriation requires a vote of three-fourths of the members of each house of the legislature. If [this act] is approved by a vote of less than three-fourths of the members of each house, this section is void and the remaining sections of [this act] are valid and remain in effect in all valid applications upon enactment.

Section 12. **Appropriation.** There is appropriated to the microbusiness finance program administrative account created in [section 5] from the general fund $64,600 for the fiscal year ending June 30, 1992.

Section 13. **Coordination instruction.** If Senate Bill No. 26 is passed and approved and if it includes provisions eliminating the in-state investment fund, the code commissioner is instructed to substitute "permanent coal tax trust" for "in-state investment fund" where it appears in [this act], unless the context requires otherwise.

Section 14. **Effective dates.** (1) [Sections 1 through 9], [section 13], and [this section] are effective on passage and approval.

(2) [Sections 10 through 12] are effective July 1, 1991.

Approved April 24, 1991.

CHAPTER NO. 603

[HB 558]

AN ACT TO REVISE PROCEDURES OF ESTIMATING REVENUES BY THE REVENUE OVERSIGHT COMMITTEE; TO CLARIFY THAT THE REVENUE ESTIMATES OF THE LEGISLATURE ARE INTENDED TO BE USED BY ALL AGENCIES; AMENDING SECTION 5-18-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-18-107, MCA, is amended to read:

"**5-18-107. Powers and duties of the committee — duty to review revenue rules — legislative oversight of the department of revenue — committee reports — revenue estimating *and use of estimates*.** (1) The committee shall review all proposed rules of the department of revenue filed with the secretary of state.

(2) The committee may:

(a) request and obtain the department's rulemaking records for the purpose of reviewing compliance with 2-4-305;

(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit the recommendations to the department;

(c) submit oral or written testimony at a rulemaking hearing;

(d) require the department to appear before the committee and respond to the committee's recommendations for the adoption, amendment, or rejection of a rule;

(e) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(f) recommend to the legislature the repeal, amendment, or adoption of a rule as provided in 2-4-412;

(g) institute, intervene in, or otherwise participate in proceedings involving the legality of a rule under the Montana Administrative Procedure Act in the state and federal courts and administrative agencies;

(h) review the incidence and conduct of the department's administrative proceedings;

(i) require the department to publish the full or partial text of any pertinent material adopted by reference under 2-4-307;

(j) by an affirmative vote of at least six members of the committee, contract for the preparation of an economic impact statement or require the department to prepare an economic impact statement, following the provisions of 2-4-405;

(k) petition the department to promulgate, amend, or repeal a rule. Within 60 days after submission of a petition, the department shall either deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(l) make written objection to a proposed rule of the department for lack of substantial compliance with 2-4-302 through 2-4-305. The provisions of 2-4-406 govern the objection procedure, the department's response, and the procedure for and effect of publication of the objection in the Montana Administrative Register and the Administrative Rules of Montana.

(m) petition the department for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the department. A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue such a ruling is subject to judicial review in the same manner as decisions or orders in contested cases under the Montana Administrative Procedure Act.

(n) petition for judicial review of the sufficiency of the reasons for the department's finding of imminent peril to the public health, safety, or welfare, cited in support of an emergency or temporary rule proposed by the department under 2-4-303; and

(o) require the department to conduct the biennial review of its rules as required in 2-4-314 and report its findings to the committee.

(3) The committee shall exercise legislative oversight of the department of revenue, including without limitation the review of:

(a) proposed budgets;

(b) proposed legislation;

(c) pending litigation; and

(d) major contracts and personnel actions of the department.

(4) The committee may investigate and issue reports on any matter concerning taxation or the department of revenue.

(5) (a) The committee shall *have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an* estimate *of* the amount of revenue projected to be available for legislative appropriation.

~~(b) The committee shall introduce a house joint resolution setting forth the committee's current revenue estimate in each regular session and each special session in which a revenue bill is under consideration. The committee shall issue periodic reports to the legislature in regular session and in the interim between regular sessions, indicating the committee's current revenue estimate.~~

~~(c)~~*(b)* The committee's *estimate, as* introduced *in the legislature,* ~~version of the joint resolution and subsequent periodic reports constitute~~ *constitutes* the legislature's current revenue estimate until *amended or until* final adoption of the ~~joint resolution~~ *estimate* by both houses. *It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenues or costs, including the preparation of fiscal notes.*

~~(d)~~*(c)* The committee may request the assistance of the staffs of the legislative council, the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1991.

CHAPTER NO. 604

[HB 579]

AN ACT TO GENERALLY REVISE THE MOTOR VEHICLE LAWS; INCREASING THE NUMBER OF REGISTRATION PERIODS FROM 10 TO 12; PROVIDING FOR MAIL RENEWAL CARDS FOR LIGHT VEHICLES, MOTOR HOMES, CAMPERS, TRAVEL TRAILERS, BOATS, SNOWMOBILES, MOTORCYCLES, QUADRICYCLES, AND OFF-HIGHWAY VEHICLES; REQUIRING PROCEDURES FOR AUTOMATED HANDLING OF MAIL RENEWAL CARDS; REQUIRING THAT ALL TAXES AND FEES BE PAID BEFORE A 60-DAY STICKER MAY BE ISSUED AND AUTHORIZING AN ADDITIONAL 60-DAY PERIOD; PROVIDING THAT ALL STATUTES AFFECTING MOTOR VEHICLES BE EFFECTIVE JANUARY 1 OF THE FOLLOWING YEAR; PROVIDING FOR THE DEVELOPMENT OF A STATEWIDE COMPUTER SYSTEM; INCREASING THE REGISTRATION FEES FOR MOTOR VEHICLES, BOATS, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES TO IMPLEMENT THE STATEWIDE COMPUTER SYSTEM; ESTABLISHING A COUNTY MOTOR VEHICLE COMPUTER COMMITTEE; APPROPRIATING MONEY TO THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 1-2-201, 61-3-101, 61-3-201, 61-3-202, 61-3-314, 61-3-342, 61-3-503, AND 61-3-535, MCA; AND PRO-

VIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants additional rulemaking authority to the department of justice. The department shall adopt rules to develop a procedure for the registration or reregistration of motor vehicles, boats, snowmobiles, travel trailers, campers, motor homes, and off-highway vehicles. The department shall create a users' advisory group to assist the department in creating and operating a county motor vehicle computer system to be used jointly by the department and county treasurers and their employees. The department shall make policy decisions necessary to develop and implement the computer system jointly with the county motor vehicle computer committee.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-2-201, MCA, is amended to read:

"**1-2-201. Statutes — effective date.** (1) *(a) Except as provided in subsection (1)(b) or (1)(c),* ~~Every~~ *every* statute adopted after January 1, 1981, ~~except those that provide for appropriation by the legislature of public funds for a public purpose,~~ takes effect on the first day of October following its passage and approval unless a different time is prescribed therein.

(b) Every statute providing for appropriation ~~as specified in this subsection~~ *by the legislature for public funds for a public purpose* takes effect on the first day of July following its passage and approval unless a different time is prescribed therein.

(c) Every statute providing for taxation or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed therein.

(2) "Passage", as used in subsection (1), means the enactment into law of a bill which has passed the legislature either with or without the approval of the governor, as provided in the constitution."

Section 2. Section 61-3-101, MCA, is amended to read:

"**61-3-101. Duties of department — records.** (1) The department shall keep a record as hereinafter specified of all motor vehicles, trailers, and semitrailers of every kind, and of certificates of registration and ownership thereof, and of all *manufacturers and* dealers in motor vehicles.

(2) ~~In the case of motor vehicles, trailers, and semitrailers, the~~ *The* record ~~shall~~ *must* show the following:

(a) name of owner, residence *address* by *street or rural route,* town, and county, and ~~business address~~ *mailing address if different than residence address;*

(b) name and address of conditional sales vendor, mortgagee, or other lienholder and amount due under contract or lien;

(c) manufacturer of car;

(d) manufacturer's designation of style of car or vehicle;

(e) identifying number;

(f) year of manufacture;

(g) character of motive power and shipping weight of car as shown by the manufacturer;

(h) the distinctive license number assigned to the vehicle;

(i) if a truck or trailer, the number of tons' capacity or GVW if imprinted on manufacturer's identification plate;

(j) such other information as may from time to time be found desirable.

(3) The department shall file applications for registration received by it from the county treasurers of the state and register the vehicles ~~therein described~~ and the *vehicle* owners ~~thereof in suitable books or on index cards,~~ as follows:

(a) under the distinctive license number assigned to the vehicle by the county treasurer;

(b) alphabetically under the name of the owner;

(c) numerically under make and identifying number of the vehicle;

(d) such other index of registration as the department considers expedient.

(4) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(5) In the case of dealers, the records shall show the information contained in the application for dealer's license as required by 61-4-101 through 61-4-105, as well as the distinctive license number assigned to the dealer.

(6) In order to prevent an accumulation of unneeded records and files, *regardless of any other statutory requirements,* the department ~~shall have the authority and it shall be its duty to~~ *may* destroy all records and files ~~which have ceased to be of any value~~ *that relate to vehicles that have not been registered within the preceding 4 years and that do not have an active lien.*

~~(7) The department may establish and maintain a short-wave radio station in order to report motor vehicle registration information to the highway patrol, to sheriffs, and to the chiefs of police of each incorporated~~

~~city of the state who are able to communicate with such short wave radio station.~~

~~(8)~~*(7)* All records shall be open to inspection during all reasonable business hours, and the department shall furnish any information from the records upon payment by the applicant of the cost of ~~transcribing~~ the information requested. *Prior to providing the information, the department may require the applicant to provide identification.*"

Section 3. Section 61-3-201, MCA, is amended to read:

"**61-3-201. Transfer of interest — cancellation of erroneous certificate of ownership *or registration*.** (1) Upon a transfer of any interest in a motor vehicle registered under the provisions of this chapter, the person whose interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for the vehicle in the appropriate space provided upon the reverse side of the certificate, and the signature must be acknowledged before the county treasurer, a deputy county treasurer, *an elected official authorized to acknowledge signatures, an employee of the department,* or a notary public.

(2) Within 20 calendar days after endorsement, the transferee shall forward both the endorsed certificate of ownership with the odometer mileage statement required under 61-3-206 and the certificate of registration, together with the information required under 61-3-202, to the county treasurer, who shall forward them to the department. The department may not issue a certificate of ownership or certificate of registration until the outstanding certificates are surrendered to that office or their loss is established to its reasonable satisfaction. Failure to make application within the 20-day grace period subjects the transferee to a penalty of $10. The county treasurer shall collect the penalty at the time of registration. The penalty is in addition to the fees otherwise provided by law. If the transferee does not make application within 25 days, a creditor or secured party may pay the fees for the transfer of title and filing of security interest or lien in order to have title transferred to the transferee and have the security interest or lien filed. The creditor or secured party is not liable for the penalty, registration fees, or taxes. The department shall return the certificate of title to the county treasurer as provided in 61-3-103(1). When the certificate of ownership is returned by the department to the county treasurer, the treasurer shall hold the certificate of ownership until the vehicle is properly registered.

(3) In the event of a transfer by operation of law of any interest in a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is transferred, the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the person whose interest is transferred shall forward to the department an application for a certificate of ownership in the form required for an original application for a certificate of ownership, together with a verified or certified statement of the transfer of interest.

The statement must set forth the reason for the involuntary transfer, the interest transferred, the name of the person to whom the interest is to be transferred, the process of procedure effecting the transfer, and other information requested by the department. Evidence and instruments otherwise required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases must be furnished with the statement. If the department is satisfied that the transfer is regular and that all formalities required by law have been complied with, it shall send to the owner, conditional sales vendor, lessor, mortgagee, and other lienor, as shown by its records, notice of the intended transfer and, not less than 5 days after sending notice, shall issue a new certificate of ownership and certificate of registration to the transferee. The notice required by this section is complied with by deposit in the ~~post office in Deer Lodge, Montana,~~ *U.S. mail* of the notice, postage prepaid, addressed to the person at the respective address shown on its records.

(4) When the vehicle certificate of ownership that is involuntarily transferred is not registered in this state, the procedure in subsection (3) must be followed in applying for a new certificate of ownership and certificate of registration but the department need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled to them.

(5) (a) If the owner of one or more motor vehicles, trailers, semitrailers, or housetrailers registered under this chapter and not exceeding a combined value of $15,000 dies without leaving other property necessitating the procuring of letters of administration or letters testamentary, the surviving spouse or other heir unless the property is by will otherwise bequeathed may secure transfer of the decedent's certificate of ownership and the certificate of registration for the vehicle.

(b) The person seeking transfer of the certificate of ownership shall file an affidavit with the department setting forth the fact of survivorship and the name and address of any other heirs and other facts as are necessary under subsection (5)(a) to entitle the affiant to a transfer.

(c) The department is authorized to transfer the certificate of ownership and certificate of registration, subject to all security interests shown by its records, upon receipt of an affidavit showing that the affiant is entitled to a transfer under the provisions of subsection (5)(a) of this section.

(6) Nothing in subsection (5) prevents any secured party from assigning his interest in a motor vehicle registered under the provisions of this chapter to any other person without the consent of and without affecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any assignment by a secured party of his security interest in any motor vehicle registered under this chapter, a copy of the assignment must be filed with the department and a record of the assignment made upon its records.

(7) The certificate of ownership is valid until canceled by the department upon a transfer of any interest shown in the certificate, and annual renewal is not needed.

(8) (a) Upon its determination that a certificate of ownership *or a registration receipt* contains an error ~~caused by the department,~~ *or that the applicant has paid the required fees and taxes with an insufficient funds check and if the department has been notified of that fact by the county attorney,* the department may cancel the certificate of ownership *or receipt* and, *in the case of an error,* issue a replacement for the erroneous certificate *or receipt* if the owner has returned the certificate *or receipt* to be canceled. *If the owner fails to return to the department the certificate of ownership, the registration receipt, or the license plate, the department shall direct a peace officer or department employee to secure and return the certificate, receipt, or license plate to the department.*

(b) Any person who fails to return a certificate of ownership *or a registration receipt* ~~issued with~~ *that contains* an error ~~caused by the department~~ *or that has been canceled by the department due to an insufficient funds check, as provided in subsection (8)(a),* after receiving actual notice of the department's demand for the return of the certificate *or receipt,* as required by subsection (8)(a), is guilty of a misdemeanor and upon conviction may be fined an amount not to exceed $500."

Section 4. Section 61-3-202, MCA, is amended to read:

"**61-3-202. Certificate of ownership — issuance — contents — joint ownership.** (1) Upon completion of the application for certificate of ownership, on forms furnished by the department, the county treasurer shall forward one copy of the application to the department, which shall enter the information contained in the application upon the corresponding records of its office and, except as provided in 61-3-103(1) and 61-3-201(2) concerning applications by creditors or secured parties, shall furnish the applicant a certificate of ownership subject to the provisions of 61-3-103.

(2) The certificate of ownership shall contain upon the face thereof:

(a) the date issued;

(b) the name and ~~complete~~ *mailing and residence* address of the owner or the names and addresses of joint owners;

(c) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the registered vehicle;

(d) a description of the registered vehicle, including the year built and serial number;

(e) except as provided in 61-3-103, the filing date of any lien against such motor vehicle; and

(f) such other statement of facts as may be determined by the department.

(3) When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

(4) Upon receipt of the application, the department shall recheck the application. If there is any error in the application, it may be returned to the *owner or to the* county treasurer to effectively secure the correction of such error, who shall return the same to the department.

(5) The certificate of ownership shall contain a notice to the department of a transfer of interest of the owner and such other statements as may be determined by the department."

Section 5. Section 61-3-314, MCA, is amended to read:

"61-3-314. **Registration period.** (1) Notwithstanding any other provisions of this title regarding the registration of motor vehicles, ~~commencing January 1, 1976,~~ all vehicles subject to the provisions of 61-3-313 through 61-3-316 shall be registered for 12-month periods based upon the time they are first registered in this state pursuant to 61-3-313 through 61-3-316.

(2) There shall be ~~ten~~ *12* registration periods, each of which shall commence on the first day of a calendar month. The periods are designated as follows:

(a) January 1 through January 31 1st period

(b) February 1 through February 28/29 2nd period

(c) March 1 through March 31 3rd period

(d) April 1 through April 30 4th period

(e) May 1 through May 31 5th period

(f) June 1 through June 30 6th period

(g) July 1 through July 31 7th period

(h) August 1 through August 31 8th period

(i) September 1 through September 30 9th period

(j) October 1 through October 31 10th period

(k) November 1 through November 30 11th period

(l) December 1 through December 31 12th period

~~(3) For purposes of 61-3-313 through 61-3-316, the period November 1 through November 30 shall be considered the 10th period preceding and the period December 1 through December 31 shall be considered the first period of the year following.~~"

Section 6. Section 61-3-342, MCA, is amended to read:

"**61-3-342. Temporary window sticker.** *(1)* Any purchaser of a motor vehicle who is unable to ~~obtain license plates from the county treasurer~~ *fully complete the process of applying for a Montana title* at the time he makes application for registration or reregistration of the vehicle because the certificate of ownership is lost, in the possession of third parties, or in the process of reissuance in this state or elsewhere may, upon making affidavit to that effect upon a form prescribed by the department and upon the payment of ~~a~~ *all applicable fees and taxes, plus an additional* fee of $2 to be collected by the county treasurer and remitted to the department, obtain from the county treasurer of the county in which the vehicle is to be registered a temporary window sticker of such size, color, and design as the department may prescribe, to be validated by the county treasurer for a period of 60 days from the date of issuance. The purchaser, upon displaying the sticker on the upper left-hand corner of the rear window of the motor vehicle, may operate the vehicle during the period for which the window sticker has been validated without displaying the registration certificate or number plates or plate for the current year. The county treasurer may not sell, and no person may purchase, more than one 60-day temporary window sticker for any vehicle, the ownership of which has not changed since the issuance of the previous 60-day window sticker.

(2) A vehicle for which an application for title cannot be completed may not be registered by the county treasurer nor may license plates for the vehicle be issued by the county treasurer until the completed certificate of ownership or application for title is presented for the purpose of transferring ownership.

(3) In the event an unusual circumstance prevents the owner of a vehicle from presenting the certificate of ownership within the 60-day period permitted under subsection (1), the owner may apply to the motor vehicle division for an extended temporary window sticker on an application form provided by the division. The form must be accompanied by the title application.

(4) Upon receipt of an application for an extended temporary window sticker and title as designated in subsection (3), the motor vehicle division or the county treasurer, with the authorization of the motor vehicle division, may issue an extended temporary window sticker, valid for an additional 60 days, upon payment of a fee of $10 that must be deposited in the general fund. At the end of the extended 60-day period or in the event the request for extension is rejected by the department for cause, the owner may obtain a certificate of ownership by the method provided in 61-3-208."

Section 7. Section 61-3-503, MCA, is amended to read:

"**61-3-503.** *(Temporary)* **Assessment.** (1) Except as provided in 61-3-520 and subsection (2) of this section, the following apply to the taxation of motor vehicles:

(a) Except as provided in subsections (1)(c) through (1)(e), a person who files an application for registration or reregistration of a motor vehicle shall before filing the application with the county treasurer submit the application to the county assessor. The county assessor shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle as of January 1 of the year for which the application for registration is made.

(b) Except as provided in subsection (1)(c), motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. A motor vehicle is not subject to assessment, levy, and taxation more than once in each year.

(c) Vehicles subject to the provisions of 61-3-313 through 61-3-316 ~~shall~~ *must* be assessed as of the first day of the registration period, using the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, *or another nationally published used vehicle or appraisal guide approved by the department of revenue* or, for a vehicle that was never listed in any edition of the preceding guides, the retail value of the vehicle as determined by the county assessor, and thereafter depreciated 10% per year until a value of $500 is reached, not including additions or deductions for options and mileage but including additions or deductions, whether or not one of the preceding guides is used, for diesel engines; and a lien for taxes and fees due on the vehicle shall occur on the anniversary date of the registration and shall continue until the fees and taxes have been paid. If the value shown in any of the appraisal guides listed in this section is less than $500, the department shall value the vehicle at $500.

(d) Motorcycles and quadricycles ~~shall~~ *must* be assessed, using the greater of the following:

(i) $250; or

(ii) the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the applicable National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide or N.A.D.A. Recreational Vehicle Appraisal Guide *or another nationally published used vehicle or appraisal guide approved by the department of revenue*, not including additions or deductions for options and mileage.

(e) If a vehicle assessed under subsection (1)(c) or (1)(d) is not originally listed in the applicable N.A.D.A. guide *or other approved guide*, the department of revenue or its agent shall depreciate the original f.o.b. factory list price, f.o.b. port-of-entry list price, or the manufacturer's suggested list price, using the following methods:

(i) if the new car sales tax has been previously paid and the vehicle is less than 1 year in age, the depreciation percentage shall be 20%; or

(ii) if the vehicle is 1 year or older in age and it is not listed in any of the appraisal guides listed in this section, the department of revenue shall determine the depreciation percentage to approximate the average wholesale or trade-in values in the current N.A.D.A. guides *or other approved guides* referred to in this subsection. For purposes of this subsection (1), the age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year of assessment.

(f) When a minimum value of $500 is reached, the value shall remain at that minimum so long as the vehicle is registered.

(g) If a previously registered vehicle is no longer listed in the applicable N.A.D.A. guide *or other approved guide*, the department or its agent shall depreciate the value of the vehicle at the rate of 10% a year until a minimum amount of $500 is attained, and the value shall remain at that amount so long as the vehicle is registered.

(2) The provisions of subsections (1)(a) through (1)(g) do not apply to motor homes, travel trailers, campers, or mobile homes as defined in 15-1-101(1). *(Terminates December 31, 1993—sec. 11, Ch. 525, L. 1989.)*

61-3-503. *(Effective January 1, 1994)* **Assessment.** (1) Except as provided in subsection (2), the following apply to the taxation of motor vehicles:

(a) Except as provided in subsections (1)(c) through (1)(e), a person who files an application for registration or reregistration of a motor vehicle shall before filing such application with the county treasurer submit the application to the county assessor. The county assessor shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle as of January 1 of the year for which the application for registration is made.

(b) Except as provided in subsection (1)(c), motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. In no event may any motor vehicle be subject to assessment, levy, and taxation more than once in each year.

(c) Vehicles subject to the provisions of 61-3-313 through 61-3-316 ~~shall~~ *must* be assessed as of the first day of the registration period, using the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, *or another nationally published used vehicle or appraisal guide approved by the department of revenue* or, for a vehicle that was never listed in any edition of the preceding guides, the retail value of the vehicle as determined by the county assessor, and thereafter depreciated 10% per year until a value of $500 is reached, not including additions or deductions for options and mileage but including additions or deductions, whether or not one of the preceding guides is used, for diesel engines; and a lien for taxes and fees due on the vehicle shall occur on the anniversary date of the registration and shall continue until the fees and taxes have been paid. If the value shown in any of the appraisal guides listed in this section is less than $500, the department shall value the vehicle at $500.

(d) Motorcycles and quadricycles shall be assessed, using the greater of the following:

(i) $250; or

(ii) the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the applicable National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide or N.A.D.A. Recreational Vehicle Appraisal Guide *or another nationally published used vehicle or appraisal guide approved by the department of revenue*, not including additions or deductions for options and mileage.

(e) If a vehicle assessed under subsection (1)(c) or (1)(d) is not originally listed in the applicable N.A.D.A. guide *or other approved guide*, the department of revenue or its agent shall depreciate the original f.o.b. factory list price, f.o.b. port-of-entry list price, or the manufacturer's suggested list price, using the following methods:

(i) if the new car sales tax has been previously paid and the vehicle is less than 1 year in age, the depreciation percentage shall be 20%; or

(ii) if the vehicle is 1 year or older in age and it is not listed in any of the appraisal guides listed in this section, the department of revenue shall determine the depreciation percentage to approximate the average wholesale or trade-in values in the current N.A.D.A. guides *or other approved guide* referred to in this subsection. For purposes of this subsection (1), the age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year of assessment.

(f) When a minimum value of $500 is reached, the value shall remain at that minimum so long as the vehicle is registered.

(g) If a previously registered vehicle is no longer listed in the applicable N.A.D.A. guide *or other approved guide*, the department or its agent shall depreciate the value of the vehicle at the rate of 10% a year until a minimum amount of $500 is attained, and the value shall remain at that amount so long as the vehicle is registered.

(2) The provisions of subsections (1)(a) through (1)(g) do not apply to motor homes, travel trailers, campers, or mobile homes as defined in 15-1-101(1)."

Section 8. Section 61-3-535, MCA, is amended to read:

"**61-3-535. Vehicle reregistration by mail** — ***renewal cards and*** **reregistration notice by mail.** (1) ~~The department shall permit the reregistration of~~ *Except as provided in subsection (2), an owner of the following types of motor vehicles may reregister by mail:*

(a) light vehicles, *motorcycles, quadricycles,* and other vehicles subject to tax under 61-3-504(2) ~~with the county treasurer by mail at the option of the owner of the vehicle.~~*; and*

(b) travel trailers, campers, and motor homes subject to a fee in lieu of tax under 61-3-521.

(2) The option to reregister by mail need only be made available for vehicles registered at the close of the expiring registration period in the name of the applicant for reregistration *and only if the value, age, length, or other criteria used to determine the tax or fee is available to the department.*

(3) The department shall develop a procedure to facilitate the reregistration by mail of the vehicles listed in subsection (1). The mail reregistration procedure developed by the department must include a procedure to facilitate automated handling of mail reregistration or recertification.

~~(2)~~*(4)* The form to be returned to the county treasurer by the applicant, with the appropriate tax and fees, is to contain a statement~~, to be subscribed to by~~ *that* the applicant~~, stating~~ *is in* compliance with the financial liability requirements of 61-6-301.

~~(3)~~*(5)* The procedure implemented by the department to permit reregistration by mail shall provide for a written reminder notice by mail to a ~~light~~ vehicle owner of the requirement to reregister his vehicle with the county treasurer.

~~(4)~~*(6)* The department shall adopt rules to implement the mail reregistration procedure."

Section 9. **Mail renewal and recertification.** The mail renewal procedure developed by the department of justice pursuant to 61-3-535 may be used for mail recertification of boats, the renewal of license decals, and the payment of the fee in lieu of tax.

Section 10. **Mail renewal and recertification.** The mail renewal procedure developed by the department of justice pursuant to 61-3-535 may be used for mail recertification of snowmobiles, the renewal of license decals, and the payment of the fee in lieu of tax.

Section 11. **Mail renewal and recertification.** The mail renewal procedure developed by the department of justice pursuant to 61-3-535 may be used for mail recertification of off-highway vehicles, the renewal of license decals, and the payment of the fee in lieu of tax.

Section 12. **County motor vehicle computer system.** (1) The department shall maintain a statewide on-line computer system to be used to register and reregister motor vehicles, boats, snowmobiles, and off-highway vehicles.

(2) The department shall establish the user advisory group to assist in the development of policies governing the registration and reregistration of motor vehicles, boats, snowmobiles, and off-highway vehicles. The user

advisory group must be appointed by the attorney general and must include:

(a) an employee of the department of administration, data processing division, selected by the division administrator;

(b) two county treasurers, selected by the Montana county treasurers association;

(c) one county motor vehicle section supervisor, selected by the Montana county treasurers association;

(d) a county assessor, selected by the director of the department of revenue;

(e) an employee of the department of justice, data processing division, selected by the division administrator;

(f) an employee of the department of justice, motor vehicle division, registrar's bureau, selected by the division administrator;

(g) an employee of the department of justice, motor vehicle division, driver services bureau, selected by the division administrator;

(h) a member of the Montana bankers' association, selected by the association director;

(i) a member of the Montana automobile dealers association, selected by the association director; and

(j) a member or employee of the Montana American automobile association, selected by the association director.

(3) Committee members who are not employees of the state of Montana shall serve a term of 2 years, and state employee members shall serve at the pleasure of the attorney general.

(4) Travel and per diem expenses for the committee must be charged to the motor vehicle division.

(5) Secretarial and support services for the committee must be provided by the motor vehicle division.

(6) The committee shall meet no more than four times a year unless specifically called by the attorney general.

Section 13. **County motor vehicle computer committee.** (1) There is a county motor vehicle computer committee.

(2) The committee is allocated to the department of justice for administrative purposes only as provided in 2-15-121.

(3) The committee consists of:

(a) an employee of the information service division of the department of administration, appointed by the director of the department of administration;

(b) two county treasurers, appointed by the Montana county treasurers association; and

(c) two employees of the department of justice, appointed by the attorney general.

Section 14. **Duties of county motor vehicle computer committee.** (1) The county motor vehicle computer committee shall:

(a) establish the requirements and specifications for the county motor vehicle computer system to be used by county treasurers and the department of justice to register and reregister motor vehicles, boats, snowmobiles, and off-highway vehicles;

(b) approve the purchase of computer equipment, including peripherals, to be used for the registration and reregistration of motor vehicles, boats, snowmobiles, and off-highway vehicles;

(c) approve the procedures for the development of the county motor vehicle computer system provided for in [section 12] and for training in the use of that system.

(2) As used in this section, "computer system" means the county motor vehicle application system and does not include the central computer centers or imply that the department of administration is responsible for establishing policy and operating and maintaining central computer centers.

Section 15. **County motor vehicle computer fee.** (1) A county motor vehicle computer fee of $1 must be assessed on the annual registration or reregistration for each of the following:

(a) motor vehicles subject to registration or reregistration under Title 61, chapter 3;

(b) boats subject to registration or reregistration under Title 23, chapter 2, part 5;

(c) snowmobiles subject to registration or reregistration under Title 23, chapter 2, part 6; and

(d) off-highway vehicles subject to registration or reregistration under Title 23, chapter 2, part 8.

(2) The fee must be collected by the county treasurer and forwarded to the state treasurer for deposit in the state general fund.

Section 16. **Appropriation.** There is appropriated from the general fund to the department of justice $639,300 in fiscal year 1992 and $837,900 in fiscal year 1993 to fund the continued development and operation of the statewide motor vehicle computer system.

Section 17. **Effective date — applicability.** [This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991.

Section 18. **Codification instruction.** (1) [Section 9] is intended to be codified as an integral part of Title 23, chapter 2, part 5, and the provisions of Title 23, chapter 2, part 5, apply to [section 9].

(2) [Section 10] is intended to be codified as an integral part of Title 23, chapter 2, part 6, and the provisions of Title 23, chapter 2, part 6, apply to [section 10].

(3) [Section 11] is intended to be codified as an integral part of Title 23, chapter 2, part 8, and the provisions of Title 23, chapter 2, part 8, apply to [section 11].

(4) [Sections 12 through 14] are intended to be codified as an integral part of Title 61, chapter 3, part 3, and the provisions of Title 61, chapter 3, part 3, apply to [sections 12 through 14].

(5) [Section 15] is intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61, chapter 3, part 5, apply to [section 15].

Approved April 24, 1991.

CHAPTER NO. 605

[HB 607]

AN ACT AMENDING THE LAWS RELATING TO PERMIT REQUIREMENTS FOR SOLID WASTE INCINERATORS; EXTENDING THE PERMIT REQUIREMENTS TO HAZARDOUS WASTE INCINERATORS; AMENDING SECTION 75-2-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

It is the intent of the legislature that the department of health and environmental sciences not issue an air quality permit for any new solid waste incinerator that is designed to burn more than 200 pounds an hour of solid waste and not authorize any existing or permitted solid waste incinerator that is designed to burn more than 200 pounds an hour of solid waste to change the amount, form, or content of the solid waste it incinerates or to incinerate any solid waste that would change the nature, character, or composition of its emissions until the department and the public have the necessary information to understand the composition and concentrations of emissions. It is also the intent of the legislature that the department apply the concept of best available control technology to all air pollutants, including hazardous air pollutants, when considering a permit application or modification for a solid waste incinerator. The legislature intends that these additional permit requirements be extended to hazardous waste incinerators as well. It is also the intent of the legislature that the department develop a reasonable and practical health risk assessment-based definition of the term "negligible risk" as used in 75-2-215(2)(c).

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-215, MCA, is amended to read:

"**75-2-215. Solid *or hazardous* waste incineration — additional permit requirements.** (1) A person may not *construct, modify, or* operate a solid *or hazardous* waste incinerator of any of the following categories until the department has issued an air quality permit pursuant to this chapter, including the conditions provided in this section:

(a) a new ~~commercial~~ solid *or hazardous* waste incinerator *that is designed to burn more than 200 pounds an hour of solid or hazardous waste*; or

(b) ~~a~~ *an existing or* permitted solid *or hazardous* waste incinerator *that is designed to burn more than 200 pounds an hour of solid or hazardous waste and* that *incinerates or* would incinerate solid *or hazardous* waste in an amount, form, kind, or content different from its *designed or* permitted operation or that *incinerates or* would incinerate any ~~material~~ *solid or hazardous waste* that changes the nature, character, or composition of its emissions.

(2) The department may not issue a permit to a facility described in subsection (1) until:

(a) the owner or operator has provided to the department's satisfaction:

(i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing incineration at the facility; and

(ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from the incineration of solid *or hazardous* waste as proposed in the permit application or modification;

(b) the public has had an opportunity to review and comment on the permit application or modification; and

(c) the department has reached a determination that the projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment.

(3) The department shall require the application of air pollution control equipment, engineering, or *other operating* procedures as necessary to

~~satisfy the determination required under subsection (2)(e). The equipment, engineering, or procedures must~~ provide ~~particulate and gaseous emission~~ reductions *of air pollutants, including hazardous air pollutants,* equivalent to or more stringent than those achieved through the best available control technology~~, in addition to any other controls necessary to satisfy the determination required under subsection (2)(e)~~.

(4) This section does not relieve an owner or operator of a solid *or hazardous* waste incinerator that is not included under subsection (1) from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1991.

CHAPTER NO. 606

[HB 693]

AN ACT TO PROMOTE HEALTH INSURANCE FOR UNINSURED MONTANANS; ALLOWING INSURERS AND HEALTH SERVICE CORPORATIONS TO ISSUE LIMITED BENEFIT DISABILITY INSURANCE POLICIES; PROVIDING REQUIREMENTS FOR LIMITED BENEFIT DISABILITY INSURANCE POLICIES; AUTHORIZING A TAX CREDIT FOR SMALL EMPLOYERS WHO MAKE DISABILITY INSURANCE AVAILABLE TO THEIR EMPLOYEES; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 5], unless the context requires otherwise, the following definitions apply:

(1) "Health service corporation" has the same meaning as provided in 33-30-101.

(2) "Insurer" means an insurer operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

(3) "Limited benefit disability insurance policy" means a policy or contract of insurance meeting the requirements of [sections 2 through 4].

Section 2. **Limited benefit disability insurance policies authorized.** (1) Insurers and health service corporations may issue limited benefit disability insurance policies that do not provide mandated health care coverage as required in 33-22-111, 33-22-114, 33-22-131, 33-22-229, 33-22-301, 33-22-302, 33-22-304, 33-22-504, 33-22-506, 33-22-509, 33-22-703, 33-22-1002, 33-30-1001, 33-30-1003, 33-30-1004, 33-30-1008, 33-30-1011, 33-30-1013, or any other provision enacted after January 1, 1991, unless the provision specifically mandates coverage for policies issued under [sections 1 through 5].

(2) Limited benefit disability insurance policies may be issued only to the following persons:

(a) employers who:

(i) employ 20 or fewer employees working at least 20 hours per week; and

(ii) have been in business in the state for at least 12 months and have not contributed, within the preceding 12 months, to payment of any premiums for disability insurance on behalf of an employee;

(b) disabled or injured workers and their families;

(c) unemployed individuals and their families;

(d) self-employed individuals and their families; and

(e) a parent, or the department of social and rehabilitation services on behalf of the parent, who is ordered by a court or administrative authority of this or another state or who is required under 40-5-208(1)(b) to provide health insurance coverage for a child if health insurance coverage is not available through employment or a union. This subsection (e) applies only to orders or modifications of orders issued after July 1, 1991, by a court or administrative authority.

(3) The insurer or health service corporation may establish terms and conditions for copayments and deductibles.

(4) The insurer or health service corporation issuing a limited benefit disability insurance policy shall provide the insured individual with a written disclosure statement, separate from the insurance policy, certificate, or evidence of coverage, stating in clear and understandable language and format which mandatory coverages and providers are not covered by the policy and what coverage is provided by the policy.

(5) Limited benefit disability insurance policies must provide coverage in accordance with the minimum requirements set forth in [section 3].

Section 3. **Limited benefit disability insurance — minimum benefits.** A limited benefit disability insurance policy must provide benefits that include but are not limited to coverage for:

(1) maternity care consisting of prenatal and obstetrical care furnished by providers licensed or certified in accordance with the laws of the state of Montana or the state where the services are provided;

(2) newborn care consisting of routine hospital nursery and pediatric care for the child of a covered individual or covered individual's spouse from

the instant of birth until the child reaches the age of 31 days. If newborn coverage is to continue beyond 31 days and payment of a specific premium or subscription fee is required to provide coverage for a child, the policy may require that notification of the birth of the child and payment of the required premium must be furnished to the insurer within 31 days after the date of birth in order to have the coverage continue beyond the 31-day period.

(3) well-child care consisting of immunizations and checkups for children under 2 years of age;

(4) services for the care and treatment of mental illness, alcoholism, and substance abuse, consisting of inpatient or outpatient services by any licensed Montana facility or provider, with a minimum annual benefit of $1,000; and

(5) hospital care under terms and conditions established by the policy of insurance.

Section 4. **Certification of limited benefit disability insurance policies.** Before an insurer or health service corporation may market or issue a limited benefit disability insurance policy, the commissioner of insurance shall certify that the policy provides the minimum benefits required in [section 3].

Section 5. **Premium tax.** The premium tax provided in 33-2-705(2) does not apply to premiums paid on account of policies issued under [sections 2 and 3].

Section 6. **Tax credit for providing disability insurance for employees.** An employer is entitled to a credit against taxes otherwise due under this chapter for the amount of premiums for disability insurance issued under [sections 1 through 5] and paid by the employer for his employees, subject to the following requirements:

(1) The tax credit is available only to employers who:

(a) have been in business in Montana for at least 12 months; and

(b) employ 20 or fewer employees working at least 20 hours per week.

(2) At least 50% of each employee's insurance premium is paid by the employer.

(3) Subject to the provisions of subsection (4), an employer is entitled to a tax credit for a maximum of 10 employees, computed as follows:

(a) a credit of $25 a month for each employee if the employer pays 100% of the employee's premium; or

(b) a credit equal to $25 a month multiplied by the percentage of the employee's premium paid by the employer for each employee if the employer pays less than 100% of the employee's premium.

(4) The credit may not exceed 50% of the premium cost for each employee and may not be claimed for a period of more than 36 consecutive months. A tax credit may not be granted to an employer or its successor within 10 years of the last consecutive credit claimed.

(5) The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the employer has no tax liability.

Section 7. **Tax credit for providing disability insurance for employees.** There is a credit against the taxes otherwise due under this chapter allowable to an employer for the amount of premiums for disability insurance paid by the employer for his employees. The tax credit must be computed in accordance with the provisions of [section 6].

Section 8. **Codification instruction.** (1) [Sections 1 through 5] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 5].

(2) [Section 6] is intended to be codified as an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [section 6].

(3) [Section 7] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 7].

Section 9. **Retroactive applicability.** [Sections 6 and 7] apply retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Section 10. **Effective dates.** (1) [Sections 1 through 3 and 5 through 7] are effective July 1, 1991.

(2) [Sections 4, 8, 9, and this section] are effective on passage and approval.

Approved April 24, 1991.

CHAPTER NO. 607

[HB 706]

AN ACT ESTABLISHING A LICENSING PROCESS FOR MOTOR VEHICLE WRECKING FACILITIES AND MOTOR VEHICLE GRAVEYARDS; ALLOWING THE GOVERNING BODY OF A COUNTY TO CONDUCT A HEARING; AND ESTABLISHING CRITERIA FOR THE DECISION BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO LICENSE A FACILITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Motor vehicle wrecking facilities and motor vehicle graveyards — licensing process — decision criteria.** (1) When an application for a motor vehicle wrecking facility or motor vehicle graveyard is filed with the department, the department shall notify by mail:

(a) each owner of property adjoining the proposed facility;

(b) the governing body of the county in which the proposed facility is to be located; and

(c) a newspaper of general circulation in the area where the proposed facility is to be located.

(2) Within 30 days of receipt of the notification in subsection (1)(b), the governing body of the county may:

(a) conduct a public hearing to determine whether the proposed facility will significantly affect the quality of life of adjoining landowners and the surrounding community; and

(b) adopt a resolution in support of or opposition to the location of the proposed facility and transmit a copy of the resolution to the department.

(3) The department may not grant a license to a facility that a governing body has opposed under subsection (2)(b).

(4) In making its decision to grant or deny a license application, the department shall consider the effect of the proposed facility on adjoining landowners and land uses.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 10, part 5, and the provisions of Title 75, chapter 10, part 5, apply to [section 1].

Section 3. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 24, 1991.

CHAPTER NO. 608

[HB 731]

AN ACT PROVIDING MANAGEMENT STANDARDS FOR THE CONDUCT OF FOREST PRACTICES IN STREAMSIDE MANAGEMENT ZONES; AUTHORIZING THE DEPARTMENT OF STATE LANDS TO ADOPT AND ENFORCE RULES IMPLEMENTING THE STREAMSIDE MANAGEMENT STANDARDS; ALLOWING ALTERNATIVE FOREST

PRACTICES IN CERTAIN CIRCUMSTANCES; AUTHORIZING THE DEPARTMENT OF STATE LANDS TO ISSUE ADMINISTRATIVE ORDERS FOR SITE REHABILITATION; PROVIDING PENALTIES FOR NONCOMPLIANCE WITH STREAMSIDE MANAGEMENT STANDARDS; AND ESTABLISHING A FOREST STEWARDSHIP SPECIAL REVENUE ACCOUNT.

STATEMENT OF INTENT

It is the intent of the legislature that the streamside management zone be an area of closely managed activity, but not a zone where timber harvest is excluded. Timber harvest activities must be managed within the zone to achieve objectives relating to water quality, beneficial water uses, management of wildlife habitat, and the long-term stability of the stream system, in addition to timber harvest objectives.

It is the intent of the legislature that the department of state lands adopt rules to implement the management standards provided for in [section 3] as enforceable standards for streamside management zones. These standards are to be coordinated with the objectives and guidelines contained in the existing system of voluntary best management practices, which will still guide forest practices outside of the streamside management zone. The department shall adopt rules governing the harvest of timber in streamside management zones to ensure the retention of merchantable and submerchantable timber necessary to maintain the integrity of the streamside management zone. The department shall also adopt rules under which owners and operators may receive approval for alternative practices for the standards provided in [section 3].

It is the intent of the legislature that the department develop voluntary, nonenforceable guidelines concerning the selection and retention of trees and vegetation, including snags, for wildlife habitat within the streamside management zone.

It is the intent of the legislature that the department establish an interdisciplinary technical committee to assist the department in adopting rules, developing voluntary guidelines for the management of wildlife habitat, and monitoring the implementation of this bill. The members of the committee should have technical knowledge or expertise in water quality, wildlife management, or forest management and include representatives from the U.S. forest service; U.S. bureau of land management; the Montana departments of health and environmental sciences and fish, wildlife, and parks; conservation districts; the Montana state university extension forestry program; the Montana forest and conservation experiment station; the forest products industry; and the conservation community.

To the extent practical, the department should conduct onsite consultations under [section 4] in conjunction with consultations or inspections conducted pursuant to Title 76, chapter 13, parts 1 and 4. It is also the intent of the legislature that whenever department personnel in the field notice a probable water quality or 310 permit violation that they notify the appropriate authority.

It is the intent of the legislature that the department, with the assistance of the technical committee, evaluate the implementation of this bill, develop recommendations to address problems, if any, that arise, and report its findings and recommendations to the environmental quality council.

Finally, the legislature recognizes that appropriate limitations on activities in streamside zones, which comprise only a very small percentage of Montana forests, can achieve substantial watershed and wildlife benefits.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Findings and purpose.** (1) The legislature finds that the streamside management zone:

(a) acts as an effective sediment filter to maintain water quality;

(b) provides shade to regulate stream temperature;

(c) supports diverse and productive aquatic and terrestrial riparian habitats;

(d) protects the stream channel and banks;

(e) provides large, woody debris that is eventually recruited into a stream to maintain riffles, pools, and other elements of channel structure; and

(f) promotes floodplain stability.

(2) The legislature further finds that maintaining the integrity of forest streams is crucial to the quality and quantity of water available to Montanans for domestic, agricultural, industrial, and recreational use.

(3) The legislature further finds that forest streams are highly susceptible to impacts from land development and that in many cases forest practices in streamside zones in Montana are causing excessive and unnecessary damage to the banks, beds, and protective vegetation of forest streams.

(4) The legislature further finds that, through careful management in the streamside zone, owners and operators can achieve timber harvest goals without sacrificing water quality or impairing the beneficial uses of the water.

(5) The purposes of [sections 1 through 7] are:

(a) to protect the legitimate public interest in the quality and quantity of forest waters;

(b) to provide for standards, oversight, rehabilitation, and penalties to ensure that forest practices are conducted in a manner that conserves the integrity of Montana's streamside zones;

(c) to provide guidelines for the management of wildlife habitat in streamside zones; and

(d) to allow operators necessary flexibility to use practices appropriate to site-specific conditions in the streamside management zone.

Section 2. **Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Alternative practices" means forest practices:

(a) conducted in the streamside management zone that are different from practices required by rules adopted under [sections 1 through 7];

(b) that are designed for site-specific conditions encountered during a timber sale; and

(c) that are subject to department approval under [section 3].

(2) "Department" means the department of state lands provided for in 2-15-3201.

(3) "Forest practices" means, within a timber sale, the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and management of logging slash. The term does not include activities related to the operation of a Christmas tree farm or nursery that do not involve new road construction.

(4) "Operator" means a person responsible for conducting forest practices. An operator may be the owner or a person who, through contractual agreement with the owner, is obligated to or entitled to conduct forest practices or carry out a timber sale.

(5) "Owner" means an individual, firm, partnership, corporation, or association of any nature that holds an ownership interest in forest land or timber.

(6) "Person" means an individual, firm, partnership, company, commercial entity, corporation, or association.

(7) "Stream" means a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water.

(8) "Streamside management zone" or "zone" means the stream, lake, or other body of water and an adjacent area of varying width where management practices that might affect wildlife habitat or water quality, fish, or other aquatic resources need to be modified. The streamside management zone encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils.

(9) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area for commercial purposes.

Section 3. **Standards for forest practices in streamside management zones.** (1) The following practices are prohibited in a streamside management zone:

(a) broadcast burning;

(b) the operation of wheeled or tracked vehicles except on established roads;

(c) the forest practice of clearcutting;

(d) the construction of roads except when necessary to cross a stream or wetland;

(e) the handling, storage, application, or disposal of hazardous or toxic materials in a manner that pollutes streams, lakes, or wetlands or that may cause damage or injury to humans, land, animals, or plants;

(f) the side-casting of road material into a stream, wetland, or watercourse; and

(g) the deposit of slash in streams or other water bodies.

(2) The department shall publish and distribute the rules implementing the streamside management standards.

Section 4. **Inspection — onsite consultation.** (1) The department may inspect forest practices on any federal, state, or private land in this state to assess compliance with the provisions of [sections 1 through 7] and rules adopted pursuant to [sections 1 through 7].

(2) The department may conduct an onsite consultation with an owner or operator to review harvest plans and watershed conditions. During the onsite consultation, the department may review and, if appropriate, approve the proposed use of alternative streamside management practices, as provided in [section 3].

Section 5. **Responsibility for compliance — penalties — administrative orders.** (1) (a) Except as provided in subsection (1)(b), it is the responsibility of the owner to ensure compliance with the provisions of [sections 1 through 7] and rules adopted pursuant to [sections 1 through 7].

(b) If a written contract between an owner and an operator specifies that the operator is responsible for compliance with laws relating to forest practices, the operator is considered the responsible party for all enforcement actions taken by the department under this section.

(2) A person who violates a provision of [sections 1 through 7], a rule adopted pursuant to [sections 1 through 7], or an order issued under this

section shall be subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation.

(3) (a) When the department determines that an owner or operator has violated a provision of [sections 1 through 7] or a rule adopted pursuant to [sections 1 through 7] and has caused damage to watershed or wildlife resources, the department may serve an order requiring the person responsible for the conduct of forest practices to undertake necessary site rehabilitation within a reasonable period of time stated in the order. The order must specify the nature of the violation and the damage or unsatisfactory condition resulting from the violation.

(b) The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the department. On receipt of the request, the department shall schedule a hearing. Service by mail is complete on the date of mailing.

(c) If, after a hearing, the department finds that a violation has occurred and the watershed or wildlife habitat damage warrants site rehabilitation, it shall affirm or modify the order previously issued. If the department finds that a violation has not occurred or that site rehabilitation is not warranted, it shall rescind the order.

(d) The department may include in an order a provision that the owner or operator immediately cease causing further damage and take immediate action to alleviate the damage or to prevent future damage. The department may institute an action for injunctive relief under Title 27, chapter 19, if the recipient of the order does not comply with it.

(4) Subsection (3) does not prevent the department from seeking voluntary compliance and site rehabilitation through warning, conference, or any other appropriate means.

Section 6. **Forest stewardship special revenue account.** (1) There is a forest stewardship special revenue account.

(2) All fines and penalties levied under [section 5] must be deposited in the forest stewardship special revenue account.

(3) The department shall spend funds deposited in the account on activities and programs that promote the stewardship of forest resources.

Section 7. **Rulemaking.** The department shall adopt rules:

(1) implementing each of the management standards provided in [section 3];

(2) providing specific direction necessary for owners and operators to understand and comply with the management standards, including additional definition of the streamside management zone and the forest practices permissible within the zone;

(3) providing alternative practices for the standards provided for in [section 3]; and

(4) regulating the harvest of timber in streamside management zones.

Approved April 24, 1991.

CHAPTER NO. 609

[HB 778]

AN ACT REVISING THE LAWS RELATING TO USE OF STATE LANDS; PROVIDING THAT ALLOWABLE USE OF STATE LANDS INCLUDES GENERAL RECREATIONAL USE BY THE PUBLIC; REQUIRING THE BOARD OF LAND COMMISSIONERS TO ADOPT RULES TO AUTHORIZE AND GOVERN THE RECREATIONAL USE AND CLOSURE OF STATE LANDS; REQUIRING PURCHASE AND POSSESSION OF A RECREATIONAL USE LICENSE BY PERSONS 12 YEARS OF AGE OR OLDER FOR THE GENERAL RECREATIONAL USE OF STATE LANDS; PROVIDING FOR ENFORCEMENT OF THE LICENSE REQUIREMENT BY THE WARDENS OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; PROVIDING PENALTIES; PROVIDING FOR THE STATUTORY APPROPRIATION OF THE LICENSE FEES AND PENALTIES; PROVIDING COMPENSATION FOR DAMAGE TO A LESSEE'S IMPROVEMENTS, GROWING CROPS, AND LIVESTOCK; AMENDING SECTIONS 17-7-502, 19-8-504, 77-1-101, 77-1-202, 77-1-203, 77-1-204, 77-1-402, 87-1-102, 87-1-502, 87-1-504, AND 87-1-601, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 13] requires the board of land commissioners to adopt rules to implement the provisions for recreational use of state lands established by this bill. Consistent with the provisions of this bill, it is intended that public recreational use of state lands be accomplished to the fullest extent possible. It is acknowledged that certain state lands will merit closure from public recreational use due to certain considerations, including but not limited to the presence of growing crops and livestock and the proximity of dwellings and agricultural buildings. Nothing in this bill authorizes or purports to authorize trespass on private lands to reach state lands.

This bill requires the board to adopt rules governing the actions of the recreational user of state lands. These rules must address protection of the resource value, compensation for damage to improvements, criteria for closure, restrictions upon certain recreational activities, and, when state land is posted, provision for the recreational user to contact the lessee or his agent to provide prior notice of the type and extent of the recreational use contemplated.

[Section 18] authorizes the department to adopt rules for weed control activities. It is the intent of the legislature that the board establish a procedure whereby weed infestations on state lands that are attributable to recreational access are controlled or eradicated. Examples of procedures that fulfill this intent include:

(1) a departmental weed control program;

(2) payments for weed control activities; and

(3) payments to county weed boards.

It is the intent of the legislature that the board evaluate the implementation of this bill, develop recommendations to address problems, if any, that arise through the course of rulemaking and implementation, and report its findings and recommendations to the 53rd legislature.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-8-504, MCA, is amended to read:

"**19-8-504. State's contribution.** Each month the state treasurer shall pay to the account, out of the department of fish, wildlife, and parks moneys, a sum equal to 7.15% of the total of all members' salaries, and out of the moneys collected as fines and forfeited bonds under the provisions of 87-1-601*(1) through (5)* or moneys distributed under 3-10-601(4), all such collections are statutorily appropriated to the account until the unfunded liability in the account is solvent and a verification statement to that effect is given to the state treasurer by the board."

Section 2. Section 77-1-101, MCA, is amended to read:

"**77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title the following definitions apply:

(1) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(2) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(3) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(4) "State land" or "lands" means lands granted to the state by the United States for any purpose, either directly or through exchange for other lands; lands deeded or devised to the state from any person; and lands that are the property of the state through the operation of law. The term does not include lands the state conveys through the issuance of patent; lands used for building sites, campus grounds, or experimental purposes by any state institution that are the property of that institution; or lands acquired through foreclosure of any investments purchased under the provisions of 17-6-211.

(5) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(6) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state lands. General recreational use does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

(7) "Legally accessible state lands" means state lands that can be accessed by dedicated public road, right-of-way, or easement; by public waters; by adjacent federal, state, county, or municipal land if the land is open to public use; or by adjacent contiguous private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public other than those granted permission."

Section 3. Section 77-1-202, MCA, is amended to read:

"**77-1-202. Powers and duties of board.** (1) The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state. The board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state.

(2) It is consistent with the powers and duties provided in subsection (1) that the people are entitled to general recreational use of state lands to the extent that the trusts are compensated for the value of the recreation.

~~(2)~~*(3)* When acquiring land for the state, the board shall determine the value thereof after an appraisal by a qualified land appraiser."

Section 4. Section 77-1-203, MCA, is amended to read:

"**77-1-203. Multiple-use management.** (1) The board shall manage state lands under the multiple-use management concept defined as the management of all the various resources of the state lands so that:

(a) they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions and realizing that some land may be used for less than all of the resources; and

(b) harmonious and coordinated management of the various resources, each with the other, will result without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

(2) If a parcel of state land in one class has other multiple uses or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed insofar as is possible to maintain or enhance these multiple-use values.

(3) State lands, including those lands that are leased primarily for other purposes, are open to general recreational use subject to legal access and to closures and restrictions pursuant to rules adopted under [section 13].

(4) The department shall include in all new or renewal leases and licenses a provision that leased lands may not be closed at any time to the public for general recreational purposes without the advanced written permission of the department."

Section 5. Section 77-1-204, MCA, is amended to read:

"**77-1-204. Power to sell, lease, or exchange certain state lands.** (1) The board is authorized to lease state lands for uses other than agriculture, grazing, timber harvest, or mineral production under such terms and conditions which best meet the duties of the board as specified in 77-1-202 and 77-1-203~~(1)~~. The lease period for such leases, except for power and school site leases, may not be for longer than 40 years.

(2) The board shall have full power and authority to sell, exchange or lease lands under its jurisdiction by virtue of 77-1-214 when, in its judgment, it is advantageous to the state to do so in the highest orderly development and management of state forests and state parks. Said sale, lease, or exchange shall not be contrary to the terms of any contract which it has entered into."

Section 6. Section 77-1-402, MCA, is amended to read:

"**77-1-402. Basis for classification or reclassification.** (1) The classification or reclassification shall be so made as to place state land in the class which best accomplishes the powers and duties of the board as specified in 77-1-202 and 77-1-203~~(1)~~. When state lands are classified or reclassified in accordance with these duties and responsibilities, special attention shall be paid to the capability of the land to support an actual or proposed land use authorized by each classification.

(2) It is the duty of the department to classify or reclassify state lands so that no state land will be sold, leased, or used under a different classification from that to which it actually belongs."

Section 7. Section 87-1-102, MCA, is amended to read:

"**87-1-102. Penalties.** (1) A person violating any provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is, unless a different punishment is expressly provided by law for the violation, guilty of a misdemeanor and shall be fined not less than $50 or more than $500, imprisoned in the county jail for not more than 6 months, or both. In addition, the person shall be subject to forfeiture of his license and *the* privilege to hunt, fish, or trap within this state *or to use state lands, as defined in 77-1-101, for recreational purposes* for a period of not less than 24 months from the date of conviction.

(2) (a) A person convicted of unlawfully taking, killing, possessing, transporting, or wasting of a bighorn sheep, moose, wild bison, caribou, mountain goat, or grizzly bear or any part of these animals shall be fined not less than $500 or more than $1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, *recreational use,* or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 30 months from the date of conviction.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, mountain lion, or black bear or any part of these animals or wasting a deer, antelope, or elk shall be fined not less than $300 or more than $1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 24 months from the date of conviction.

(c) A person convicted of unlawfully attempting to trap, take, shoot, or kill a game animal shall be fined not less than $200 or more than $600, imprisoned in the county jail for not more than 60 days, or both.

(d) A person convicted of unlawfully taking, killing, possessing, transporting, shipping, labeling, packaging, or wasting or unlawfully attempting to take, kill, or possess any game bird, wild turkey, or fish or any part of any such bird or fish or of failure to tag a game animal or game bird as prescribed by law shall be fined not less than $50 or more than $200 or imprisoned in the county jail for not more than 30 days, or both.

(e) A person convicted of purposely or knowingly taking, killing, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined not less than $50 or more than $1,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current license and the privilege to hunt, fish, or trap for not less than 24 months from the date of conviction and any pelts possessed unlawfully must be confiscated.

(f) A person convicted of hunting, fishing, or trapping while his license is forfeited or his privilege denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition, that person may be fined not less than $500 or more than $1,000.

(3) A person convicted or who has forfeited bond or bail under subsection (2) and who has been ordered to pay restitution under the provisions of 87-1-111 may not apply for any special license under Title 87, chapter 2,

part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later.

(4) Notwithstanding the provision of subsection (1), the penalties provided by this section shall be in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2."

Section 8. Section 87-1-502, MCA, is amended to read:

"**87-1-502. Qualifications, powers, and duties.** (1) Wardens shall be qualified by their experience, training, and skill in protection, conservation, and propagation of wildlife, game, fur-bearing animals, fish, and game birds and interested in this work. They shall devote all of their time for which they are appointed to their official duties.

(2) They shall enforce the laws of this state and the rules of the department with reference to the protection, preservation, and propagation of game and fur-bearing animals, fish, and game birds.

(3) They shall see that persons who hunt, fish, or take game or fur-bearing animals, game birds, or fish *and that those persons who make recreational use of state lands, as defined in 77-1-101, for hunting and fishing,* have *the* necessary licenses.

(4) They shall assist in the protection, conservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds and assist in the planting, distributing, feeding, and care of fish, game, fur-bearing animals, and game and nongame birds. They shall, when ordered by the department, assist in the destruction of predatory animals, birds, and rodents. They shall perform all other duties prescribed by the department and make a monthly report to the department correctly informing the department of their activities on each day of the preceding month with regard to the enforcement of the fish and game laws, showing where their duties called them and what they did. The reports shall contain any pertinent recommendations the wardens may see fit to make.

(5) A warden may not compromise or settle violations of fish and game laws out of court.

(6) A warden has the authority to inspect any and all fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals at reasonable times and at any location other than a residence or dwelling. Upon request therefor, all persons having in their possession any fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals shall exhibit the same and all thereof to the warden for such inspection."

Section 9. Section 87-1-504, MCA, is amended to read:

"**87-1-504. Protection of private property — *duty of* wardens ~~as ex-officio firewardens~~.** (1) It shall be the duty of wardens (state conservation officers) to enforce the provisions of 45-6-101, 45-6-203, ~~and~~ 75-10-212(2), *[section 11], [section 15], and rules adopted under [section 13]* on private *and state* lands being used for *the* recreational purposes *of hunting and fishing* and to act as ex officio firewardens as provided by 77-5-104.

(2) As used in this section, "recreational purposes" means recreational purposes as defined in 70-16-301."

Section 10. Section 87-1-601, MCA, is amended to read:

"**87-1-601. Use of fish and game money.** (1) ~~All~~ *Except as provided in subsection (6), all* money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source shall be turned over to the state treasurer and placed by him in the state special revenue fund to the credit of the department. Any money received from federal sources shall be deposited in the federal special revenue fund to the credit of the department.

(2) That money shall be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. That money shall be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) ~~All~~ *Except as provided in subsection (6), all* money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, relating to violations of state fish and game laws under Title 87 shall be deposited by the state treasurer and credited to the department ~~of fish, wildlife, and parks~~ in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution shall be paid to the county where the trial was held in any case where the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition shall be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived therefrom, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department, and only upon appropriation by the legislature. If the use of money as set forth herein would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in such violation.

(6) Money collected or received from fines or forfeited bonds for the violation of [section 11], [section 15], or rules adopted under [section 13] must be deposited as follows:

(a) 50% in an account for use by the department for the enforcement of [section 11], [section 15], and rules adopted under [section 13]; and

(b) 50% in the state lands recreational use account established by [section 16] for use by the department of state lands in the management of state lands."

Section 11. **Recreational use license required to use state lands for general recreational purposes — penalty.** (1) A person 12 years of age or older shall obtain an annual recreational use license pursuant to [section 12] to use state lands, as defined in 77-1-101, for general recreational purposes.

(2) A person shall, upon the request of a peace officer or fish and game warden, present for inspection his recreational use license.

(3) A violator of subsection (1) or (2) is guilty of a misdemeanor and shall be fined not less than $50 or more than $500, imprisoned in the county jail for not more than 6 months, or both.

Section 12. **Recreational use license — fee.** (1) The fee for a recreational use license is $5. The fee is based upon:

(a) a $3 charge as the value of 1 year of recreational use of state lands; and

(b) a $2 surcharge for the administrative costs of providing recreational access to state lands and the maintenance of a state lands recreational use account pursuant to [section 16].

(2) Money received by the department from the sale of recreational use licenses must be credited as follows:

(a) proceeds collected under subsection (1)(a) must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage contribution to the total acreage of all state land trusts; and

(b) proceeds collected under the surcharge of subsection (1)(b), less 50 cents for each license to be returned as a commission to license dealers, must be deposited in the state lands recreational use account established by [section 16] for use by the department in the management of state lands open to general recreational use.

(3) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9.

Section 13. **Rules for recreational use of state lands — penalty.** (1) The board shall adopt rules authorizing and governing the recreational use of state lands allowed under 77-1-203. The board shall use local offices of the department to administer this program whenever practical.

(2) Rules adopted under this section must address the circumstances under which the board may close legally accessible state lands to recreational use. Such action by the board may be taken upon its own initiative or upon petition by an individual, organization, corporation, or governmental agency. Closures may be of an emergency, seasonal, temporary, or permanent nature. State lands may be closed by the board only after public notice and opportunity for public hearing in the area of the proposed closure, except when the department is acting under rules adopted by the board for an emergency closure. Closed lands must be posted by the lessee at customary access points, with signs provided or authorized by the department.

(3) Closure rules adopted pursuant to subsection (2) may categorically close state lands whose use or status is incompatible with recreational use. Categorical or blanket closures may be imposed on state lands due to:

(a) cabinsite and homesite leases and licenses;

(b) the seasonal presence of growing crops; and

(c) active military, commercial, or mineral leases.

(4) The board shall adopt rules that provide an opportunity for any individual, organization, or governmental agency to petition the board for purposes of excluding a specified portion of state land from a categorical closure that has been imposed under subsection (3).

(5) Under rules adopted by the board, state lands may be closed on a case-by-case basis for certain reasons, including but not limited to:

(a) damage attributable to recreational use that diminishes the income-generating potential of the state lands;

(b) damage to surface improvements of the lessee;

(c) the presence of threatened, endangered, or sensitive species or plant communities;

(d) the presence of unique or special natural or cultural features;

(e) wildlife protection;

(f) noxious weed control; or

(g) the presence of buildings, structures, and facilities.

(6) Rules adopted under this section may impose restrictions upon general recreational activities, including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the presence of livestock. The board may also by rule restrict access on state lands in accordance with a block management program administered by the depart-

ment of fish, wildlife, and parks. Motorized vehicle use by recreationists on state lands is restricted to federal, state, and dedicated county roads and to those roads designated by the department to be open to motorized vehicle use.

(7) The board shall adopt rules providing for the issuance of a recreational special use license. Commercial or concentrated recreational use, as defined in 77-1-101, is prohibited on state lands unless it occurs under the provisions of a recreational special use license. The board may also adopt rules requiring a recreational special use license for recreational use that is not commercial, concentrated, or within the definition of general recreational use.

(8) For a violation of rules adopted by the board pursuant to this section, the department may assess a civil penalty of up to $1,000 for each day of violation. The board shall adopt rules providing for notice and opportunity for hearing in accordance with Title 2, chapter 4, part 6. Civil penalties collected under this subsection must be deposited as provided in 87-1-601(6).

Section 14. **Liability of state and lessee.** (1) The provisions of 70-16-302 that limit the liability of a landowner or his tenant for the recreational use of property apply to the state and any lessee of state lands used for general recreational purposes.

(2) The lessee is not responsible for the suppression of or for damages resulting from a fire on his leased land caused by a general recreational user, except that a lessee who observes a fire caused by a general recreational user shall make reasonable efforts to suppress the fire or report it to the proper firefighting authority.

Section 15. **Prior notification to lessee of recreational use — trespass — penalty.** (1) If a lessee of state lands under [sections 11 through 18] desires to be notified prior to anyone entering upon his leasehold, the lessee shall post, at customary access points, signs provided or authorized by the department. The signs must set forth the lessee's or his agent's name, address, telephone number, and method of notification. The lessee or his agent shall make himself available to receive notice from recreational users or provide an alternative means for notice as prescribed by rule. When state land is posted, recreational users shall contact and identify themselves to the lessee or his agent for the purposes of minimizing impact upon the leasehold interest and learning the specific boundaries of adjacent unfenced private property.

(2) Each recreational user of state lands shall obtain permission of the lessee or his agent before entering the adjacent private property owned by the lessee. Entry to private property from adjacent state lands without permission of the landowner or his agent is an absolute liability offense. A violator of this subsection is guilty of a misdemeanor and shall be fined not less than $50 or more than $500, imprisoned in the county jail for not more than 6 months, or both.

(3) A person may be found guilty of the offense described in subsection (2) regardless of the absence of fencing or failure to post a notice in accordance with 45-6-201.

Section 16. **State lands recreational use account.** (1) There is a state lands recreational use account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue received from the recreational use license established by [section 12];

(b) all revenue received from the imposition of fines under [sections 11 and 15] and from civil penalties imposed pursuant to [section 13]; and

(c) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money deposited in the state lands recreational use account is statutorily appropriated, as provided in 17-7-502, and must be used by the department for the following purposes:

(a) compensation pursuant to [section 17] for damage to the improvements of leases that has been proved to be caused by recreational users;

(b) assistance in weed control management necessary as a result of recreational use of state lands;

(c) protection of the resource value of the trust assets; and

(d) administration and management for the implementation of recreational use of state lands.

Section 17. **Compensation for damage to improvements, growing crops, or livestock.** A lessee may apply to the department for reimbursement of documented costs of repair to or replacement of improvements, growing crops, or livestock damaged by recreational users of state lands. The application must include an affidavit by the applicant setting forth the nature of the loss, allegations and reasonable proof supporting the involvement of recreational users, and documentation of repair or replacement costs. Upon review of the application and supporting proof and upon additional investigation as required, the department shall either grant, modify, or deny the claim. The department, by reason of payment to the lessee for damage to improvements, is entitled to be subrogated to the rights of the lessee to recover the amount paid from the party causing the damage. Payments under this section must be made from the state lands recreational use account established by [section 16], and the liability of the department for damage payments is limited to the existing balance of the account. Claim applications are to be considered in the order they are received.

Section 18. **Weed control management.** (1) The department shall establish a weed control management program for the control of noxious weeds reasonably proved to be caused by the recreational use of state lands. The department may by rule establish a noxious weed management program that may include direct compensation for noxious weed control activities or participation in district and county weed control projects or department-initiated weed control activities.

(2) Funding for this program must come from the state lands recreational use account pursuant to [section 16].

Section 19. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; ~~and~~ section 13, House Bill No. 861, Laws of 1985*; and [section 16]*.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 20. **Codification instruction.** [Sections 11 through 18] are intended to be codified as an integral part of Title 77, and the provisions of Title 77 apply to [sections 11 through 18].

Section 21. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 22. **Applicability.** On passage and approval of [this act], the board of land commissioners shall commence proceedings to adopt rules to be effective March 1, 1992. The department of state lands and the department of fish, wildlife, and parks shall commence proceedings and arrangements necessary to establish a recreational use license to be effective March 1, 1992.

Section 23. **Effective date.** [This act] is effective March 1, 1992.

Approved April 24, 1991.

CHAPTER NO. 610

[HB 793]

AN ACT ALLOWING THE BOARD OF COUNTY COMMISSIONERS OF A COUNTY TO DIRECT THE COUNTY TREASURER TO REDISTRIBUTE COAL GROSS PROCEEDS TAXES OR LOCAL GOVERNMENT SEVERANCE TAX MONEY FROM ONE TAXING UNIT IN THE COUNTY TO ANOTHER TAXING UNIT OR UNITS IN THE COUNTY UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 15-23-703 AND 15-36-112, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-703, MCA, is amended to read:

"**15-23-703. Taxation of gross proceeds — taxable value for bonding and guaranteed tax base aid to schools.** (1) The county assessor shall compute from the reported gross proceeds from coal a tax roll that he shall transmit to the county treasurer on or before September 15 each year. The county assessor may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall proceed to give full notice to each coal producer of the taxes due and to collect the taxes as provided in 15-16-101.

(2) For bonding, county classification, and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102(5).

(3) The taxable value of gross proceeds for the purpose of computing guaranteed tax base aid for schools is the amount of tax received by a district in the previous year divided by the number of mills levied by the district in the previous year, multiplied by 1,000. This amount must be added to the district, county, and statewide taxable value when computing guaranteed tax base aid under 20-9-368.

(4) ~~The~~ *Except as provided in subsection (5), the* county treasurer shall credit all taxes collected under this part:

(a) to the state and to the counties that levied mills *in fiscal year 1990* against *1988* production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in ~~the~~ *fiscal* year ~~1989~~ *1990* in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills *in school fiscal year 1990* against *1988* production or used nontax revenue, such as Public Law 81-874 money, in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in ~~1989~~ *school fiscal year 1990* in the school district.

(5) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (5)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(6) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (6)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district."

Section 2. Section 15-36-112, MCA, is amended to read:

"**15-36-112. Disposition of oil and gas state and local government severance taxes — calculation of unit value for local government severance tax.** (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each taxing unit.

(2) For purposes of the distribution of local government severance taxes collected under this chapter, the department shall determine the unit value of oil and gas for each taxing unit as follows:

(a) The unit value for petroleum and other mineral or crude oil for each taxing unit is the quotient obtained by dividing the net proceeds taxes calculated on petroleum or mineral or crude oil produced in that taxing unit in calendar year 1988 by the number of barrels of petroleum or other mineral or crude oil produced in that taxing unit during 1988, excluding new and interim production.

(b) The unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculated on natural gas produced in that taxing unit in calendar year 1988 by the number of cubic feet of natural gas produced in that taxing unit during 1988, excluding new and interim production.

(3) The state and local government severance taxes collected under this chapter are allocated as follows:

(a) The local government severance tax is statutorily appropriated, as provided in 17-7-502, for allocation to the county for distribution as provided in subsection (4);

(b) The state severance tax is allocated to the state general fund.

(4) (a) For the purpose of distribution of the local government severance tax, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters to be distributed plus accumulated interest earned by the state and penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters to be distributed. The taxes must be calculated and distributed as follows:

(i) By November 30 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the calendar quarters ending March 31 and June 30 of the preceding calendar year.

(ii) By May 31 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the 2 calendar quarters immediately following those quarters referred to in subsection (4)(a)(i).

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsections (4)(a)(i) and (4)(a)(ii) must be calculated and distributed in the following manner:

(i) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(ii) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(5) ~~The~~ *Except as provided in subsection (6), the* county treasurer shall distribute the money received under subsection (4) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that no distribution may be made to a municipal taxing unit.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of local government severance tax money that would have gone to a taxing unit, as provided in subsection (5), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district."

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved April 24, 1991.

CHAPTER NO. 611

[HB 883]

AN ACT REVISING THE PROVISIONS RELATING TO THE PRIOR TAX LIEN ON REAL PROPERTY FOR TAXES OWED ON PERSONAL PROPERTY; PROVIDING THAT AN OWNER OR HOLDER OF A MORTGAGE OR OTHER LIEN MAY FILE TO REMOVE THE PRIOR TAX LIEN ON REAL PROPERTY ONLY WHEN THE TAXABLE VALUE OF PERSONAL PROPERTY ON WHICH PERSONAL PROPERTY TAXES ARE DELINQUENT EXCEEDS $10,000; AND AMENDING SECTION 15-16-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-402, MCA, is amended to read:

"**15-16-402. Tax on personal property lien on realty — separate assessment — filing of mortgage satisfaction.** (1) ~~Every~~ *The* tax due upon personal property is a prior lien upon any or all of ~~such~~ *the personal* property~~, which~~. *The* lien ~~shall have~~ *has* precedence over any other lien, claim, or demand upon ~~such~~ *the personal* property~~,~~. ~~and except as hereinafter~~ *Except as* provided *in subsection (2),* ~~every~~ *the* tax upon personal property is also a lien upon the real property of the owner thereof on and after January 1 of each year.

(2) The taxes upon personal property based upon a taxable value up to and including ~~$1,000~~ *$10,000* ~~shall be~~ *are* a first and prior lien upon the real property of the owner of ~~such~~ *the* personal property. Taxes upon personal property based upon the taxable value thereof in excess of ~~$1,000~~ *$10,000* ~~shall be~~ *are* a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon ~~said~~ *the* real property appearing of record in the office of the clerk and recorder of the county where ~~such~~ *the* real property is situated, at or before the time ~~such~~ *the* personal property tax attached thereto, ~~shall have~~ *has* filed ~~the~~ *a* notice ~~hereinafter~~ *as* provided ~~for~~ *in subsection (3). If the notice is filed,* ~~in which event~~ the *personal property* taxes upon ~~such~~ *the taxable value in* excess of ~~$1,000~~ *$10,000* ~~of taxable value shall~~ *are* not ~~be~~ a lien on the *owner's* real property ~~of such owner~~. ~~It shall be the duty of the~~ *The* county treasurer *shall,* ~~to issue to any~~ *at the request of a* mortgagee or ~~lien holder~~ *lienholder,* ~~upon his request,~~ *issue* a statement of the personal property tax due upon the taxable value up to and including ~~$1,000~~ *$10,000.* Personal property taxes upon a taxable value up to ~~$1,000~~ *$10,000* may be paid, redeemed from a tax sale as by law provided, or discharged separately from any personal property taxes in excess of such amount. Payment of ~~such~~ *the* taxes upon a taxable value up to ~~$1,000~~ *$10,000,* as ~~herein~~ provided *in this subsection,* shall operate to discharge the tax lien upon the personal property of the owner to the extent of such payment in the order that the person paying such tax shall direct.

(3) The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file *each year* in the office of the county treasurer of said county a notice giving:

(a) the name and address of the mortgagee and holder of the mortgage or lien;

(b) the name of the reputed owner of the land;

(c) the description of the land;

(d) the date of record and expiration of the mortgage or lien;

(e) the amount thereof; and

(f) a statement that he claims the benefit of the provisions of this section.

(4) Such notice shall be ineffectual as to any taxes which shall have become a lien on real property prior to the filing of such notice as ~~aforesaid~~ *provided in subsection (3).* ~~If the mortgage be not paid at maturity, such notice shall thereafter be filed annually unless the mortgage be extended for a definite period to be stated in such notice.~~

(5) Any owner of a mortgage on real ~~estate~~ *property* upon which personal property taxes are by this section made a lien, where the owner of such real ~~estate~~ *property* and personal property has failed to pay taxes due upon such real ~~estate~~ *property* and personal property for 1 or more years, may file with the department of revenue or its agent in the county in which such property is located a written request to have the personal property and real ~~estate~~ *property* of the owner separately assessed. Such request must be made by registered or certified mail at least 10 days prior to January 1 in the year for which property is assessed. Upon receipt by the department or its agent of such request, it is ~~hereby made~~ the duty of the department or its agent to make a separate assessment of real and personal property of the owner thereof, and such personal taxes shall not be a lien upon the real ~~estate~~ *property* so mortgaged of the owner thereof, and the personal property taxes shall be collected in the manner provided by law for other personal property.

(6) The holder of a mortgage or lien upon real property who files a certificate of satisfaction and the proof and acknowledgment thereof, as provided for in 71-1-211, shall file a copy of the certificate and the proof and acknowledgment with:

(a) the county treasurer if the holder has filed a notice under subsection (3); and

(b) the department of revenue or its agent in the county in which the real property is located if the holder has filed a written request under subsection (5).

(7) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the

provisions of Title 15, chapter 24, part 17. *(Subsection (7) terminates December 31, 1993—sec. 17, Ch. 631, L. 1989.)* "

Approved April 24, 1991.

CHAPTER NO. 612

[HB 904]

AN ACT EXCLUDING SOCIAL SECURITY INCOME PAID DIRECTLY TO A NURSING HOME FROM THE DEFINITIONS OF INCOME USED TO CALCULATE THE LOW-INCOME PROPERTY TAX REDUCTION AND THE RESIDENTIAL PROPERTY TAX CREDIT FOR THE ELDERLY; AMENDING SECTIONS 15-6-134, 15-6-142, AND 15-30-171, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-134, MCA, is amended to read:

"**15-6-134. Class four property — description — taxable percentage.** (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements except those specifically included in another class;

(c) the first $80,000 or less of the market value of any improvement on real property and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of any person whose total income from all sources, including otherwise tax-exempt income of all types *but not including social security income paid directly to a nursing home,* is not more than $10,000 for a single person or $12,000 for a married couple, as adjusted according to subsection (2)(b)(ii);

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least 9 holes and not less than 3,000 lineal yards.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a) and (1)(b) is taxed at 3.86% of its market value.

(b) (i) Property described in subsection (1)(c) is taxed at 3.86% of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple	Percentage Multiplier
$ 0 - $ 1,000	$ 0 - $ 1,200	0%
1,001 - 2,000	1,201 - 2,400	10%
2,001 - 3,000	2,401 - 3,600	20%
3,001 - 4,000	3,601 - 4,800	30%
4,001 - 5,000	4,801 - 6,000	40%
5,001 - 6,000	6,001 - 7,200	50%
6,001 - 7,000	7,201 - 8,400	60%
7,001 - 8,000	8,401 - 9,600	70%
8,001 - 9,000	9,601 - 10,800	80%
9,001 - 10,000	10,801 - 12,000	90%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department of revenue. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1986; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

(3) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate for class four property until a revaluation has been made as provided in 15-7-111.

(4) Within the meaning of comparable property as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property, and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 2. Section 15-6-142, MCA, is amended to read:

"**15-6-142. Class twelve property — description — taxable percentage.** (1) Class twelve property includes:

(a) a trailer or mobile home used as a residence except when:

(i) held by a distributor or dealer of trailers or mobile homes as his stock in trade; or

(ii) specifically included in another class;

(b) the first $80,000 or less of the market value of a trailer or mobile home used as a residence and actually occupied for at least 10 months a year as the primary residential dwelling of any person whose total income from all sources, including otherwise tax-exempt income of all types *but not including social security income paid directly to a nursing home*, is not more than $10,000 for a single person or $12,000 for a married couple, as adjusted according to 15-6-134(2)(b)(ii).

(2) Class twelve property is taxed as follows:

(a) Property described in subsection (1)(a) that is not of the type described in subsection (1)(b) is taxed at 3.86% of its market value.

(b) Property described in subsection (1)(b) is taxed at 3.86% of its market value multiplied by a percentage figure based on income and determined from the table established in subsection (2)(b)(i) of 15-6-134."

Section 3. Section 15-30-171, MCA, is amended to read:

"**15-30-171. Residential property tax credit for elderly — definitions.** As used in 15-30-171 through 15-30-179, the following definitions apply:

(1) "Income" means federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(a) the gross amount of any pension or annuity (including Railroad Retirement Act benefits and veterans' disability benefits);

(b) the amount of capital gains excluded from adjusted gross income;

(c) alimony;

(d) support money;

(e) nontaxable strike benefits;

(f) cash public assistance and relief;

(g) payments and interest on federal, state, county, and municipal bonds; and

(h) all payments received under federal social security *except social security paid directly to a nursing home*.

(2) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(3) "Claimant" means an individual natural person who is eligible to file a claim under 15-30-172.

(4) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses,

The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(5) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(6) "Household income" means $0 or the amount obtained by subtracting the greater of $4,000 or 50% of total retirement benefits from gross household income, whichever is greater.

(7) "Homestead" means:

(a) a single-family dwelling or unit of a multiple-unit dwelling that is subject to ad valorem taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling; or

(b) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal housing authority as provided in Title 7, chapter 15.

(8) "Department" means the department of revenue.

(9) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's length transaction with the landlord.

(10) "Property tax paid" means general ad valorem taxes levied against the homestead, exclusive of special assessments, penalties, or interest and paid during the claim period.

(11) "Rent-equivalent tax paid" means 15% of the gross rent."

Section 4. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990.

Approved April 24, 1991.

CHAPTER NO. 613

[HB 949]

AN ACT TO ALLOW A STATE INCOME TAX DEDUCTION FOR THE COST OF PURCHASING LONG-TERM CARE INSURANCE; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-121, MCA, is amended to read:

"**15-30-121. Deductions allowed in computing net income.** In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) expenses of household and dependent care services as outlined in subsections (3)(a) through (3)(c) and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f) as follows:

(a) expenses for household and dependent care services necessary for gainful employment incurred for:

(i) a dependent under 15 years of age for whom an exemption can be claimed;

(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to care for himself because of physical or mental illness; and

(iii) a spouse who is unable to care for himself because of physical or mental illness;

(b) employment-related expenses incurred for the following services, but only if such expenses are incurred to enable the taxpayer to be gainfully employed:

(i) household services which are attributable to the care of the qualifying individual; and

(ii) care of an individual who qualifies under subsection (3)(a);

(c) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and his spouse;

(d) the amounts deductible in subsection (3)(a) through (3)(c) are subject to the following limitations:

(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent such expenses do not exceed $4,800;

(ii) expenses for services in the household are deductible under subsection (3)(a) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent such expenses incurred during the year do not exceed:

(A) $2,400 in the case of one qualifying individual;

(B) $3,600 in the case of two qualifying individuals; and

(C) $4,800 in the case of three or more qualifying individuals;

(e) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the taxable year during which the expenses are incurred, the amount of the employment-related expenses incurred must be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(f) for purposes of this subsection (3):

(i) married couples shall file a joint return or file separately on the same form;

(ii) if the taxpayer is married during any period of the taxable year, employment-related expenses incurred are deductible only if:

(A) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);

(iii) an individual legally separated from his spouse under a decree of divorce or of separate maintenance may not be considered as married;

(iv) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which was not otherwise deducted in computing taxable income; ~~and~~

(6) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156; *and*

(7) premium payments for long-term care insurance with benefits that meet or exceed the minimum standards as established by the state insurance commissioner."

Section 2. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved April 24, 1991.

CHAPTER NO. 614

[HB 978]

AN ACT REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO SEEK A WAIVER FROM THE U.S. SECRETARY OF HEALTH AND HUMAN SERVICES TO ESTABLISH A PILOT PROGRAM TO TEST THE FEASIBILITY OF PROVIDING MEDICAID REIMBURSEMENT FOR SERVICES TO THE ELDERLY AND DISABLED IN PERSONAL-CARE FACILITIES; GRANTING THE DEPARTMENT AUTHORITY TO ADOPT RULES; APPROPRIATING FUNDS; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

WHEREAS, studies indicate that facilities, such as personal-care facilities, may enable the elderly and disabled to delay placement in skilled and intermediate nursing care facilities; and

WHEREAS, personal-care facilities in Montana provide an important service for those elderly and disabled who are unable to live independently but who do not require the level of care provided in skilled and intermediate nursing care facilities; and

WHEREAS, it is prudent to study the cost-effectiveness of maintaining the elderly and disabled within personal-care facilities in accordance with licensure regulations; and

WHEREAS, reimbursements for Medicaid-eligible individuals in personal-care facilities may serve to delay admittance to skilled and intermediate nursing care facilities.

THEREFORE, the Legislature finds it appropriate to enact this bill.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] grants the department of social and rehabilitation services authority to adopt rules to implement [sections 1 through 3].

It is the intent of the legislature, in enacting this bill, to establish a pilot program to test the feasibility of providing medicaid reimbursement for services to the elderly and disabled in personal-care facilities. The pilot program is prudent because, beginning October 1, 1994, federal law will allow medicaid reimbursement for services provided to residents of a personal-care facility.

It is intended that, in adopting rules, the department should define:

(1) services to be provided under the pilot program;

(2) persons eligible to receive services under the program;

(3) procedures for screening eligible persons to ensure that personal-care facilities provide the degree of care required by each person and allowed within the facilities' licensure; and

(4) procedures to select personal-care facilities for participation in the program.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The legislature declares that it is the purpose of [sections 1 through 4] to:

(1) minimize inappropriate medicaid admissions of the elderly and disabled to skilled and intermediate nursing care facilities;

(2) make it possible for the elderly and disabled who do not require the degree of care provided in a long-term care facility to receive necessary care in a personal-care facility; and

(3) provide the most efficient and effective use of public funds in the delivery of medicaid services to the elderly and disabled.

Section 2. **Definitions.** As used in [sections 1 through 4], unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(2) "Disabled" means an individual who is disabled as defined in 42 U.S.C. 1382c.

(3) "Elderly" means a person who is 65 years of age or older.

(4) "Personal-care facility" means a facility licensed under 50-5-227 to operate as a personal-care facility.

Section 3. **Waiver of federal requirements.** (1) Prior to December 31, 1991, the department shall seek a waiver from the U.S. secretary of health and human services, in accordance with 42 U.S.C. 1396n, to establish a pilot program to test the feasibility of providing medicaid reimbursement for services to the elderly and disabled in personal-care facilities.

(2) Contingent upon approval of the waiver provided in subsection (1), the department shall establish procedures to:

(a) select personal-care facilities to participate in the pilot program, based on criteria contained in the request for proposal;

(b) limit the pilot program to a total of 100 beds in at least four personal-care facilities that represent at least three different bed-size classes;

(c) provide medicaid reimbursement for services to residents in each personal-care facility who meet the requirements for eligibility adopted under subsection (3); and

(d) record and evaluate:

(i) reimbursement levels for services in personal-care facilities;

(ii) the cost of providing personal-care facility services;

(iii) preadmission screening procedures;

(iv) medicaid service utilization;

(v) consumer satisfaction; and

(vi) the impact on the demand for services.

(3) The department shall develop eligibility criteria consistent with the requirements of Title XIX of the federal Social Security Act.

Section 4. **Rulemaking.** The department may adopt rules to implement [sections 1 through 4].

Section 5. **Appropriation.** The following money is appropriated to the department of social and rehabilitation services for the fiscal year ending June 30, 1993, for the purpose of carrying out the provisions of [this act]:

Fund	Amount
General fund	$ 60,000
Federal special revenue	153,523
TOTAL:	$213,523

Section 6. **Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [sections 1 through 4].

Section 7. **Effective dates.** (1) [Sections 1 through 4, 6, 8, and this section] are effective July 1, 1991.

(2) [Section 5] is effective July 1, 1992, contingent upon approval of the waiver provided in [section 3] by the U.S. secretary of health and human services.

Section 8. **Termination.** [This act] terminates July 1, 1993.

Approved April 24, 1991.

CHAPTER NO. 615

[HB 1008]

AN ACT ALLOCATING TO SEPARATE TRUST FUNDS THE COAL SEVERANCE TAX MONEY THAT WOULD BE DEPOSITED IN A NONEXPENDABLE TRUST FUND FOR PARKS MANAGEMENT, PROTECTION OF WORKS OF ART IN THE STATE CAPITOL, AND OTHER CULTURAL AND AESTHETIC PROJECTS; ALLOWING THE EXPENDITURE OF COAL SEVERANCE TAX REVENUE FOR PARKS FOR 2 YEARS; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"**15-35-108.** *(Temporary)* **Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) 17.5% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) ~~5%~~ *0%* to a nonexpendable trust fund for the purpose of parks ~~acquisition or~~ management~~, protection of works of art in the state capitol, and other cultural and aesthetic projects~~. Income from this trust fund shall be appropriated ~~as follows:~~

~~(i) 1/3 for protection of works of art in the state capitol and other cultural and aesthetic projects; and~~

~~(ii) 2/3~~ for the ~~acquisition,~~ development, operation, and maintenance of any sites and areas described in 23-1-102;

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 1/4% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1.667% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(k) beginning July 1, 1991, and ending June 30, 1993, 3.333% to a special revenue account to be used by the department of fish, wildlife, and parks for the development, operation, and maintenance of state parks and the stabilization and preservation of historic sites within the state park system;

~~(j)~~*(l)* all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. *(Terminates July 1, 1993—sec. 7, Ch. 541, L. 1983.)*

15-35-108. *(Effective July 1, 1993)* **Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17.5% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) ~~5%~~ *3.333%* to a nonexpendable trust fund for the purpose of parks acquisition or management~~, protection of works of art in the state capitol, and other cultural and aesthetic projects~~. Income from this trust fund shall be appropriated ~~as follows:~~

~~(i) 1/3 for protection of works of art in the state capitol and other cultural and aesthetic projects; and~~

~~(ii) 2/3~~ for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102;

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 1/4% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1.667% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

~~(j)~~*(k)* all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 2. **Transfer of funds.** The board of investments shall transfer one-third of the balance as of June 30, 1991, of the nonexpendable trust fund created in 15-35-108(3)(e) to the nonexpendable trust fund created in 15-35-108(3)(j) for protection of works of art in the capitol and for other cultural and aesthetic projects. The remainder of the trust fund created in 15-35-108(3)(e) must be used as provided in 15-35-108(3)(e).

Section 3. **Effective date — termination.** [This act] is effective July 1, 1991, and the temporary version of [section 1] terminates June 30, 1993.

Approved April 24, 1991.

CHAPTER NO. 616

[HB 1010]

AN ACT ESTABLISHING A HARD-ROCK MINING IMPACT TRUST RESERVE ACCOUNT; AUTHORIZING AND LIMITING EXPENDITURES FROM THE RESERVE ACCOUNT; APPROPRIATING MONEY TO THE HARD-ROCK MINING IMPACT BOARD FROM THE RESERVE ACCOUNT; AMENDING SECTIONS 90-6-304 AND 90-6-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-304, MCA, is amended to read:

"**90-6-304. Accounts established.** (1) There is within the state ~~special revenue fund~~ *agency fund type* a hard-rock mining impact account. ~~Moneys are~~ *Money is* payable into this account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw warrants from this account upon order of the ~~hard-rock mining impact~~ board.

(2) There is within the state special revenue fund a hard-rock mining impact trust account. *Within this trust account, there is established a reserve account not to exceed $100,000.*

(a) Money within the hard-rock mining impact trust account may be used:

(i) for the administrative and operating expenses of the board, as provided by 90-6-303(4);

(ii) to establish and maintain the reserve account; and

(iii) for distribution to the counties of origin, as provided by 90-6-331(1) and this section.

(b) Money within the hard-rock mining impact trust reserve account may be used for the administrative and operating expenses of the board if:

(i) the revenue provided under 15-37-117(1)(b) is less than the amount appropriated for the administrative and operating expenses of the board; or

(ii) the use of the reserve account revenue is necessary to allow the board to meet its quasi-judicial responsibilities under 90-6-307, 90-6-311, or 90-6-403(3).

(c) The board shall report to the legislature any expenditure from the hard-rock mining impact trust reserve account.

(3) Money is payable into ~~this~~ *the hard-rock mining impact trust* account under the provisions of 15-37-117. After *first* deducting the administrative and operating expenses of the board, as provided in 90-6-303, *and then establishing and maintaining the reserve account in the amount of $100,000, as provided in subsection (2) of this section, the remaining* money must be segregated within the account by county of origin. The state treasurer shall draw warrants from this account upon order of the ~~hard-rock mining impact~~ board. ~~If money available to pay administrative and operating expenses is insufficient, the board may apply for supplemental money from the general fund.~~"

Section 2. Section 90-6-331, MCA, is amended to read:

"**90-6-331. Fund transfer.** (1) On July 1, 1990, and ~~on~~ *prior to* each ~~July 1~~ *October 1* thereafter, all ~~funds remaining~~ *money segregated by county* in the hard-rock mining impact trust account *following allocation to the hard-rock mining impact trust reserve account* established in 90-6-304(2) ~~after June 30~~ *as of September 1* immediately preceding must be transferred to the county for which the funds have been held in deposit. The funds so transferred must be deposited in the county hard-rock mine trust reserve account established in 7-6-2225.

(2) The transfer of funds required by this section is a statutory appropriation pursuant to 17-7-502."

Section 3. **Appropriation.** There is appropriated to the hard-rock mining impact board an amount not to exceed $100,000 from the hard-rock mining impact trust reserve account, as established in 90-6-304(2).

Section 4. **One-time reservation of funds.** Any money within the hard-rock mining impact trust account on [the effective date of this act], regardless of fiscal year of origin, that is not expended to pay administrative and operating expenses incurred during the current fiscal year must be retained in the hard-rock mining impact trust reserve account established in 90-6-304(2).

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1991.

CHAPTER NO. 617

[HB 760]

AN ACT EQUALIZING THE AMOUNT OF CERTAIN DISABILITY RETIREMENT ALLOWANCE PAYMENTS TO MEMBERS OF THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM HIRED AFTER JULY 1, 1981, WITH THE ALLOWANCE PAYMENTS TO MEMBERS HIRED BEFORE JULY 1, 1981; INCREASING THE STATE CONTRIBUTION RATE; AMENDING SECTIONS 19-13-604 AND 19-13-803, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-13-604, MCA, is amended to read:

"**19-13-604. State contribution.** The state shall make its contributions through the state auditor from the premium taxes on the insurance risks enumerated in 19-11-512. These payments shall be made annually to the administrator after the end of each fiscal year but no later than September 1 from the gross premium taxes after deduction for cancellations and returned premiums. The payment is statutorily appropriated as provided in 17-7-502. The administrator shall notify the auditor of the annual compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all active members during the preceding year, and effective July 1, 1981, the state's contribution is 12% of this compensation. This contribution shall increase to 15% effective July 1, 1982, to 18% effective July 1, 1983, ~~and~~ to 22.98% effective July 1, 1985, *and to 23.27% effective July 1, 1991*. As soon as practicable after receipt of the state contribution, the administrator shall deposit it with the state treasurer."

Section 2. Section 19-13-803, MCA, is amended to read:

"**19-13-803. Amount of disability retirement allowance.** (1) A member hired before July 1, 1981, who is eligible under 19-13-802:

(a) before completing 20 years of service shall receive a disability retirement allowance equal to one-half the monthly compensation last received by the member for his services as an active firefighter;

(b) after completing 20 years or more of service shall receive the disability retirement allowance provided in subsection (1)(a) increased at a rate of 1% for each year in excess of 20, up to a maximum of 60% of the monthly compensation last received by the member.

(2) A member hired on or after July 1, 1981, who is eligible under 19-13-802:

(a) before completing 25 years of service shall receive a disability retirement allowance equal to one-half ~~his final average salary~~ *the monthly* *compensation last received by the member for his services as an active firefighter;*

(b) after completing 25 years or more of service shall receive the disability retirement allowance provided in subsection (2)(a) increased at a rate of 2% for each year in excess of 25, up to a maximum of 5 years of additional service."

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved April 24, 1991.

CHAPTER NO. 618

[HB 937]

AN ACT TO REVISE THE MONTANA CHILD CARE ACT; TO CONTINUE THE STATE GRANT PROGRAM FOR LOCAL CHILD-CARE RESOURCE AND REFERRAL PROGRAMS; REPEALING SECTION 52-2-712, MCA, AND SECTION 18, CHAPTER 692, LAWS OF 1989; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 52-2-712, MCA, and section 18, Chapter 692, Laws of 1989, are repealed.

Section 2. **Effective date.** [This act] is effective June 29, 1991.

Approved April 23, 1991.

CHAPTER NO. 619

[SB 279]

AN ACT PROVIDING A TAXPAYER BILL OF RIGHTS; GUARANTEEING TO ALL MONTANA TAXPAYERS SPECIFIED PROCEDURAL RIGHTS IN THE ADMINISTRATION AND COLLECTION OF TAXES BY THE DEPARTMENT OF REVENUE; AND CREATING AN OFFICE OF TAXPAYER ASSISTANCE.

WHEREAS, the Legislature finds and declares that the administration and collection of taxes is the most sensitive point of contact between citizens and their government;

WHEREAS, the Legislature further declares that it is the intent of the Legislature to ensure that the rights, privacy, and property of Montana taxpayers are adequately protected during the process of assessment and collection of taxes administered or collected by the department of revenue.

THEREFORE, it is the purpose of this bill to enact a Montana taxpayer bill of rights.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 3] may be cited as the "Montana Taxpayer Bill of Rights".

Section 2. **Taxpayer bill of rights.** The department of revenue shall in the course of performing its duties in the administration and collection of the state's taxes ensure that:

(1) the taxpayer has the right to record any interview, meeting, or conference with auditors or any other representatives of the department;

(2) the taxpayer has the right to hire a representative of the taxpayer's choice to represent the taxpayer's interests before the department or any tax appeal board. The taxpayer has a right to obtain a representative at any time, except that the selection of a representative may not be used to unreasonably delay a field audit that is in progress. The representative must have written authorization from the taxpayer to receive from the department confidential information concerning the taxpayer. The department shall provide copies to the authorized representative of all information sent to the taxpayer and shall notify the authorized representative concerning contacts with the taxpayer.

(3) the taxpayer has the right to obtain tax advice from the department.. The taxpayer has a right to the waiver of penalties and interest, but not taxes, when he has relied on written advice provided to him by an employee of the department.

(4) at the discretion of the department, the taxpayer has the right to pay delinquent taxes, interest, and penalties on an installment basis. This subsection applies only to taxes collected by the department, provided the taxpayer meets reasonable criteria.

(5) the taxpayer has the right to a complete and accurate written description of the basis for any additional tax assessed by the department;

(6) the taxpayer has the right to a review by management level employees of the department for any additional taxes assessed by the department;

(7) the taxpayer has the right to a full explanation of the available procedures for review and appeal of additional tax assessments;

(8) the taxpayer, after the exhaustion of all appropriate administrative remedies, has the right to have the state tax appeal board, or a court, or both review any final decision of the department assessing an additional tax. The taxpayer shall seek a review in a timely manner. A taxpayer is entitled to collect court costs and attorney fees from the department for frivolous or bad faith lawsuits as provided in 25-10-711.

(9) the taxpayer has the right to a full explanation of the department's authority to collect delinquent taxes, including the procedures and notices that are required to protect the taxpayer;

(10) the taxpayer has the right to have certain property exempt from levy and seizure as provided in Title 25, chapter 13, part 6, and any other applicable provisions in Montana law;

(11) the taxpayer has the right to the immediate release of any lien the department has placed on property when the tax is paid or when the lien is the result of an error by the department;

(12) the taxpayer has the right to assistance from the department in complying with state and local tax laws that the department administers; and

(13) the taxpayer has the right to be guaranteed that an employee of the department is not paid, promoted, or in any way rewarded on the basis of assessments or collections from taxpayers.

Section 3. **Office of taxpayer assistance.** (1) The department of revenue shall establish and maintain an office of taxpayer assistance.

(2) The office shall assist taxpayers by:

(a) providing easily understandable tax information on audits and corrections and review procedures of the department;

(b) providing easily understandable information on appeal procedures;

(c) answering questions regarding preparing and filing returns and reports with the department; and

(d) locating documents or payments filed with or submitted to the department.

(3) The office of taxpayer assistance shall also:

(a) receive and evaluate complaints related to improper or abusive behavior or inefficient service provided by employees of the department and recommend appropriate action to the director of the department of revenue to resolve the complaints;

(b) compile data on the number and type of taxpayer complaints received and evaluate the actions taken to resolve complaints;

(c) survey taxpayers to obtain their evaluation of the quality of service provided by the department;

(d) monitor the department's compliance with the taxpayer bill of rights and report any abuses to the director of the department;

(e) monitor the department's collection activities to:

(i) report any abuses in collection activities by the department to the director;

(ii) recommend to the director whether a particular collection activity should be stopped if the taxpayer has not had an adequate opportunity to discuss alternative means of payment; and

(f) perform any other functions that the director may assign to assist taxpayers in complying with Montana's tax laws.

Section 4. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 15, chapter 1, part 2, and the provisions of Title 15, chapter 1, part 2, apply to [sections 1 through 3].

Approved April 24, 1991.

CHAPTER NO. 620

[SB 299]

AN ACT CLARIFYING THE PROCEDURE FOR AN INTERLOCUTORY ADJUDICATION OF AN APPEAL PENDING BEFORE THE STATE TAX APPEAL BOARD; AND AMENDING SECTIONS 15-2-304 AND 15-2-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-2-304, MCA, is amended to read:

"**15-2-304. Petition for interlocutory adjudication.** (1) (a) Either party, within 30 days of the filing of an answer to an appeal before the state tax appeal board, may file a petition for an interlocutory adjudication under 15-2-305. The petition may be filed with the district court:

(i) in the first judicial district;

(ii) in the county in which the taxable property is located; or

(iii) in cases not involving property taxes, in the county where the taxpayer resides or has his principal place of business in the state.

(b) The petition ~~must~~ *may* raise ~~all questions~~ *any question involving procedure, the admissibility of evidence, or a substantive question of law* raised by the pleadings ~~involving the interpretation of a constitutional provision, a statute, or a rule~~ within 30 days of filing an answer to the appeal with the state tax appeal board.

(c) A nonpetitioning party shall respond to the petition within 30 days after service of the petition. The response may raise any question not raised in the petition involving procedure, the admissibility of evidence, or a substantive question of law.

(2) After ~~a proceeding has commenced before the state tax appeal board~~ *the 30-day period specified in subsection (1)(b)* but before arguments have been heard, the parties to the proceeding may *jointly* petition a district court to make an interlocutory adjudication as provided under 15-2-305. A petition for ~~such~~ *an* adjudication ~~shall~~ *must* be signed by each party to the proceeding.

(3) In a petition under subsection (1) or (2), one party ~~shall~~ *must* be designated as the petitioner and every other party ~~shall~~ *must* be designated a respondent. The court may in its discretion grant ~~such~~ a petition if it appears that the issues presented involve ~~the interpretation of a constitutional provision, a statute, or a rule~~ *procedure, the admissibility of evidence, or a substantive question of law* and do not require the ~~hearing of evidence to be resolved~~ *determination of questions of fact* and that the controversy would be more expeditiously resolved by ~~such~~ *an* adjudication. *If the court grants a petition, it shall rule on all issues presented in the petition and the response, regardless of whether a ruling on less than all of the issues is dispositive of the case.*"

Section 2. Section 15-2-305, MCA, is amended to read:

"**15-2-305. Jurisdiction to make interlocutory adjudication.** A district court may make an interlocutory adjudication of an issue pending ~~in~~ *before* the state tax appeal board if that issue involves ~~only the interpretation of a constitutional provision, statute, or regulation~~ *procedure, the admissibility of evidence, or a substantive question of law* and does not require the ~~hearing of evidence~~ *determination of a question of fact. If the petition is granted, the district court shall rule on all issues presented in the petition and the response, regardless of whether a ruling on less than all of the issues is dispositive of the case.* Appeals from the ruling of the court may be appealed as in other civil actions."

Approved April 24, 1991.

CHAPTER NO. 621

[SB 438]

AN ACT EXEMPTING FROM BENEFICIAL USE TAXATION RAILROAD TRACKS AND RIGHT-OF-WAY OWNED BY THE UNITED STATES; AMENDING SECTION 15-24-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-1203, MCA, is amended to read:

"**15-24-1203. Privilege tax on gainful use of tax-exempt property — exceptions.** After March 17, 1969, there is imposed and shall be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. No tax may be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on such airport property are subject to tax. No tax shall be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates. The tax shall be imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts shall not be subject to the tax. The tax may not be imposed upon the possession or other beneficial use of railroad right-of-way or track *owned by the United States or* acquired by the state pursuant to Title 60, chapter 11, part 1, as long as the state *or the United States* retains ownership and the right-of-way or track is used exclusively for rail transportation."

Section 2. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1986.

Approved April 24, 1991.

CHAPTER NO. 622

[HB 30]

AN ACT TO ESTABLISH A MONTANA EDUCATIONAL TELECOMMUNICATIONS NETWORK TO SUPPORT EDUCATION, ECONOMIC DEVELOPMENT, AND GOVERNMENT SERVICES IN THE STATE; TO DESIGNATE DUTIES AND RESPONSIBILITIES FOR THE NETWORK TO THE DEPARTMENT OF ADMINISTRATION, THE SUPERINTENDENT OF PUBLIC INSTRUCTION, AND THE COMMISSIONER OF HIGHER EDUCATION; TO PROVIDE AN APPROPRIATION AND OTHER FUNDING MECHANISMS FOR THE PROGRAM; AMENDING SECTIONS 20-9-343 AND 20-9-344, MCA; REPEALING SECTION 20-7-1001, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the school funding reform legislation in House Bill No. 28 (Chapter 11), Special Laws of June 1989, promotes the use of telecommunications technology for the purpose of enhancing the equal educational opportunities provided to students in the Montana public school system; and

WHEREAS, the Department of Administration, the Superintendent of Public Instruction, and the Montana University System, with the assistance of private consulting services and other private and public entities, have followed the directive in House Bill No. 28 and have completed the needs assessment and network design for improvements in the Montana education system through telecommunications technology; and

WHEREAS, Montana's future depends on the ability to provide quality educational opportunities and on the ability to train and retrain the state's work force, regardless of location in the state; and

WHEREAS, telecommunications can contribute to equal educational opportunity for all Montanans through improved access to a wide range of educational needs, such as specialized coursework in languages, mathematics, and the sciences, college credit coursework, adult education, teacher inservice training, and preparation for professional recertification; and

WHEREAS, by both past actions and future commitments, the private sector has demonstrated its willingness to share in the funding for development and enhancement of an educational telecommunications network in Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose — definition.** (1) The purpose of [sections 1 through 3] is to establish a Montana educational telecommunications network.

(2) For the purposes of [sections 1 through 3], "network" means the Montana educational telecommunications network (METNET).

(3) The aims of the network are to provide:

(a) instructional and educational coursework and materials through telecommunications delivery to students in kindergarten through 12th grade in the Montana public school system;

(b) instructional and educational coursework and materials through telecommunications delivery to students enrolled in units of the Montana university system, the vocational-technical centers, and the community colleges;

(c) instructional and professional development or other appropriate inservice training for teachers in the schools of the state; and

(d) telecommunications capabilities to agencies, subdivisions of state government, and public libraries in order to improve their ability to perform their responsibilities and duties.

Section 2. **Agency cooperation — responsibilities.** (1) To meet the objectives of the network, the following entities shall cooperate with one another:

(a) the department of administration, with its responsibilities for telecommunications for agencies of state government;

(b) the superintendent of public instruction, with a supervisory role over the public system of elementary and high schools; and

(c) the commissioner of higher education, with responsibilities to the Montana university system, the vocational-technical centers, and the community colleges.

(2) The responsibilities of the superintendent of public instruction to the network include but are not limited to:

(a) general supervision of delivery of educational materials through telecommunications to elementary and high school districts in the state;

(b) compilation, maintenance, and dissemination to participating school districts of information that identifies the educational programming available from within and from outside the state;

(c) training of teachers and other school personnel in the use of telecommunications technologies for instructional purposes;

(d) assistance to school districts in identifying and procuring the telecommunications technologies needed to interface with the network;

(e) identification of production capability for telecommunication of educational materials;

(f) assistance to participating school districts with group purchases of instructional and educational materials;

(g) coordination with the commissioner of higher education and the units of the Montana university system to offer advanced placement courses, teacher inservice training, and other instruction through the network;

(h) payment of the superintendent's share of the network costs to the department of administration, as provided in [section 4];

(i) coordinate with the department of administration to ensure compatibility of network components, to minimize duplication of efforts on behalf of the network, and to maximize use of the network by school districts; and

(j) determine the kinds of equipment, inservice, and district accounting necessary to implement the provisions of [sections 1 through 3] for school districts.

(3) The responsibilities of the department of administration to the network include but are not limited to:

(a) provision of technical support to the coordinating agencies referred to in subsection (1);

(b) development of standards of compatibility for the network;

(c) procurement and management of network equipment and facilities that have shared use by multiple users or agencies;

(d) assistance with procurement, installation, maintenance, and operation of end-terminal equipment and facilities of the network;

(e) minimizing any duplication of equipment and facilities within the network and in conjunction with the department of administration's other networking capabilities;

(f) coordination of use of the network by state agencies, subdivisions of the state, and public libraries in a manner that does not interfere with the delivery of the primary network function of providing educational services to school districts and state units of higher education;

(g) studying the use of the network by Native American tribal colleges and other nonpublic education institutions in the state, with the long-range goal of coordinating the use of the network with those entities; and

(h) maintenance of cost and usage records and a billing system for user agencies for services rendered that incur marginal costs for the network.

(4) The responsibilities of the commissioner of higher education to the network include but are not limited to:

(a) coordination of the use of the network among the units of higher education and with the superintendent of public instruction and the department of administration;

(b) assistance to the units of the Montana university system to provide college credit courses through the network to students throughout the state;

(c) coordination with the superintendent of public instruction to develop advance placement courses for high school students in Montana, teacher inservice training, and other services and instruction through the network;

(d) assistance to the units of the Montana university system, the vocational-technical centers, and the community colleges in defining their specific needs for interfacing with the network;

(e) assistance to participating units, centers, and colleges with group purchases of instructional and educational materials; and

(f) determination of the kinds of equipment, inservice, and accounting necessary to implement the provisions of [sections 1 through 3] for the university system, community colleges, and vocational-technical centers.

Section 3. **Fee collection and disposition for operational costs.** As a condition of participation in the network, the Montana university system, vocational-technical centers, and community colleges shall collect from appropriate discretionary funds in a manner approved by the board of regents an amount not to exceed $1 for each full-time equivalent student enrolled in the units, centers, or colleges. The funds collected must be deposited with the commissioner of higher education by July 1 of the fiscal year, beginning with fiscal year 1992 for the purposes of [section 2(4)]. The commissioner of higher education shall pay the department of administration the commissioner's share of the network costs, as provided in [section 4].

Section 4. **Apportionment of costs.** The superintendent of public instruction and the commissioner of higher education shall share on a prorated basis according to the related student counts any costs incurred by the department of administration for the purposes of [section 2(3)].

Section 5. Section 20-9-343, MCA, is amended to read:

"20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for distribution to the public schools for the purposes of payment of guaranteed tax base aid and equalization of the foundation program *and for the Montana educational telecommunications network as provided in [section 1].*

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid as required for *the purposes of* guaranteed tax base aid ~~and~~, *the* foundation program ~~purposes~~, *and the Montana educational telecommunications network,* throughout the biennium.

(3) The following must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;

(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) money allocated to state equalization from the collection of the severance tax on coal;

(d) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) money received from the state equalization aid levy under 20-9-360;

(g) income from the lottery, as provided in 23-5-1027;

(h) the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333;

(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; and

(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704(2).

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium."

Section 6. Section 20-9-344, MCA, is amended to read:

"20-9-344. Purpose of state equalization aid and duties of the board of public education for distribution — conditions of first payment. (1) The money available for state equalization aid must be distributed and apportioned to provide:

(a) an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings and grounds, and transportation; *and*

(b) the Montana educational telecommunications network as provided in [section 1].

(2) The board of public education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law and in a manner that provides for monthly distribution to each district of its foundation program amount and to each county and district distribution of its guaranteed tax base aid;

(b) have the power to require reports from the county superintendents, budget boards, county treasurers, and trustees as it considers necessary; and

(c) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education may not increase or decrease the state equalization aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(3) The board of public education may order the superintendent of public instruction to withhold distribution of state equalization aid or order the county superintendent of schools to withhold county equalization money from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status.

(4) Prior to any proposed order by the board of public education to withhold distribution of state equalization aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(5) If a district or county receives more state equalization aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the department of commerce.

(6) (a) The first foundation program payment and guaranteed tax base aid payment must be based on an estimate of 20% of the entitlement of each district or county and distributed by July 15 of the school fiscal year.

(b) Each subsequent monthly payment must be at least 7% of the entitlement of each district or county."

Section 7. **Appropriations.** (1) There is appropriated $450,000, $300,000 of which is from the general fund, to the department of administration for each year of the biennium ending June 30, 1993, to be used for the Montana educational telecommunications network if $150,000 of the appropriated amount is available in cash or equipment value from federal or other sources. If less than $150,000 of the appropriated amount is available from federal or other funds, the allowable expenditures from the appropriation are reduced proportionately and any remainder of the appropriation must revert to the general fund.

(2) There is appropriated for each fiscal year of the biennium ending June 30, 1993, from the state equalization aid account in 20-9-343 to the superintendent of public instruction an amount equal to $1 for each average number belonging calculated for the state for the previous school fiscal year for the purposes of [section 2(2)].

(3) There is appropriated each year of the biennium ending June 30, 1993, to the department of administration from the money collected under the provisions of [section 3] and subsection (2) of this section the amount equal to any costs incurred by the department of administration for the purposes of [section 2(3)].

Section 8. **Repealer.** Section 20-7-1001, MCA, is repealed.

Section 9. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1991.

CHAPTER NO. 623

[HB 145]

AN ACT REQUIRING OIL RETAILERS AND WHOLESALERS TO DISPLAY A SIGN INDICATING THE LOCATION OF THE NEAREST WASTE OIL RECYCLING COLLECTION CENTERS.

WHEREAS, under new federal regulations, most crankcase oil is expected to be classified as hazardous; and

WHEREAS, the use of waste oil, used oil, or other material that is contaminated with dioxin or any hazardous material is prohibited for use as a dust suppressant under 40 CFR 266.23; and

WHEREAS, other means of management are available, including rerefining and use as a substitute fuel.

STATEMENT OF INTENT

A statement of intent is required for this bill in order for the department of health and environmental sciences to adopt rules to implement [section 1]. The department shall design an oil recycling sign to be displayed in retail stores and wholesale outlets and shall distribute the signs to oil retailers.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Waste oil notice.** (1) Each retailer and wholesaler offering motor oil for sale must visibly display at an appropriate location within the retail store or wholesale outlet a sign indicating the location of the nearest waste oil recycling collection centers if the center is within 25 miles of the retailer or wholesaler.

(2) The department of health and environmental sciences shall design an oil recycling sign to be used by retailers and wholesalers. The department may establish the specifications for the sign by rule.

Approved April 24, 1991.

CHAPTER NO. 624

[HB 234]

AN ACT APPROPRIATING MONEY FROM THE CAPITAL PROJECTS FUND FOR THE LAND PURCHASE FOR AND CONSTRUCTION AND REMODELING OF A STATE NURSING HOME OR DOMICILIARY HOME AT GLENDIVE, MONTANA, FOR VETERANS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation for veterans' home project.** (1) The following money is appropriated for the biennium ending June 30, 1993, from the capital projects fund: $1,991,897 to the department of administration for construction and remodeling, including land purchase and design costs, of a state nursing home and domiciliary home at Glendive, Montana, for veterans in Montana.

(2) There is appropriated to the department of administration for the biennium ending June 30, 1993, $3,699,237 in spending authority from the federal special revenue received from the veterans benefits administration.

Approved April 24, 1991.

CHAPTER NO. 625

[HB 298]

AN ACT ELIMINATING THE REQUIREMENT FOR THE DEPARTMENT OF ADMINISTRATION TO INCLUDE IN ITS BUDGET APPROPRIATION REQUESTS FOR THE CUSTODIAL CARE OF THE CAPITOL BUILDINGS AND EQUIPMENT; AMENDING SECTION 2-17-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-111, MCA, is amended to read:

"**2-17-111. Custodial care of capitol buildings and grounds.** (1) The department of administration is custodian of all state property in the state capitol area, which is the geographic area within a 10-mile radius of the state capitol.

(2) It is the duty of the department to supervise and direct the work of caring for and maintaining buildings and equipment in the state capitol area. ~~The department shall include in the department's budget the necessary requests for appropriations for the maintenance, repair, replacement, renewal, or addition to state buildings and equipment in the state capitol area.~~ The department shall provide or approve all custodial, maintenance, and security work done on state-owned or leased buildings in the state capitol area.

(3) A state agency may not alter, improve, repair, or remodel a state building in the state capitol area without the approval of the department.

(4) It is the duty of the department of fish, wildlife, and parks to maintain or approve the maintenance of the grounds in the state capitol area."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved April 24, 1991.

CHAPTER NO. 626

[HB 321]

AN ACT REQUIRING THAT INTEREST AND PENALTIES ASSESSED AND COLLECTED ON CERTAIN TAXES BE DEPOSITED IN THE STATE GENERAL FUND; CLARIFYING THE ALLOCATION OF REFUNDS; AMENDING SECTIONS 15-1-501 AND 15-31-702, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-501, MCA, is amended to read:

"**15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund all money received by him from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone company license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must be deposited as follows:

(a) 57% *of the taxes* in fiscal year 1990 and 50% *of the taxes* in fiscal year 1991, to the credit of the state general fund;

(b) 9.8% *of the taxes* in fiscal year 1990 and 8.7% *of the taxes* in fiscal year 1991, to the credit of the debt service account for long-range building program bonds as described in 17-5-408; ~~and~~

(c) 33.2% *of the taxes* in fiscal year 1990 and 41.3% *of the taxes* in fiscal year 1991, to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343~~.~~*; and*

(d) all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must be deposited as follows:

(a) 64% *of the taxes* in fiscal year 1990 and 61% *of the taxes* in fiscal year 1991, to the credit of the state general fund;

(b) 11% *of the taxes* in fiscal year 1990 and 10.5% *of the taxes* in fiscal year 1991, to the credit of the debt service account for long-range building program bonds as described in 17-5-408; ~~and~~

(c) 25% *of the taxes* in fiscal year 1990 and 28.5% *of the taxes* in fiscal year 1991, to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343~~.~~*; and*

(d) all interest and penalties to the credit of the state general fund.

(4) The state treasurer shall also deposit to the credit of the state general fund all money received by him from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections must be deposited in the general fund.

(6) All refunds of taxes must be attributed to the funds in which the taxes are deposited. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are deposited."

Section 2. Section 15-31-702, MCA, is amended to read:

"**15-31-702. Distribution of corporation license taxes collected from banks or savings and loan associations.** (1) All corporation license taxes, *interest, and penalties* collected from banks and savings and loan associations shall be distributed in the following manner:

(a) 20% must be remitted to the state treasurer to be allocated as provided in 15-1-501(2); and

(b) 80% is statutorily appropriated, as provided in 17-7-502, for allocation to the various taxing jurisdictions within the county in which the bank or savings and loan association is located.

(2) The corporation license taxes, *interest, and penalties* distributed under subsection (1)(b) shall be allocated to each taxing jurisdiction in the proportion that its mill levy for that fiscal year bears to the total mill levy of the taxing authorities of the district in which the bank or savings and loan association is located.

(3) "Taxing jurisdictions" means, for the purposes of this section, all taxing authorities within a county permitted under state law to levy mills against the taxable value of property in the taxing district in which the bank or savings and loan association is located.

(4) If a return filed by a bank or savings and loan association involves branches or offices in more than one taxing jurisdiction, the department of revenue shall provide a method by rule for equitable distribution among those taxing jurisdictions."

Section 3. **Effective date — applicability.** (1) [This act] is effective July 1, 1991.

(2) [Sections 1 and 2] apply to all tax interest and penalties collected after June 30, 1992, regardless of when the tax, interest, or penalty was originally due.

Approved April 24, 1991.

CHAPTER NO. 627

[HB 334]

AN ACT REVISING THE TAXATION OF CERTAIN LIVESTOCK; ALLOWING A LIVESTOCK OWNER TO ELECT TO BE TAXED ON A PRORATED BASIS FOR LIVESTOCK MOVED INTERSTATE DURING THE TAX YEAR; PROVIDING FOR A REFUND OF PROPERTY TAXES PAID ON LIVESTOCK FOR A PERIOD LONGER THAN THE ACTUAL NUMBER OF MONTHS THE LIVESTOCK ARE IN THE STATE; PROVIDING FOR AN ADDITIONAL ASSESSMENT OF TAXES ON LIVESTOCK FOR THE ACTUAL NUMBER OF MONTHS THE LIVESTOCK ARE IN THE STATE; PROVIDING FOR A REFUND OF THE PER CAPITA LEVY FOR LIVESTOCK MOVED OUT OF STATE; EXPANDING THE DEFINITION OF LIVESTOCK TO INCLUDE LLAMAS, DOMESTIC BISON, AND DOMESTIC UNGULATES; AMENDING SECTIONS 15-24-921, 15-24-922, AND 15-24-926, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Election for proration of tax on livestock — refunds — additional assessment.** (1) An owner of livestock who moves his livestock interstate may elect to have his nonexempt livestock taxed on a prorated basis.

(2) The owner shall file his election with the county assessor:

(a) on the statement required in 15-24-903; or

(b) if his livestock have taxable situs in the state before March 1, on a form prescribed by the department. The statement must indicate the number of months the owner's livestock will be in the state.

(3) If a livestock owner elects to be taxed on a prorated basis, the tax on livestock that are moved interstate must be prorated according to the ratio of the number of months the livestock have taxable situs in the county to the total number of months in the taxable year. Livestock must be prorated as provided in this section regardless of when the livestock gain taxable situs in the county during the taxable year.

(4) Subject to the provisions of 15-16-601, a taxpayer whose nonexempt livestock are assessed under subsection (3) for a period longer than the actual number of months that the livestock have taxable situs in the state is entitled to a refund. The amount of the refund is equal to the difference between the original prorated amount paid and the subsequent amount owed after the actual number of tax situs months are determined at the end of the tax year. A taxpayer shall apply for a refund allowed under this subsection by January 31 following the year of assessment. The application must include a statement showing the date when the livestock were moved out of the state.

(5) A taxpayer whose nonexempt livestock are assessed under subsection (3) for a period shorter than the actual number of months that the livestock have taxable situs is subject to additional taxes for the number of additional months that the livestock has taxable situs in the state.

Section 2. Section 15-24-921, MCA, is amended to read:

"**15-24-921. Per capita tax levy to pay expenses of enforcing livestock laws.** (1) In addition to appropriations made for such purposes, a per capita tax is hereby authorized and directed to be levied by the county assessor on all poultry and bees, all swine 3 months of age or older, and all other livestock 9 months of age or older in each county of this state for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the livestock laws of the state and for the payment of bounties on wild animals as hereinafter specified.

(2) As used in this section, "livestock" means cattle, sheep, swine, poultry, bees, goats, horses, mules, ~~and~~ asses, *llamas, domestic bison, and domestic ungulates.*"

Section 3. Section 15-24-922, MCA, is amended to read:

"**15-24-922. Board of livestock to prescribe per capita levy —** ***refunds.*** (1) The board of livestock shall annually prescribe the amount of the per capita levy to be made against livestock of all classes for the purpose indicated in 15-24-921.

(2) The per capita tax levy must be calculated each year to provide not more than 110% of the average annual revenue that was generated in the 3 previous years, beginning with revenue generated by 81-7-104 and this section in the taxable years 1985, 1986, and 1987. The calculation shall apply a reasonable factor for nonpayment and late payment of taxes and for reimbursement to the counties pursuant to 15-24-925 for collection of the levy.

(3) (a) A livestock owner taxed under [section 1] is entitled to a refund of the per capita levy collected under 15-24-921 based on the number of months the livestock have taxable situs in the state. The amount of the refund is equal to the ratio of the number of months the livestock do not have taxable situs in the state to the number of months in the tax year, multiplied by the original per capita levy due. A taxpayer shall apply to the board of livestock on a form prescribed by the board for a refund allowed under this subsection by January 31 following the taxable year. The application must include a statement showing the date when the livestock were moved out of the state.

(b) For the purposes of 15-24-921 and this section, the per capita levy may not be prorated."

Section 4. Section 15-24-926, MCA, is amended to read:

"**15-24-926. Livestock reserve fund.** (1) The county treasurer may, at the discretion of the county governing body, deposit up to 5% of the property tax collected each year on livestock ~~assessed on the average inventory basis~~ *or each year on a prorated basis as provided in [section 1]* in a livestock reserve fund.

(2) Refunds for overpayment of property tax on livestock ~~shall~~ *must* be issued from this fund.

(3) When the amount in a livestock reserve fund exceeds 10% of the total property tax collected in a year on livestock ~~assessed on the average inventory basis~~ *or each year on a prorated basis as provided in [section 1]*, the excess funds ~~shall~~ *must* be transferred to the county general fund and included in the next year's county budget."

Section 5. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 24, part 9, and the provisions of Title 15, chapter 24, part 9, apply to [section 1].

Section 6. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1991.

CHAPTER NO. 628

[HB 393]

AN ACT ALLOWING THE DEPARTMENT OF ADMINISTRATION TO APPROVE LONG-TERM LOANS TO ACCOUNTING ENTITIES IN THE FEDERAL AND STATE SPECIAL REVENUE FUNDS UNDER SPECI-

FIED CIRCUMSTANCES; AUTHORIZING THE DEPARTMENT TO APPROVE THE LOANS IF THE LOANS ARE NECESSARY TO PROVIDE CASH FOR DISBURSEMENTS MADE PENDING RECEIPT OF REIMBURSEMENT FROM FEDERAL, PRIVATE, OR OTHER GOVERNMENTAL ENTITY SOURCES; AMENDING SECTION 17-2-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-2-107, MCA, is amended to read:

"**17-2-107. Accurate accounting records and interentity loans.** (1) The department of administration shall record receipts and disbursements for treasury funds and for accounting entities within treasury funds and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each accounting entity. The department of administration shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money or loans do not result in inflation of figures reflecting total governmental costs and revenues.

(2) (a) When the expenditure of an appropriation from a fund designated in 17-2-102(1)(a) through (1)(c) is necessary and the cash balance in the accounting entity from which the appropriation was made is insufficient, the department of administration may authorize a temporary loan, bearing no interest, of unrestricted money from other accounting entities if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. An accounting entity receiving a loan or an accounting entity from which a loan is made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended.

(b) (i) When an expenditure from a fund or subfund designated in 17-2-102(1)(d)(i)(A) through (1)(d)(vi) is necessary and the cash balance in the fund or subfund from which the expenditure is to be made is insufficient, the commissioner of higher education may authorize a temporary loan, bearing interest as provided in subsection (4), of money from the agency's other funds or subfunds if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is extended.

(ii) One accounting entity within each fund or subfund designated in 17-2-102(1)(d)(i)(A) through (1)(d)(vi) must be established for the sole purpose of recording loans between the funds or subfunds. This accounting entity is the only accounting entity within each fund or subfund that may receive a loan or from which a loan may be made.

(c) A loan made under subsection (2)(a) or (2)(b) must be repaid within 1 calendar year of the date the loan is approved unless it is extended under subsection (3) or by specific legislative authorization.

(3) Under unusual circumstances the director of the department of administration or the board of regents may grant one extension for up to 1 year for a loan made under subsection (2)(a) or (2)(b). The director or board shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the current unrestricted subfund to funds designated in 17-2-102(1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool. Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings, other than investment earnings on student activity fees used to support student governments at units of the university system, are credited to the state general fund.

(5) If for two consecutive fiscal yearends a loan or an extension of a loan has been authorized to the same accounting entity as provided in subsection (2) or (3), the department of administration or the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the second loan or extension was made, an analysis of the solvency of the accounting entity or accounting entities within the university fund or subfund, and a plan for repaying the loans.

(6) If for two consecutive fiscal yearends an accounting entity in a fund or subfund designated in 17-2-102(1)(d)(i) through (1)(d)(vi) has a negative cash balance, the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan to address any problems concerning the accounting entity's negative cash balance or solvency.

(7) (a) An accounting entity in a fund designated in 17-2-102(1)(a) through (1)(c) may not have a negative cash balance at fiscal yearend. The department of administration may, however, allow an accounting entity to carry a negative balance at any point during the fiscal year if the negative cash balance does not exist for more than 7 working days.

(b) (i) Except as provided in subsection (7)(b)(ii), a unit of the university system or vocational-technical center shall maintain a positive cash balance in the funds and subfunds designated in 17-2-102(1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi).

(ii) If a fund or subfund inadvertently has a negative cash balance, the department of administration may allow the fund or subfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more than 7 working days, a transaction may not be processed through the statewide accounting system for that fund or subfund.

(8) Notwithstanding the provisions of subsections (2) through (4), the department of ~~social and rehabilitation services~~ *administration* may ~~maintain positive cash balances~~ *authorize loans to accounting entities* in the federal and state special revenue funds with long-term repayment whenever necessary due to the timing ~~for transmittal of obligated matching funds~~ *of the receipt of agreed upon reimbursements from federal, private, or other governmental entity sources for disbursements made. The department of administration may approve the loans* if ~~it~~ *the requesting agency* can ~~be demonstrated to the satisfaction of the department of administration~~ *demonstrate* that the total loan balance does not exceed total receivables from federal, *private,* ~~and county governments~~ *or other governmental entity sources* and receivables have been billed on a timely basis. The loan must be repaid under such terms and conditions as may be determined by the department of administration or by specific legislative authorization."

Section 2. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved April 24, 1991.

CHAPTER NO. 629

[HB 489]

AN ACT TO DEFINE THE REQUIREMENTS FOR PAYMENT OF CLOTHING FOR CHILDREN PLACED IN FOSTER HOMES; TO APPROPRIATE FUNDS TO THE DEPARTMENT OF FAMILY SERVICES; AMENDING SECTION 41-3-1103, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, a clothing allowance is not included in the basic payment for foster care; and

WHEREAS, children who are removed from their home and placed in foster care typically have only the clothing they are wearing and have few other personal effects; and

WHEREAS, children placed in foster care eventually have the need for additional clothing because of their growth or the change in seasons or weather.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-1103, MCA, is amended to read:

"**41-3-1103. Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, child-care agencies, and detention facilities and services for youth in need of care, youth in need of supervision, and delinquent youth, as defined in 41-5-103;

(b) exercise licensing authority over all detention facilities as defined in 41-5-103, youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and delinquent youth;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of supervision, and indigent delinquent youths who require such treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide facilities and services for youth in need of care, youth in need of supervision, and delinquent youth;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in

such facilities. *Payments for the clothing of a child placed in a youth foster home must be provided to the extent the child needs a basic wardrobe or has a special clothing need. However, payments for clothing may not exceed $300 a year per child.*"

Section 2. **Appropriation.** The amount of $266,186 from the general fund and $112,996 from federal special revenue funds are appropriated to the department of family services for the biennium ending June 30, 1993, to carry out the purposes of [this act].

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved April 24, 1991.

CHAPTER NO. 630

[HB 508]

AN ACT ESTABLISHING MONTANA AS A MEMBER OF THE PACIFIC NORTHWEST ECONOMIC REGION; PROVIDING FOR THE APPOINTMENT OF MEMBERS TO THE PACIFIC NORTHWEST ECONOMIC REGION AND ITS COMMITTEES; APPROPRIATING FUNDS FOR PARTICIPATION IN THE PACIFIC NORTHWEST ECONOMIC REGION; AMENDING SECTIONS 5-11-301 AND 85-3-213, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Legislative findings.** (1) The legislature finds that there is a new emerging global economy in which countries and regions located in specific areas of the world are forging new cooperative arrangements.

(2) The legislature finds that these new cooperative arrangements are increasing the competitiveness of the participating countries and regions, thus increasing the economic benefits and the overall quality of life for the citizens of the individual countries and regions.

(3) The legislature also finds that the Pacific Northwest states of Alaska, Idaho, Montana, Oregon, and Washington and the Canadian provinces of Alberta and British Columbia are in a strategic position to act together as a region, thus increasing the overall competitiveness of the individual states and provinces that will provide substantial economic benefits for all of their citizens.

Section 2. **Participation in Pacific Northwest economic region.** The Pacific Northwest economic region is hereby enacted into law and entered into by the state of Montana as a party and is in full force and effect in accordance with the terms of this agreement.

THE PACIFIC NORTHWEST ECONOMIC REGION

ARTICLE I — Policy and Purpose

(1) States and provinces participating in the Pacific Northwest economic region shall seek to develop and establish policies that:

(a) promote greater regional collaboration among the seven entities;

(b) enhance the overall competitiveness of the region in international and domestic markets;

(c) increase the economic well-being of all citizens in the region; and

(d) improve the quality of life of the citizens of the Pacific Northwest.

(2) (a) States and provinces recognize that there are many public policy areas in which cooperation and joint efforts would be mutually beneficial. These areas include but are not limited to:

(i) international trade;

(ii) economic development;

(iii) human resources;

(iv) the environment and natural resources;

(v) energy; and

(vi) education.

(b) Parties to this agreement shall work diligently to establish collaborative activity in these and other appropriate policy areas where such cooperation is considered to be worthwhile and of benefit to the participating entities.

(c) Participating states and provinces also agree that there are areas in which cooperation may not be feasible.

(3) The substantive actions of the Pacific Northwest economic region may take the form of uniform legislation enacted by two or more states or provinces or policy initiatives endorsed as appropriate by participating entities. It is not necessary for all states and provinces to participate in each initiative.

ARTICLE II — Eligible Parties and Effective Date

(1) Each of the following states and provinces is eligible to become a party to this agreement: Alaska, Alberta, British Columbia, Idaho, Montana, Oregon, and Washington.

(2) This agreement establishing the Pacific Northwest economic region becomes effective when it is executed by one state, one province, and one additional state or province in a form considered appropriate by each entity.

(3) This agreement continues in force and remains binding upon each of the states and provinces entering into it until renounced by the state or province.

(4) Renunciation of this agreement must be preceded by sending 1 year's notice in writing of intention to withdraw from the agreement to all other parties to the agreement.

ARTICLE III — Organizational Structure

(1) Each state and province participating in this agreement shall appoint representatives to the Pacific Northwest economic region.

(2) The organizational structure of the Pacific Northwest economic region shall consist of the following:

(a) a delegate council consisting of four legislators from each participating state and four representatives from each participating province; and

(b) an executive committee consisting of one legislator from each participating state or province who is a member of the delegate council.

(3) Policy committees may be established to carry out further duties and responsibilities of the Pacific Northwest economic region.

ARTICLE IV — Duties and Responsibilities

(1) The delegate council has the following duties and responsibilities:

(a) facilitate the involvement of other government officials in the development and implementation of specific collaborative initiatives;

(b) work with policymaking committees in the development and implementation of specific initiatives;

(c) approve general organizational policies developed by the executive committee;

(d) provide final approval of the annual budget and staffing structure for the Pacific Northwest economic region developed by the executive committee; and

(e) other duties and responsibilities as may be established in the rules and regulations of the Pacific Northwest economic region.

(2) The executive committee shall perform the following duties and responsibilities:

(a) elect the president and vice president of the Pacific Northwest economic region;

(b) approve and implement general organizational policies;

(c) develop the annual budget;

(d) devise the annual action plan;

(e) act as liaison with other public and private sector entities; and

(f) other duties and responsibilities established in the rules and regulations of the Pacific Northwest economic region.

(3) The rules and regulations of the Pacific Northwest economic region shall establish the procedure for voting.

ARTICLE V — Membership of Policy Committees

(1) Policy committees dealing with specific subject matter may be established by the executive committee.

(2) Each participating state and province shall appoint legislators to sit on these policy committees in accordance with its own rules and regulations concerning such appointments.

ARTICLE VI — General Provisions

This agreement may not be construed to limit the powers of any state or province or to repeal or prevent the enactment of any legislation.

Section 3. **Appointment to Pacific Northwest economic region — vacancy.** (1) Pursuant to [section 2, Article III], four legislators must be appointed to the delegate council of the Pacific Northwest economic region as follows:

(a) one member to be appointed by the president of the senate;

(b) one member to be appointed by the speaker of the house of representatives;

(c) one member to be appointed by the minority leader of the senate; and

(d) one member to be appointed by the minority leader of the house of representatives.

(2) If the Pacific Northwest economic region establishes policy committees under [section 2, Article V], appointments of legislators to the policy committees are to be made by the legislative council as provided in 5-11-301.

(3) In the event that a vacancy occurs, appointment to fill the vacancy must be made in the same manner as the original appointment.

Section 4. **Compensation of appointees to Pacific Northwest economic region.** Members appointed to the Pacific Northwest economic region under [section 3] are entitled to compensation as provided in 5-2-302.

Section 5. Section 5-11-301, MCA, is amended to read:

"**5-11-301. Functions of legislative council — interstate cooperation.** It shall be a function of the legislative council to:

(1) carry forward the participation of the state of Montana as a member of the council of state governments, and the legislative council is hereby designated as the Montana commission on interstate cooperation;

(2) encourage and assist the government of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise with the other states, with the federal government, and with local units of government;

(3) establish such delegations and committees as may be deemed advisable to confer with similar delegations and committees from other states concerning problems of mutual interest. The membership of such delegations and committees may consist of legislators and employees of the state other than members of the legislative council. Members of such delegations and committees shall be reimbursed and compensated as provided in 5-2-302.

(4) endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for interstate compacts and reciprocal or uniform legislation and by facilitating the adoption of uniform or reciprocal administrative rules and regulations, informal cooperation of governmental offices, personal cooperation among governmental officials and employees, interchange and clearance of research and information, and any other suitable process~~.~~*;*

(5) make appointments to any policy committee established by the Pacific Northwest economic region as provided in [section 3(2)]."

Section 6. Section 85-3-213, MCA, is amended to read:

"**85-3-213. State special revenue fund.** All license and permit fees and fines collected under this chapter, other than those collected in a justice's court, shall be deposited in the state special revenue fund for use by the department in the administration of this chapter *or as appropriated by the legislature.*"

Section 7. **Appropriation.** There is appropriated from the state special revenue account 02429 to the legislative council for the biennium ending June 30, 1993, the balance remaining in that account on June 30, 1991, for participation in the Pacific Northwest economic region.

Section 8. **Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 5, chapter 11, and the provisions of Title 5, chapter 11, apply to [sections 1 through 4].

Section 9. **Effective dates.** (1) [Sections 1 through 6, 8, and this section] are effective on passage and approval.

(2) [Section 7] is effective July 1, 1991.

Approved April 24, 1991.

CHAPTER NO. 631

[HB 595]

AN ACT ALLOWING EMPLOYEES COVERED UNDER THE STATEWIDE POLICE OFFICERS' RETIREMENT SYSTEM TO RETIRE AFTER 20 YEARS OF SERVICE; REMOVING THE REQUIREMENT THAT A POLICE OFFICER BE 50 YEARS OF AGE TO BE ELIGIBLE FOR RETIREMENT; AMENDING SECTIONS 19-9-104, 19-9-601, 19-9-702, 19-9-703, 19-9-801, 19-9-802, 19-9-804, AND 19-9-903, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-104, MCA, is amended to read:

"**19-9-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Administrator" means the public employees' retirement division of the department of administration.

(2) "Base salary" means the sum of the monthly compensations for each month in a given calendar year.

(3) "Board" means the retirement board described in 2-15-1009.

(4) "Credited service" means the aggregate of a member's prior service and membership service.

(5) "Death benefit" means a monthly annuity paid to a surviving spouse or dependent child or a lump-sum payment made to a beneficiary on behalf of a member who dies before retirement.

(6) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(7) "Employer" means any city which participated in a prior plan or which elects to join this plan under 19-9-107.

(8) "Employer annuity" means monthly payments for life derived from employer and state contributions.

(9) "Final average salary" means the monthly compensation of a member, averaged over the last 36 months of his active service or, in the event he has not been a member that long, over the period of his membership.

(10) "Fund" means the pension trust fund in the treasury system designated for the use of the plan.

(11) "Member" means a person who is employed by an employer as a police officer or who is entitled to a retirement allowance by virtue of his service to an employer as a police officer.

(12) "Member contributions" means the total of the deductions from the compensation of a member, either made during a period of active membership hereunder or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(13) "Member's annuity" means monthly payments for life derived from member contributions.

(14) "Membership service" means a period of employment with an employer occurring after June 30, 1977, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(15) "Minimum retirement date" or "normal retirement date" means the first day of the month coinciding with or immediately following~~, if none coincides,~~ the date on which a member ~~becomes both age 50 or older and~~ completes 20 ~~or more~~ years of credited service.

(16) "Monthly compensation" means the wage, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, a member receives as an active police officer.

(17) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(18) "Plan" means the municipal police officers' retirement system created by this chapter.

(19) "Police officer" means a law enforcement officer employed by an employer.

(20) "Prior plan" means the local police reserve or retirement fund of a city which elects to join the plan under 19-9-107 or the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974.

(21) "Prior service" means a period of employment as a police officer for which credit was granted to a member under a prior plan and has been transferred to this plan.

(22) "Retirement allowance" means the employer annuity plus the member's annuity.

(23) "Retirement date" means the date on which the first payment of the retirement, disability, or survivor benefits of a member or a beneficiary is payable.

(24) "Surviving spouse" means the spouse married to a member at the time of the member's death.

(25) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a police officer."

Section 2. Section 19-9-601, MCA, is amended to read:

"**19-9-601. Member contributions.** (1) The normal contribution of each active member is 6% of his monthly compensation ~~or, in~~. *In the case of a member first employed by an employer as a police officer after June 30, 1975, the contribution is 7.2% of his monthly compensation. In* the case of a member first employed by an employer as a police officer after June 30, 1979, ~~7 1/2%~~ *the contribution is 8.7%* of his monthly compensation~~, excluding~~. *Compensation excludes* overtime *payments*, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, for his services as a police officer.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions which would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and his monthly compensation as defined in 19-9-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 3. Section 19-9-702, MCA, is amended to read:

"**19-9-702. State contribution.** The state of Montana shall make its contributions through the state auditor out of the premium tax on motor vehicle property and casualty insurance policies, which premium tax is statutorily appropriated, as provided in 17-7-502, for the contributions. Such payments shall be made annually after the end of each fiscal year but no later than September 1 from the gross premium tax after deduction for cancellations and returned premiums. The administrator shall notify the auditor by April 1 of each year of the annual compensation paid to all active members during the preceding year. ~~Before July 1, 1985, the~~ *The* state's contribution ~~shall be~~ *is:*

(1) 14.04% of ~~such~~ compensation ~~and~~ *paid to members before July 1, 1985;*

(2) 15.06% ~~on and~~ *of compensation paid to members from July 1, 1985, through June 30, 1991; and*

(3) 15.66% of compensation paid to members after July 1, ~~1985~~ *1991.*"

Section 4. Section 19-9-703, MCA, is amended to read:

"**19-9-703. Employer contribution.** Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official out of moneys available to the city for such purpose. ~~Before July 1, 1985, the~~ *The* employer's contribution ~~shall be~~, *which must be paid monthly to the administrator, is:*

(1) 14.04% of the total monthly compensation paid to all active members during the preceding month~~,~~ *before July 1, 1985;*

(2) 13.02% ~~on and after~~ *of the total monthly compensation paid to all active members during the preceding month from* July 1, 1985, ~~and shall be payable monthly to the administrator~~ *through June 30, 1991; and*

(3) 13.92% of the total monthly compensation paid to all active members during the preceding month after July 1, 1991."

Section 5. Section 19-9-801, MCA, is amended to read:

"**19-9-801. Eligibility for service retirement — commencement of allowance.** Members are eligible for retirement and shall retire as provided in this section:

(1) A member ~~who was~~ employed by an employer as a police officer ~~on July 1, 1975,~~ is eligible to receive a service retirement allowance when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank, and has terminated covered employment.

(2) ~~A member who was or is first employed by an employer as a police officer after July 1, 1975, is eligible to receive a service retirement allowance when he has reached the age of 50, has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank, and has terminated covered employment.~~

~~(3)~~ (a) Except as provided in subsection ~~(3)(b)~~ *(2)(b)*, the retirement allowance may commence on the first day of the month following the member's last day of membership service or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application.

(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 55th birthday."

Section 6. Section 19-9-802, MCA, is amended to read:

"**19-9-802. Election to serve additional years.** ~~(1)~~ A police officer who is eligible for service retirement under 19-9-801~~(1) or (2)~~ may retire as of the time he becomes eligible or may elect to serve an additional 1 to 10 years as an active police officer.

~~(2) A police officer whose eligibility depends on 19-9-801(2) and who completes 20 years of service before reaching the age of 50 is considered to have elected to serve an additional year for each year between the completion of his 20th year of service and his 50th birthday and shall be paid the additional 1%, as prescribed in 19-9-804(2), for each such year.~~"

Section 7. Section 19-9-804, MCA, is amended to read:

"**19-9-804. Amount of service retirement allowance — continuation of allowance after death of member.** (1) A police officer who is eligible under ~~subsection (1) or (2) of~~ 19-9-801 and does not elect to serve any additional years as an active police officer shall receive a service retirement allowance equal to one-half his final average salary.

(2) A police officer who is eligible for service retirement after 20 years of service and who elects to serve additional years shall receive the allowance provided for in subsection (1) plus an additional 1% of his final average salary for each year of additional service, up to a maximum of 60% of his final average salary.

(3) Upon the death of a police officer receiving a service retirement allowance under this section, his surviving spouse, if there is one, shall receive from the fund a sum equal to one-half of the officer's final average salary. If the officer leaves one or more dependent children, then upon his death, if he leaves no surviving spouse or upon the death of the surviving spouse, the officer's surviving dependent child, or children collectively if there are more than one, shall receive the same monthly payments a surviving spouse would receive for as long as the child or one of the children remains dependent as defined in 19-9-104. The payments must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata payments to that child must cease and be made to the remaining children until all the children are no longer dependent."

Section 8. Section 19-9-903, MCA, is amended to read:

"**19-9-903. Amount of disability retirement allowance — continuation of allowance after death of member.** (1) A police officer who is eligible under 19-9-902 before completing 20 years of service shall receive a disability retirement allowance equal to one-half his average final salary.

(2) A police officer who is retired under 19-9-902 and who, at the time of his injury or disability, was eligible at his option to be retired under ~~subsection (1) or (2) of~~ 19-9-801 but had elected to serve additional years and was then serving such additional years shall be paid for the additional years at the rate prescribed in 19-9-804(2).

(3) Upon the death of a police officer receiving a disability allowance under this section, his surviving spouse or dependent child is eligible for benefits as provided in 19-9-804(3)."

Section 9. **Effective date.** [This act] is effective July 1, 1991.

Approved April 24, 1991.

CHAPTER NO. 632

[HB 723]

AN ACT CREATING SPECIAL LICENSE PLATES FOR VETERANS OF MILITARY SERVICE AND FOR HOLDERS OF THE PURPLE HEART MEDAL; ALLOCATING PART OF THE LICENSE FEES TO CONSTRUCTION, OPERATION, AND MAINTENANCE OF A STATE VETERANS' CEMETERY; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Special license plates — veterans of military service — disposition of veterans' license plate fee.** (1) A motor vehicle owner and resident of this state who is a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (2) if he:

(a) was separated from the armed services under other than dishonorable circumstances; or

(b) was awarded the purple heart medal.

(2) (a) Upon submission of proof, in a form prescribed by the department, of his qualification under subsection (1), there must be issued to each applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(i) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(ii) a symbol representing the purple heart medal.

(b) Plates must be furnished by the department to the county treasurer, who shall issue them to qualified veterans. The plates must be placed or mounted on the vehicle owned by the veteran designated in the application and must be removed upon sale or other disposition of the vehicle.

(3) (a) Each veteran who receives special license plates under this section is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veterans' or purple heart medal license plate fee of $10.

(b) Upon an original application, the county treasurer shall:

(i) deposit $3 of the special fee in the county general fund;

(ii) remit $1 for deposit in the state general fund; and

(iii) deposit the remainder of the special fee in the state special revenue fund to the credit of the department of military affairs to be appropriated by the legislature for construction, operation, and maintenance of the state veterans' cemetery.

(c) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (3)(b)(iii).

Section 2. **Coordination instruction.** If Senate Bill No. 191 is passed and approved, [sections 1, 3, and 4 of this act] and [section 8 of Senate Bill No. 191] or any other section containing amendments to incorporate into 61-3-332 provisions for special license plates are void and 61-3-332 is amended to read:

"**61-3-332.** *(Temporary)* **Number plates.** (1) ~~Every~~ *A* motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned the vehicle. The number plates are in ~~eight~~ *10* series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", ~~and~~ one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", *one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates.* All markings for the ~~aforementioned~~ *various* kinds of dealers' plates must be placed on the number plates assigned thereto in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide

nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after January 1, 1991, to replace, at renewal as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on such license plates, and the word "Montana" and the year must be placed across the plates. Such registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of such numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings ~~herein~~ provided *in this section*, number plates must ~~have thereon~~ *bear* the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and no year number may be indicated thereon because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and that are used and operated by officials and employees thereof in line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty, there must be placed on the number plates assigned thereto, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of the counties and those of the irrigation districts that obtain plates within each county must begin with number one and be numbered consecutively. *Because these number plates are of a permanent nature, they are subject to replacement by the department* *only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.*

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. No registration or license fee may be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, handicapped persons, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued a special license plate with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the division to issue one set of national guard plates, and the member shall surrender the plates to the division upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued a special license plate with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of one set of plates. The member shall surrender the plates to the division upon becoming ineligible to use them.

(c) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the veterans' administration to be service-connected may, upon presentation to the division of proof of the 100% disability, be issued a special license plate under this section with a design or decal displaying the letters "DV".

(i) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(ii) Special license plates issued to a disabled veteran are not transferable to another person.

(iii) A disabled veteran is not entitled to a special license plate for more than one vehicle.

(iv) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by his service record, may upon application and presentation of proof be issued a special license plate with a design or decal displaying the words "ex-prisoner of war" or an abbreviation as the department considers appropriate.

(e) Upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, for one motor vehicle only, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if he was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of proof, in a form prescribed by the department, of his qualification under this subsection, there must be issued to each applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to qualified veterans. The plates must be placed or mounted on the vehicle owned by the veteran designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Each veteran who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue fund to the credit of the department of military affairs to be appropriated by the legislature for construction, operation, and maintenance of the state veterans' cemetery.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of the handicapped person. (Terminates July 1, 1996—sec. 4, Ch. 654, L. 1989.)

61-3-332. *(Effective July 1, 1996)* **Number plates.** (1) ~~Every~~ *A* motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned the vehicle. The number plates are in ~~eight~~ *10* series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", ~~and~~ one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", *one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates.* All markings for the ~~aforementioned~~ *various* kinds of dealers' plates must be placed on the number plates assigned thereto in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after January 1, 1991, to replace, at renewal as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(4) In the case of motorcars and trucks, number plates must be of metal 6 inches wide and 12 inches in length. For number plates issued after 1976, the outline of the state of Montana must be used as a distinctive border on such license plates, and the word "Montana" and the year must be placed across the bottom of the plates. Such registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of such numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates must have thereon the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and no year number may be indicated thereon because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and that are used and operated by officials and employees thereof in line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty, there must be placed on the number plates assigned thereto, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of the counties and those of the irrigation districts that obtain plates within each county must begin with number one and be numbered consecutively. *Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.*

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. No registration or license fee may be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of

plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, handicapped persons, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued a special license plate with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the division to issue one set of national guard plates, and the member shall surrender the plates to the division upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued a special license plate with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of one set of plates. The member shall surrender the plates to the division upon becoming ineligible to use them.

(c) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the veterans' administration to be service-connected may, upon presentation to the division of proof of the 100% disability, be issued a special license plate under this section with a design or decal displaying the letters "DV".

(i) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(ii) Special license plates issued to a disabled veteran are not transferable to another person.

(iii) A disabled veteran is not entitled to a special license plate for more than one vehicle.

(iv) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by his service record, may upon application and presentation of proof be issued a special license plate with a design or decal displaying the words "ex-prisoner of war" or an abbreviation as the department considers appropriate.

(e) Upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, for one motor vehicle only, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if he was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of proof, in a form prescribed by the department, of his qualification under this subsection, there must be issued to each applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to qualified veterans. The plates must be placed or mounted on the vehicle owned by the veteran designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Each veteran who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue fund to the credit of the department of military affairs to be appropriated by the legislature for construction, operation, and maintenance of the state veterans' cemetery.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of the handicapped person."

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [section 1].

Section 4. **Effective date.** [This act] is effective January 1, 1992.

Approved April 24, 1991.

CHAPTER NO. 633

[HB 830]

AN ACT PROVIDING THAT THE CALCULATION FOR A SUPPLEMENTAL BENEFIT FOR A PERSON RETIRED PRIOR TO JULY 1, 1975, UNDER THE STATEWIDE POLICE RETIREMENT SYSTEM BE DETERMINED BY THE BASE SALARY OF THE EMPLOYEE DURING THE CURRENT FISCAL YEAR, RATHER THAN THE PREVIOUS CALENDAR YEAR; AMENDING SECTION 19-9-1007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-1007, MCA, is amended to read:

"**19-9-1007. Supplement to certain pensions.** (1) The payment for each fiscal year to the police officers, surviving spouses, or dependent children described in subsections (2)(a) through (2)(c) may be not less than one-half of the base salary paid in the ~~previous calendar~~ *current fiscal* year in the appropriate city or town to newly confirmed police officers, except that for the fiscal year beginning July 1, 1979, all retirees and their beneficiaries who received a supplement to their retirement allowance on July 1, 1978, and are receiving an allowance on July 1, 1979, shall receive a 3% increase in their retirement allowance in lieu of any other increase.

(2) On or before ~~April~~ *August* 1 of each year, the department of administration shall make a report including the following information:

(a) the names of all police officers who are receiving payments from the plan as of the date of the report and were receiving payments from a prior plan before July 1, 1975;

(b) the names of all surviving spouses or dependent children who are receiving payments from the plan because of the death of a police officer who was receiving payments from a prior plan before July 1, 1975;

(c) the names of all surviving spouses or dependent children who are receiving payments from the plan and who were receiving payments from a prior plan before July 1, 1975, or in the case of dependent children, whose parent, the spouse of a police officer, was receiving payments from a prior plan before July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (3), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each surviving spouse or dependent child (or children) described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from a prior plan before July 1, 1975, his surviving spouse or dependent children are entitled to receive payments from the plan, the amount which would have been paid to an eligible surviving spouse of such police officer had that spouse been receiving payments in the base fiscal year;

(e) the base salary for the ~~previous calendar~~ *current fiscal* year of a newly confirmed police officer of each city or town participating in the plan.

(3) The department of administration shall compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the base salary for the ~~previous calendar~~ *current fiscal* year of a newly confirmed police officer of the appropriate city or town. The difference shall be reported to and paid by the state auditor out of the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-11-512(3) to the administrator ~~after the end of each fiscal year, but~~ no later than September 1. *If the base salary of a newly confirmed police officer has not been set for the current fiscal year in time to be included in the August 1 report to the state auditor, the department shall make any retroactive adjustments necessary to individual supplemental benefits after the base salary has been determined and shall include these amounts in the next year's report for reimbursement at that time.* The premium tax amount paid by the state auditor is statutorily appropriated, as provided in 17-7-502. This payment is in addition to the payment to be made by the state auditor under 19-9-702. The administrator shall use the funds received under this subsection to supplement the monthly payments

to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(4) In addition to the payments made by the auditor as provided in subsection (3), the auditor shall make annual payments of $100,000 after the end of each fiscal year but no later than September 1, until the sum of $500,000 has been paid to the administrator for deposit in the retirement account. These payments are statutorily appropriated as provided in 17-7-502. These payments are to be made to reimburse the retirement account for funds advanced to implement this section.

(5) If more than one dependent child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such dependent children under this section shall be determined as if there were one such dependent child and the supplementary payment shall be made to the dependent children collectively."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1991.

CHAPTER NO. 634

[HB 876]

AN ACT TO REVISE AND CONTINUE THE MIAMI PROJECT; TO EXPAND THE MEMBERSHIP OF THE MIAMI PROJECT ADVISORY COUNCIL TO INCLUDE AN INDIAN TRIBAL MEMBER; TO REQUIRE MORBIDITY REVIEWS OF BIRTHS INVOLVING LOW BIRTHWEIGHT BABIES; TO REQUIRE AMBULATORY PRENATAL CARE FOR PREGNANT WOMEN DURING A PRESUMPTIVE ELIGIBILITY PERIOD; TO AUTHORIZE TARGETED CASE MANAGEMENT SERVICES FOR HIGH-RISK PREGNANT WOMEN; TO PROVIDE MEDICAID ELIGIBILITY TO INFANTS AND PREGNANT WOMEN WHOSE FAMILY INCOME DOES NOT EXCEED 133 PERCENT OF THE FEDERAL POVERTY THRESHOLD; TO MANDATE CONTINUOUS ELIGIBILITY FOR INFANTS AND PREGNANT WOMEN; TO APPROPRIATE FUNDS TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTIONS 2-15-2109, 50-19-311, 50-19-312, 53-6-101, AND 53-6-131, MCA; REPEALING SECTION 15, CHAPTER 649, LAWS OF 1989; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2109, MCA, is amended to read:

"**2-15-2109.** ~~(Temporary)~~—**MIAMI project advisory council.** (1) There is a Montana initiative for the abatement of mortality in infants (MIAMI) project advisory council.

(2) The council is composed of ~~seven~~ *eight* members appointed by the governor as follows:

(a) one person from the department who is involved in providing preventative health services for women and children;

(b) one person from the department of social and rehabilitation services who administers or supervises services under the Montana medicaid program;

(c) one person from a local health department;

(d) one person from among local service providers;

(e) one person representing a nonprofit child health organization;

(f) one private physician who specializes in obstetric or pediatric care; ~~and~~

(g) one person involved in children's issues or programs who is a representative of a parents' organization*; and*

(h) one person who is an enrolled member of a recognized Indian tribe and who is knowledgeable and involved in health services to Indians as a consumer, provider, or advocate.

(3) The council is allocated to the department for administrative purposes only as provided in 2-15-121.

(4) The provisions of 2-15-122(5) through (8) apply to the council and its members. ~~(Terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)~~"

Section 2. Section 50-19-311, MCA, is amended to read:

"**50-19-311.** ~~(Temporary)~~—**MIAMI project.** (1) There is a MIAMI project established in the department.

(2) Under the project, the department shall provide the following services:

(a) infant mortality review;

(b) morbidity review of births involving low birthweight babies;

~~(b)~~*(c)* low birthweight prevention;

~~(c)~~*(d)* assistance to low-income women and infants in gaining access to prenatal care, delivery, and postpartum care;

~~(d)~~*(e)* referral of low-income women and children to other programs to protect the health of women and children, including:

(i) supplemental food programs for women, infants, and children;

(ii) family planning services; and

(iii) other maternal and child health programs;

~~(e)~~*(f)* public education and community outreach to inform the public on:

(i) the importance of receiving early prenatal care;

(ii) the need for good health habits during pregnancy; and

(iii) the availability of special services for pregnant women and for children. ~~*(Terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)*~~"

Section 3. Section 50-19-312, MCA, is amended to read:

"50-19-312. ~~*(Temporary)*~~ **Advisory council — powers and duties.** The council shall:

(1) advise the department on matters relating to administration of the MIAMI project;

(2) review and monitor activities conducted under the project;

(3) gather information relating to infant mortality and *morbidity and the incidence of* low birthweight babies;

(4) identify problems in the quality and availability of maternal and child health services; and

(5) make recommendations to improve maternal and child health services consistent with the purposes of this part. ~~*(Terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)*~~"

Section 4. Section 53-6-101, MCA, is amended to read:

"**53-6-101. Montana medicaid program — authorization of services.** (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of social and rehabilitation services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

~~(h)~~*(j)* services provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

~~(i)~~*(k)* health services provided under a physician's orders by a public health department; and

~~(j)~~*(l)* hospice care as defined in 42 U.S.C. 1396d(o).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23, if funds are specifically appropriated for the inclusion of these services in the Montana medicaid program;

~~(m) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;~~

~~(n)~~*(m)* any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(5) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(6) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost effective.

(7) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

(8) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(9) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(10) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted thereunder. *(Subsection (2)(j) terminates June 30, 1991—sec. 4, Ch. 633, L. 1989~~; Subsection (3)(m) terminates June 30, 1991—sec. 15, Ch. 649, L. 1989~~.)* "

Section 5. Section 53-6-131, MCA, is amended to read:

"53-6-131. **Eligibility requirements.** (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of social and rehabilitation services to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the federal Social Security Act (42 U.S.C. 1381, et seq.) or aid to families with dependent children under Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.).

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if he were to apply for such assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, he would be receiving assistance under one of the programs in subsection (1)(a).

(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan for aid to families with dependent children, other than with respect to school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a hard-to-place child.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the medically needy income level specified for federally aided categories of assistance and his resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance, has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance and his resources are within the resource standards of the federal supplemental security income program.

~~(g) The person is under 1 year of age and:~~

~~(i) has income that does not exceed income standards as may be required by the federal Social Security Act; and~~

~~(ii) has resources that do not exceed standards the department determines reasonable for purposes of the program.~~

~~(2) A person who is pregnant is eligible for pregnancy-related medical assistance under the Montana medicaid program if she:~~

~~(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and~~

~~(b) has resources that do not exceed standards the department determines reasonable for purposes of the program.~~

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

~~(3)~~*(2)* The Montana medicaid program shall pay for the premiums necessary for participation in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare deductibles and coinsurance for a medicare-eligible person who:

(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(b) has resources that do not exceed standards the department determines reasonable for purposes of the program.

~~(4)~~*(3)* The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

~~(5)~~*(4)* Notwithstanding any other provision of this chapter, medical assistance must be provided to ~~pregnant women and to~~ infants *and pregnant women* whose family income does not exceed *133% of* the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) *and 42 U.S.C. 1396a(l)(2)(A)(i).*

(5) A person described in subsection (4) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7). ~~*(Subsection (5) terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)*~~"

Section 6. **Appropriation.** There is appropriated to the department of health and environmental sciences $14,000 from the general fund for the biennium ending June 30, 1993, for the purpose of implementing [this act].

Section 7. **Repealer.** Section 15, Chapter 649, Laws of 1989, is repealed.

Section 8. **Effective date.** [This act] is effective June 30, 1991.

Approved April 24, 1991.

CHAPTER NO. 635

[HB 923]

AN ACT TO REVISE PROCEDURES PERTAINING TO INCOME WITHHOLDING FOR THE PAYMENT OF CHILD SUPPORT TO CONFORM THOSE PROCEDURES TO FEDERAL REGULATIONS; TO PROVIDE FOR ENFORCEMENT OF HEALTH INSURANCE OBLIGATIONS THROUGH INCOME WITHHOLDING; AMENDING SECTIONS 40-4-204, 40-5-226, 40-5-304, 40-5-309, 40-5-402, 40-5-403, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-421, 40-5-433, AND 40-6-116, MCA; REPEALING SECTION 40-5-425, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-204, MCA, is amended to read:

"**40-4-204. Child support — orders to address health insurance — ~~automatic~~ withholding of child support.** (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the custodial parent;

(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and his educational and medical needs;

(e) the financial resources and needs of the noncustodial parent;

(f) the age of the child;

(g) the cost of day care for the child;

(h) any custody arrangement that is ordered or decided upon; and

(i) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of such standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(4) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

~~(5) (a) Except as provided in subsection (5)(b), each district court judgment, decree, or order establishing a child support obligation under this title, whether temporary or final, and each modification of an existing child support order must:~~

~~(i) provide that the amount of child support must be withheld from the obligor's income and paid to the department pursuant to procedures established by the department under Title 40, chapter 5, part 4; and~~

~~(ii) include the obligor's social security number and the name and address of the obligor's employer and of any other payor of income to the obligor.~~

~~(b) Income is not subject to automatic withholding if:~~

~~(i) the obligee or obligor demonstrates and the court finds that there is good cause not to require automatic income withholding; or~~

~~(ii) the obligee and obligor agree in writing to an alternative arrangement regarding the payment of child support that provides sufficient security to ensure compliance with their agreement. The security is in addition to the child support obligation.~~

~~(c) When a judgment, decree, or order for child support is entered or modified and automatic income withholding is ordered, an obligee who is not a recipient of public assistance shall apply for the support enforcement services of the department pursuant to Title IV-D of the Social Security Act for the collection of support through automatic income withholding under Title 40, chapter 5, part 4. The department shall accept the application. Pending an application, the department shall immediately implement automatic income withholding and hold any amounts collected in trust for the obligee until the obligee makes application.~~

~~(d) When automatic income withholding is ordered under subsection (5)(a), the clerk of court shall immediately forward a copy of the order to the department.~~

~~(e) If an obligor is not subject to income withholding or is exempted from income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.~~

(5) (a) Unless the court makes a written exception under [section 16] or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in [section 16] or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(6) For the purposes of income withholding under subsection (5), every district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

~~(6)~~*(7)* If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208."

Section 2. Section 40-6-116, MCA, is amended to read:

"**40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, including his medical needs;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others;

(i) the value of services contributed by the custodial parent;

(j) the cost of day care for the child; and

(k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of such standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(7) The judgment or order concerning child support and each modification of a judgment or order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

~~(8) (a) Except as provided in subsection (8)(b), each district court judgment or order establishing a child support obligation under this part, whether temporary or final, and each modification of an existing child support order must:~~

~~(i) provide that the amount of child support must be withheld from the obligor's income and paid to the department pursuant to procedures established by the department under Title 40, chapter 5, part 4; and~~

~~(ii) include the obligor's social security number and the name and address of the obligor's employer and of any other payor of income to the obligor.~~

~~(b) Income is not subject to automatic withholding if:~~

~~(i) the obligee or obligor demonstrates and the court finds that there is good cause not to require automatic income withholding; or~~

~~(ii) the obligee and obligor agree in writing to an alternative arrangement regarding the payment of child support that provides sufficient security to ensure compliance with their agreement. The security is in addition to the child support obligation.~~

~~(c) When a judgment or order for child support is entered or modified and automatic income withholding is ordered, an obligee who is not a recipient of public assistance shall apply for the support enforcement services of the department pursuant to Title IV-D of the Social Security Act for the collection of support through automatic income withholding under Title 40, chapter 5, part 4. The department shall accept the application. Pending an application, the department shall immediately implement automatic income withholding and hold any amounts collected in trust for the obligee until the obligee makes application.~~

~~(d) When automatic income withholding is ordered under subsection (8)(a), the clerk of court shall immediately forward a copy of the order to the department.~~

(8) Unless an exception is found under [section 16] or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforceable by immediate or delinquency withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(9) For the purposes of income withholding as provided in subsection (8), whenever the district court establishes or modifies a child support obligation, the judgment, decree, or order must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department of:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

~~(9)~~*(10)* If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208."

Section 3. Section 40-5-226, MCA, is amended to read:

"**40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

(2) At the discretion of the hearing officer, the administrative hearing may be held:

(a) in the county of residence or other county convenient to the obligor or obligee; or

(b) in the county in which the department or any of its offices are located.

(3) If a hearing is requested, it must be scheduled within 20 days.

(4) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with such determination.

(5) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.

(6) In a hearing to determine financial responsibility, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the scale of suggested minimum contributions under 40-5-214. The hearing officer is not limited to the amounts stated in the notice.

(7) Within 20 days of the hearing, the hearing officer shall enter a final ~~decison~~ *decision* and order. The determination of the hearing officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act.

(8) If a support order is established under this part, any party may file a verified petition with the department alleging facts constituting a material change of circumstances. Upon the filing of such petition, the depart-

ment shall issue an order to the nonpetitioning party to appear and show cause why the decision previously entered should not be prospectively modified. The order to appear and show cause, together with a copy of the verified petition, must be served by the petitioner upon all other parties in the manner provided by this part. Upon receipt of proof of service, the department shall schedule a hearing not less than 15 or more than 30 days from the date of service, unless extended for good cause shown. Prospective modification may be ordered but only upon a showing of good cause and material change of circumstances.

(9) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearing officer.

(10) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

(11) Unless the hearing officer makes a written exception under [section 16] or 40-5-411 and the exception is included in the support order, every order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section, is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearing officer.

(12) For the purposes of income withholding provided for in subsection (11), whenever the department establishes or modifies a child support obligation, the department's order must include a provision requiring the obligor, for as long as the department is providing support enforcement services, to keep the department informed of the name and address of the obligor's current employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information."

Section 4. Section 40-5-304, MCA, is amended to read:

"40-5-304. **When child support payments considered delinquent.** (1) Nonpayment of child support required by any order of a district court or by a similar order of a court of another jurisdiction becomes delinquent under this part when the amount owed is equal to 3 months of child support payments.

(2) Child support payments may be considered delinquent under this part only in reference to a court order setting child support payments.

(3) In the case of support orders not subject to immediate income withholding under [section 16], including cases in which the court or ad-

ministrative authority has made a finding of good cause or alternative arrangement, the income of the obligor is subject to withholding under this part beginning on the date on which the obligor is found to be delinquent in the payment of support due under a support order in an amount equal to at least 3 months' support payments. Intervening agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part. For the purposes of this section, "alternative arrangement" has the meaning provided in [section 16(3)(b)]."

Section 5. Section 40-5-402, MCA, is amended to read:

"**40-5-402. Purpose — *applicability*.** *(1)* The purpose of this part is to provide a more effective and efficient way to guarantee the support of dependent children by the person or persons primarily responsible for such support by ensuring that the support of children is the highest priority in the allocation of a responsible parent's income.

(2) This part applies to all support obligations being enforced or collected by the department of social and rehabilitation services pursuant to Title IV-D of the Social Security Act.

(3) When the requirements of this part are met, an employer or other payor of income to a person having a support obligation under a court or administrative order must be directed to withhold from the person's income in an amount sufficient to meet the support obligation and to defray any arrearages that are due or may become due.

(4) Unless an exception under 40-5-411(4) is contained in a support order, withholding of income is required under this part without need for any amendment to the support order involved or any action by the court or entity that issued the support order even though the support order did not address withholding or the support order provided for other payment arrangements.

(5) Withholding, once commenced, applies to all current and subsequent payors of income to a person obligated to pay support until the withholding is terminated as provided by this part.

(6) The provisions for income withholding under this part take precedence over any other law or court order."

Section 6. Section 40-5-403, MCA, is amended to read:

"**40-5-403. Definitions.** As used in this part, the following definitions apply:

(1) "Alternative arrangement" means a written agreement signed by the obligor and obligee, and signed by the department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or modifying the support order.

~~(1)~~*(2)* "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

~~(2)~~*(3)* "Income" means any form of periodic payment to a person, including earnings and wages. However, income does not include:

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

~~(3)~~*(4)* "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state to which a person has assigned the right to receive current and accrued support payments.

~~(4)~~*(5)* "Obligor" means a person who owes a duty to make payments under a support order.

~~(5)~~*(6)* "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure.

~~(6)~~*(7)* "Support order" means an order of the district court of the state of Montana, an order of a court of appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of this chapter, or an order established by administrative hearing process of an agency of another state with functions similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for temporary or final periodic payment of funds for the support of a child. Support order further includes the following:

(a) an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor child;

(b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent of a child for whom child support is awarded under the same order; and

(c) an order requiring payment of interest due on unpaid judgments for child support."

Section 7. Section 40-5-411, MCA, is amended to read:

"**40-5-411. ~~Income~~ *Immediate income* withholding.** ~~(1) If an obligation for support is being enforced by the department pursuant to Title IV-D of the Social Security Act and the obligation has been established as required by law or administrative process, income due or to become due within this state to the obligor is subject to withholding procedures under this part if:~~

~~(a) except as provided in 40-4-204 and 40-6-116, a support obligation is initially decreed and ordered or modified after January 1, 1990, by a district court or administrative process, regardless of whether child support payments are in arrears; or~~

~~(b) the obligor is found to owe a combination of unpaid child support under a support order in an amount equal to or in excess of 1 month's support payment.~~ *(1) Except as provided in subsection (4), in the case of a child support order, whether temporary or final, that is issued by a court or administrative authority of this state after January 1, 1990, the income of the obligor is subject to immediate withholding under this part regardless of whether support payments are in arrears.*

(2) ~~When the requirements of this part have been met, the department, without necessity for amendment of the support order or further order by a court or other entity, shall issue an order directing the obligor's employer or other payor to withhold and deliver to the department such amount of the obligor's income as will be sufficient to meet the support obligation imposed by the support order and to defray arrearages, if any, due when the withholding order takes place.~~ *After October 1, 1991, when a support order of another state is registered in Montana under the provisions of 40-5-137 or other applicable law, the support obligation is subject to immediate income withholding under this section.*

(3) ~~The provisions for income withholding under this part take precedence over any other law or court order.~~ *The department may direct the payor of income to the obligor to commence the withholding of the obligor's income on:*

(a) the effective date of the support order or the date of registration of the support order; or

(b) the date, if any, that the department becomes authorized by law to provide child support enforcement services.

(4) An obligor's income is not subject to immediate withholding if the court or administrative authority that issued or modified the support order finds:

(a) that there is good cause not to require immediate withholding; or

(b) that there is an alternative arrangement between the parties for the payment of support that provides sufficient security to ensure compliance with the arrangement.

(5) For the purposes of subsection (4), any finding of good cause not to require immediate income withholding must be based on at least:

(a) a written determination and explanation by the court or administrative authority as to why implementation of immediate income withholding would not be in the best interests of the child; and

(b) proof of timely payment of previously ordered support in cases involving the modification of support orders.

(6) Immediate withholding under this section terminates only:

(a) upon the conditions provided in 40-5-417; or

(b) at the request of the obligor if:

(i) withholding has not been previously terminated and subsequently initiated under 40-5-412 because of a delinquency; and

(ii) and the obligor meets one of the exemptions under subsection (4)."

Section 8. Section 40-5-412, MCA, is amended to read:

"**40-5-412. ~~Initiation of~~ *Delinquency* income withholding ~~procedures~~.** (1) ~~In a case concerning a support obligation referred to in 40-5-411, the department shall immediately issue an order under 40-5-415 for the payment of current support.~~ *In the case of support orders not subject to immediate income withholding under 40-5-411, including cases in which the court or administrative authority has made a finding of good cause or determines that an alternative arrangement exists, the income of the obligor is subject to withholding under this part beginning on the date on which the obligor is found to owe unpaid support under the support order in an amount equal to or in excess of 1 month's support payment. Intervening agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part.*

(2) ~~In any other case, the department shall monitor and track all support payments required by the support order. If at any time these records indicate that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support, the department shall commence proceedings to initiate withholding of the obligor's income as provided in this part.~~ *Notwithstanding the provisions of subsection (1), income withholding must be initiated, without regard to whether there is an arrearage, on the earliest of:*

(a) the date the obligor requests that withholding begin; or

(b) at the request of the obligee if the obligor is found, after an opportunity for hearing under 40-5-414, to be delinquent under the terms of an alternative arrangement for the payment of support.

(3) To accomplish the purpose of subsection ~~(2)~~ *(1)*, the department *shall monitor all support payments not otherwise subject to immediate withholding. To facilitate monitoring, the department* by written notice to the obligor may direct an obligor who does not owe unpaid child support equal to or in excess of 1 month's support payment to pay all support through the department, notwithstanding any court order directing payments to be made to the obligee or clerk of court.

(4) ~~Whenever an obligation for support is paid through the support enforcement and collections unit of the department, the department must forward payment to the obligee within 10 days of the department's receipt of payment from the obligor.~~ *The only basis for contesting withholding under this section is a mistake of fact, which includes a mistake:*

(a) concerning the obligor's identity;

(b) concerning the existence of the support obligation;

(c) concerning the amount of support to be paid;

(d) in the determination that the delinquent support amounts owed are equal to or greater than 1 month's support payment;

(e) in computation of delinquent support amounts owed; or

(f) in the allegation that the obligor is in default of an alternative agreement."

Section 9. Section 40-5-413, MCA, is amended to read:

"40-5-413. **Notice of intent to withhold income.** (1) Prior to service of an initial order or a modification of an existing order on the payor under 40-5-415, the department shall serve upon the obligor a notice of the intended action ~~if~~ *when*:

(a) ~~the department previously has not issued an order to withhold and it has determined the obligor owes a combination of unpaid support equal to or in excess of 1 month's support~~ *income withholding is initiated under 40-5-412 because of a delinquency;*

(b) additional arrearages have accrued subsequent to the issuance of an order to withhold *and the department proposes to add those arrears to the withholding order*; or

(c) immediate withholding has commenced for current support and there are arrearages due for a period prior to entry of the order to withhold *that the department proposes to add to the withholding order.*

(2) The notice must contain a statement:

(a) of the amount to be withheld, including a computation showing the period and total amount of the arrearages as of the date of the notice;

(b) that withholding applies to all current and subsequent payors;

(c) of the obligor's right to a hearing under 40-5-414 to contest the ~~implementation~~ *initiation* of income withholding or modification of an existing order on the ground that the intended action is not proper because of mistake of fact, *as provided in 40-5-412(4)*; ~~and~~

(d) of the period of time within which the obligor must request a hearing and that failure to request the hearing within the time limit will result in income withholding orders being served upon the payor for the amount stated in the notice*; and*

(e) in those cases in which withholding is being initiated at the request of an obligee without regard to whether there is an arrearage as provided in 40-5-412(2), a statement that the obligor can require the obligee to appear and show proof that the obligor is not meeting the terms of the alternative arrangement.

(3) The notice must be served upon the obligor personally or by certified mail."

Section 10. Section 40-5-414, MCA, is amended to read:

"**40-5-414. Hearing.** (1) ~~The~~ *To contest the withholding of income initiated under 40-5-412 because of a delinquency, an* obligor may within 10 days of being served with notice of ~~the intended action~~ *intent to withhold income* under 40-5-413 file with the department a written request for an administrative hearing to be held pursuant to the contested case provisions of Title 2, chapter 4, part 6.

~~(2) In a case initiated because an arrearage has accrued or because additional income is to be withheld to satisfy additional arrearages and in which the obligor requests a hearing within the time allowed, the intended action may not take effect until the conclusion of the hearing or the date of the hearing if the obligor fails to appear at a scheduled hearing.~~

~~(3)~~*(2)* Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.

~~(4)~~*(3)* The administrative hearing must be held by teleconferencing methods unless the obligor or the department expressly requests an in-person hearing before the hearing examiner.

(4) If the obligor requests a hearing within the 10-day period:

(a) the delinquency income withholding by the department must be stayed until conclusion of the hearing or the date of the hearing if the obligor fails to appear at the scheduled hearing. If the obligor is only contesting an arrearage amount and is not contesting withholding for current support, income withholding for current support is not stayed.

(b) the department shall, within 45 days of the service of the notice of intent to withhold income, inform the obligor of the hearing results concerning whether income withholding will take place.

(5) The department shall issue an order to withhold income in accordance with 40-5-415 if:

(a) the obligor fails to file a written request for hearing with the department within the specified 10-day period;

(b) the obligor fails to appear at a scheduled hearing;

(c) the hearing officer determines from the evidence that the obligor owes unpaid support equal to or in excess of 1 month's support obligation and the amount of arrearages owing is determined and adjudged to be a fixed and certain sum; or

(d) in cases in which income withholding is being initiated at the request of an obligee without regard to whether there is an arrearage, the hearing examiner determines from the evidence that the obligor did not meet the terms of the alternative arrangement.

~~(5)~~*(6)* For purposes of the hearing process, arrearages of support must be computed on the basis of the amount owed and unpaid on the date the obligor was served with the notice of intent to withhold income~~, and the fact that the obligor may have later paid the arrearage does not remove from the hearing examiner the authority to direct the department to order income withholding~~. *When the department is enforcing a current support obligation, payment of the arrearage after service of the notice is not a basis for not initiating income withholding.*

~~(6)~~*(7)* In a case initiated because an arrearage has accrued or because additional income is being withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to withhold income, must be informed of the hearing decision on whether income withholding will take place.

~~(7)~~*(8)* If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing or if the hearing examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support obligation, the department shall proceed with the intended action in accordance with 40-5-415."

Section 11. Section 40-5-415, MCA, is amended to read:

"**40-5-415. Order to withhold income.** (1) When the requirements of this part have been met, the department shall ~~immediately~~ serve an order or modification order to withhold and deliver income upon any payor or combination of payors. The order must:

(a) direct the payor and successor payors to withhold from the obligor's income each month the amount specified in the order if sufficient funds are available;

(b) direct the payor to deliver the amount withheld to the department in the same month in which the funds were withheld;

(c) state that the order is binding on the payor until further notice by the department; ~~and~~

(d) state the rights and duties of the payor under this part*; and*

(e) include a statement that the obligor is required under a support order to provide health insurance coverage for the obligor's child, if appropriate.

(2) An order or modification order to withhold and deliver the obligor's income made under this section is binding upon the payor immediately upon service of the order upon the payor. Service of the order or modification order to withhold may be made either personally or by certified mail.

(3) Whenever there is more than one payor, the department may, in its discretion, apportion the total amount to be withheld each month among payors."

Section 12. Section 40-5-416, MCA, is amended to read:

"**40-5-416. Determination of amount of income to be withheld.** (1) (a) Subject to the limitations provided in subsection (2), the amount of funds to be withheld each month from the obligor's income must be the amount of money necessary to pay current installments of support as they become due and payable.

(b) If income is being withheld to satisfy an arrearage, the amount of funds to be withheld must include the greater of:

(i) the amount of money that, when deducted in equal amounts each month, will pay all outstanding support arrearages and interest, if any, within 2 years; or

(ii) 25% of the obligor's income.

(c) If income is being withheld ~~to satisfy an arrearage~~ *under this part,* the department may allow a fee not to exceed $5 each month, which may be withheld by the payor as compensation for the administrative costs of each withholding.

(2) The maximum amounts withheld from the obligor's wages or salaries, *including fees,* may not exceed the maximum amount permitted under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b), *as amended.*

(3) At any time, if the obligor can show that substantial hardship will result if the maximum permissible withholding is implemented or continued, the department for cause shown may in its discretion determine a lesser amount to be withheld each month in satisfaction of support arrearages."

Section 13. Section 40-5-417, MCA, is amended to read:

"**40-5-417. Modification or termination of withholding orders.** (1) The department may at any time modify the order to withhold income to:

(a) reflect payment in full of the arrearages by income withholding or otherwise;

(b) recognize an increase or decrease in the support order; or

(c) indicate any other reason the amount to be withheld is to be reduced or changed.

(2) If an arrearage occurs while the department is collecting an amount of money necessary to pay current installments of support as they become due and payable, the department may adjust the amount of income required to be withheld to also satisfy the arrearage, as provided in this part.

(3) An income withholding order terminates only when the department is no longer authorized under the law to collect support or, when appropriate, services rendered under 40-5-203 have come to an end or when the

obligation to pay support is terminated and all arrearages are paid in full, whichever occurs first.

(4) The payment in full of any arrearage amount may not be the sole basis for termination of withholding as long as there is a support obligation enforceable by the department."

Section 14. Section 40-5-421, MCA, is amended to read:

"**40-5-421. Duties of payor.** (1) A payor who has been served with an order to withhold and deliver income shall deduct the amount designated in the order beginning not later than the first pay period that occurs after 14 days from the service of the order. The payor shall, *within 10 working days of the date the obligor is paid,* promptly deliver the amount withheld to the department as directed by the order or in accordance with any subsequent modification of the order received from the department. *The payor shall include with the payment a statement indicating the date the amount was withheld from the obligor's income.*

~~(2) If the obligor's pay periods are at intervals of less than 1 month, the payor may withhold an equal amount at each pay period cumulatively sufficient to pay the monthly withholding as directed by the withholding order.~~

~~(3)~~*(2)* Whenever the payor is obligated to withhold income for more than one obligor, the payor may combine all amounts withheld into a single payment for that month with the portion thereof which is attributable to each obligor separately designated.

~~(4)~~*(3)* Whenever there is more than one order for withholding against a single obligor, the payor must comply with the orders in the sequence in which they were served upon the payor and must honor all withholding orders to the extent that the total amount withheld from the obligor's wages or salary does not exceed the limits set in 40-5-416.

~~(5)~~*(4)* The payor must promptly notify the department of the termination of the obligor's employment or other source of income and provide the obligor's last-known address and the name and address of the obligor's new employer or other source of income, if known to the payor."

Section 15. Section 40-5-433, MCA, is amended to read:

"**40-5-433. Additional duties of department in interstate income withholding.** ~~(1) Unless the public agency of the foreign jurisdiction makes application to the department for additional services, the department is not required to locate the obligor or to locate payors of income to the obligor. If the application for interstate service provided for in 40-5-431 and 40-5-432 fails to provide this information or the information is determined to be incorrect, the department may return the application without further proceeding under this part.~~

~~(2)~~*(1)* If the department determines that the obligor is no longer employed in this state or no longer derives income within this state, the department shall promptly notify the agency which requested income withholding of the changes and shall forward to that agency all information it has with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income.

~~(3)~~*(2)* The department shall promptly transmit payments received on an income withholding order to the agency or person designated in the interstate application."

Section 16. **Immediate income deductions.** (1) Notwithstanding any provision in this part requiring a delinquency as a prerequisite to an order for income deductions, except as provided in subsection (2), the salaries and wages of a person obligated to pay child support by an order of a district court issued after October 1, 1991, are subject to an immediate deduction order under 40-5-308 on the effective date of the order, regardless of whether there is a delinquency.

(2) An obligor's salaries and wages are not subject to deduction under this section in any case in which the district court finds:

(a) that there is good cause not to require immediate deduction; or

(b) that there is an alternative arrangement between the parties for the payment of support that provides sufficient security to ensure compliance with the arrangement.

(3) (a) For the purposes of subsection (2), a finding of good cause not to require immediate deduction must, at a minimum, be based on:

(i) a written determination and explanation by the district court as to why implementation of immediate deductions is not in the best interests of the child; and

(ii) in cases involving the modification of support orders, proof of timely payment of previously ordered support.

(b) As used in subsection (2)(b), "alternative arrangement" means a written agreement that is signed by the obligor and obligee and, in cases in which there is an assignment of support rights under 53-2-613, signed by the department of social and rehabilitation services, and that has been approved and entered into the record by the district court that issued or modified the support order.

(4) The clerk of court shall administer immediate income deductions under this section. The clerk of court, at any time after docketing the support order or modification of a support order, at the request of the obligee, and without need for amendment to the support order or for any further action by the district court, shall issue the order for income deductions provided for by 40-5-308 for service upon the obligor's employer. The deduction order must direct the employer to promptly deliver the amount deducted to the clerk of court for distribution to the obligee.

(5) Wage deductions under this section may be terminated only when:

(a) the obligation to pay support has terminated and all arrearages are paid in full;

(b) the obligor requests termination and the obligee and obligor have entered into an alternative arrangement as set forth in subsection (2)(b); or

(c) the department has superseded the deduction order under authority of Title 40, chapter 5, part 4.

(6) If a delinquency occurs subsequent to issuance of an immediate deduction order or if arrearages occur prior to beginning the deductions, the arrearages may be added to the deduction order only after compliance with the notice of hearing requirements of 40-5-305.

(7) (a) After October 1, 1991, whenever a support order is registered as provided by 40-5-137 or other law, the support order is subject to immediate orders to deduct income under this section.

(b) Withholding income under this section must be imposed when an obligor has wages or salaries derived from within this state and the support order was issued in another state.

(8) This section applies only to support orders that are not being enforced by the department under Title IV-D of the Social Security Act. The withholding of income for support orders being enforced by the department is provided for in Title 40, chapter 5, part 4, and those procedures, if applicable, supersede the provisions of this section.

Section 17. Section 40-5-309, MCA, is amended to read:

"40-5-309. **Amount to be deducted from income.** (1) The amount of money to be deducted each pay period from the obligor's income shall be:

(a) (i) the amount of money necessary to pay current installments of child support as they become due and payable; plus

(ii) the amount of money which, when deducted in equal amounts each payday, will pay off all outstanding child support payments delinquent within 2 years; or

(b) not less than 25% of the obligor's disposable earnings ~~but may not be more than the maximum amount allowable by federal garnishment law if the sum provided in subsection (1)(a) exceeds that amount~~.

(2) The district court may allow a fee of not to exceed $5 per deduction, which the employer may deduct from the obligor's wages or salary for the expense of administering the deduction.

(3) The total amount to be deducted under subsections (1) and (2) may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b), as amended.

~~(3)~~*(4)* ~~The~~ *Except as provided in [section 16], the* child support income deduction shall cease when there is no past-due child support owing unless the district court orders continued income deductions for payment of child support installments as they become due and payable."

Section 18. **Health insurance coverage — order of enrollment.** (1) Whenever the obligor is required by a court or administrative order or is required under 40-5-208(1)(b) to provide health insurance coverage for a child and the obligor fails to provide the coverage or lets it lapse, the department may enforce the obligation under this section if a payor of income to an obligor has a health insurance plan which can be extended to cover the obligor's child.

(2) (a) Prior to service of an initial order of enrollment on a payor, the department shall serve the obligor a notice of its intent to order an enrollment, by certified mail or by personal service.

(b) Within 20 days after service of the notice, the obligor may provide written proof to the department that health insurance coverage for the child has been obtained or applied for. If proof is received by the department within 20 days after service, further action may not be taken by the department except in the event of a lapse of coverage as provided in subsection (3). If proof of health insurance coverage is not timely received by the department, an order of enrollment may be issued in accordance with subsection (3).

(3) If the obligor fails to timely provide proof of coverage or if after timely proof of coverage the obligor lets the coverage lapse, the department may, without further notice to the obligor, serve an order of enrollment on the payor. The payor may be the same payor who is subject to an order to withhold under this part or any other payor or subsequent payor.

(4) (a) Upon receipt of an order of enrollment, the payor shall respond to the department within 20 days and confirm that the child:

(i) has been enrolled in the health insurance plan;

(ii) will be enrolled in the next enrollment period; or

(iii) cannot be covered because the child resides outside the plan's service area or the contracted terms of the plan do not permit an extension of coverage to the child.

(b) Upon enrollment of the child, the payor shall withhold from the obligor's income an amount equal to the required premium, if any, and apply the withheld amount to the premium as necessary.

(c) If more than one plan is offered by the payor and each plan may be extended to the child, the child must be enrolled in the same plan as the obligor. If the obligor's plan does not provide coverage that is accessible to the child, the child must be enrolled in the least expensive plan available to the obligor.

(d) Once an initial order of enrollment is authorized under this section, the authority to issue orders to subsequent payors and to bind payors to the orders terminates only when:

(i) the department is no longer providing enforcement services;

(ii) the obligation to provide health insurance coverage is terminated according to law; or

(iii) the department finds under subsection (5) that the premium charged to the obligor is not reasonable under the circumstances of the obligor's case.

(e) A payor served with an order of enrollment shall inform the department of the name of the health insurance coverage provider or insurer and the extent of the coverage. The payor shall make available to the department or obligee any necessary claim forms or enrollment membership cards. If coverage is terminated for any reason, the payor shall inform the department of the termination within 20 days of the termination date.

(5) (a) Whenever an obligor is being charged with a premium under subsection (3) and the obligor believes the amount of the premium to be unreasonable under the circumstances, the obligor may make a written request to the department for an administrative hearing to determine the reasonableness of the premium charge.

(b) The department shall schedule the hearing within 20 days after receipt of the obligor's request. The hearing must be conducted by telephone conferencing methods unless the hearing officer determines an in-person hearing is appropriate.

(c) If the hearing officer finds that the premium charged the obligor is causing an undue hardship on the obligor or the child, the department shall withdraw any order of enrollment served on a payor. A withdrawal is temporary and remains in effect only until a significant change in circumstances occurs, such as an improvement in the obligor's ability to pay the premium or an increase in the child's need for health insurance coverage. Upon a change of circumstances, the department may again serve the order of enrollment on the payor. After service of the order, the obligor may request an administrative hearing to determine the reasonableness of premiums considering the new circumstances.

(d) If the hearing officer finds that the premium is reasonable under the circumstances, the obligor may not request any further hearings under this subsection (5) unless there is a significant change in circumstances from that existing at the time the finding was made.

(6) A notice under this section may be combined with a notice of intent to withhold income under 40-5-413 or with any other notice served on an obligor under part 2 of this chapter.

(7) This section may not be construed to limit the right of an obligee or the department to bring any other action available under the law to enforce an obligation to provide health insurance coverage for a child.

(8) This section may not be construed to require a health maintenance organization, health care service provider, or insurer to extend coverage to

a child who resides outside its service area or to deviate from contractual provisions and restrictions.

(9) An obligor whose child is enrolled in a health insurance plan under this section shall cooperate with the insurer, health care service provider, department, and child's custodian to obtain and use the health insurance plan.

Section 19. **Liability of payor — penalties.** (1) A payor is liable for a fine of up to $1,000 for each instance in which the payor fails or refuses, within 20 days of receipt of an order of enrollment, to:

(a) enroll the obligor's child in the health insurance plan; or

(b) make a written response to the department, stating that the child:

(i) will be enrolled in the next available open enrollment period; or

(ii) cannot be covered and explaining the reasons why coverage cannot be provided.

(2) A payor who enrolls a child in a health insurance plan in compliance with an order of enrollment under [section 18] is exempt from any liability to the obligor that may result from the enrollment.

Section 20. **Health insurance coverage — notice of intent to purchase.** (1) The department may serve a notice of intent to purchase health insurance coverage on an obligor by certified mail or personal service, when:

(a) the obligor is ordered by a court or administrative order or is required under 40-5-208(1)(b) to provide health insurance coverage for a child;

(b) the obligor fails to provide such coverage or lets it lapse;

(c) there is no payor upon whom an order of enrollment under [section 18] is applicable; and

(d) the child is currently eligible for medical assistance benefits under Title 53.

(2) The notice must specify the type and cost of the proposed health insurance coverage. Within 20 days of the date of service of the notice, the obligor shall:

(a) provide written proof to the department that the obligor has either applied for or obtained coverage accessible to the child; or

(b) request an administrative hearing to show that the proposed purchase of coverage and the premium chargeable to the obligor will cause undue hardship.

(3) If a hearing is requested, the department shall schedule the hearing within 20 days of the receipt of the request. The hearing must be held by

telephone conferencing methods unless the hearing officer determines that an in-person hearing is appropriate.

(4) If the obligor fails to timely provide written proof of coverage or if the hearing officer finds that the proposed purchase of coverage will not cause an undue hardship on the obligor, the department shall purchase the health insurance coverage specified in the notice. The amount of the premium may be added to the obligor's child support debt and may be collected without further notice by income withholding under this part or by any other remedy available to the department.

(5) Health insurance coverage purchased under this section must be continued by the department until:

(a) the child is no longer eligible for medical assistance benefits;

(b) the obligor is no longer responsible under the law for providing coverage for the child;

(c) the obligor provides written proof to the department that other coverage accessible to the child has been obtained; or

(d) relief is granted under subsection (6).

(6) (a) If a change of circumstances occurs after health insurance coverage is purchased and the obligor believes the change makes the provision of health insurance coverage an undue hardship, the obligor may make a written request for an administrative hearing to reconsider the matter of continuing to purchase coverage.

(b) If a hearing is requested, the department shall schedule the hearing within 20 days of the receipt of the request. The hearing must be conducted by telephone conferencing methods unless the hearing officer determines that an in-person hearing is appropriate.

(c) If the hearing officer finds that the continued purchase of coverage will cause undue hardship on the obligor, the department shall terminate the coverage.

(d) If the hearing officer finds that the continued purchase of coverage will not cause undue hardship, the department shall continue to purchase the coverage, as appropriate, under the provisions of subsection (5).

(7) An obligor whose child is enrolled in a health insurance plan under this section shall cooperate with the insurer, health care provider, department, and child's custodian to obtain and use the health insurance plan.

Section 21. **Payors to provide information — exemption from liability.** (1) For the purposes of this part, upon written request by the department, a payor or former payor and any labor union of which the obligor is or may have been a member shall provide the department with the following information, if known, regarding the obligor:

(a) last-known residential address;

(b) social security number;

(c) dates of employment or union membership;

(d) amounts of wages, salaries, commissions, and other earnings paid to the obligor during any period when the department provided support enforcement services; and

(e) whether health insurance coverage is or was available to the obligor through the payor or union and, if so:

(i) the name of the insurer or health care provider;

(ii) the policy numbers or other identifiers; and

(iii) the persons covered.

(2) A payor who discloses information to the department in compliance with this section is exempt from any liability to the obligor that may result from such disclosure.

Section 22. **Repealer.** Section 40-5-425, MCA, is repealed.

Section 23. **Codification instruction.** (1) [Section 16] is intended to be codified as an integral part of Title 40, chapter 5, part 3, and the provisions of Title 40, chapter 5, part 3, apply to [section 16].

(2) [Sections 18 through 21] are intended to be codified as an integral part of Title 40, chapter 5, part 4, and the provisions of Title 40, chapter 5, part 4, apply to [sections 18 through 21].

Section 24. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 25. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1991.

CHAPTER NO. 636

[HB 103]

AN ACT PROHIBITING THE DETENTION OF MENTALLY ILL PERSONS IN JAIL PENDING A CIVIL COMMITMENT HEARING; REQUIRING SHERIFFS AND JAIL ADMINISTRATORS TO SCREEN AND DIVERT FROM JAIL CERTAIN PERSONS WHO APPEAR TO BE SERIOUSLY MENTALLY ILL; PROVIDING ALTERNATIVES TO THE

PLACEMENT OF MENTALLY ILL PERSONS IN JAIL; REQUIRING THE DEPARTMENT OF INSTITUTIONS TO ESTABLISH CRISIS INTERVENTION PROGRAMS AND TO ASSIST COUNTIES IN DEVELOPING COUNTY PLANS; AUTHORIZING TARGETED CASE MANAGEMENT SERVICES UNDER THE MEDICAID PROGRAM FOR ADULTS WHO ARE SERIOUSLY MENTALLY ILL; AMENDING SECTIONS 53-6-101, 53-21-120, AND 53-21-124, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-120, MCA, is amended to read:

"**53-21-120.** *(Temporary)* **Detention to be in least restrictive environment — preference for mental health facility — court relief — prehearing detention of mentally ill person prohibited.** (1) A person detained pursuant to this part ~~shall~~ *must* be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part ~~shall~~ *must* be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be made to return him to trial. ~~Such~~ *The* trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. ~~No~~ *A* person may *not* be detained in any hospital or other medical facility ~~which~~ *that* is not a mental health facility unless ~~such~~ *the* hospital or facility has agreed in writing to admit the person.

(3) ~~Except as provided in 53-21-124, a~~ *A* person may not be detained pursuant to this part in a jail or other correctional facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain.

(5) ~~No detention~~ *Detention* may *not* be ordered under this part for a person concerning whom a petition has been filed under 53-21-121(1)(b).

(6) ~~No~~ *A* person may *not* be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic~~,~~ *or is* mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

53-21-120. *(Effective July 1, 1997)* **Detention to be in least restrictive environment — preference for mental health facility — court relief —** ***prehearing detention of mentally ill person prohibited.*** (1) A person detained pursuant to this part ~~shall~~ *must* be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part ~~shall~~ *must* be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be made to return him to trial. ~~Such~~ *The* trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. ~~No~~ *A* person may *not* be detained in any hospital or other medical facility ~~which~~ *that* is not a mental health facility unless ~~such~~ *the* hospital or facility has agreed in writing to admit the person.

(3) ~~Except as provided in 53-21-124, a~~ *A* person may not be detained pursuant to this part in a jail or other correctional facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain."

Section 2. Section 53-21-124, MCA, is amended to read:

"**53-21-124. Detention of respondent pending hearing or trial — *jail prohibited.*** (1) The court may not order detention of *a* respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention. Counsel ~~shall~~ *must* be orally notified immediately. Counsel for the respondent may then request a detention hearing, which ~~shall~~ *must* be held forthwith.

(2) In the event of detention, the respondent ~~shall~~ *must* be detained in the least restrictive setting necessary to assure his presence and assure his safety and the safety of others as provided in 53-21-120. ~~A respondent may be detained in a jail or other correctional facility only if no appropriate mental health facility is immediately available for placement. When the respondent is detained in a jail or other correctional facility, the jail or other facility shall immediately notify the regional central office of the nearest mental health facility, as defined in 53-21-201, that a person detained in the jail or correctional facility is in need of an appropriate placement. Upon notification, the mental health facility shall identify an appropriate placement for the respondent, in accordance with the requirements of 53-21-120. Until a placement is identified, the mental health facility shall report on the status of the placement to the jail or correctional facility within every 12-hour period, including weekends and holidays. When an appropriate placement has been identified, the court must be promptly notified and the respondent must be transferred to that facility as soon as reasonably practical.~~

(3) If the respondent is detained, he ~~shall have~~ *has* the right to be examined additionally by a professional person of his choice. Unless objection is made by counsel for the respondent, he ~~shall~~ *must* continue to be evaluated and treated by the professional person pending the hearing.

(4) A respondent may not be detained in a jail or other correctional facility pending a hearing or trial to determine whether the respondent should be committed to a mental health facility."

Section 3. **Diversion of certain mentally ill persons from jail.** (1) The sheriff or administrator of a jail in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be seriously mentally ill, as defined in 53-21-102.

(2) If as a result of screening and observation it is believed that an inmate is seriously mentally ill, the sheriff or administrator of the jail shall:

(a) request services from a crisis intervention program established by the department as provided for in [section 4];

(b) refer the inmate to the nearest community mental health center, as defined in 53-21-212; or

(c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment and care of persons who are seriously mentally ill.

(3) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a nonserious misdemeanor, such as criminal trespass to property, loitering, vagrancy, disorderly conduct, and disturbing the public peace.

Section 4. **Crisis intervention programs.** (1) The department shall, subject to available appropriations, establish crisis intervention programs. The programs must be designed to provide 24-hour emergency admission and care of seriously mentally ill persons in a temporary, safe environment in the community as an alternative to placement in jail.

(2) The department shall provide information and technical assistance regarding needed services and assist counties in developing county plans for crisis intervention services and for the provision of alternatives to jail placement.

(3) The department may enter into an interagency agreement with the department of social and rehabilitation services to provide crisis intervention programs as:

(a) a rehabilitative service under 53-6-101(3)(j); and

(b) a targeted case management service authorized in 53-6-101(3)(n).

Section 5. Section 53-6-101, MCA, is amended to read:

"**53-6-101. Montana medicaid program — authorization of services.** (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of social and rehabilitation services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) services provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(i) health services provided under a physician's orders by a public health department; and

(j) hospice care as defined in 42 U.S.C. 1396d(o).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23, if funds are specifically appropriated for the inclusion of these services in the Montana medicaid program;

(m) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(n) targeted case management services for adults who are seriously mentally ill, as provided in 42 U.S.C. 1396n(g), but limited to services provided in crisis intervention programs established under [section 4]; and

~~(n)~~*(o)* any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(5) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(6) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost effective.

(7) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

(8) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(9) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(10) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted thereunder. *(Subsection (2)(j) terminates June 30, 1991—sec. 4, Ch. 633, L. 1989; Subsection (3)(m) terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)* "

Section 6. **Development of county plans for alternatives to placement in jail of seriously mentally ill.** No later than January 1, 1993, each county, with the assistance of the department of institutions and local agencies, shall establish a plan for the development and implementation of appropriate services to persons awaiting commitment hearings. The plan must include appropriate alternatives to jail for the detention of mentally ill persons pending a commitment hearing or trial and must be developed with the advice of consumers, family members of consumers, and mental illness advocacy groups. The following agencies and individuals shall assist the counties in establishing and implementing the plans:

(1) mental health centers licensed under Title 50, chapter 5, part 2;

(2) hospitals licensed under Title 50, chapter 5, part 2;

(3) law enforcement agencies;

(4) physicians licensed under Title 37, chapter 3;

(5) psychologists licensed under Title 37, chapter 17;

(6) social workers licensed under Title 37, chapter 22;

(7) professional counselors licensed under Title 37, chapter 23; and

(8) professional persons certified under Title 53, chapter 21, part 1.

Section 7. **Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to [sections 3 and 4].

Section 8. **Effective dates — termination.** (1) [Sections 1 through 5 and 7] are effective July 1, 1993.

(2) [Section 6 and this section] are effective on passage and approval.

(3) [Section 6] terminates July 1, 1993.

Approved April 25, 1991.

CHAPTER NO. 637

[HB 448]

AN ACT AMENDING THE METAL MINE RECLAMATION LAWS; IMPLEMENTING THE RECOMMENDATIONS OF THE GOVERNOR'S MINE PERMITTING IMPROVEMENT ADVISORY COUNCIL; AMENDING SECTIONS 82-4-303, 82-4-305, 82-4-306, 82-4-335, 82-4-337, 82-4-338, 82-4-339, AND 82-4-355, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill to provide guidance to the department of state lands concerning the adoption of rules to define the types of department expenses that applicants for hard-rock mine operating permits will be required to pay through increased permit application fees.

Section 82-4-335(3) of the bill allows the department to increase the permit application review fee to fund expenses that are beyond the department's normal operating expenses and that are reasonably necessary in order for the department to provide a timely and adequate review, including any environmental review that is conducted pursuant to the requirements of the Montana Environmental Policy Act. The department's rules should authorize the use of the money collected from increased permit application fees for expenses, such as the hiring of temporary employees and contracted consultants and data collection and analysis when, due to workload considerations and statutory deadlines, the department cannot otherwise perform an adequate review.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-303, MCA, is amended to read:

"**82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Board" means the board of land commissioners or a state employee or state agency as may succeed to its powers and duties under this part.

(3) *"Commissioner" means the commissioner of state lands provided for in 2-15-3202.*

(4) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

~~(4)~~*(5)* "Department" means the department of state lands.

~~(5)~~*(6)* "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

~~(6)~~*(7)* "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

~~(7)~~*(8)* "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

~~(8)~~*(9)* "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

~~(9)~~*(10)* "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

~~(10)~~*(11)* "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

~~(11)~~*(12)* "Placer deposit" means naturally occurring, scattered or unconsolidated valuable minerals in gravel or alluvium lying above bedrock.

~~(12)~~*(13)* "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

~~(13)~~*(14)* "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed. The proposal shall include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

~~(14)~~*(15)* (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2), and that conducts:

(i) an operation resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

~~(15)~~*(16)* "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

~~(16)~~*(17)* "Underground mining" means all methods of mining other than surface mining.

~~(17)~~*(18)* "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

~~(18)~~*(19)* "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 2. Section 82-4-305, MCA, is amended to read:

"**82-4-305. Exemption — small miners — written agreement.** (1) Except as provided in subsections (3) through ~~(7)~~*(9)*, the provisions of this part do not apply to any small miner if the small miner annually agrees in writing:

(a) that he will not pollute or contaminate any stream;

(b) that he will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;

(c) that he will provide a map locating his mining operations. The map must be of a size and scale determined by the department.

(d) if the small miner's operations are placer or dredge mining, that he shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless he annually certifies in writing:

(a) if the small miner is a natural person, that:

(i) no business association or partnership of which he is a member or partner has a small-miner exemption; and

(ii) no corporation of which he is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's actual cost of reclaiming the disturbed land, although the bond may not exceed $5,000 per operation. However, if the small miner has posted a bond for reclamation with another government agency, he is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, he is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs it deems reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of his operation where the cyanide ore-processing reagent will be used or disposed of.

(8) The exemption provided in this section does not apply to a person whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond unless that person meets the conditions described under 82-4-360.

(9) The exemption provided in this section does not apply to an area under permit pursuant to 82-4-335 or to an area that has been permitted

pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency."

Section 3. Section 82-4-306, MCA, is amended to read:

"**82-4-306. Confidentiality of application information.** *(1)* ~~Any and all~~ *Except as provided in subsections (2) and (3), any* information obtained by the board or by the director or his staff by virtue of applications for exploration licenses and all information obtained from small miners is confidential between the board and the applicant, except as to the name of the applicant and the county of proposed operation; provided that all activities conducted subsequent to exploration and other associated facilities shall be public information and conducted under an operating permit.

(2) ~~It is further provided that any~~ *Any* information ~~obtained by the board or by the director or his staff by virtue of such applications~~ *referenced in subsection (1)* is properly admissible in any hearing conducted by the director, the board, appeals board, or in any judicial proceeding to which the director and the applicant are parties and is not confidential when a violation of ~~the~~ *this* part or rules *adopted under this part* has been determined by the department or by judicial order.

(3) The department may disclose information obtained by the board, the commissioner, or department staff from exploration license applications and from small miners for exploration or mining on state and federal lands that identifies the location of exploration and mining activities and that describes the surface disturbance that is occurring or projected to occur. The department may not disclose a licensee's or small miner's proprietary geological information.

(4) Failure to comply with the secrecy provisions of this part ~~shall be~~ *is* punishable by a fine of up to $1,000."

Section 4. Section 82-4-335, MCA, is amended to read:

"**82-4-335. Operating permit — limitation —** ***fees.*** (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the board. A separate operating permit is required for each complex.

(2) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of his operation where the cyanide ore-processing reagent will be used or disposed of.

(3) Prior to receiving an operating permit from the board, a person shall pay the basic permit fee of $25. *The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75,*

chapter 1, parts 1 and 2. The department may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed $5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(4) ~~and~~ *The person* shall submit an application on a form provided by the board, which must contain the following information and any other pertinent data required by rule:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its ~~principal~~ officers, *directors, owners of 10% or more of any class of voting stock,* partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built, and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to the applicant;

(f) types of access roads to be built and manner of reclamation of road sites on abandonment;

(g) a plan which will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(h) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(i) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(j) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

(k) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

~~(4)~~*(5)* Except as provided in subsection ~~(6)~~*(7)*, the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the board, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

~~(5)~~*(6)* When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302(4) and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the board with proof that he has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that he has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the board that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the board shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

~~(6)~~*(7)* Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

~~(7)~~*(8)* A person may not be issued an operating permit if that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond unless that person meets the conditions described in 82-4-360.

(9) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (4)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (9)(a)(i) or (9)(a)(ii),

as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 5. Section 82-4-337, MCA, is amended to read:

"**82-4-337. Inspection — issuance of operating permit — modification.** (1) (a) The board shall cause all applications for operating permits to be reviewed for completeness within 30 days of receipt. The board shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within 30 days of receipt.

(b) Unless the review period is extended as provided in this section, the board shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the board does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within such time period, the operating permit shall be issued upon receipt of the bond as required in 82-4-338 *and pursuant to the requirements of subsection (1)(c).* The department shall promptly notify the applicant of the form and amount of bond which will be required.

(c) No permit may be issued until*:*

(i) sufficient bond has been submitted pursuant to 82-4-338*;*

(ii) the information and certification have been submitted pursuant to 82-4-335(9); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(6).

~~(c)~~*(d)* (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible due to extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department must serve written notice of extension upon the applicant in person or by certified mail, and any such extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review.

(iii) Failure of the board to act upon a complete application within the extension period constitutes approval of the application, and the permit shall be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit shall be granted for the period required to complete the operation and shall be valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the board as provided in this part.

(3) The operating permit shall provide that the reclamation plan may be modified by the board, upon proper application of the permittee or department, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection."

Section 6. Section 82-4-338, MCA, is amended to read:

"**82-4-338. Performance bond.** (1) The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the ~~penal~~ sum to be determined by the department of not less than $200 or more than $2,500 for each acre or fraction thereof of the disturbed area, conditioned upon the faithful performance of the requirements of this part and the rules of the board. In lieu of such bond, the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the board. Regardless of the above limits, the bond shall not be less than the estimated cost to the state to complete the reclamation of the disturbed land. A public or governmental agency shall not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. Such blanket bond shall adequately secure the estimated total number of acres of disturbed land.

(2) The department shall review the amount of each bond at least every 5 years and shall consult with the licensee or permittee if the review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of reclamation, the department may modify the bonding requirements of that permit or license. *The department shall make written findings, give the licensee or permittee a copy of the findings, and, for operating permits, publish notice of the findings in a newspaper of general circulation in the county in which the operation is located. The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing under the provisions of the Montana Administrative Procedure Act on the adjusted bond level by filing with the department within 30 days of the notice a written request for hearing.*

~~(2)~~*(3)* ~~No~~ *A* bond filed in accordance with the provisions of this part ~~shall~~ *may not* be released by the department until the provisions of this part, the rules adopted pursuant ~~thereto~~ *to this part*, and this reclamation plan have been fulfilled.

~~(3)~~*(4)* No bond filed for an operating permit obtained under 82-4-335 may be released until the public has been provided an opportunity for a hearing."

Section 7. Section 82-4-339, MCA, is amended to read:

"82-4-339. **Annual report of activities by permittee — fee — notice of large-scale mineral developer status.** (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules of the board and each year thereafter until reclamation is completed and approved, the permittee shall pay the annual fee of $25 and shall file a report of activities completed during the preceding year on a form prescribed by the board which report shall:

(a) identify the permittee and the permit number;

(b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;

(c) estimate acreage to be newly disturbed by operation in the next 12-month period;

(d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4); ~~and~~

(e) *update the information required in 82-4-335(4)(a); and*

(f) update any maps previously submitted or specifically requested by the board. Such maps shall show:

(i) the permit area;

(ii) the unit of disturbed land;

(iii) the area to be disturbed during the next 12-month period;

(iv) if completed, the date of completion of operations;

(v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and

(vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the

permittee, the hard-rock mining impact board, and the county or counties in which the operation is located."

Section 8. Section 82-4-355, MCA, is amended to read:

"**82-4-355. Action for damages to water supply — replacement.** (1) An owner of an interest in real property who obtains all or part of his supply of water for beneficial uses, as defined in 85-2-102, from an underground source other than a subterranean stream having a permanent, distinct, and known channel may sue the operator engaged in ~~a mining or exploration~~ *an* operation *for which a license is required pursuant to 82-4-332 or for which a permit is required pursuant to 82-4-335* to recover damages for loss in quality or quantity of the water supply resulting from mining or exploration. The owner is required to exhaust the administrative remedy under subsection (2) prior to filing suit.

(2) (a) An owner described in subsection (1) may file a complaint with the department detailing the loss in quality or quantity of water. Upon receipt of a valid complaint, the department:

(i) shall investigate the statements and charges in the complaint, using all available information, including monitoring data gathered at the exploration or mine site;

(ii) may require the operator, if necessary, to install monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity and quality;

(iii) shall issue a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity and quality;

(iv) shall, if it determines that the preponderance of evidence indicates that the loss is caused by an exploration or mining operation, order the operator, in compliance with Title 85, chapter 2, to provide the needed water immediately on a temporary basis and within a reasonable time replace the water in like quality, quantity, and duration. If the water is not replaced, the department shall order the suspension of the operator's exploration or operating permit until such time as the operator provides substitute water, except that nothing in this section preempts Title 85, chapter 2. The operator may not be required to replace a junior right if the operator's withdrawal or dewatering is not in excess of his senior right.

(b) If the department determines that there is a great potential that surface or subsurface water quality and quantity may be adversely affected by a mining or exploration operation, the operator shall install a water quality monitoring program, water quantity monitoring program, or both, which must be approved by the department prior to the commencement of exploration or mining."

Section 9. **Abatement of environmental emergencies.** (1) Whenever an environmental emergency exists, as determined by the department, at an active, temporarily abandoned, or permanently abandoned exploration, mining, ore processing, or hard-rock mill site, the department may enter the site and may apply for and, if approved by the governor, use the funds in the environmental contingency account created in 75-1-1101 to abate the situation on either a temporary or a permanent basis, or both.

(2) The department may bring an action against the operator to recover the abatement costs in the district court of the first judicial district in Lewis and Clark County. Nothing in this section affects the right of the department to retain or pursue forfeiture of any bond posted pursuant to 82-4-338. Expenditures from the environmental contingency account that are recovered under this subsection must be deposited in the environmental contingency account.

Section 10. **Codification instruction.** [Section 9] is intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [section 9].

Section 11. **Effective date.** [This act] is effective July 1, 1991.

Approved April 25, 1991.

CHAPTER NO. 638

[HB 696]

AN ACT EXTENDING THE FUNDING FOR THE STATEWIDE GENETICS PROGRAM FOR 2 YEARS; INCREASING THE FEE ON HEALTH INSURERS TO FUND THE PROGRAM; APPROPRIATING FUNDING FOR THE PROGRAM TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTION 33-2-712, MCA; REPEALING SECTIONS 33-2-712 AND 33-2-713, MCA, SECTION 7, CHAPTER 554, LAWS OF 1987, AND SECTIONS 2 AND 5, CHAPTER 155, LAWS OF 1989, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-712, MCA, is amended to read:

"33-2-712. *(Temporary)* **Genetics program fee.** Except as provided in 33-2-713, for each Montana resident insured under any individual or group disability or health insurance policy on February 1 of each year, the insurer or health service corporation issuing the policy, and the state group health plan provided for in Title 2, chapter 18, part 8, shall pay ~~45~~ *70* cents to the commissioner. The fee must be paid on or before March 1 of each year and be deposited in the general fund. The purpose of the fee is to fund the voluntary statewide genetics program established in 50-19-211. ~~*(Terminates June 30, 1991—sec. 2, 5, Ch. 155, L. 1989.)*~~"

Section 2. **Appropriation.** There is appropriated from the general fund to the department of health and environmental sciences $1,069,299 for the biennium ending June 30, 1993, for the purpose of operating the voluntary statewide genetics program established in 50-19-211.

Section 3. **Repealer.** (1) Section 7, Chapter 554, Laws of 1987, and sections 2 and 5, Chapter 155, Laws of 1989, MCA, are repealed.

(2) Sections 33-2-712 and 33-2-713, MCA, are repealed.

Section 4. **Effective dates.** (1) [Sections 1, 2, and 3(1)] are effective July 1, 1991.

(2) [Section 3(2)] is effective June 30, 1993.

Approved April 25, 1991.

CHAPTER NO. 639

[HB 704]

AN ACT TO APPROPRIATE MONEY FROM THE FEDERAL SPECIAL REVENUE FUND IN FISCAL YEARS 1992 AND 1993 TO THE DEPARTMENT OF LABOR AND INDUSTRY TO FUND APPRENTICESHIP INSTRUCTION PROGRAMS; AMENDING SECTION 39-51-1301, MCA, AND SECTION 1, CHAPTER 600, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following money is appropriated from the federal special revenue fund established in 39-51-1301 to the department of labor and industry to fund apprenticeship instruction programs pursuant to 39-6-103:

Fiscal year 1992	$110,000
Fiscal year 1993	$110,000

Section 2. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. ~~(Temporary)~~ **Penalty and interest on past-due contributions.** (1) Contributions unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, that are paid by the end of the month following the due date shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater. If the contributions are not paid by the end of the month following the due date, the employer shall be subject to a penalty assessment of $15 or 15% of the contributions due, whichever is greater. All past-due contributions shall bear interest at the rate of 18% a year, to be prorated on a daily basis.

(2) A penalty of $40 shall be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay contributions on

time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.

(3) There is an account in the federal special revenue fund. Penalties and interest collected under this section must be deposited in that account. Money deposited in that account and appropriated to the department ~~must~~ *may only* be used by the department to administer this chapter ~~and~~, ~~for programs to train and retrain unemployed and underemployed persons~~ *to fund apprenticeship instruction programs pursuant to 39-6-103, and to detect and collect unpaid contributions and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose.* Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each ~~fiscal year~~ *biennium.*

(4) When failure to pay contributions on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due contributions must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose. ~~*(Terminates July 1, 1991—sec. 1, Ch. 600, L. 1989.)*~~

39-51-1301. *(Effective July 1, 1991)* **Penalty and interest on past-due contributions.** (1) Contributions unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, that are paid by the end of the month following the due date shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater. If the contributions are not paid by the end of the month following the due date, the employer shall be subject to a penalty assessment of $15 or 15% of the contributions due, whichever is greater. All past-due contributions shall bear interest at the rate of 18% a year, to be prorated on a daily basis.

(2) A penalty of $40 shall be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay contributions on time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.

(3) Interest and penalties collected pursuant to this section shall be paid into the unemployment insurance trust fund.

(4) When failure to pay contributions on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due contributions must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

Section 3. Section 1, Chapter 600, Laws of 1989, is amended to read:

"Section 1. Section 3, Chapter 13, Special Laws of June 1986, is amended to read:

"Section 3. **Effective date ~~— termination date.~~** This act is effective on passage and approval ~~and terminates July 1, 1991~~.""

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 25, 1991.

CHAPTER NO. 640

[HB 853]

AN ACT CLARIFYING THE POWERS OF A PORT AUTHORITY; REQUIRING THE APPOINTMENT OR ELECTION OF LOCAL PORT AUTHORITY COMMISSIONERS; GRANTING THE LOCAL GOVERNING BODY DISCRETION IN ESTABLISHING MILL LEVIES FOR A PORT AUTHORITY; AND AMENDING SECTIONS 7-14-1101, 7-14-1103, 7-14-1104, 7-14-1111, 7-14-1112, 7-14-1125, 7-14-1126, 7-14-1131, AND 7-14-1133, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-1101, MCA, is amended to read:

"**7-14-1101. Local port authority.** (1) Any county or municipality may, by resolution of its governing body, create a public body, corporate and politic, to be known as a local port authority, authorized to exercise its functions upon the appointment and qualification of the first commissioners thereof. Such a governing body may by resolution determine to exercise any or all powers granted to such authorities in this part, unless such powers have been conferred upon a local or regional port authority.

(2) Upon the adoption of a resolution creating a local port authority, the governing body of the county or municipality shall, pursuant to the resolution, appoint *or, at the option of the governing body, elect, as provided in [section 2],* not less than five persons as commissioners of the authority. The commissioners who are first appointed must be designated to serve for terms of 1, 2, 3, 4, and 5 years, respectively, but thereafter each commissioner must be appointed *or elected* for a term of 5 years, except that vacancies occurring other than by expiration of a term must be filled for the unexpired term by the governing body."

Section 2. **Election of local port authority commissioners.** (1) Any registered elector in the county or municipality in which the local port authority is located may file a petition of candidacy with the election administrator. The petition must contain the signatures of not less than 25 registered electors of the county or municipality. The petition must be filed at least 75 days before the election day.

(2) The election must be conducted at the time provided in 13-1-104(3) and in the manner provided by 13-1-401.

(3) If no nomination petitions are filed for one or more commissioner offices, the appropriate local governing body shall appoint one or more commissioners as necessary to fill those offices.

Section 3. Section 7-14-1103, MCA, is amended to read:

"**7-14-1103. Commissioners.** (1) The powers of each authority are vested in the commissioners thereof. A majority of the commissioners of an authority constitutes a quorum for the purpose of conducting business of the authority and exercising its powers for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

(2) There must be elected a chairman and vice-chairman from among the commissioners. An authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation. An authority may delegate to one or more of its agents or employees such powers or duties as it considers proper.

(3) A commissioner of an authority is entitled to receive expenses, as provided in 2-18-501 through 2-18-503, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed *or elected* and has qualified. The certificates of the appointment, ~~and~~ reappointment, *or election* of commissioners must be filed with the authority."

Section 4. Section 7-14-1104, MCA, is amended to read:

"**7-14-1104. Purpose — public and governmental functions.** (1) The purposes of a port authority are to:

(a) promote, stimulate, develop, and advance the general welfare, commerce, economic development, and prosperity of its jurisdiction and of the state and its citizens;

(b) endeavor to increase the volume of commerce within the jurisdiction of the port authority and the state through planning, advertising, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of ~~ports and transportation and storage~~ *transportation, storage, or other* facilities that promote the safe, efficient, and economical handling of commerce;

(c) cooperate and act in conjunction with other organizations, public or private, in the development of commerce, industry, manufacturing, services, natural resources, agriculture, livestock, recreation, tourism, health care, and other economic activity in the state;

(d) support the creation, expansion, modernization, retention, and relocation of new and existing businesses and industry in the state and otherwise stimulate, assist in, and support the growth of all kinds of economic activity that will tend to promote commerce and business development, maintain the economic stability and prosperity of its jurisdiction and of the state, and thus provide maximum opportunities for employment and improvement in the standard of living of citizens of the state.

(2) The acquisition of any land or interest in land pursuant to this part, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of ~~ports and transportation and storage~~ *port authority* facilities, and the exercise of any powers granted to port authorities and other public agencies to be severally or jointly exercised are public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency, as provided in this part, must be used for public and governmental purposes and as a matter of public necessity."

Section 5. Section 7-14-1111, MCA, is amended to read:

"**7-14-1111. General powers of authority.** An authority has all the powers necessary or convenient to carry out the purposes of this part, including but not limited to the power to:

(1) ~~certify annually to the governing bodies creating it the amount of tax to be levied by the governing bodies~~ *request annually the amount of tax to be levied by the governing body for port purposes, which request the governing body may in its discretion approve* for port purposes;

(2) sue and be sued, have a seal, and have perpetual succession;

(3) execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this part;

(4) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect ~~ports and transportation and storage~~ *transportation, storage, or other* facilities. For such purposes an authority may, by purchase, gift, devise, lease, or otherwise, acquire real or personal property or any interest therein, including easements.

(5) establish comprehensive port zoning regulations in accordance with the laws of this state;

(6) acquire, by purchase, gift, devise, lease, or otherwise, existing ~~ports and transportation and storage~~ *transportation, storage, or other* facilities *as may be necessary or convenient to carry out the purposes of this part.* However, an authority may not acquire or take over any ~~port or transportation and storage~~ *transportation, storage, or other* facility owned or controlled by another authority, county, municipality, or public agency without the consent of such authority, county, municipality, or public agency.

(7) provide financial and other support to organizations in its jurisdiction, including corporations organized under the provisions of the development corporation act in Title 32, chapter 4, whose purpose is to promote, stimulate, develop, and advance the general welfare, economic development, and prosperity of its jurisdiction and of the state and its citizens by stimulating, assisting in, and supporting the growth of all kinds of economic activity, including the creation, expansion, modernization, retention, and relocation of new and existing businesses and industry in the state, all of which will tend to promote business development, maintain the economic stability and prosperity of the state, and thus provide maximum opportunities for employment and improvement in the standards of living of citizens of the state."

Section 6. Section 7-14-1112, MCA, is amended to read:

"**7-14-1112. Rules.** An authority may adopt, amend, and repeal such reasonable resolutions, rules, and orders as it considers necessary for its own administration, management, and governance as well as for the management, governance, and use of any ~~port or transportation and storage~~ *transportation, storage, or other* facility owned by it or under its control. No rule, order, or standard prescribed by the commission may be inconsistent with or contrary to any act of the congress of the United States or any regulation promulgated or standard established pursuant thereto. The authority shall keep on file at the principal office of the authority a copy of all its rules for public inspection."

Section 7. Section 7-14-1125, MCA, is amended to read:

"**7-14-1125. Granting of operation and use privileges.** (1) In connection with the operation of a ~~port or transportation and storage~~ *transportation, storage, or other* facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements for terms not to exceed 30 years with any persons:

(a) granting the privilege of using or improving the port ~~or transportation and storage~~ *authority* facility or any portion or facility thereof or space therein for commercial purposes;

(b) conferring the privilege of supplying goods, commodities, services, or facilities at the port ~~or transportation and storage~~ *authority* facility; and

(c) making available services to be furnished by the authority or its agents at the ~~port or transportation and storage~~ *transportation, storage, or other* facility.

(2) In each case the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which must be reasonable and uniform for the same class of privilege or service and must be established with due regard to the property and improvements used and the expenses of operation to the authority."

Section 8. Section 7-14-1126, MCA, is amended to read:

"**7-14-1126. Port property — disposal.** Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by 7-14-1136, an authority may sell, lease, or otherwise dispose of any ~~port, transportation and storage~~ *transportation, storage, or other* facility~~,~~ or other property or portion thereof or interest therein acquired pursuant to this part. Such disposal by sale, lease, or otherwise must be in accordance with the laws of this state governing the disposition of other public property."

Section 9. Section 7-14-1131, MCA, is amended to read:

"**7-14-1131. Municipal tax levy.** The port authority may ~~certify~~ *request* annually ~~to~~ *from* the governing bodies the amount of tax to be levied by each municipality participating in the creation of the port authority, and the municipality may levy the amount ~~certified~~ *requested,* pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes. The levy made may not exceed the maximum levy permitted by 67-10-402 for port purposes or any lower limit that may have been established by the municipality or municipalities in the resolution creating the authority. The municipality shall collect the taxes ~~certified~~ *requested* by a port authority *that it has authorized* in the same manner as other taxes are levied and collected and make payment to the port authority. The proceeds of such taxes when and as paid to the port authority must be deposited in a special account or accounts in which other revenues of the authority are deposited and may be expended by the authority as provided for in this part. Prior to the issuance of bonds under 7-14-1133 and 7-14-1134, the port authority or the municipality may by resolution covenant and agree that the total amount of such taxes then authorized by law, or such portion thereof as may be specified by the resolution, will be ~~certified~~ *requested,* levied, and deposited annually as provided in this section until the bonds and interest thereon are fully paid."

Section 10. Section 7-14-1133, MCA, is amended to read:

"**7-14-1133. Bonds and obligations.** (1) Except for providing financial support to a private development organization, including a corporation organized under Title 32, chapter 4, whose purpose is to advance the economic development of its jurisdiction and of the state and its citizens, an authority may borrow money for any of its corporate purposes and issue bonds therefor, including refunding bonds, in such form and upon such terms as it determines, payable out of any revenues of the authority, including revenues derived from:

(a) any port or transportation and storage facility;

(b) taxes levied pursuant to 7-14-1131 or 67-10-402;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that no bonds may be issued at any time if the total amount of principal and interest to become

due in any year on such bonds and on any then outstanding bonds for which revenues from the same source are pledged exceeds the amount of such revenues to be received in that year, as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, *and* rentals~~,~~ and *to request* taxes, if any are pledged, sufficient to make the revenues from the pledged source in such year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided in this part, any bonds issued pursuant to this part by an authority may be payable as to principal and interest solely from revenues of the authority and shall state on their face the applicable limitations or restrictions regarding the source from which such principal and interest are payable.

(4) Bonds issued by an authority, county, or municipality pursuant to the provisions of this part are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of any such bonds, the authority, county, or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenues referred to in this part, prior to the payment of current costs of operation and maintenance of the facilities.

(6) Nothing in this section or 7-14-1134 may be construed to limit the use of port authority revenues, including federal and state money as described in 7-14-1136, to make grants and loans or to otherwise provide financial and other support to private development organizations, including corporations organized under the provisions of the development corporation act in Title 32, chapter 4. Under no circumstances may the credit of the state, county, or municipal governments or their agencies or authorities be pledged to provide financial support to such development organizations."

Approved April 25, 1991.

CHAPTER NO. 641

[HB 868]

AN ACT TO GENERALLY REVISE THE DISTRIBUTION OF COAL GROSS PROCEEDS; REQUIRING THE DEPARTMENT OF REVENUE TO CALCULATE UNIT VALUES FOR COAL PRODUCTION BASED ON 1988 PRODUCTION; EXCLUDING COAL MINES THAT BEGAN

PRODUCTION AFTER DECEMBER 31, 1988, FROM THE UNIT VALUE CALCULATION; REQUIRING COUNTY TREASURERS TO DISTRIBUTE COAL GROSS PROCEEDS BASED ON UNIT VALUE; PROVIDING A SEPARATE DISTRIBUTION OF COAL GROSS PROCEEDS TAXES FOR COAL MINES THAT BEGAN PRODUCTION AFTER DECEMBER 31, 1988; REQUIRING COUNTY TREASURERS TO SEND EXCESS REVENUE TO THE DEPARTMENT OF REVENUE; REQUIRING THE DEPARTMENT OF REVENUE TO REDISTRIBUTE EXCESS REVENUE TO THE COUNTIES; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-23-703 AND 17-7-502; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Department to calculate unit value.** (1) Except as provided in subsection (2), for the purposes of the distribution of coal gross proceeds taxes collected under this part, the department shall determine the unit value of coal for each mine in each taxing unit. The unit value for coal for each mine in each taxing unit is the quotient obtained by dividing the gross proceeds taxes calculated on coal produced in that taxing unit in calendar year 1988 by the number of tons of coal extracted, treated, and sold in that taxing unit during 1988.

(2) The unit value calculation does not apply to coal mines that began production after December 31, 1988.

Section 2. Section 15-23-703, MCA, is amended to read:

"**15-23-703. Taxation of gross proceeds — taxable value for bonding and guaranteed tax base aid to schools.** (1) The county assessor shall compute from the reported gross proceeds from coal a tax roll that he shall transmit to the county treasurer on or before September 15 each year. The county assessor may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall proceed to give full notice to each coal producer of the taxes due and to collect the taxes as provided in 15-16-101.

(2) For bonding, county classification, and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102(5).

(3) The taxable value of gross proceeds for the purpose of computing guaranteed tax base aid for schools is the amount of tax received by a district in the previous year divided by the number of mills levied by the district in the previous year, multiplied by 1,000. This amount must be added to the district, county, and statewide taxable value when computing guaranteed tax base aid under 20-9-368.

(4) Except as provided in subsection (7), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multi-

plying the unit value calculated in [section 1] times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

~~(4)~~*(5)* ~~The~~ *Except as provided in subsections (6) and (7), the* county treasurer shall credit ~~all taxes collected~~ *the amount determined* under ~~this part~~ *subsection (4) and the amounts received under [section 3]*:

(a) to the state and to the counties that levied mills against production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in ~~the year 1989~~ *fiscal year 1990* in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills against production or used nontax revenue, such as Public Law 81-874 money, in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in ~~1989~~ *the 1990 school fiscal year* in the school district.

(6) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (4), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenues, to the department for redistribution as provided in [section 3].

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (4), the taxing jurisdiction is entitled to a redistribution as provided by [section 3].

(7) The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year."

Section 3. **Department to determine redistribution of coal gross proceeds to taxing jurisdictions.** (1) The coal gross proceeds redistribution account established in [section 4] is statutorily appropriated, as provided in 17-7-502, for allocation to the county for redistribution as provided in subsections (2) and (3).

(2) Each year the department shall determine the amount of tax collected under this part from within each taxing unit in the county. If the amount collected by each county is less than the amount determined under 15-23-703(4) for that county, the department shall, on or before June 30 of each year, send the amount of the difference from the state special revenue account established in [section 4] to the county treasurer for redistribution as provided in 15-23-703(5).

(3) If the amount received by the department for redistribution is less than or more than the redistribution amount determined in subsection (2), the department shall calculate and redistribute the shortage or excess amount in the following manner:

(a) If a county does not receive the entire amount to which it is entitled under subsection (2), the shortage amounts of each taxing unit must be divided by the total shortage amounts of all taxing units determined under 15-23-703(4) to obtain a shortage percentage for each taxing unit. The shortage percentage for each taxing unit must be multiplied by the amount that is available for redistribution to each taxing unit, and this amount must be redistributed to each respective taxing unit.

(b) If there are excess amounts after the redistribution provided for in subsection (2), the excess amounts must be redistributed to the county of origin in proportion to the amount each taxing unit in the county contributed for redistribution.

(4) The county treasurer shall distribute the money received under subsection (3)(b) as provided in 15-23-703(5).

Section 4. **Coal gross proceeds redistribution account.** (1) There is within the state special revenue fund a coal gross proceeds redistribution account.

(2) All money received from county treasurers as provided in 15-23-703(6)(a) must be deposited by the department into the coal gross proceeds redistribution account for redistribution as provided in [section 3].

Section 5. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; *[section 3];* 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 6. **Codification instruction.** [Sections 1, 3, and 4] are intended to be codified as an integral part of Title 15, chapter 23, part 7, and the provisions of Title 15, chapter 23, part 7, apply to [sections 1, 3, and 4].

Section 7. **Effective date — applicability.** [This act] is effective July 1, 1991, and applies retroactively, within the meaning of 1-2-109, to the distribution and redistribution of coal gross proceeds taxes levied against coal produced after December 31, 1989.

Approved April 25, 1991.

CHAPTER NO. 642

[HB 934]

AN ACT CREATING THE 21ST JUDICIAL DISTRICT; AMENDING SECTION 3-5-101, MCA; AND PROVIDING AN APPLICABILITY DATE.

WHEREAS, demographics have changed dramatically in Montana in the last decade; and

WHEREAS, census data that is currently available will be the most reliable data available for reapportioning judicial districts for the next decade; and

WHEREAS, the number of filings in some district courts has grown at a greater rate than the number of filings in other district courts; and

WHEREAS, the cost of the court system is an issue of increasing importance in Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-101, MCA, is amended to read:

"**3-5-101. Judicial districts defined.** In this state there are ~~20~~ *21* judicial districts, distributed as follows:

(1) 1st district: Lewis and Clark and Broadwater Counties;

(2) 2nd district: Silver Bow County;

(3) 3rd district: Deer Lodge, Granite, and Powell Counties;

(4) 4th district: Missoula~~,~~ *and* Mineral~~, and Ravalli~~ Counties;

(5) 5th district: Beaverhead, Jefferson, and Madison Counties;

(6) 6th district: Park and Sweet Grass Counties;

(7) 7th district: Dawson, McCone, Richland, Prairie, and Wibaux Counties;

(8) 8th district: Cascade County;

(9) 9th district: Teton, Pondera, Toole, and Glacier Counties;

(10) 10th district: Fergus, Judith Basin, and Petroleum Counties;

(11) 11th district: Flathead County;

(12) 12th district: Liberty, Hill, and Chouteau Counties;

(13) 13th district: Yellowstone, Stillwater, Carbon, and Big Horn Counties;

(14) 14th district: Meagher, Wheatland, Golden Valley, and Musselshell Counties;

(15) 15th district: Roosevelt, Daniels, and Sheridan Counties;

(16) 16th district: Custer, Carter, Fallon, Powder River, Garfield, Treasure, and Rosebud Counties;

(17) 17th district: Phillips, Blaine, and Valley Counties;

(18) 18th district: Gallatin County;

(19) 19th district: Lincoln County;

(20) 20th district: Lake and Sanders Counties*;*

(21) 21st district: Ravalli County."

Section 2. **Applicability.** The judge for the 21st judicial district must be elected at the general election to be held in November 1992 and shall take office on January 1, 1993.

Approved April 24, 1991.

CHAPTER NO. 643

[SB 209]

AN ACT TO REQUIRE A SOLID WASTE MANAGEMENT SYSTEM TO BE LICENSED ANNUALLY BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; TO REQUIRE AN APPLICANT FOR A LICENSE TO PAY AN APPLICATION FEE; TO AUTHORIZE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO COLLECT FEES; AMENDING SECTIONS 7-13-231, 75-10-102, 75-10-104, 75-10-115, 75-10-204, AND 75-10-221, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill to:

(1) provide the department of health and environmental sciences with guidelines for adopting rules to implement [sections 1 through 7];

(2) indicate the structure and amount of fees that are intended to be charged to license solid waste management systems; and

(3) indicate the method of collection.

A fee for review of a license application for a new solid waste management system or for substantial modifications to an existing system will be charged. The fees must be based on the capacity of the proposed system and reflect the relative cost of reviewing the proposal. The following fee structure is suggested:

(1) Megafacility. $15,000 for a facility with a planned capacity of more than 200,000 tons of solid waste per year.

(2) Major facility. $10,000 for a facility with a planned capacity of more than 25,000 tons of solid waste per year but not more than 200,000 tons per year.

(3) Intermediate facility. $7,500 for a facility with a planned capacity of more than 5,000 tons of solid waste per year but not more than 25,000 tons per year.

(4) Minor facility. $5,000 for a facility with a planned capacity of not more than 5,000 tons of solid waste per year.

A fee will be charged to issue a license for a solid waste management system, and an annual fee will be charged to renew a solid waste management system license. The fees are intended to reflect a minimal base fee related to the fixed costs of an annual inspection and license renewal and a volume fee related to the estimated amount of solid waste to be disposed of each year. All solid waste systems must pay these fees in order to receive a license under 75-10-221. The initial volume fee may not exceed 31 cents per ton.

For the purposes of estimating the volume for small solid waste management systems or for systems that choose not to weigh or measure the volume of waste managed, the following formulas are suggested:

Solid waste should be assumed to be generated at the following per capita rates:

Population	Tons Per Year
Greater than 5,000	1.04
1,000 - 5,000	0.59
Less than 1,000 and unincorporated areas	0.41

For the purpose of conversion between solid waste weight and volume, the following equivalents are suggested:

(1) One uncompacted cubic yard equals 300 pounds; and

(2) One compacted cubic yard equals 700 pounds.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-231, MCA, is amended to read:

"**7-13-231. Authorization for charges for services.** (1) To defray the cost of maintenance and operation of said refuse disposal district, the board shall establish a fee for service, with approval of the county commissioners, provided a public hearing has been held if written protest has been made as provided in 7-13-211. An increase in fees may not be approved and implemented unless notice of such increase is given as provided in 7-13-208(1) and (2) and opportunity for protest is allowed as provided in 7-13-209 and 7-13-211.

(2) This fee shall be assessed to all units in the district that are receiving a service, for the purpose of maintenance and operation of said district.

(3) An opportunity for protest or hearing is not required to increase fees for the purpose of paying fees imposed by the department of health and environmental sciences under 75-10-115. Notice must be provided to all units of the rate or portion of any rate that is directly attributable to the fee imposed."

Section 2. Section 75-10-102, MCA, is amended to read:

"**75-10-102. Public policies.** (1) To implement this part, the following are declared to be public policies of this state:

(a) Maximum recycling from solid waste is necessary to protect the public health, welfare, and quality of the natural environment.

(b) Solid waste management systems shall be developed, financed, planned, designed, constructed, and operated for the benefit of the people of this state.

(c) Private industry is to be utilized to the maximum extent possible in planning, designing, managing, constructing, operating, manufacturing, and marketing functions related to solid waste management systems.

(d) Local governments shall retain primary responsibility for adequate solid waste management with the state preserving those functions necessary to assure effective solid waste management systems throughout the state.

(e) Costs for the management and regulation of solid waste management systems should be charged to those persons generating solid waste in order to encourage the reduction of the solid waste stream.

~~(e)~~*(f)* Encouragement and support be given to individuals and municipalities to separate solid waste at its source in order to maximize the value of such wastes for reuse.

~~(f)~~*(g)* The state shall provide technical advisory assistance to local governments and other affected persons in the planning, developing, financing, and implementation of solid waste management systems.

~~(g)~~*(h)* Actions and activities performed or carried out by persons and their contractors in accordance with this part shall be in conformity with the state solid waste plan.

(2) This part is in addition and supplemental to any other law providing for the financing of a solid waste management system and does not amend or repeal any other law."

Section 3. Section 75-10-104, MCA, is amended to read:

"**75-10-104. Duties of department.** The department shall:

(1) prepare a state solid waste management and resource recovery plan for submission to the board;

(2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

(b) governing procedures to be followed in applying for and making loans;

(c) governing agreements between a local government and the department for grants or loans under this part;

(d) establishing, for the purpose of determining the solid waste management fee to which a facility is subject under 75-10-115, methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility; *and*

(e) providing procedures for the quarterly collection of the solid waste management fee provided for in 75-10-115; ~~and~~

~~(f) providing guidelines for a waiver of fees for certain incineration or disposal of solid waste, as provided for in 75-10-115(2);~~

(3) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system which is compatible with the state plan whenever financial assistance is available;

(4) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating a solid waste management system in order to insure that the system conforms to the state plan;

(5) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for loans are available;

(6) enforce and administer the provisions of this part;

(7) administer loans made by the state under the provisions of this part; and

(8) approve plans for a proposed solid waste management system submitted by a local government."

Section 4. Section 75-10-115, MCA, is amended to read:

"**75-10-115. Solid waste management fee.** ~~(1) Except as provided in subsections (2) and (3), any person who owns an incinerator that burns more than 1,000 tons of solid waste a year or a solid waste disposal facility that is licensed pursuant to 75-10-221 and rules adopted under 75-10-221 and that disposes of more than 1,000 tons of solid waste a year shall pay to the department a quarterly fee of $1 for each ton of solid waste generated in a different region and incinerated or disposed of at the facility.~~

~~(2) The fee provided in subsection (1) must be waived if the department finds that the incineration or disposal is consistent with state solid waste management goals and results in equivalent or improved protection of Montana's public health, safety, welfare, and environment when compared to the alternative of intraregional incineration or disposal.~~

~~(3) The incineration or disposal of solid waste at a licensed facility in the manner and quantity incinerated or disposed of before May 22, 1989, is exempt from the solid waste management fee.~~ *(1) The department may establish and collect fees for the management and regulation of solid waste disposal. These fees may include:*

(a) a license application fee that reflects the cost of reviewing a new solid waste management system or a substantial change to an existing facility;

(b) an annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal and based upon the following formula:

(i) for a major facility with a planned capacity of more than 25,000 tons of solid waste a year, $3,500;

(ii) for an intermediate facility with a planned capacity of more than 5,000 tons a year but not more than 25,000 tons per year, $3,000;

(iii) for a minor facility with a planned capacity of not more than 5,000 tons a year, $2,500; and

(c) a volume-based fee on solid waste disposal.

~~(4)~~*(2)* All fees collected must be deposited in the solid waste management account provided for in 75-10-117."

Section 5. Section 75-10-204, MCA, is amended to read:

"75-10-204. **Powers and duties of department.** The department shall adopt rules governing solid waste management systems which shall include but are not limited to:

(1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;

(2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;

(5) requirements relating to ground water monitoring, including but not limited to:

(a) information that owners and operators of municipal solid waste landfills and other disposal sites specified in 75-10-207 must submit to the department to enable the department to prepare the priority compliance list authorized by 75-10-207(3);

(b) the content of plans for the design, construction, operation, and maintenance of monitoring wells and monitoring systems; and

(c) recordkeeping and reporting; ~~and~~

(6) fees related to the review of solid waste management system license applications;

(7) the renewal of solid waste management system licenses and related fees; and

~~(6)~~*(8)* any other factors relating to the sanitary disposal or management of solid wastes."

Section 6. Section 75-10-221, MCA, is amended to read:

"**75-10-221. License required — application.** (1) Except as provided in 75-10-214, no person may dispose of solid waste or operate a solid waste management system without a license from the department.

(2) The department shall provide application forms for a license as provided in this part.

(3) The application shall contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and such other information as the department may by rule require.

(4) The license provided for in this section is for a period not to exceed 12 months unless renewed by the department. The department may provide exceptions to the 12-month requirement for a 2-year period following July 1, 1991.

(5) The department may require submission of a new application if the department determines that the plan of operation, the management of the solid waste system, or the geological or ground water conditions have changed since the license was initially approved.

(6) In establishing fees for licenses and the review of applications, the department shall consider the volume of waste to be managed and the size of the proposed solid waste management system. The fees must encourage reduction in the volume of waste to be managed and cover the costs to the department of initially reviewing and annually licensing the solid waste management system."

Section 7. **Filing fee for megafacility — use.** An applicant for a license under 75-10-221 to operate a megafacility shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the license application. The filing fee must be deposited in the solid waste management account, provided for in 75-10-117, for use by the department in licensing the facility. The initial filing fee may not exceed the following scale, based upon the megafacility's projected annual tonnage of waste:

(1) base fee of $40,000; plus

(2) 20 cents a ton for every ton of waste over 200,000 tons.

Section 8. **Codification instruction.** [Section 7] is intended to be codified as an integral part of Title 75, chapter 10, part 2, and the provisions of Title 75, chapter 10, part 2, apply to [section 7].

Section 9. **Coordination instruction.** If House Bill No. 377 is passed and approved and if it includes a section that provides a filing fee for a certificate of site acceptability for a megalandfill, then [section 7 of this act] is void.

Section 10. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to all applications provided for in 75-10-221 received after January 1, 1990.

Section 11. **Effective date.** [This act] is effective July 1, 1991.

Approved April 26, 1991.

CHAPTER NO. 644

[SB 211]

AN ACT INCREASING THE MAXIMUM PENALTIES THAT MAY BE ASSESSED FOR VIOLATIONS OF TITLE 75, CHAPTER 5, PART 6, MCA; ESTABLISHING FACTORS THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES SHALL CONSIDER IN REACHING A SETTLEMENT; AND AMENDING SECTIONS 75-5-631 AND 75-5-633, MCA.

STATEMENT OF INTENT

It is the legislature's intent that the department of health and environmental sciences develop penalty guidelines to ensure that the civil penalty provided by 75-5-631 is fairly applied by the department in reaching settlement agreements with persons who have violated Title 75, chapter 5, part 6. The legislature recognizes that the department may, in its initial filings, seek the maximum penalty of $25,000 for each day of violation. However, it is the legislature's intent that the actual amount assessed in a settlement reflect the factors listed in 75-5-631(4) and that the department apply these factors uniformly to all violators.

This bill does not direct the department to adopt rules to ensure the uniform application of the factors listed in 75-5-631(4). The enforcement guidelines developed by the department should include a process for applying the factors to each violator, guidance for determining the amount to request in a civil complaint, and, most importantly, a format for determining an equitable settlement value. The format may include a clear and concise description of penalty settlement ranges by type of violation. The department should complete the guidelines by October 1, 1991.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-631, MCA, is amended to read:

"**75-5-631. Civil penalties — injunctions not barred.** (1) A person who violates this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter shall be subject to a civil penalty not to exceed ~~$10,000~~ *$25,000.* Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The department shall institute and maintain any enforcement proceedings in the name of the state.

(4) When seeking penalties under this section, the department shall take into account the following factors in determining an appropriate settlement, if any, subsequent to the filing of a complaint:

(a) the nature, circumstances, extent, and gravity of the violation; and

(b) with respect to the violator, his ability to pay, any prior history of such violations, the economic benefit or savings, if any, to the violator resulting from the violator's action, and any other matters as justice may require."

Section 2. Section 75-5-633, MCA, is amended to read:

"**75-5-633. Penalties for false statements and falsifying monitoring.** Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall upon conviction be punished by a fine of not more than ~~$10,000~~ *$25,000* or by imprisonment for not more than 6 months, or both."

Approved April 26, 1991.

CHAPTER NO. 645

[SB 407]

AN ACT CLARIFYING THE DEFINITION OF "PUBLIC WATER SUPPLY SYSTEM"; ENABLING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO REVIEW A PUBLIC WATER SUPPLY SYSTEM OR PUBLIC SEWAGE SYSTEM TO DETERMINE IF THAT SYSTEM HAS THE FINANCIAL CAPABILITY TO COMPLY WITH THE PUBLIC WATER SUPPLY LAWS; DESCRIBING A PROCESS TO BE USED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTRATIVELY ENFORCE THE LAWS PROTECTING PUBLIC WATER SUPPLIES; PROVIDING AN ADMINISTRATIVE PENALTY AND CIVIL PENALTY FOR VIOLATION OF PUBLIC WATER SUPPLY LAWS OR OF A RULE, ORDER, OR CONDITION OF APPROVAL ISSUED UNDER THOSE LAWS; PRO-

VIDING FOR ASSESSMENT OF FEES ESTABLISHED THROUGH RULEMAKING TO RECOVER COSTS OF DEPARTMENT SERVICES UNDER THE LAWS RELATING TO PUBLIC WATER SUPPLIES AND TO SANITATION IN SUBDIVISIONS; PROVIDING FOR APPEAL OF THE FEE ASSESSMENT; ALLOWING A MUNICIPALITY TO RAISE WATER RATES TO COVER COSTS ASSOCIATED WITH FEES WITHOUT A PUBLIC HEARING; PROVIDING THAT LOCAL SEWER DISTRICTS MAY SELL SEWER SERVICE TO MUNICIPALITIES OR TOWNS OR CONSUMERS LOCATED WITHIN OR OUTSIDE THE DISTRICT; ESTABLISHING A PUBLIC DRINKING WATER SPECIAL REVENUE FUND TO RECEIVE REVENUES FROM FEES, ADMINISTRATIVE PENALTIES, AND CIVIL PENALTIES RECEIVED PURSUANT TO THIS ACT; ALLOCATING A PORTION OF THE REVENUES TO THE GROUND WATER ASSESSMENT ACCOUNT; AMENDING SECTIONS 7-13-2218, 69-7-111, 75-6-102, 75-6-103, 75-6-104, 75-6-111, AND 76-4-105, MCA; AND PROVIDING A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is provided for this bill because rulemaking authority is delegated to the board of health and environmental sciences to prescribe procedures for administrative enforcement actions undertaken by the department of health and environmental sciences in administering the public water supply laws, as provided in Title 75, chapter 6, and to develop a fee schedule to enable the department to recover costs in administering these laws. Rulemaking authority is also delegated to the department to develop fees to pay for costs of reviewing plats and subdivisions under the laws related to sanitation in subdivisions, as provided in Title 76, chapter 4. It is the intent of the legislature that the rules establish a reasonable fee schedule that approximates the department's actual and necessary costs.

The legislature anticipates that the department will expand its enforcement activity in order to address ongoing and increasing health problems with public water supply systems and public sewage systems in Montana. In undertaking this effort, the legislature expects that the department will have the option to pursue administrative enforcement as a means of expediting and encouraging compliance with Title 75, chapter 6. Nonetheless, it is the department's duty to clearly inform each violator of:

(1) the nature of the action taken against it;

(2) what the department requires to resolve the matter; and

(3) what legal avenues are available to the violator if he desires to contest the matter.

The legislature recognizes that an economic hardship may be imposed on a public water supply system in order for that system to be brought into compliance with state and federal public water supply laws and that this hardship may be further increased by the levying of administrative and civil penalties for noncompliance. It is the intention of the legislature that the department adopt rules that establish a procedure for the progressive enforcement of this act in which the levying of administrative and civil penalties is a final action. The department may adopt rules that allow for the bypass of the enforcement procedures and the immediate assessment of penalties if specific circumstances warrant this action.

The rules also require the board of health and environmental sciences to develop fees for recovery of costs incurred by the department in delivering services to persons who own or operate or intend to own or operate a public water supply system or public sewage system. These costs include costs associated with review of engineering plans and specifications, inspections, and general assistance. To assist the board in developing these rules, the department shall prepare and submit to the board a detailed estimate of projected costs associated with these services for fiscal years 1992 and 1993. The board shall develop a fee schedule that will provide revenues that are commensurate with the projected costs. A similar approach should be used by the department in developing rules setting new fees for review of plats and subdivisions under 76-4-105.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6-102, MCA, is amended to read:

"**75-6-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Community water system" means any public water supply system that serves at least 10 service connections used by year-round residents or regularly serves at least 25 year-round residents.

~~(2)~~*(3)* "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

~~(3)~~*(4)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(4)~~*(5)* "Drainage" means rainfall, surface, and subsoil water.

~~(5)~~*(6)* "Industrial waste" means any waste substance from the processes of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(6)~~*(7)* "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water supply system.

~~(7)~~*(8)* "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(8)~~*(9)* "Person" means any individual, corporation, association, partnership, municipality, other political subdivision of the state, or federal agency.

~~(9)~~*(10)* "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

~~(10)~~*(11)* "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that is designed to serve or serves 10 or more families or 25 or more persons daily for a period of at least 60 days out of the calendar year.

~~(11)~~*(12)* "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that *is designed to serve or* serves 10 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year.

~~(12)~~*(13)* "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations at Title 40, CFR, Parts 141 and 142.

~~(13)~~*(14)* "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

~~(14)~~*(15)* "State waters" means any body of water, irrigation system, or drainage system, either surface or underground.

(16) "Transient noncommunity water system" means any public water supply system that is not a community water system and that serves persons on a transient basis."

Section 2. Section 75-6-103, MCA, is amended to read:

"**75-6-103. Duties of the board.** (1) The board has general supervision over all state waters which are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, *as described in [section 4],* for services rendered by the department ~~in conducting inspections~~;

(c) monitoring, recordkeeping, and reporting by persons who own or operate a public water supply system;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the issuance of licenses by the department to laboratories that conduct analysis of public water supply systems;

(f) the siting, construction, operation, and modification of a public water supply system *or public sewage system*;

(g) the review of financial viability of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

~~(g)~~*(h)* the collection and analysis of samples of water used for drinking or domestic purposes;

~~(h)~~*(i)* the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part; ~~and~~

(j) administrative enforcement procedures and administrative penalties authorized under this part; and

~~(i)~~*(k)* any other requirement necessary for the protection of public health as described in this part.

(3) The board may issue orders necessary to fully implement the provisions of this part."

Section 3. Section 75-6-104, MCA, is amended to read:

"**75-6-104. Duties of department.** The department shall:

(1) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their quality and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of assuring its quality;

(4) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) collect fees, *as described in [section 4],* for services ~~rendered in analyzing water and conducting inspections to cover costs of the service~~ and deposit the fees collected in the ~~state~~ *public drinking water* special revenue fund ~~for use by the department~~ *established in [section 8]*;

(7) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the board are being obeyed;

(9) enforce and administer the provisions of this part;

(10) establish a plan for the provision of safe drinking water under emergency circumstances;

(11) maintain an inventory of public water supply systems and establish a program for conducting sanitary surveys; and

(12) enter into agreements with local boards of health wherever appropriate for the performance of surveys and inspections under the provisions of this part."

Section 4. **Board to prescribe fees — opportunity for appeal.** (1) The board shall by rule prescribe fees to be assessed annually by the department on owners of public water supply systems to recover department costs in providing services under this part. The annual fee for a public water supply system is no more than $2.25 for each service connection to the public water supply system for the biennium beginning July 1, 1991, and ending June 30, 1993, and thereafter is no more than $2 for each service connection to the public water supply system, although the minimum fee for any system is $100, except that the fee for a transient noncommunity water system is $50.

(2) Public water supply systems in a municipality may raise the rates to recover costs associated with the fees prescribed in this section without the public hearing required in 69-7-111.

(3) The board shall by rule prescribe fees to be assessed by the department on persons who submit plans and specifications for construction, alteration, or extension of a public water supply system or public sewage system. The fees must be commensurate with the cost to the department of reviewing the plans and specifications.

(4) Fees collected pursuant to this section must be deposited in the public drinking water special revenue fund established in [section 8][, except that $45,000 must be deposited each fiscal year in the ground water assessment account, established by [section 4 of Senate Bill No. 94], within the state special revenue fund].

(5) (a) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in writing to the board within 20 days after receipt of the written notice.

(b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal may not be based only on the fee schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice provided for in subsection (5)(a).

Section 5. Section 75-6-111, MCA, is amended to read:

"**75-6-111. Appeal from rule or standard — injunction to require compliance.** (1) A person aggrieved by a rule, standard, or order adopted or issued pursuant to this part may appeal to the district court, *except as otherwise provided in [section 6]*. While the appeal is pending, the rule, standard, or order is in force.

(2) The department may seek an injunction from the appropriate district court to require compliance with this part or a rule or order issued as authorized by this part. The court may award the department costs and expenses incurred in investigating and abating the violation. The department may also initiate an action to collect a criminal penalty as provided in 75-6-113 *or a civil penalty as provided in [section 7]*."

Section 6. **Administrative enforcement.** (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or his agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time, which must be stated in the order. Service by mail is complete on the date of filing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or [section 7].

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or [section 7].

(6) An action initiated under this part may include an administrative penalty not to exceed $500 for each day of violation. Administrative penalties collected under this section must be deposited in the public drinking water special revenue fund established in [section 8].

(7) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under [section 4] or this section.

Section 7. **Civil penalty.** (1) A person who violates this part or a rule, order, or condition of approval issued under this part is subject to a civil penalty not to exceed $10,000.

(2) Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part or a rule, order, or condition of approval issued under this part by injunction or other appropriate remedy.

(4) Civil penalties collected pursuant to this section must be deposited in the public drinking water special revenue fund established in [section 8].

Section 8. **Public drinking water special revenue fund.** (1) There is a public drinking water special revenue fund within the state special revenue fund established in 17-2-102. There are established in the public drinking water special revenue fund an operator training account and a public drinking water program account.

(2) There must be credited to:

(a) the operator training account all administrative and civil penalties collected under [sections 6 and 7]; and

(b) the public drinking water program account revenues from fees assessed, collected, and allocated pursuant to [section 4].

(3) Funds from the operator training account may be used only to finance public water supply system and public sewage system operator training programs.

(4) Funds from the public drinking water program account may be used only to pay department costs in implementing the public drinking water supply program, as described in this part.

Section 9. Section 76-4-105, MCA, is amended to read:

"**76-4-105. Lot fees — general fund support.** (1) The department shall adopt rules setting forth fees~~,~~ *that do* not ~~to~~ exceed ~~$48 per parcel, for services rendered in the review of~~ *actual costs to the department in reviewing* plats and subdivisions. The rules shall provide for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the state general fund or, if applicable, to another reviewing authority for deposit in the general fund of the reviewing authority's jurisdiction. The fees shall be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of fees between the local governing body and the state general fund, as provided in 76-4-128. When a subdivision is reviewed under the provisions of 76-4-124, the local governing body shall, within 20 days after receiving preliminary plat approval under the Montana Subdivision and Platting Act, distribute the lot fees according to the fee schedule adopted under this section.

(3) When a local department or board of health conducts a review under the provisions of 76-4-104, it shall submit to the department, along with its approval statement, a fee of $5 per reviewed lot, for purposes of offsetting costs incurred in providing certification to a local reviewing authority and other administrative costs.

(4) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities.

(5) Costs of implementing this part must be paid from the state general fund as provided by legislative appropriation."

Section 10. Section 69-7-111, MCA, is amended to read:

"69-7-111. **Municipal rate hearing required — notice.** (1) ~~If~~ *Except as provided in [section 4], if* the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.

(2) Notice of the hearing shall be published in a newspaper as provided in 7-1-4127.

(3) (a) The notice shall be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days prior to the hearing.

(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average bill will increase.

(4) The published notice must contain:

(a) the date, time, and place of the hearing;

(b) a brief statement of the proposed action; and

(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel."

Section 11. Section 7-13-2218, MCA, is amended to read:

"7-13-2218. **District powers related to water and sewer projects.** Any district incorporated as provided in this part may:

(1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights, waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial to the district. Beneficial purposes include but are not limited to flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply, and other similar purposes.

(2) if the incorporators of the district are members of a private, nonprofit water association that was formed under the laws of this state, acquire by eminent domain from that water association any type of property referred to in this section;

(3) store water for the benefit of the district; conserve water for future use; appropriate, acquire, and conserve water and water rights for the purposes of the district; commence, maintain, intervene in, and compromise, in the name of the district, and assume the costs of any action or

proceeding involving or affecting the ownership or use of waters, water rights, or sewer rights within the district used or useful for any purpose of the district or a benefit to any land situated in the district;

(4) commence, maintain, intervene in, defend, and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants;

(5) commence, maintain, and defend actions and proceedings to prevent any interference with the waters or rights referred to in this section as may endanger the inhabitants or lands of the district;

(6) lease from any person, firm, or public or private corporation, with the privilege of purchase or otherwise, existing water rights, waterworks, sewerworks, canals, or reservoir systems; and carry on and maintain them;

(7) sell water or the use of water for household or domestic or other similar purposes *or sell sewer service* and, whenever there is a surplus of water *or sewerworks capacity*, sell or otherwise dispose of the water *or sewerworks capacity* to municipalities or towns or to consumers located within or outside the boundaries of the district."

Section 12. **Codification instruction.** [Sections 4, 6, 7, and 8] are intended to be codified as an integral part of Title 75, chapter 6, part 1, and the provisions of Title 75, chapter 6, part 1, apply to [sections 4, 6, 7, and 8].

Section 13. **Termination.** The bracketed portion of [section 4(4)] terminates October 1, 1993.

Approved April 26, 1991.

CHAPTER NO. 646

[SB 416]

AN ACT ALLOWING A TAX CREDIT FOR THE INSTALLATION OF A GEOTHERMAL SYSTEM; AMENDING SECTION 15-32-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-102, MCA, is amended to read:

"**15-32-102. Definitions.** As used in this part, the following definitions apply:

(1) "Building" means a single or multiple dwelling, including a mobile home, or a building used for commercial, industrial, or agricultural purposes, which is enclosed with walls and a roof.

(2) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

(3) "Energy conservation purpose" means one or more of the following results of an investment: reducing the waste or dissipation of energy or reducing the amount of energy required to accomplish a given quantity of work.

(4) "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a residential building.

~~(4)~~*(5)* "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

~~(5)~~*(6)* "Low emission wood or biomass combustion device" means a stove or furnace or a catalytic converter added to a stove or furnace which burns wood or other nonfossil biomass and which has an emission rate of less than 6 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves as adopted by the department of health and environmental sciences pursuant to 15-32-203.

~~(6)~~*(7)* "Recognized nonfossil forms of energy generation" means:

(a) a system for the utilization of solar energy including passive solar systems, wind, solid wastes, or the decomposition of organic wastes for capturing energy or converting energy sources into usable sources;

(b) a system for the production of electric power from solid wood wastes;

(c) a low-emission wood or biomass combustion device; or

(d) a small system for the utilization of water power by means of an impoundment not over 20 acres in surface area."

Section 2. **Credit for geothermal system — to whom available — eligible costs — limitations.** (1) A resident individual taxpayer who completes installation of a geothermal system, as defined in 15-32-102, in the taxpayer's principal dwelling is entitled to claim a tax credit, as provided in subsection (3), against the taxpayer's tax liability under chapter 30 for a portion of the installation costs of the system, up to $250 per year for 4 years. The credit may not exceed the taxpayer's income tax liability for the taxable year in which the credit is claimed.

(2) For the purposes of this section, installation costs include the cost of:

(a) trenching, well drilling, casing, and downhole heat exchangers;

(b) piping, control devices, and pumps that move heat from the earth to heat or cool the building;

(c) ground source or ground coupled heat pumps;

(d) liquid-to-air heat exchanger, ductwork, and fans installed with a ground heat well that pump heat from a well into a building; and

(e) design and labor.

(3) The tax credit allowed under this section is deductible from the taxpayer's income tax liability for the taxable year in which the installation costs were incurred and for the next 3 taxable years succeeding the taxable year in which the installation costs were incurred. There is no carryback or carryforward of the credit permitted under this section.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 15, chapter 32, part 1, and the provisions of Title 15, chapter 32, part 1, apply to [section 2].

Section 4. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved April 26, 1991.

CHAPTER NO. 647

[SB 427]

AN ACT TO GENERALLY REVISE THE PUBLIC GAMBLING LAWS OF MONTANA; REVISING THE DEFINITIONS OF ILLEGAL GAMBLING DEVICE AND ILLEGAL GAMBLING ENTERPRISE; DEFINING A PROMOTIONAL GAME OF CHANCE; PERMITTING LIMITED RELEASE OF LICENSE AND TAX INFORMATION; ESTABLISHING A ONE-TIME FEE FOR PROCESSING AN OPERATOR'S LICENSE APPLICATION; PROVIDING REQUIREMENTS FOR PREMISES APPROVAL; REQUIRING NOTIFICATION BEFORE THE TRANSFER OF AN OWNERSHIP INTEREST IN AN OPERATOR'S PREMISES; PROVIDING FOR INSPECTION OF PREMISES; CREATING A MANUFACTURER'S LICENSE FOR ELECTRONIC BINGO AND KENO EQUIPMENT; LEGALIZING LIMITED CASINO NIGHTS; EXPANDING PROVISIONS GOVERNING SPORTS POOLS; PRORATING VIDEO GAMBLING MACHINE PERMIT FEES; ALLOWING A DEDUCTION FOR THEFT FOR PURPOSES OF CALCULATING THE VIDEO

GAMBLING MACHINE TAX; AUTHORIZING FANTASY SPORTS LEAGUES, FISHING DERBIES, AND WAGERING ON NATURAL OCCURRENCES; REQUIRING BIENNIAL REPORTS FROM THE DEPARTMENT OF JUSTICE AND GAMING ADVISORY COUNCIL; REVISING CERTAIN GAMBLING DEFINITIONS; CLARIFYING CERTAIN CRIMINAL GAMBLING OFFENSES; ESTABLISHING A PENALTY FOR SALE, ASSIGNMENT, LEASE, OR TRANSFER OF A LICENSE OR PERMIT; STATUTORILY APPROPRIATING VIDEO GAMBLING MACHINE TESTING FEES TO THE DEPARTMENT OF JUSTICE; REVISING PROVISIONS CONCERNING ANTIQUE SLOT MACHINES; CLARIFYING PROHIBITED ACTIVITIES FOR DEPARTMENT OF JUSTICE EMPLOYEES; CLARIFYING DISPOSITION OF PENALTIES, FINES, AND FORFEITURES; AUTHORIZING THE DEPARTMENT OF JUSTICE TO ISSUE WARRANTS FOR DISTRAINT; ESTABLISHING THE CRIME OF SOLICITING ANOTHER PERSON TO PARTICIPATE IN AN ILLEGAL GAMBLING ENTERPRISE AND ESTABLISHING A PENALTY; PROHIBITING A MINOR FROM PARTICIPATING IN CERTAIN FORMS OF GAMBLING; REQUIRING LICENSE AND PERMIT REVOCATION UPON CONVICTION OF A FELONY GAMBLING OFFENSE; CREATING ADDITIONAL EXEMPTIONS FROM THE LIVE CARD GAMES AND LIVE BINGO AND KENO LAWS; CLARIFYING RAFFLE PROVISIONS; PROVIDING FOR SALE OF VIDEO GAMBLING MACHINES; REVISING CARD DEALER PROVISIONS; AUTHORIZING WAY TICKETS IN KENO GAMES; REMOVING THE 10-MACHINE LIMIT ON VIDEO DRAW POKER MACHINES; REVISING LICENSURE QUALIFICATIONS; PROVIDING FOR CARD GAME TOURNAMENTS; CLARIFYING PLACEMENT OF VIDEO GAMBLING MACHINES; ELIMINATING NET TAX ON LIVE BINGO AND KENO GAMES AND REVISING THE PERMIT FEE; AUTHORIZING SPORTS TAB GAMES PURSUANT TO THE RULES GOVERNING SPORTS POOLS; AMENDING SECTIONS 2-15-2021, 17-7-502, 23-5-112, 23-5-113, 23-5-114, 23-5-115, 23-5-136, 23-5-152, 23-5-153, 23-5-154, 23-5-156, 23-5-158, 23-5-162, 23-5-176, 23-5-177, 23-5-308, 23-5-309, 23-5-406, 23-5-407, 23-5-409, 23-5-412, 23-5-413, 23-5-501, 23-5-502, 23-5-503, 23-5-602, 23-5-603, 23-5-610, 23-5-611, 23-5-612, 23-5-625, AND 23-5-631, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 13, 20, and 44] grant rulemaking authority to the department of justice.

[Section 13] requires the department to adopt rules describing electronic live bingo and keno equipment that may be approved for use in Montana. The rules must ensure that the electronic equipment use a random selection process to determine the outcome of each bingo or keno game.

[Section 20] requires the department to adopt rules to administer the laws governing casino nights. The rules must address but are not limited to:

(1) procedures for applying for a casino night permit;

(2) the type of documentation to be submitted as part of the application to establish an organization's nonprofit status; and

(3) the conduct of games operated during a casino night to ensure that illegal gambling activities are not offered.

[Section 44] requires the department to adopt rules describing the types of sports pools authorized under 23-5-501, 23-5-503, and [section 44].

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-112, MCA, is amended to read:

"**23-5-112. Definitions.** Unless the context requires otherwise, the following definitions apply to parts 1 through 6 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 6 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. No more than 75 numbers may be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover a previously designated arrangement of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table authorized by permit and made available to the public on the premises of a licensed gambling operator.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

~~(7)~~*(8)* "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

~~(8)~~*(9)* "Department" means the department of justice.

~~(9)~~*(10)* "Distributor" means a person who:

(a) purchases or obtains from another person equipment of any kind for use in gambling activities; and

(b) sells, leases, or otherwise furnishes the equipment to another person for use in public.

~~(10)~~*(11)* "Gambling" or "gambling activity" means risking money, credit, deposit, check, property, or any other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise. *The term does not mean conducting or participating in a promotional game of chance.*

~~(11)~~*(12)* "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

~~(12)~~*(13)* "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

~~(13)~~*(14)* "Gross proceeds" means gross revenue received less prizes paid out.

~~(14)~~*(15)* "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. *The term includes:*

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under part 5 or 10 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, craps table or a slot machine, except as provided in 23-5-153.

~~(15)~~*(16)* "Illegal gambling enterprise" means a gambling enterprise that violates *or is not specifically authorized by* a statute or a rule of the department. *The term includes:*

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more die, includes craps, hazard, or chuck-a-luck, but does not include an activity in which a participant rolls one or more die for a chance to obtain a drink or music; and

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in chapter 4 of this title and parts 2 and 5 of this chapter.

~~(16)~~*(17)* "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

~~(17)~~*(18)* "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

~~(18)~~*(19)* "License" means an operator's, dealer's, or manufacturer-distributor's license issued to a person by the department.

~~(19)~~*(20)* "Licensee" means a person who has received a license from the department.

~~(20)~~*(21)* "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator.

~~(21)~~*(22)* "Lottery" or "gift enterprise" means a scheme, by whatever name known, for the disposal or distribution of property by chance among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance. However, "gift enterprise" does not mean:

(a) lotteries authorized under part 10 of this chapter; or

(b) cash or merchandise attendance prizes or premiums that the county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos.

~~(22)~~*(23)* "Manufacturer" means a person who assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device.

(24) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

~~(23)~~*(25)* "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public, a gambling device or gambling enterprise authorized under parts 1 through 6 of this chapter.

~~(24)~~*(26)* "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 6 of this chapter.

~~(25)~~*(27)* "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

~~(26)~~*(28)* "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(29) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property by chance among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it.

~~(27)~~*(30)* "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access; or

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization*; or*

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominately commercial manner.

~~(28)~~*(31)* "Raffle" means a ~~gift enterprise~~ *form of lottery* in which each participant ~~buys a chance or chances~~ *pays valuable consideration for a ticket to become eligible* to win a prize. *Winners must be determined by a random selection process approved by department rule.*

~~(29)~~*(32)* "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner. This definition does not apply to video gambling machines authorized under part 6 of this chapter.

~~(30)~~*(33)* "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 2. Section 23-5-113, MCA, is amended to read:

"23-5-113. **Department as criminal justice agency — *seized property.*** *(1)* The department is a criminal justice agency. Designated agents of the department are granted peace officer status, with the power of search, seizure, and arrest, to investigate gambling activities in this state regulated by parts 1 through 6 of this chapter and the rules of the department and to report violations to the county attorney of the county in which they occur.

(2) Upon conviction for any violation of parts 1 through 6 of this chapter, the court may order any property seized by a department or local law enforcement agent during a lawful search to be forfeited to the department, sold, if necessary, and disposed of under 23-5-123."

Section 3. Section 23-5-115, MCA, is amended to read:

"23-5-115. **Powers and duties of department — licensing.** (1) The department shall administer the provisions of parts 1 through 6 of this chapter.

(2) The department shall adopt rules to administer and implement parts 1 through 6 of this chapter.

(3) The department shall provide licensing procedures, prescribe necessary application forms, and grant or deny license applications.

(4) The department shall prescribe recordkeeping requirements for licensees, provide a procedure for inspection of records, provide a method for collection of taxes, and establish penalties for the delinquent reporting and payment of required taxes.

(5) The department may suspend, revoke, deny, or place a condition on a license issued under parts 1 through 6 of this chapter.

(6) The department may not make public or otherwise disclose information obtained in the application or tax reporting processes, except for general statistical reporting or studies *or as provided in [section 4].*

(7) The department shall assess, collect, and disburse any fees, taxes, or charges authorized under parts 1 through 6 of this chapter."

Section 4. **Disclosure of information.** (1) The department shall, upon request, disclose the following information from a license or permit application:

(a) the applicant's name;

(b) the address of the business where the activity under the license or permit is to be conducted;

(c) the name of each person having an ownership interest in the business; and

(d) types of permits requested by the applicant.

(2) In addition to the information enumerated in subsection (1), the department may disclose any other relevant information obtained in the application or tax reporting process or as a result of other department operations to:

(a) a federal, state, city, county, or tribal criminal justice agency; and

(b) the department of revenue and the federal internal revenue service.

Section 5. Section 23-5-152, MCA, is amended to read:

"**23-5-152. Possession of illegal gambling device** ***or conducting illegal gambling enterprise*** **prohibited — ~~exception~~** ***exceptions.*** (1) Except as provided in 23-5-153 and ~~subsection~~ *subsections* (2) *through (4)* of this section, it is a misdemeanor punishable under 23-5-161 for a person to purposely or knowingly*:*

(a) have in his possession or under his control or ~~to purposely or knowingly~~ permit to be placed, maintained, or kept in any room, space, enclosure, or building owned, leased, or occupied by him or under his management or control an illegal gambling device*; or*

(b) operate an illegal gambling enterprise.

(2) ~~This section~~ *Subsection (1)* does not apply to a public officer or to a person coming into possession of an illegal gambling device in or by reason of the performance of an official duty and holding it to be disposed of according to law.

~~(2)~~*(3)* (a) The department may adopt rules to license persons to manufacture gambling devices that are not legal for public play in the state and are manufactured only for export from the state.

(b) A person may not manufacture or possess an illegal gambling device for export from the state without having obtained a license from the department. The department may charge an administrative fee for the license that is commensurate with the cost of issuing the license.

(4) An illegal gambling device may be possessed or located for display purposes only and not for operation:

(a) in a public or private museum; or

(b) any other public place if the device has been made permanently inoperable for purposes of conducting a gambling activity."

Section 6. Section 23-5-177, MCA, is amended to read:

"**23-5-177. Operator of gambling establishment — license — fee.** (1) It is a misdemeanor for a person who is not licensed by the department as an operator to make available to the public for play a gambling device or gambling enterprise *for which a permit must be obtained from the department.*

(2) To obtain an operator's license, a person shall submit to the department:

(a) a completed operator's license application on a form prescribed and furnished by the department;

(b) any other relevant information requested by the department; and

(c) a license application processing fee, as required in subsection (8).

(3) Before issuing an operator's license, the department shall approve, in accordance with [section 7], the premises in which the gambling activity is to be conducted.

(4) Except as provided in [section 7], regardless of the number of on-premises alcoholic beverage licenses issued for a premises, the department may issue only one operator's license for the premises.

~~(2)~~*(5)* An operator's license must include the following information:

(a) a description of the premises upon which the gambling will take place;

(b) the operator's name;

(c) a description of each gambling device or card game table ~~licensed~~ *for which a permit has been issued* to the operator by the department for play upon the premises, including the type of game and ~~license number or decal~~ *permit* number for each ~~licensed~~ game; and

(d) any other relevant information determined necessary by the department.

~~(3)~~*(6)* The operator's license must be issued annually along with all other ~~licenses~~ *permits* for gambling devices or games ~~licensed~~ *issued* to the operator.

~~(4)~~*(7)* The operator's license must be updated each time a *video* gambling ~~device~~ *machine, bingo, keno,* or card game table ~~license~~ *permit* is newly issued or the ~~device~~ *machine* or game is removed from the premises.

~~(5)~~*(8)* The department ~~may not~~ *shall* charge *an applicant who has submitted an operator's license application on or after July 1, 1991,* a *one-time license application processing* fee *to cover the actual cost incurred by the department in determining whether the applicant qualifies* for *licensure under 23-5-176* ~~the issuance of an operator's license~~. *After making its determination, the department shall refund any overpayment or charge and collect amounts sufficient to reimburse the department for any underpayment of actual costs.*

~~(6)~~*(9)* The operator's license must be prominently displayed upon the premises for which it is issued."

Section 7. **Premises approval.** (1) Except as provided in subsection (4), the department may approve a premises for issuance of an operator's license if the premises meets the requirements contained in subsections (2) through (4).

(2) The premises must:

(a) be a structure or facility that is clearly defined by permanently installed walls that extend from floor to ceiling;

(b) have a unique address assigned by the local government in which the premises is located; and

(c) have a public external entrance, leading to a street or other common area, that is not shared with another premises for which an operator's license has been issued.

(3) If the premises shares a common internal wall with another premises for which an operator's license has been issued, the common wall must be permanently installed, opaque, and extend from floor to ceiling and may not contain an internal entrance through which public access is allowed.

(4) A second operator's license may be issued or renewed until June 30, 1996, for a person operating a gambling activity on a premises that did not meet the requirements of subsections (2) and (3) if:

(a) the second operator's license was issued to the person on or before January 1, 1991; or

(b) (i) the application for the second operator's license was received by the department on or before January 1, 1991;

(ii) a second on-premises alcoholic beverages license was obtained for the premises on or before January 1, 1991; and

(iii) substantial physical modifications to the premises were made on or before January 1, 1991.

Section 8. **Transfer of ownership interest.** A licensed operator shall notify the department in writing before transferring any ownership interest in his premises.

Section 9. **Card room contractor's license — fee — submission of contract.** (1) It is a misdemeanor for a person to enter into a contract with a licensed operator to operate one or more live card game tables on the operator's premises without obtaining a card room contractor's license from the department.

(2) The department shall charge an annual license fee of $150 for issuing or renewing a card room contractor's license. The department shall retain the fee for administrative purposes.

(3) The applicant shall submit at the time of application for a card room contractor's license a copy of the agreement entered into with the licensed operator.

Section 10. **Inspection of premises, records, and devices.** The department or a local law enforcement official may inspect at any time during normal business hours a premises, as defined in 23-5-112, or a facility where gambling devices are manufactured or distributed. The inspection may include the examination of records, equipment, and proceeds related to the operation of a gambling activity or the manufacture or distribution of a gambling device.

Section 11. **Manufacturer's license for electronic bingo or keno equipment — license and processing fees.** (1) A person may not assemble, produce, manufacture, or supply electronic equipment for use in conducting live bingo or keno games in this state without obtaining an annual manufacturer's license from the department.

(2) The department shall charge an annual license fee of $1,000 for issuing or renewing a manufacturer's license.

(3) A manufacturer's license expires June 30 of each year, and the license fee may not be prorated.

(4) In addition to the license fee provided for in subsection (2), the department may charge a one-time manufacturer's application fee to cover the actual cost of processing the original license. The department shall refund an overpayment or charge and collect an amount sufficient to reimburse the department for underpayment of actual costs.

(5) The department shall retain for administrative purposes the license and processing fees collected under this section.

Section 12. **Examination and approval of electronic bingo and keno equipment — fee.** (1) A licensed manufacturer shall submit to the department for examination a prototype of any electronic equipment intended for use in conducting live bingo or keno games before the equipment is used in the state.

(2) Before the equipment is examined, the manufacturer shall pay the anticipated examination costs as determined by the department. The department shall refund an overpayment or charge and collect an amount sufficient to reimburse the department for underpayment of actual costs.

(3) Upon completion of the examination, the department may approve, disapprove, or place a condition upon use of the equipment before it is made available for use in conducting live bingo or keno games.

Section 13. **Electronic live bingo and keno equipment specifications — rules.** The department shall adopt rules describing electronic live bingo and keno equipment that may be approved under [section 12]. At a minimum, the rules must provide that the equipment use a random selection process to determine the outcome of each game.

Section 14. **Definitions.** Unless the context requires otherwise, for purposes of [sections 14 through 20], "casino night" means a fundraising event during which wagers may be made in gambling activities authorized in [section 15] through the use of imitation money.

Section 15. **Casino nights authorized.** (1) Nonprofit organizations may conduct or participate in a casino night.

(2) The following gambling activities may be conducted during a casino night:

(a) live card games authorized under 23-5-311;

(b) live bingo and keno games; and

(c) raffles.

Section 16. **Application for permit.** (1) A nonprofit organization may apply to the department for a casino night permit on a form prescribed and furnished by the department. The application must be accompanied by a fee of $25.

(2) The application must include:

(a) the name and address of the applicant;

(b) the name and address of the applicant's officers;

(c) the location, date, and time at which the applicant will conduct the casino night;

(d) sufficient evidence concerning the structure and operation of the organization to enable the department to determine whether the applicant is a nonprofit organization; and

(e) other relevant information requested by the department.

Section 17. **Issuance of permit — disposition of fee.** (1) After review of an application submitted under [section 16], the department may issue to the applicant a casino night permit. Only one permit may be issued to the applicant each year. The permit is valid for only one location and is not assignable or transferable.

(2) The department shall retain the fee provided for in [section 16] for administrative purposes.

Section 18. **Requirements for conducting casino nights.** A nonprofit organization that has obtained a permit under [section 17] shall conduct a casino night in compliance with the following conditions:

(1) The casino night may not last more than 12 consecutive hours.

(2) The casino night must be managed and operated only by members of the nonprofit organization that was issued the permit under [section 17]. The members may not be compensated for their services.

(3) Only merchandise may be awarded as prizes.

(4) Proceeds derived from the casino night, after payment of reasonable administrative expenses, may be used only for a civic, charitable, or educational purpose, and administrative expenses may not exceed 50% of the proceeds.

Section 19. **Nonapplicability of certain gambling laws.** The provisions of parts 3 and 4 of this chapter, except 23-5-311, do not apply to live card games, live bingo or keno games, or raffles conducted during a casino night.

Section 20. **Rules.** The department shall adopt rules to administer [sections 14 through 19]. At a minimum, the rules must address application procedures and play of the games during a casino night.

Section 21. **Fantasy sports leagues defined.** As used in [sections 21 through 25], a "fantasy sports league" means a gambling activity conducted in the following manner:

(1) A fantasy sports league consists of a limited number of persons or groups of persons who pay an entrance fee for membership in the league. The entrance fee may include an administrative fee.

(2) Each league member creates a fictitious team composed of athletes from a given professional sport, such as baseball, basketball, or football. Player selection is conducted through random drawings or a bidding process.

(3) After the initial teams are selected, interim replacement of players may occur by trade or purchase. A specific fee, which may not exceed the total entrance fee, is charged for each transaction.

(4) A method, as defined by league rules, is devised to permit each team to compete against other teams in the league. Points are awarded to a team according to the performance of individual players or teams or both during a designated time period.

(5) A member may be eligible to receive a payout based on the number of points accumulated. Payouts, which may be in the form of cash or prizes, are awarded according to league rules.

(6) Rules governing the conduct of the fantasy sports league must be provided in writing to each member.

Section 22. **Fantasy sports leagues authorized.** It is lawful to conduct or participate in a fantasy sports league.

Section 23. **Payouts — administrative fees charged by commercial establishments.** (1) The total value of payouts to all league members must equal the amount collected for entrance, administrative, and transactions fees, minus payment for administrative expenses.

(2) If a commercial establishment charges an administrative fee for conducting a fantasy sports league, the fee for each participant may not be more than 15% of the amount charged as a participant's entrance fee.

Section 24. **Sports betting prohibited — applicability.** [Sections 21 through 23] do not:

(1) authorize betting or wagering on the outcome of an individual sports event; or

(2) apply to gambling activities governed under chapter 4 or chapter 5, part 2 or 5, of this title.

Section 25. **Violations.** A person who purposely or knowingly violates or procures, aids, or abets in a violation of [sections 21 through 24] is guilty of a misdemeanor punishable under 23-5-161.

Section 26. Section 23-5-114, MCA, is amended to read:

"**23-5-114. Department employees — activities prohibited.** *(1)* An employee of the department~~, a former department employee during the first 365 days following termination of employment, or any peace officer or prosecutor~~ directly involved with the prosecution, investigation, regulation, or licensing of gambling, *as designated by the attorney general,* may not:

~~(1)~~*(a)* serve as an officer ~~or manager~~ of a ~~corporation~~ *business* or organization~~, other than a nonprofit corporation or organization,~~ that conducts a gambling activity, *other than as an officer of a nonprofit organization;*

(b) be employed by a licensed operator in any capacity that requires assisting in conducting a gambling activity regulated under parts 1 through 6 of this chapter or maintaining records for the gambling activity;

~~(2) receive or share in, directly or indirectly, any profit of a gambling activity regulated by the department;~~

~~(3)~~*(c)* have a beneficial or pecuniary interest in a contract for the manufacture, lease, or sale of a gambling device, the conduct of a gambling activity, or the provision of independent consultant services in connection with a gambling activity*; or*

(d) participate in a gambling activity governed by parts 1 through 6 of this chapter, except in performing assigned employment duties. An employee may participate in a gambling activity governed by part 10 of this chapter or chapter 4 of this title.

(2) The prohibitions in subsections (1)(a) through (1)(c) apply to a former designated department employee during the first year following termination from employment with the department if the employee was directly involved with the prosecution, investigation, regulation, or licensing of gambling immediately before termination."

Section 27. Section 23-5-136, MCA, is amended to read:

"**23-5-136. Injunction and other remedies.** (1) If a person has engaged or is engaging in an act or practice constituting a violation of a provision of parts 1 through 6 of this chapter or a rule or order of the department, the department may:

(a) issue a temporary order to cease and desist from the gambling activity, act, or practice for a period not to exceed 60 days;

(b) following notice and an opportunity for hearing, and with the right of judicial review, under the Montana Administrative Procedure Act:

(i) issue a permanent order to cease and desist from the act or practice, which order remains in effect pending judicial review;

(ii) place a licensee on probation;

(iii) suspend for a period not to exceed 180 days a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(iv) revoke a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(v) impose a civil penalty not to exceed $10,000 for each violation, whether or not the person is licensed by the department; and

(vi) impose any combination of the penalties contained in this subsection (1)(b); and

(c) bring an action in district court for relief against the act or practice. The department may not be required to post a bond. On proper showing, the court may:

(i) issue a restraining order, a temporary or permanent injunction, or other appropriate writ;

(ii) suspend or revoke a license or permit; and

(iii) appoint a receiver or conservator for the defendant or the assets of the defendant.

(2) The department may issue a warrant for distraint against an operator who fails to pay a civil penalty imposed under subsection (1) or a tax imposed under 23-5-409 or 23-5-610. The department may issue the warrant for the amount of the unpaid penalty or for the amount of the unpaid tax, plus penalty and accumulated interest on the tax, and shall follow the procedures provided in 15-1-701 through 15-1-708.

~~(2)~~*(3) (a)* A civil penalty imposed under this section must be collected by the department and ~~deposited in the state's general fund as required by~~ *distributed as provided in* 23-5-123. *The local government portion of the penalty payment is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.*

(b) If a person fails to pay the civil penalty, the amount due is a lien on the person's licensed premises and gambling devices in the state and may be recovered by the department in a civil action."

Section 28. Section 23-5-153, MCA, is amended to read:

"**23-5-153. Possession *and sale* of antique slot machines.** (1) For the purposes of this section, an antique slot machine is a mechanically or electronically operated slot machine that at any present time is more than 25 years old.

(2) Except as provided in subsection (3), an antique slot machine may be possessed, located, and operated only in a private residential dwelling.

(3) *(a)* An antique slot machine may be possessed or located for purposes of display only and not for operation in any public museum owned and operated by the state, a county, or a city.

(b) A licensed manufacturer-distributor *or a person licensed under subsection (4)* may possess ~~and sell~~ antique slot machines *for purposes of commercially selling or otherwise supplying the machines.*

(4) A person other than a licensed manufacturer-distributor may not sell more than three antique slot machines in a 12-month period without first obtaining from the department an annual license for selling the machines. The fee for the license is $50 a year. The fee must be retained by the department for administrative purposes. The department may not issue a license under this subsection to a licensed operator.

(5) A person or entity legally possessing a slot machine under subsection (2) or (3) may sell or otherwise supply a machine to another person or entity who may legally possess a slot machine.

~~(4)~~*(6)* An antique slot machine may not be operated for any commercial or charitable purpose."

Section 29. Section 23-5-154, MCA, is amended to read:

"**23-5-154. Soliciting ~~or persuading persons to play~~ *participation in* illegal gambling ~~device~~ *activity* prohibited.** A person who *purposely or knowingly* advertises for or solicits another person to ~~play or engage in the~~ *participate in an illegal gambling enterprise or* use ~~of~~ an illegal gambling device is guilty of a misdemeanor and is punishable under 23-5-161."

Section 30. Section 23-5-156, MCA, is amended to read:

"**23-5-156. Obtaining anything of value by fraud or operation of illegal gambling device or enterprise.** (1) A person who ~~by gambling~~ *in an activity involving gambling* obtains money, property, or anything of value that does not exceed $300 in value by misrepresentation, fraud, or the use of an illegal gambling device or an illegal gambling enterprise is guilty of a misdemeanor and is punishable as provided in 23-5-161.

(2) A person who ~~by gambling~~ *in an activity involving gambling* obtains money, property, or anything of value that exceeds $300 in value by misrepresentation, fraud, or the use of an illegal gambling device or an

illegal gambling enterprise is guilty of a felony and is punishable as provided in 23-5-162."

Section 31. Section 23-5-158, MCA, is amended to read:

"**23-5-158. Minors not to participate — penalty — *exception.*** (1) ~~A~~ *Except as provided in subsection (2), a* person may not purposely or knowingly allow a person under 18 years of age to participate in a gambling activity.

~~(2)~~ A person who violates this ~~section~~ *subsection* is guilty of a misdemeanor and must be punished in accordance with 23-5-161.

(2) A person under 18 years of age may sell or buy tickets for or receive prizes from a raffle conducted in compliance with 23-5-413 if proceeds from the raffle, minus administrative expenses and prizes paid, are used to support charitable activities, scholarships or educational grants, or community service projects."

Section 32. Section 23-5-162, MCA, is amended to read:

"**23-5-162. Criminal liabilities — felony.** *(1)* A person who purposely or knowingly violates a provision of parts 1 through 6 of this chapter, the punishment for which is a felony, may upon conviction be fined not more than $50,000 or imprisoned for not more than 10 years, or both, for each violation.

(2) In addition to any penalty imposed under subsection (1), the department shall revoke all licenses or permits issued to the person under parts 1 through 6 of this chapter and may not issue the person another license or permit under parts 1 through 6 of this chapter."

Section 33. Section 23-5-176, MCA, is amended to read:

"**23-5-176. Qualifications for licensure.** (1) A person whom the department determines is qualified to receive a license under the provisions of this chapter, except for the provisions of part 10, may, based on information available to, required by, or supplied to the department under department rules, be issued a state gambling license.

(2) ~~The~~ *Except as provided in subsection (4), the* department shall issue a license unless the department can demonstrate that the applicant ~~is~~:

(a) *is* a person whose prior *financial or other* activities or criminal record:

(i) poses a threat to the public interest of the state ~~or~~*;*

(ii) poses a threat to the effective regulation and control of gambling; or

~~(ii)~~*(iii)* creates a danger of illegal practices, methods, or activities in the conduct of gambling or in the carrying on of the business and financial arrangements incidental to gambling; ~~or~~

(b) has been convicted of a felony offense within 5 years of the date of application or is on probation or parole or under deferred prosecution for committing a felony offense; or

~~(b)~~*(c) is* receiving a substantial amount of financing for the proposed operation from an unsuitable source. A lender or other source of money or credit that the department finds to meet the provisions of subsection (2)(a) may be considered an unsuitable source.

(3) The provisions of 37-1-203 and 37-1-205 do not apply to licensing determinations made under this section.

(4) The department may deny a license or permit to an applicant who has falsified a license or permit application. If the falsification is determined after the license or permit has been issued, the department may revoke the license or permit."

Section 34. **Illegal sale, assignment, lease, or transfer of license — penalty.** A licensee who purposely or knowingly sells, assigns, leases, or transfers a license or permit in violation of 23-5-110 is guilty of a misdemeanor punishable in accordance with 23-5-161.

Section 35. Section 23-5-308, MCA, is amended to read:

"**23-5-308. Card game dealers — license.** (1) A person may not deal cards in a live card game *of panguingue or poker* without being licensed annually by the department.

(2) The fee for the first year in which the license is effective is $75, and the annual renewal fee is $25. The fee may not be prorated.

(3) The department shall retain for administrative purposes the license fee charged for the issuance of a dealer's license.

(4) A licensed dealer shall have on his person, and display upon request, his dealer's license when he is working as a dealer.

(5) *(a)* The department shall adopt rules to implement temporary licensing procedures until a permanent license is issued to a dealer.

(b) The rules must provide that*:*

(i) a temporary license may be obtained at the place where a person locally applies for a driver's license*;* and ~~that~~

(ii) the receipt received upon mailing *by certified mail* ~~an~~ *a completed license* application ~~for a permanent license~~ *and the fee required under subsection (2)* ~~by certified mail~~, return receipt requested, ~~also~~ constitutes a temporary license.

(c) The department may not assess a fee for the temporary license."

Section 36. Section 23-5-309, MCA, is amended to read:

"**23-5-309.** ~~Presence and control of dealer~~ ***Requirements for conducting card games.*** *(1)* ~~A~~ *Except as provided in [section 37], a* live card game ~~may not~~ *must* be played ~~except~~ on a live card game table ~~in the presence and under the control of a licensed dealer~~ *for which a permit has been issued and* on the premises of a licensed operator.

(2) A live card game of panguingue or poker must be played in the presence and under the control of a licensed dealer."

Section 37. **Tournaments.** (1) Subject to the department's approval, a licensed operator who has a permit for placing at least 1 live card game table on his premises may conduct up to 12 live card game tournaments a year on his premises. Each tournament may be conducted for no more than 5 consecutive days. If an operator conducts more than one tournament a year, at least 7 days must lapse between the conclusion of one tournament and the beginning of the next tournament.

(2) (a) Before the start of a tournament, the operator shall submit to the department an application for a tournament permit. The permit application must be accompanied by a $10 fee. The department shall retain the fee for administrative purposes.

(b) If a tournament is to be conducted on the premises of more than one licensed operator, each operator shall submit a permit application and processing fee. The permit is applied toward each operator's annual 12-tournament limit.

(3) Permits for placement of additional live card game tables, as provided in 23-5-306, are not required for additional tables authorized under a tournament permit.

(4) Tournament participants must be provided with a copy of the tournament rules before the start of the tournament. A copy of the rules must be posted in a conspicuous location in each area where the tournament is conducted.

(5) A person must be present on the premises during the tournament to oversee the conduct of the card games and to settle disputes among players. This person may be a dealer licensed under 23-5-308.

(6) A licensed operator may charge a tournament participant an entry fee, which may include a fee to cover expenses incurred in conducting the tournament. A participant who has been eliminated from competition during the tournament may reenter the tournament by paying an additional fee if permitted to do so under tournament rules. A rake-off may not be taken during a tournament card game.

(7) The face value of the chips used does not govern the value of the pot awarded at the end of the tournament.

(8) The provisions of this part and the department rules governing live card games apply to live card games conducted as part of a tournament unless otherwise provided.

Section 38. Section 23-5-406, MCA, is amended to read:

"23-5-406. Exempt charitable organizations *and facilities.* *(1)* *(a)* An organization ~~qualified for~~ *granted an* exemption under 26 U.S.C. 501(c)(3) ~~and~~, (c)(4), *(c)(8), or (c)(19):*

(i) on *or before* January 15, 1989, is exempt from ~~the~~ taxation and ~~license fees~~ *the permit fee* imposed by this part~~. An organization qualified for exemption under that section~~;

(ii) after ~~that date~~ *January 15, 1989,* is exempt from taxation ~~under,~~ and ~~need only pay~~ one-half the ~~license fees under,~~ *permit fee imposed by* this part if the organization carries on gambling activities for no more than 60 days a calendar year ~~and if the~~.

(b) An organization provided for in subsection (1)(a) shall:

(i) limit its live bingo and keno activities ~~are limited~~ to its main premises or place of operations and to events at other places operated by other charitable organizations or by a government unit or entity~~. The organization shall~~;

(ii) comply with other statutes and rules relating to the operation of live bingo and keno ~~or raffles. A qualified organization shall~~; *and*

(iii) apply to the department for a ~~cost-free~~ permit to conduct charitable live bingo ~~and~~ *or* keno games ~~or raffles~~.

(2) A long-term care facility, as defined in 50-5-101, or a retirement home, as defined in subsection (4), that has obtained an operator's license and a permit from the department to operate live bingo or keno is exempt from taxation and the permit fee imposed by this part if the facility:

(a) limits participation in live bingo and keno games to persons using the facility and their guests;

(b) limits live bingo or keno activities to its main premises or place of operation; and

(c) complies with other statutes and rules relating to the operation of live bingo and keno.

(3) The department may revoke or suspend the permit of ~~a qualified~~ *an* organization *or a facility provided for in subsection (1) or (2) if* ~~that~~, after investigation, the department determines *that the organization or facility* is ~~contracting~~ *operating or has contracted* with a nonqualified organization ~~to operate~~ *that is operating* live bingo~~,~~ *or* keno~~, or raffles~~ in a predominantly commercial manner.

(4) For purposes of this section, "retirement home" means a building in which sleeping rooms without cooking facilities in each room are rented to three or more persons who are 60 years of age or older and who do not need skilled nursing care, intermediate nursing care, or personal nursing care, as defined in 50-5-101."

Section 39. Section 23-5-407, MCA, is amended to read:

"**23-5-407. Live bingo or keno permit — fees — disposition of fees.** (1) A person who has been granted an operator's license may be granted an annual permit by the department to conduct live bingo or keno games on specified premises. *The permit expires June 30 of each year.*

(2) The permit fee for each ~~of the~~ premises in which a live bingo or keno game is conducted ~~may not be prorated and must be $500~~ *is $250.*

(3) The department shall retain the permit fee for administrative ~~costs~~ *purposes.*"

Section 40. Section 23-5-409, MCA, is amended to read:

"**23-5-409. Bingo and keno tax — records — distribution — statement and payment.** (1) A licensee who has received a permit to operate bingo or keno games shall pay to the department a tax of ~~5%~~ *1%* of the ~~net income~~ *gross proceeds* from the operation of each live bingo and keno game operated on his premises. ~~For purposes of this section, "net income" means gross proceeds, as defined in 23-5-112, minus the cost of equipment, supplies, personnel, and advertising allocated to the games. If in any year 5% of net income does not equal 1% of gross proceeds, then the licensee shall pay a tax of 1% of gross proceeds.~~

(2) A licensee shall keep a record of gross proceeds ~~and net income~~ in the form the department requires. At all times during the business hours of the licensee the records must be available for inspection by the department.

(3) A licensee shall annually complete and deliver to the department a statement showing the total gross proceeds ~~and net income~~ for each live keno or bingo game operated by him and the total amount due as live bingo or keno tax for the preceding year. This statement must contain any other relevant information required by the department.

(4) The department shall forward the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed game is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from taxes on live bingo or keno games located in incorporated cities and towns within the county. The tax collected under subsection (3) is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury."

Section 41. Section 23-5-412, MCA, is amended to read:

"**23-5-412. Card prices and prizes — *exception.*** ~~The~~ *(1) Except as provided in subsection (3):*

(a) the price for an individual bingo or keno card may not exceed 50 cents~~. Bingo prizes may be paid in either tangible personal property or cash. A~~*;*

(b) *a* prize may not exceed the value of $100 for each individual bingo award or keno card~~. It~~*; and*

(c) *it* is unlawful to, in any manner, combine any awards so as to increase the ultimate value of the award.

(2) Bingo and keno prizes may be paid in either tangible personal property or cash.

(3) A variation of the game of keno, as approved by the department, in which a player selects three or more numbers and places a wager on various combinations of these numbers is permissible if:

(a) no more than 50 cents is wagered on each combination of numbers; and

(b) a winning combination does not pay more than $100.

(4) A player may give ~~the~~ *a keno* caller a card with instructions on the card to play that card and its marked numbers for up to the number of successive games that the house allows and that the player has indicated on the card, upon payment of the price per game times the number of successive games indicated. The player shall remain on the house premises until the card is played or withdrawn. The caller shall keep the card until the end of the number of games indicated, and the department may by rule provide that at that time the caller shall pay the player any prizes won."

Section 42. Section 23-5-413, MCA, is amended to read:

"**23-5-413. Raffle prizes — permits — exception.** ~~(1) Raffle prizes may not exceed the value of $5,000 for each individual raffle ticket. It is unlawful to, in any manner, combine any awards so as to increase the ultimate value of the prize awarded for each ticket.~~

~~(2)~~*(1)* *(a)* ~~A separate~~ *Except as provided in subsection (1)(b), a* permit must be issued by the board of county commissioners for each raffle conducted within its jurisdiction. The permit must be issued before the raffle may be conducted. *The board of county commissioners may not charge a permit fee or an investigative fee for a raffle conducted by a religious corporation sole or nonprofit organization if the organization presents sufficient documentation of its nonprofit status.*

(b) If tickets for a raffle are to be sold in more than one county, a permit must be obtained only in the county where the winners of the raffle are to be determined.

(2) Except for a religious corporation sole or nonprofit organization, a person or organization conducting a raffle shall own all prizes to be awarded as part of the raffle before the sale of any tickets.

(3) A person who has conducted a raffle must submit an accounting to the board of county commissioners within 30 days following the completion of the raffle.

(4) The sale of raffle tickets authorized by this part is restricted to events and participants within the geographic confines of the state.

(5) The value of a prize awarded for an individual ticket for a raffle conducted by a person or an organization, other than a religious corporation sole or nonprofit organization, may not exceed $5,000. The prize may be in the form of cash, other intangible personal property, tangible personal property, or real property. Prizes may not be combined in any manner to increase the ultimate value of the prize awarded for each ticket.

~~(3) (a) The restrictions of subsection (1) do not apply to a raffle conducted by a nonprofit corporation,~~

(6) (a) In addition to complying with the requirements of subsections (1) through (5), a religious corporation sole~~,~~ or ~~other~~ nonprofit organization *as defined in 23-5-112* ~~if the corporation or organization is permitted by the board of county commissioners to conduct the raffle. The board of county commissioners may not charge a permit fee or an investigative fee for a raffle conducted by a nonprofit veterans' organization.~~

~~(b) The nonprofit organization or corporation seeking permission under subsection (3)(a)~~ shall ~~apply~~ *provide the following information* to the board of county commissioners *when applying* for ~~the~~ *a raffle* permit ~~and provide the following information~~:

(i) the cost and number of raffle tickets to be sold;

(ii) the charitable purposes the proceeds of the raffle are intended to benefit; and

(iii) the proposed prizes and their value.

~~(c) A veterans' organization seeking exemption from the permit fee or an investigative fee shall present evidence of the organization's nonprofit status to the board of county commissioners.~~

~~(d)~~*(b)* The proceeds from the sale of ~~the raffle~~ tickets *for a raffle conducted by a religious corporation sole or a nonprofit organization* may be used only for charitable purposes or to pay for prizes. ~~The raffle prize must be in tangible personal property only and not in money, cash, stock, bonds, evidence of indebtedness, or other intangible personal property. None of the proceeds~~ *Proceeds* may *not* be used for the administrative cost of conducting the raffle.

(c) The value of a prize awarded for an individual ticket for a raffle conducted by a religious corporation sole or nonprofit organization may equal or exceed $5,000 if the prize is in the form of tangible personal property. If the value of the prize is less than $5,000, the prize may be in the form of cash, other intangible personal property, tangible personal property, or real property."

Section 43. Section 23-5-501, MCA, is amended to read:

"23-5-501. **Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

~~(1) "Nonprofit organization" means a charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, or service organization, other than one established for the purpose of conducting or participating in a sports pool.~~

~~(2)~~*(1)* "Sports pool" means a ~~card divided into squares or spaces, with the names of the participants in the pool written within such squares or spaces, for~~ *gambling activity, other than an activity governed under chapter 4 or chapter 5, part 2 of this title in* which ~~consideration in~~ *a person wagers* money ~~is paid by the person playing~~ for each ~~square or space for the~~ chance to win money or other items of value *based* on ~~any~~ *the outcome of a* sports event *or series of sports events* wherein the ~~participants~~ *competitors* in ~~such~~ *the* sports event *or series of sports events* are natural persons or animals.

(2) "Sports tab" means a folded or banded ticket with a face covered to conceal a combination of two numbers, with each number ranging from zero through nine.

(3) "Sports tab game" means a gambling enterprise conducted on a card to which 100 sports tabs are attached that have 100 different combinations for which consideration in money is paid by the person purchasing each tab. A person may purchase a sports tab from the card for the chance to win money or other items of value on a sports event as provided in 23-5-503."

Section 44. **Sports pool design — department rules.** (1) A sports pool must be designed to ensure that:

(a) there is at least one winner from among the participants in the pool; and

(b) each participant has an equal chance to win the pool.

(2) Competitors in a sports event or series of sports events must be randomly assigned to each participant in the sports pool.

(3) The department shall by rule describe the types of sports pools authorized by this part. Variations in the authorized sports pools must be submitted to the department for review and approval before they are made available for public play.

Section 45. Section 23-5-503, MCA, is amended to read:

"23-5-503. **Rules.** (1) The card *or other device* used for recording the *sports* pool *or sports tab game* ~~and upon which the squares or spaces appear shall~~ *must* clearly indicate in advance of the sale of any chances the number of chances to be sold in that specific pool, the name of the event *or series of events,* the consideration to be paid for each chance, and the total amount *or percentage* to be paid to the winners. *The sports tabs must be purchased from a manufacturer licensed under 23-5-152.*

(2) ~~A chance to participate in a sports pool may not be sold other than upon the premises in which the sports pool is conducted. An individual~~ *Each sports tab or* chance to participate in a sports pool ~~may not~~ *must* be sold for ~~a consideration in excess of~~ *the same amount, which may not exceed* $5, and the total amount ~~to be~~ paid to ~~the~~ *all* winners of any individual sports pool *or sports tab game* may not exceed the value of $500. *Chances for a series of events may be purchased all at once prior to the occurrence of the first event.*

(3) (a) Except as provided in subsection (3)*(b)*, the ~~winner~~ *winners* of any sports pool shall receive a 100% payout of the value of the sports pool. *The winner of a sports tab game must receive at least 90% of the total cost of the 100 sports tabs. The operator of the sports tab game may retain the remaining money for administration and other expenses.*

~~(3)~~*(b)* A nonprofit organization that maintains *records* and opens *the records* to inspection upon reasonable demand ~~records~~ to verify that the retained portion is used to support charitable activities, scholarships or educational grants, or community service projects may retain up to 50% of the value of a sports pool *or sports tab game.*

(4) A person or nonprofit organization conducting a sports pool or sports tab game may purchase chances or sports tabs to participate in the sports pool or sports tab game but may not:

(a) retain any portion of the amount wagered in the sports pool or sports tab game, except as provided in subsection (3)(b);

(b) charge a fee for participating in the sports pool or sports tab game; or

(c) use the sports pool or sports tab game in any manner to establish odds or handicaps or to allow betting or booking against the person or nonprofit organization conducting the pool or game."

Section 46. Section 23-5-603, MCA, is amended to read:

"**23-5-603. Video gambling machines — possession — play — restriction.** (1) A ~~person~~ *licensed operator* may make available for public play only the number of approved video gambling machines specifically authorized by this part.

(2) The video gambling machines specifically authorized by this part are bingo, keno, and draw poker machines. Only the number of approved machines for which permits have been granted under 23-5-612 may be made available for play by the public on the premises of a licensed operator. The department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced while it is being repaired with a video gambling machine that is approved under the permit provisions of this part. A fee may not be charged for the replacement machine.

(3) Machines on premises licensed to sell alcoholic beverages for *on-premises* consumption ~~on the premises~~ must be placed:

(a) in ~~the~~ *a* room, area, or other part of the premises in which ~~the~~ alcoholic beverages are sold ~~and normally~~ *or* consumed*; and*

(b) within control of the operator for the purpose of preventing access to the machines by persons under 18 years of age."

Section 47. Section 23-5-610, MCA, is amended to read:

"**23-5-610. Video gambling machine ~~net~~ *gross* income tax — records — distribution — quarterly statement and payment.** (1) ~~An~~ *A licensed* operator issued a permit under this part shall pay to the department a video gambling machine tax of 15% of ~~net machine~~ *the gross* income from each video gambling machine licensed under this part. *A licensed operator may deduct from the gross income amounts equal to amounts stolen from machines if the amounts are not repaid by insurance and if a law enforcement agency investigated the theft.*

(2) ~~An~~ *A licensed* operator issued a permit under this part shall keep a record of ~~net machine~~ *the gross* income *from each machine* in such form as the department may require. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(3) ~~An~~ *A licensed* operator issued a permit under this part shall, within 15 days after the end of each quarter, complete and deliver to the department a statement showing the total ~~net machine~~ *gross* income from each video gambling machine licensed to him, together with the total amount due the state as video gambling machine ~~net~~ *gross* income tax for the preceding quarter. The statement must contain other relevant information as the department may require.

(4) (a) The department shall forward one-third of the tax collected under subsection (3) to the general fund.

(b) The department shall forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury."

Section 48. Section 23-5-611, MCA, is amended to read:

"**23-5-611. Machine permit qualifications — limitations.** (1) (a) A person who has been granted an operator's license under 23-5-177 and a license to sell alcoholic beverages for consumption on the premises may be granted a permit for the placement of video gambling machines in his premises.

(b) If video keno or bingo gambling machines were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the premises or operated for the principal purpose of gaming and there is an operator's license for the premises under 23-5-177, a permit for the same number of video keno or bingo gambling machines as were operated on the premises on that date may be granted to the person who held the permit for such machines on those premises on that date.

(c) A person who legally operated an establishment on January 15, 1989, for the principal purpose of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the placement of bingo and keno machines in his premises.

(2) An applicant for a permit shall disclose on the application form to the department any information required by the department consistent with the provisions of 23-5-176.

(3) A licensee may not have on the premises or make available for play on the premises more than 20 machines of any combination ~~and no more than 10 may be draw poker machines~~."

Section 49. Section 23-5-612, MCA, is amended to read:

"**23-5-612. Machine permits — fee.** (1) The department, upon payment of the fee provided in subsection (2) and in conformance with rules adopted under this part, shall issue to the operator ~~a~~ *an annual* permit for an approved video gambling machine.

(2) The department shall charge an annual permit fee of $200 for each video gambling machine permit. *The fee must be prorated on a quarterly basis but may not be prorated to allow a permit to expire before June 30. The department may not grant a refund if the video gambling machine ceases operation before the permit expires.*

(3) The department shall retain ~~$100~~ *50%* of the total permit fee collected *under subsection (2)* for purposes of administering this part. The ~~remaining $100~~ *balance* must be returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury.

~~(3) The permit expires on June 30 of each year, and the fee may not be prorated.~~

~~(4) A used keno machine may be licensed under subsection (1) without meeting the requirements of 23-5-609 [as that section read on September 30, 1989] if the applicant for licensure can establish to the satisfaction of the department that, on the date of application, he owns or possesses a machine that was owned or operated in the state prior to June 30, 1987. A license issued under this subsection expires for all purposes no later than June 30, 1989.~~"

Section 50. Section 23-5-625, MCA, is amended to read:

"**23-5-625. Video gambling machine manufacturer-distributor — license — fees.** (1) ~~It~~ *(a) Except as provided in subsections (2) and (3), it* is unlawful for any person to assemble, produce, manufacture, or supply any video gambling machine or associated equipment for use or play in the state without having first been issued a video gambling machine manufacturer-distributor's license by the department. *A licensed manufacturer-distributor may supply a video gambling machine only to another licensed manufacturer-distributor or a licensed operator.*

~~(2)~~*(b)* The department shall charge an annual license fee of $1,000 for the issuance or renewal of a video gambling machine manufacturer-distributor's license.

~~(3)~~*(c)* In addition to other license fees, the department may charge the applicant a one-time video gambling machine manufacturer-distributor's license application processing fee. The processing fee may not exceed the department's actual costs for processing an application.

~~(4)~~*(d)* All video gambling machine manufacturer-distributor's licenses expire on June 30 of each year, and the license fee may not be prorated.

~~(5)~~*(e)* The department shall retain the license and processing fees collected for purposes of administering this part, unless otherwise provided.

(2) A licensed operator who is not licensed as a manufacturer-distributor may sell up to 20 video gambling machines in a calendar year if the operator:

(a) had obtained permits for the machines and legally operated them prior to the sale; and

(b) sells the machines to another licensed operator or a licensed manufacturer-distributor.

(3) A lienholder who acquires title to video gambling machines through a foreclosure action involving a licensed operator or manufacturer-distributor may sell the machines to a licensed operator or licensed manufacturer-distributor."

Section 51. Section 23-5-631, MCA, is amended to read:

"**23-5-631. Examination and approval of new video gambling machines and associated equipment — fee.** (1) The department shall examine and may approve a new video gambling machine and associated equipment which are manufactured, sold, or distributed for use in the state before the video gambling machine or associated equipment is sold, played, or used.

(2) A video gambling machine or associated equipment may not be examined or approved by the department until the video gambling machine manufacturer-distributor is licensed as required in 23-5-625.

(3) All video gambling machines approved by the department of commerce prior to October 1, 1989, must be considered approved under this part.

(4) The department shall require the manufacturer-distributor seeking the examination and approval of a new video gambling machine or associated equipment to pay the anticipated actual costs of the examination in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

(5) Payments received under subsection (4) are statutorily appropriated to the department, as provided in 17-7-502, to defray the costs of examining and approving video gambling machines and associated equipment and to issue refunds for overpayments.

~~(5)~~*(6)* The department may inspect and test and approve, disapprove, or place a condition upon a video gambling machine prior to its distribution and placement for play by the public."

Section 52. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; *23-5-136;* 23-5-306; 23-5-409; 23-5-610; 23-5-612; *23-5-631;* 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant

to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 53. Section 2-15-2021, MCA, is amended to read:

"**2-15-2021. Gaming advisory council — allocation — composition — compensation — ~~annual~~ *biennial* report.** (1) There is a gaming advisory council.

(2) The gaming advisory council is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The gaming advisory council consists of nine members. One member must be from the senate, and one member must be from the house of representatives. The senate committee on committees and the speaker of the house of representatives shall appoint the legislative members of the council. The seven remaining members must be appointed by the department, with one representing the public at large, two representing local governments, one being a Native American, and three representing the gaming industry.

(4) Each gaming advisory council member is appointed to a 3-year term of office, except that three of the first-appointed original members shall serve a 1-year term, three (including both legislative members) shall serve a 2-year term, and three shall serve a 3-year term. A member of the council may be removed for good cause by the appointing body provided for in subsection (3).

(5) The gaming advisory council shall appoint a chairman from its members.

(6) Legislative members of the gaming advisory council are entitled to compensation and expenses, as provided in 5-2-302, while the council is meeting. The remaining members are entitled to travel, meals, and lodging expenses as provided for in 2-18-501 through 2-18-503. Expenses of the council must be paid from licensing fees received by the department.

(7) The gaming advisory council shall, within its authorized budget, hold meetings and incur expenses as it considers necessary to study all aspects of gambling in the state.

(8) (a) The gaming advisory council shall submit ~~an annual~~ *a biennial* report to the department, at a time designated by the department, with recommendations for amendments to the gambling statutes, the need for additional or modified department rules, the clarification of existing rules, and other recommendations on the operation of the department or any other gambling-related matter.

(b) The ~~annual~~ *biennial* report required under subsection (8)(a) must be affixed to the ~~annual department~~ report on gambling in the state *that the department submits that year.* The department and council shall submit the two most recent department and council reports to each of the next two regular sessions of the legislature.

(c) The council may submit interim reports to the department as the council considers necessary.

(d) The council shall meet with the department upon request of the department.

(e) The department shall meet with the council upon request of the council.

(9) The department shall give each council member notice and a copy of each proposed change in administrative rules relating to gambling. The notice and copy must be given at the time a notice of proposed rules changes is filed with the secretary of state. The council shall review the proposal, may comment on it, and may attend any hearing on the proposal. The department shall consider any comment by any council member or by the council as a whole prior to adopting the proposed change."

Section 54. Section 23-5-602, MCA, is amended to read:

"**23-5-602. Definitions.** As used in this part, the following definitions apply:

(1) "Associated equipment" means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video gambling machine, including but not limited to integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, metering devices, and cabinetry.

(2) "Bingo machine" means an electronic video gambling machine that, upon insertion of cash, is available to play bingo as defined by rules of the department. The machine utilizes a video display and microprocessors in which, by the skill of the player, by chance, or both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(3) "Draw poker machine" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker as defined by rules of the department. The machine utilizes a video display and microprocessors in which, by the skill of the player, by chance, or both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(4) "Keno machine" means an electronic video gambling machine that, upon insertion of cash, is available to play keno as defined by rules of the

department. The machine utilizes a video display and microprocessors in which, by the skill of the player, by chance, or both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(5) "~~Net machine~~ *Gross* income" means money put into a video gambling machine minus credits paid out in cash.

(6) "Video gambling machine manufacturer-distributor" means a person who assembles, produces, makes, or supplies video gambling machines or associated equipment for sale, use, or distribution in the state."

Section 55. **Fishing derbies and wagering on natural occurrences.** (1) The following are authorized gambling activities:

(a) a fishing derby in which two or more persons pay valuable consideration for an opportunity to win a prize for the species, size, weight, or otherwise specified fish caught in a fishing event; and

(b) wagering on the outcome of a natural occurrence in which two or more persons pay valuable consideration for an opportunity to win a prize by most accurately predicting the date or time of an event resulting from a climatological or meteorological activity.

(2) Except as provided in subsection (3), all consideration paid to participate in a gambling activity authorized in subsection (1) must be paid to the winners.

(3) A nonprofit organization sponsoring a gambling activity authorized in subsection (1) may retain up to 50% of the total amount paid to participate.

(4) This section does not apply to a gambling activity conducted under chapter 4 or chapter 5, part 2 or 3 of this title.

Section 56. Section 23-5-502, MCA, is amended to read:

"**23-5-502. Sports pools *and sports tab games* authorized~~.~~** — *tax. (1)* Conducting or participating in sports pools *and sports tab games* as defined and governed in this part is lawful, *except that sports tab games may only be conducted on premises licensed to sell alcoholic beverages for consumption on the premises.*

(2) A manufacturer licensed under 23-5-152 who sells sports tabs to a licensed operator for use in a sports tab game shall collect from the operator, at the time of sale, a tax of $1 for each 100 sports tabs sold and, within 15 days after the end of each calendar quarter, submit to the department any forms required by the department and the proceeds of the collected tax. The manufacturer shall keep a record of taxes collected as required by department rule. The records must be made available for inspection by the department upon request of the department. The department shall retain the proceeds of the tax to administer this part."

Section 57. **Codification instruction — code commissioner instruction.** (1) [Sections 4, 7 through 25, 34, and 55] are intended to be codified as an integral part of Title 23, chapter 5. [Sections 14 through 20 and 21 through 25] are each intended to be codified as a separate part of Title 23, chapter 5. The provisions of Title 23, chapter 5, apply to [sections 4, 7 through 25, 34, and 55].

(2) [Section 37] is intended to be codified as an integral part of Title 23, chapter 5, part 3, and the provisions of Title 23, chapter 5, part 3, apply to [section 37].

(3) [Section 44] is intended to be codified as an integral part of Title 23, chapter 5, part 5, and the provisions of Title 23, chapter 5, part 5, apply to [section 44].

(4) The code commissioner shall recodify part 10 of Title 23, chapter 5, as a new chapter in Title 23. Internal references in the Montana Code Annotated section text and in any act of the 52nd legislature must be changed by the code commissioner if necessary to retain their original meaning.

Section 58. **Effective dates.** (1) [Sections 4, 26, and this section] are effective on passage and approval.

(2) [Sections 1 through 3, 5 through 25, and 27 through 57] are effective July 1, 1991.

Approved April 26, 1991.

CHAPTER NO. 648

[SB 437]

AN ACT ALLOWING A LOCAL GOVERNMENT TO ESTABLISH REASONABLE FEES FOR LAKE-RELATED CONSTRUCTION PERMITS; CLARIFYING THAT A PERMIT IS REQUIRED FOR CONSTRUCTION ON A LAKESHORE; AND AMENDING SECTION 75-7-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7-210, MCA, is amended to read:

"**75-7-210. Application for permit — fee — *limitations.*** *(1)* A person seeking a permit for work in a lake *or on a lakeshore* shall apply to the local governing body and shall pay ~~an application~~ *a permit* fee ~~of $10 to~~ *established by* the governing body *under subsection (2).*

(2) (a) The local governing body shall establish a permit fee as provided in subsection (1). The permit fee must reasonably address the cost of administering the permit application. Factors the local governing body shall consider when establishing the fee include but are not limited to:

(i) the annual estimated total number of permit requests;

(ii) the complexity of the specific project;

(iii) the need for and location and number of onsite investigations; and

(iv) the estimated cost of the specific project.

(b) The fees established in this subsection may not exceed the following limits:

(i) $25 for residential permits not requiring a variance from the local governing authority;

(ii) $60 for residential permits requiring a variance from the local governing authority;

(iii) $60 for commercial permits not requiring a variance from the local governing authority; and

(iv) $150 for commercial permits requiring a variance from the local governing authority."

Approved April 26, 1991.

CHAPTER NO. 649

[HB 139]

AN ACT TO EXTEND THE MORATORIUM ON CERTAIN INTERSTATE TRANSPORT OF SOLID WASTE; AND AMENDING SECTION 75-10-209, MCA.

WHEREAS, the State of Montana presently is faced with proposals to import out-of-state solid waste for disposal in Montana; and

WHEREAS, additional time is needed to adequately develop and staff the Department of Health and Environmental Sciences' regulatory program for solid waste; and

WHEREAS, the Department of Health and Environmental Sciences needs to promulgate administrative rules necessary to implement the Montana Megalandfill Siting Act (House Bill No. 377, Laws of 1991); and

WHEREAS, the Montana solid waste management plan is being rewritten to incorporate the principles of integrated waste management and to reduce the waste stream in Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-209, MCA, is amended to read:

"**75-10-209. Moratorium on certain interstate transport of solid waste.** (1) The state of Montana recognizes the importance of providing for disposal or incineration of solid waste in a manner that protects Montana's public health, safety, welfare, and environment. Although the state of Montana also recognizes that, under appropriate conditions, the transportation of out-of-state solid waste into Montana may not conflict with this goal, it is imperative that the state ~~undertake a legislative study of solid waste regulation and management,~~ further develop regional and statewide solid waste management goals, plans, and regulations~~;~~ and ~~adopt rules implementing the solid waste management fee~~ *revise its rules governing landfill siting and operation criteria* before allowing solid waste importation beyond current levels.

(2) Except as provided in subsection (3), a person may not transport solid waste into Montana *for disposal or incineration* until October 1, ~~1991~~ *1993.*

(3) A person who transported solid waste into Montana before May 22, 1989, may continue to transport solid waste into Montana subject to the limitation that the amount he transports into Montana during any calendar year of the moratorium does not significantly exceed the amount he transported into Montana during calendar year 1988."

Approved April 26, 1991.

CHAPTER NO. 650

[HB 152]

AN ACT TO REVISE THE STATE MINIMUM WAGE LAW TO REQUIRE THAT THE STATE MINIMUM WAGE BE SET IN ACCORDANCE WITH FEDERAL LAW; TO PROVIDE AN EXCEPTION FOR CERTAIN BUSINESSES; TO REPEAL THE NEW HIRE WAGE STATUTE; AMENDING SECTION 39-3-409, MCA; REPEALING SECTION 39-3-410, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-409, MCA, is amended to read:

"**39-3-409. Adoption of minimum wage rates — *exception.*** *(1)* The commissioner shall adopt rules to establish a minimum wage that, *except as provided in subsection (2),* must be the same minimum hourly wage rate as provided under the federal Fair Labor Standards Act (29 U.S.C. 206*(a)(1)*)~~, but not to exceed $4 an hour~~, *excluding the value of tips received by the employee and the special provisions for a training wage.*

(2) The minimum wage rate for a business whose annual gross sales are $110,000 or less is $4 an hour."

Section 2. **Repealer.** Section 39-3-410, MCA, is repealed.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 26, 1991.

CHAPTER NO. 651

[HB 528]

AN ACT REQUIRING THE DEPARTMENT OF INSTITUTIONS TO DEVELOP A REQUEST FOR PROPOSALS TO SOLICIT PROPOSALS FROM MONTANA LOCAL GOVERNMENTAL UNITS FOR THE SITING OF A WOMEN'S CORRECTIONAL CENTER; REQUIRING THE DEPARTMENT TO SOLICIT PROPOSALS ACCORDING TO THE REQUEST; SPECIFYING CERTAIN CRITERIA FOR THE SITE OF THE CENTER; CREATING A COMMITTEE TO EVALUATE THE PROPOSALS; PROVIDING FOR THE EVALUATION OF THE PROPOSALS AND SELECTION OF A CENTER SITE; APPROPRIATING MONEY FOR THE PURPOSES OF THE SITE SELECTION COMMITTEE; AMENDING SECTIONS 53-1-202, 53-30-101, AND 53-30-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, Article II, section 28, of the Montana Constitution states that laws for the punishment of crime should be founded on the principles of prevention and reformation; and

WHEREAS, the current Women's Correction Center was created in 1982 as a temporary facility; and

WHEREAS, the current Women's Correction Center is a totally inadequate correctional facility consisting of a vacant nurses' dormitory at Warm Springs State Hospital, which provides inadequate security; inadequate medical, vocational, and other educational and rehabilitative services; and inadequate space for the state's rising population of female inmates; and

WHEREAS, population projections by the Department of Institutions estimate 124 female inmates will be incarcerated in a state facility, including prerelease and community-based facilities, by the year 1995; and

WHEREAS, Chapter 518, Laws of 1989, required the Department of Institutions, in cooperation with the Governor's Criminal Justice and Corrections Advisory Council, to develop a comprehensive plan for housing female inmates and required submission of the plan to the 52nd Legislature; and

WHEREAS, the Department of Institutions has begun a request for proposal process by which it is soliciting proposals from various Montana communities to construct a women's correctional center; and

WHEREAS, the Legislature believes that decisions concerning the site selection process and the financing and construction of the center must be made with the interests of crime prevention and reformation of female inmates as the state's highest priority and are matters of statewide concern and appropriate for legislative action.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Legislative findings.** The legislature finds that the incarceration and management of female felony offenders is a matter of state responsibility and that the location and design of a women's correctional center providing for these services determines the proper management of those offenders, so that it is necessary to provide proper guidelines for the location and construction of the women's correctional center.

Section 2. **Definitions.** As used in [sections 1 through 7], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of institutions provided for in 2-15-2301.

(2) "Center" or "women's correctional center" means a women's correctional center with a capacity of approximately 120 beds providing minimum, medium, and maximum security for female inmates.

(3) "Local governmental unit" means a county, city, town, or consolidated government.

(4) "Proposal" means a proposal for the location of the facility, submitted by local governmental units to the department in response to the request for proposals required by [section 3].

Section 3. **Request for proposals.** (1) The department shall request that proposals be submitted to the department from local governmental units for the siting and community support of a new women's correctional center. The request must:

(a) be made in the form of a request for proposals;

(b) specify January 30, 1991, as the date on which all proposals are to be received by the department; and

(c) contain the information required under subsection (2) and other information determined necessary by the department.

(2) The request for proposal must require that information in the following categories be submitted by a local governmental unit as part of any proposal:

(a) construction site information, including:

(i) the acreage of the site;

(ii) the name and address of the owner or owners and the form of the legal interest in which the site is held;

(iii) how the site may be acquired by the state;

(iv) the configuration and topography of the site;

(v) access to paved public streets and reliable utilities, such as water supply, sewage system, natural gas, electricity, telephone, and refuse disposal;

(vi) compatibility with current local zoning ordinances, as well as any ordinance modifications necessary and the procedure for making those modifications;

(vii) flood hazard information;

(viii) subsurface soils analyses and water table location;

(ix) climate; and

(x) location plan drawings, areawide master plan drawings, and site plan drawings.

(b) service availability information, including:

(i) proximity, stated in the shortest roadway miles on all-weather roads, to 24-hour emergency medical services;

(ii) proximity, stated in the shortest roadway miles on all-weather roads, to 24-hour fire protection services;

(iii) proximity, stated in the shortest roadway miles on all-weather roads, to a certified local law enforcement agency and the level of the agency's capability to respond to emergencies;

(iv) proximity to, stated in the shortest roadway miles on all-weather roads, and availability of interstate transportation services;

(v) proximity to counties committing inmates;

(vi) the adequacy of the court system and legal services;

(vii) availability of motel or hotel accommodations;

(viii) an adequate number of vendors of food, motor fuel, and other supplies;

(ix) an adequate skilled workforce for employment in the center;

(x) availability of affordable housing for the center staff;

(xi) established organizations whose primary missions are specific to the needs of women;

(xii) established organizations that emphasize and are concerned with Native American issues; and

(xiii) availability of employment opportunities for inmates outside the center;

(c) program information, including:

(i) proximity to medical services at a referral hospital with 24-hour emergency room service, including the presence of an attending physician;

(ii) proximity to a hospital offering medical specialties needed by women inmates;

(iii) proximity to dental services;

(iv) proximity to chemical dependency treatment;

(v) proximity to mental health services, including psychiatric care, clinical services, inpatient and outpatient treatment, and programs appropriate to women's needs;

(vi) proximity to vocational education or its programmatic equivalent and a public or private postsecondary educational institution; and

(vii) proximity to licensed foster care and all levels of child care, including registered day care, licensed group care, and out-of-home care;

(d) additional criteria, including:

(i) the strength of community volunteer resources;

(ii) the ability of the community's postsecondary educational programs to provide appropriate interns for the center;

(iii) the receptiveness of the public school district or districts to enrolling the children of center inmates; and

(iv) the ethnic and cultural diversity of the community.

(3) The department may accept in full or partial compliance with the requirements of subsection (2) information provided to the department pursuant to any similar request for proposals process if that information otherwise satisfies the requirements of subsection (2) and was received by the department no later than January 30, 1991. If the criteria included in the department's original request for proposals for which responses were submitted by January 30, 1991, do not include all the criteria required in subsection (2), the department shall request the additional information from the respondents.

Section 4. **Site selection committee.** (1) Proposals submitted in response to the request for proposals required by [section 3] must be evaluated by a site selection committee. The committee consists of the following persons, whose selection must provide for gender balance on the committee:

(a) one representative of the architecture and engineering division of the department of administration, appointed by the director of the department of administration, to serve in an advisory capacity only;

(b) three representatives of the public, appointed by the governor, none of whom may be a resident of a local governmental unit submitting a proposal;

(c) the corrections division administrator and the warden of the women's correctional center, representing the department of institutions;

(d) two members of the house of representatives, neither of whom may be a resident of a local governmental unit submitting a proposal, appointed by the speaker of the house;

(e) two members of the senate, neither of whom may be a resident of a local governmental unit submitting a proposal, appointed by the president of the senate;

(f) one representative of established and recognized organizations whose primary mission is specific to women's needs, appointed by the governor; and

(g) one representative of the criminal justice and corrections advisory council, appointed by the governor.

(2) Except as otherwise provided by [sections 1 through 7], the site selection committee shall be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122 regarding advisory councils.

(3) The committee shall meet as often as necessary to perform the duties assigned by [sections 1 through 7]. The committee shall consider, evaluate, and select the location for the women's correctional center according to the procedure and criteria in [section 5].

(4) The committee is attached for administrative purposes only to the department, which shall provide such staff, budgetary, administrative, and clerical services to the committee as the committee or its chairperson requests.

(5) The committee terminates on the date of the announcement of the winning proposal by the director of the department in accordance with [section 7(3)].

Section 5. **Site selection procedure and criteria.** (1) The site selection committee may not consider a proposal unless the proposal:

(a) is submitted within the time required by the request for proposal; and

(b) contains the construction site information, service availability information, program information, and additional criteria required by [section 3(2)].

(2) The committee shall determine a maximum numeric value for each of the criteria required in [section 3]. Criteria that the committee determines to be of more relative importance must be awarded a greater maximum value. The committee shall rate each proposal considered by it by using a weighted scale process that assigns a numeric score for each criteria and then totals the score for each proposal. The score for each criteria and proposal must be determined by the extent to which each criteria is satisfied, based upon a documented demonstration of:

(a) the proximity, availability, and number of resources satisfying the criteria;

(b) the strength and quality of the resources satisfying the criteria; and

(c) the strength of the community's willingness and ability to provide resources satisfying the criteria.

Section 6. **Site visitation and hearings required.** The site selection committee shall determine the four proposals with the highest numeric scores. The committee shall eliminate the other proposals from further consideration. As soon as possible after elimination of the other sites, the committee shall conduct on-site reviews of the four remaining candidate sites by conducting both an on-site tour of each of the four candidate sites and holding a public hearing on the subject of the center in the community where each proposed site is located. The purpose of the tour and hearing is to receive information concerning the extent to which each candidate site satisfies the criteria in [section 3] and [section 7(2)]. The hearings must be conducted under procedures determined by the committee, and the committee shall give notice of each hearing by advertisement in a newspaper of general circulation in the county of each candidate site.

Section 7. **Site selection.** (1) After completing the on-site reviews required by [section 6], the committee shall again score each of the four candidate sites by applying the criteria and scoring method provided in [section 5].

(2) If two or more proposals receive the same total score, the committee shall determine the leading proposal by assigning maximum point values for and scoring those proposals on the following criteria for the community in which the center would be located:

(a) strength of community volunteer resources;

(b) ability of the community's post-secondary educational programs to provide appropriate interns for the facility;

(c) the receptiveness of the public school district or districts to enrolling the children of center inmates in their schools; and

(d) the ethnic and cultural diversity of the community.

(3) The center must be located at the site proposed by the local governmental unit whose proposal receives the highest numeric score using the procedure provided in this section. Upon selection of the winning proposal

by the committee, the committee will inform the director of the department of its selection. The director shall review the selection process to ensure that the committee has not made an error in process or in fact. If the director determines that an error has been made, he shall remand the recommendation to the committee for further evaluation. The director shall make a public announcement of the committee's selection upon determining that no errors have been made. The committee shall submit its selection to the director of the department no later than 150 days after [the effective date of this act].

Section 8. Section 53-1-202, MCA, is amended to read:

"**53-1-202. Institutions in department.** (1) The following institutions are in the department:

(a) Montana state hospital;

(b) Montana veterans' home at Columbia Falls;

(c) Montana veterans' home in eastern Montana;

(d) state prison;

(e) Montana developmental center;

(f) Montana center for the aged;

(g) Swan River forest camp; ~~and~~

(h) Montana women's correctional center; and

~~(h)~~*(i)* Eastmont human services center.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature."

Section 9. Section 53-30-101, MCA, is amended to read:

"**53-30-101. Location and function of prison *and women's correctional center*.** *(1)* The institution at Deer Lodge is the state prison and as its primary function provides facilities for the custody, treatment, training, and rehabilitation of adult *male* criminal offenders.

(2) The institution located in accordance with [sections 1 through 7] is the women's correctional center and as its primary function provides facilities for the custody, treatment, training, and rehabilitation of adult female criminal offenders."

Section 10. Section 53-30-102, MCA, is amended to read:

"**53-30-102. Qualifications of warden *of state prison and warden of women's correctional center*.** The warden of the state prison *and the warden of the women's correctional center* shall be ~~a person~~ *persons* trained through education and experience in directing a training, rehabilitation, or custodial program in a penal institution."

Section 11. **Appropriation.** There is appropriated from the general fund $8,000 to the department of institutions for the purposes of the site selection committee created by [section 4]. This appropriation is effective through the fiscal year ending June 30, 1992.

Section 12. **Effective date.** [This act] is effective on passage and approval.

Section 13. **Termination.** [Sections 1 through 7] terminate 150 days after passage and approval.

Approved April 26, 1991.

CHAPTER NO. 652

[HB 781]

AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES FOR THE COLLECTION OF FEES FOR THE ISSUANCE AND RENEWAL OF AIR QUALITY CONSTRUCTION AND OPERATING PERMITS; PROVIDING FOR THE EXPIRATION OF THE PERMITS; ALLOWING FEE ASSESSMENTS TO FUND DEPARTMENTAL AIR QUALITY ACTIVITIES FOR PARTICULAR GEOGRAPHIC AREAS IF THE LEGISLATURE AUTHORIZES THE ACTIVITIES AND APPROPRIATES THE FUNDS FOR THE ACTIVITIES; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ISSUE AN OPERATING PERMIT; AMENDING SECTIONS 75-2-111 AND 75-2-211, MCA; AND PROVIDING AN EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 1] requires the board of health and environmental sciences to adopt by rule fees for air quality permit applications. The purpose of this bill is to allow the collection of an ongoing annual fee to cover the costs associated with the development and administration, including implementation and enforcement, of an air quality permitting program. While there is a need for a fee system to cover these costs, it is not the legislature's intent that these fees be used to recover other costs not delineated in this bill. The legislature recognizes that the identification of actual costs associated with specific permits and permitting activities may be difficult and envisions that a fee schedule may be established with generic applicability. This may result in fees for classes of sources according to the type or amount of emissions or the type of source. For example, it may be determined that the costs associated with the development and administration of a permitting program vary directly with the amount or type of regulated pollutants emitted. In such a case, a fee based upon the tons of a regulated pollutant emitted may be appropriate.

The board's rules defining the fee structure to be used by the department shall ensure that the fees charged will not collect, in the aggregate, more than is authorized and appropriated by the legislature to the department for the development and administration of the permitting program.

This bill also clarifies the authority of the department of health and environmental sciences to issue an operating permit for air contaminant sources. It is the legislature's intent that all air contaminant sources operating within the state obtain an operating permit, including those sources that are "grandfathered" under current air quality regulations. Reasonable exemptions from this requirement may be approved by the board and implemented based upon the size or nature of the source or its emissions.

For sources of air contaminants that are subject to Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, the board may provide for the expiration and renewal of permits issued to those sources, as necessary to meet the requirements of Title V. To provide for the orderly transition to Title V permits for both current permitholders and grandfathered sources, the board shall establish a transition schedule. The transition schedule may not specify dates for obtaining Title V permits that are earlier than the times contained in the Act.

This bill also allows for the assessment of those fees necessary to fund activities of the department that are intended to address specific air quality problems in the state if the legislature authorizes the activities and appropriates the funds for the activities. For example, it may be necessary to conduct additional ambient monitoring in a particular geographic area in order to determine the compliance status of that area with applicable ambient air quality standards. The legislature intends that this provision be used only to fund those activities that examine specific problems in particular geographic areas. The assessments for funding should be levied in an equitable fashion and only upon those sources whose emissions are both of the type being focused upon and thought to impact the geographic area.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-111, MCA, is amended to read:

"**75-2-111. Powers of board.** The board shall:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant thereto;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings

and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits *and permit applications, consistent with* ~~under~~ this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

Section 2. Section 75-2-211, MCA, is amended to read:

"**75-2-211. Permits for construction, installation, alteration, or use.** (1) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this ~~section~~ *part.*

(2) For all sources of air contaminants that are subject to the provisions of Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, the provisions of this section apply in addition to the other applicable provisions of this chapter.

(a) The board shall by rule require that permits issued to sources described in subsection (2) be of limited duration, but it may not limit the duration of the permits beyond that required by the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended.

(b) The board shall by rule provide for the renewal of permits issued to the sources.

(c) The board shall by rule establish a transition schedule for air quality permits held by sources of air contaminants subject to the provisions of subsection (2). The transition schedule must specify dates for the expiration of the permits, absent an application for renewal by the source. The transition schedule may not specify expiration dates that are earlier in time than those required by Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended. The transition schedule established by the board also applies to existing sources of air contaminants that are subject to the provisions of Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, and that do not hold an air quality permit from the department as of November 2, 1992.

~~(2)~~*(3)* Not later than 180 days before construction, ~~begins~~ *installation, or alteration begins or as a condition of use* of any machine, equipment, device, or facility which the board finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants ~~and not later than 120 days before installation, alteration, or use begins~~, the owner or operator shall file with the department the appropriate permit application on forms available from the department. ~~and pay to the department a fee sufficient to cover:~~

~~(a) the reasonable costs of reviewing and acting upon the application for such permit; and~~

~~(b) the reasonable costs of implementing and enforcing the terms and conditions of such permit if the permit is granted (not including any court costs or other costs associated with any enforcement action). The fee shall be deposited in the state special revenue fund to be used by the department for administration of this section.~~

(4) Concurrent with the submittal of a permit application required by subsection (3) and annually for the duration of the permit, the applicant shall submit to the department a fee sufficient to cover the reasonable costs, both direct and indirect, of developing and administering the permitting requirements in this chapter, including the reasonable costs of:

(a) reviewing and acting upon the application;

(b) implementing and enforcing the terms and conditions of the permit if the permit is issued. However, this amount does not include any court costs or other costs associated with any enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

(c) emissions and ambient monitoring;

(d) preparing generally applicable regulations or guidance;

(e) modeling, analysis, and demonstrations; and

(f) preparing inventories and tracking emissions.

(5) In addition to the fee required under subsection (4), the board may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates the funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the geographic area. Before the board may require the assessments, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, that the assessments apportion the required funding in an equitable manner, and that the department has obtained legislative authorization for the expenditure and the necessary appropriation.

(6) As a condition of the continuing validity of permits issued by the department under this part prior to October 1, 1991, the department may require the permitholder to pay an annual fee sufficient to cover the costs identified in subsection (4).

(7) For any existing source of air contaminants that is subject to Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, and that is not required to hold an air quality permit from the department as of October 1, 1991, the board may, as a condition of continued operation,

require by rule that the owner or operator of the source pay the annual fee provided for in subsection (4). Nothing in this subsection may be construed as allowing the department to charge any source of air contaminants more than one annual fee that is designed to cover the costs identified in subsection (4).

(8) The fees collected by the department pursuant to this section must be deposited in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting requirements in this chapter.

(9) (a) The department shall give written notice of the amount of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air contaminant source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based only on the amount of the fee schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act provided for in Title 2, chapter 4, apply to any hearing before the board under this subsection (9).

~~(3)~~*(10)* Nothing in this section shall restrict the board's authority to adopt regulations providing for a single air quality permit system.

~~(4)~~*(11)* The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

~~(5)~~*(12)* The department shall require that applications for permits be accompanied by any plans, specifications, and other information it considers necessary.

~~(6)~~*(13)* An application is not considered filed until the applicant has submitted all *fees and* information and completed all application forms required by subsections ~~(2),~~ (3)~~,~~ ~~and (5)~~ *through (7) and (12)*. However, if the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

~~(7)~~*(14)* (a) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days of the receipt of a filed application, as defined in subsection ~~(6)~~ *(13)*, if the department prepares the environmental impact statement; or

(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement.

(b) However, where an application does not require the compilation of an environmental impact statement, the department shall notify the applicant in writing within 60 days of the receipt of a filed application, as defined in subsection ~~(6)~~ *(13)*, of the approval or denial of the application. Notification of approval or denial may be served personally or by registered or certified mail on the applicant or his agent.

~~(8)~~*(15)* When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act.

~~(9)~~*(16)* The department's decision on the application is not final unless 15 days have elapsed and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board."

Section 3. **Retroactive applicability.** (1) [Subsections (2) and (6) of section 2] apply retroactively, within the meaning of 1-2-109, to all permits issued by the department of health and environmental sciences pursuant to Title 75, chapter 2, and prior to [the effective date of those subsections].

(2) [Subsections (2), (3), and (7) of section 2] apply retroactively, within the meaning of 1-2-109, to all uses identified in those subsections that are not subject to a permit issued by the department of health and environmental sciences pursuant to Title 75, chapter 2, as of [the effective dates of those subsections].

Section 4. **Effective date — rulemaking authority.** (1) [Section 1, subsections (1) and (3) through (16) of section 2, section 3, and this section] are effective October 1, 1991, but the department may proceed with the rulemaking process under Title 2, chapter 4, prior to that date. The effective date of any rule adopted to implement those parts of [this act] may be effective no earlier than October 1, 1991.

(2) [Subsection (2) of section 2] is effective November 1, 1992, but the department may proceed with the rulemaking process under Title 2, chapter 4, prior to that date. The effective date of any rule adopted to implement those parts of [this act] may be effective no earlier than November 1, 1992.

Approved April 26, 1991.

CHAPTER NO. 653

[SB 384]

AN ACT IMPOSING A 2-MILL LEVY UPON THE TAXABLE VALUE OF ALL REAL AND PERSONAL PROPERTY SUBJECT TO TAXATION IN MONTANA FOR THE SUPPORT AND MAINTENANCE OF VOCATIONAL AND TECHNICAL EDUCATION; REPLACING REVENUE FROM THE SCHOOL DISTRICT LEVY FOR VOCATIONAL-TECHNICAL CENTERS; SUBMITTING THE LEVY TO THE QUALIFIED ELECTORS OF MONTANA; PROVIDING FOR THE RESTRICTED USE OF THE STATEWIDE MILL LEVY AT COMMUNITY COLLEGES; AMENDING SECTIONS 15-10-402, 15-10-412, 20-15-311, AND 20-16-205, MCA; REPEALING SECTION 20-16-207, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Tax levy for vocational and technical education.** (1) There is levied annually upon the taxable value of all real and personal property subject to taxation in the state of Montana 2 mills for the support and maintenance of vocational and technical education. The revenue from the 2-mill levy must be distributed as follows:

(a) not more than 4% of the total revenue collected from the mill levy to the center for vocational education research, curriculum, and personnel development at northern Montana college in Havre; and

(b) the remainder to the vocational-technical center system and community college districts of Montana.

(2) The funds raised from the 2-mill levy are allocated to the board of regents for the purposes set forth in subsection (1).

Section 2. Section 15-10-402, MCA, is amended to read:

"**15-10-402. Property tax limited to 1986 levels.** (1) Except as provided in subsections (2) ~~and (3)~~ *through (4)*, the amount of taxes levied on property described in 15-6-133, 15-6-134, 15-6-136, 15-6-142, and 15-6-144 may not, for any taxing jurisdiction, exceed the amount levied for taxable year 1986.

(2) The limitation contained in subsection (1) does not apply to levies for rural improvement districts, Title 7, chapter 12, part 21; special improvement districts, Title 7, chapter 12, part 41; elementary and high school districts, Title 20; or bonded indebtedness.

(3) The limitation contained in 15-10-411, 15-10-412, or subsection (1) of this section does not apply to the 2-mill levy imposed in [section 1] for the support and maintenance of vocational and technical education.

~~(3)~~*(4)* New construction or improvements to or deletions from property described in subsection (1) are subject to taxation at 1986 levels.

~~(4)~~*(5)* As used in this section, the "amount of taxes levied" and the "amount levied" mean the actual dollar amount of taxes imposed on an individual piece of property, notwithstanding an increase or decrease in value due to inflation, reappraisal, adjustments in the percentage multiplier used to convert appraised value to taxable value, changes in the number of mills levied, or increase or decrease in the value of a mill."

Section 3. Section 15-10-412, MCA, is amended to read:

"**15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status;

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements; or

(i) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit;

(f) conversion of the individual property from tax-exempt to taxable status; or

(g) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(5) Property in classes four, twelve, and fourteen is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four, class twelve, or class fourteen property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills

levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) *the* satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

(h) revolving funds to support any categories specified in this subsection (8);

(i) levies for economic development authorized pursuant to 90-5-112(4); ~~and~~

(j) *the statewide levy for vocational and technical education authorized in [section 1]; and*

(k) elementary and high school districts.

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(12) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402."

Section 4. Section 20-15-311, MCA, is amended to read:

"**20-15-311. Funding sources.** The annual operating budget of a community college district ~~shall~~ *must* be financed from the following sources:

(1) the estimated revenues to be realized from student tuition and fees, except those related to community service courses as defined by the board of regents;

(2) a mandatory mill levy on the community college district;

(3) the 1-mill adult education levy authorized under provisions of 20-15-305;

(4) the state general fund appropriation;

(5) an optional voted levy on the community college district that ~~shall~~ *must* be submitted to the electorate in accordance with general school election laws;

(6) all other income, revenue, balances, or reserves not restricted by a source outside the community college district to a specific purpose;

(7) income, revenue, balances, or reserves restricted by a source outside the community college district to a specific purpose. Student fees paid for community service courses as defined by the board of regents ~~shall~~ *and revenue from the 2-mill levy imposed in [section 1] must* be considered restricted to a specific purpose;

(8) income from a political subdivision that is designated a community college service region under 20-15-241."

Section 5. Section 20-16-205, MCA, is amended to read:

"**20-16-205. Tuition rates.** (1) Tuition may be charged to any resident or nonresident of the state of Montana by the director of any vocational-technical center at rates to be determined by the board of regents ~~and the provisions of subsection (3)~~. The board of regents shall prescribe permissible uses for any tuition authorized.

(2) For the purposes of this section, the eligibility of a student for resident status ~~shall~~ *must* be determined in the same manner as that prescribed for use by the Montana university system, except that those provisions referring to "high school graduates" or "graduation from high school" ~~shall~~ *must* be considered to refer to a person who has attended school or who was in attendance at a school.

~~(3) If an additional levy for a center is approved under 20-16-207, the board of regents may charge an additional tuition amount not to exceed $40 a quarter to a student at the center who is a resident of Montana but who is not a property taxpayer of the county or an owner of a vehicle registered within the county where the center is located.~~"

Section 6. **Repealer.** Section 20-16-207, MCA, is repealed.

Section 7. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 10, part 1, and the provisions of Title 15, chapter 10, part 1, apply to [section 1].

Section 8. **Submission to electorate.** The question of whether this act will become effective shall be submitted to the qualified electors of Montana at the primary election to be held in June 1992 by printing on the ballot the full title of this act and the following:

☐ FOR imposing a levy of 2 mills for the support and maintenance of vocational and technical education.

☐ AGAINST imposing a levy of 2 mills for the support and maintenance of vocational and technical education.

Section 9. **Effective date — applicability.** If approved by the electorate, [this act] is effective December 31, 1992, and applies to tax years beginning after December 31, 1992.

CHAPTER NO. 654

[SB 177]

AN ACT RELATING TO THE ADMINISTRATION OF ABANDONED PROPERTY BY THE DEPARTMENT OF REVENUE; ESTABLISHING PRESUMPTIONS OF ABANDONMENT FOR INTANGIBLE PROPERTY; REQUIRING A DETAILED REPORT OF ABANDONED PROPERTY ONLY IF THE PROPERTY HAS A VALUE OF $25 OR MORE; REQUIRING DELIVERY OF ALL ABANDONED PROPERTY AT THE TIME IT IS REPORTED TO THE DEPARTMENT; PROVIDING THAT A STATUTE OF LIMITATIONS MAY NOT BE RAISED AS A DEFENSE AGAINST THE STATE BY THE FEDERAL GOVERNMENT, A STATE GOVERNMENT, A LOCAL GOVERNMENT, OR AN AGENCY OF THE FEDERAL, STATE, OR LOCAL GOVERNMENT; CLARIFYING THE DEPARTMENT'S AUTHORITY TO ESTIMATE UNCLAIMED PROPERTY ASSESSMENTS BY PROVIDING THAT THE DEPARTMENT'S AUTHORITY COINCIDES WITH THE TIME PERIOD FOR REPORTING UNCLAIMED PROPERTY; AMENDING SECTIONS 70-9-301, 70-9-302, 70-9-303, AND 70-9-307, MCA, AND SECTION 3, CHAPTER 14, LAWS OF 1989; REPEALING SECTION 70-9-313, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Intangible property issued in state by entity created by state — presumptions of abandonment.** (1) Intangible property is presumed abandoned and subject to the custody of this state as unclaimed property if:

(a) the owner has not claimed or corresponded in writing concerning the property within 5 years after the date prescribed for payment or delivery;

(b) the address of the owner is unknown; and

(c) the entity originating or issuing the intangible property is the state or a local political subdivision of the state or is or at the relevant time was incorporated, organized, or created in the state.

(2) For the purposes of this section, intangible property includes but is not limited to interest, dividends, or other earnings of the intangible property, less lawful charges, held by a business association, governmental entity, or other person or entity.

Section 2. Section 70-9-301, MCA, is amended to read:

"**70-9-301. Report of abandoned property — duty to prevent abandonment prior to filing.** (1) Every person holding ~~moneys~~ *money* or other property, tangible or intangible, presumed abandoned under parts 1 through 3 shall report the property to the department as ~~hereinafter~~ provided *in this part.*

(2) The report ~~shall~~ *must* be verified and ~~shall~~ *must* include:

(a) except with respect to travelers' checks and money orders, the name, if known, and last-known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of ~~$10~~ *$25* or more presumed abandoned under parts 1 through 3;

(b) in case of unclaimed ~~moneys~~ *money* of life insurance corporations, the full name of the insured or annuitant and his last-known address according to the life insurance corporation's records;

(c) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due. Items *less than $25* of value ~~under $10~~ each may be reported in aggregate.

(d) the date when the property became payable, demandable, or returnable and the date of the last transaction with the owner with respect to the property; and

(e) other information which the department prescribes by rule as necessary for the administration of parts 1 through 3.

(3) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(4) The report ~~shall~~ *must* be filed before November 1 every year as of *the preceding* June 30 ~~next preceding~~, but the reports of life insurance corporations, banking and financial organizations, and cooperatives ~~shall~~ *must* be filed before May 1 of each year as of *the preceding* December 31 ~~next preceding~~. The department may postpone the reporting date upon written request by any person required to file a report. The department shall furnish forms for this report.

(5) Not more than 120 days before filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under parts 1 through 3 shall send written notice to the apparent owner at his last-known address informing him that the holder is in possession of property subject to this chapter if:

(a) the holder has in his records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(b) the claim of the apparent owner is not barred by the statute of limitations; and

(c) the property has a value of $100 or more.

(6) Verification if made by a partnership ~~shall~~ *must* be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer."

Section 3. Section 70-9-302, MCA, is amended to read:

"**70-9-302. Notice of property presumed abandoned — publication.** (1) The department shall publish notice of property presumed abandoned not later than March 1 after the report required by 70-9-301 is due or, in the case of property reported by life insurance corporations, banking and financial organizations, and cooperatives, August 1 of the year the report is due. The notice must be published at least once a week for 2 consecutive weeks in a newspaper of general circulation in the county in this state in which ~~is located~~ the last-known address of any person to be named in the notice *is located*. If ~~no~~ *an* address is *not* listed or the address is outside the state, the notice must be published in the county in which the holder of the property has its principal place of business within this state.

(2) The published notice ~~shall~~ *must* be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property" and ~~shall~~ *must* contain:

(a) the names, in alphabetical order, and last-known addresses, if any, of persons listed in the report and entitled to notice within the county ~~as hereinbefore specified~~;

(b) a statement that information concerning the amount or description of the property ~~and the name and address of the holder~~ may be obtained by ~~any persons~~ *a person* possessing an interest in the property by addressing an inquiry to the department; and

(c) a statement that if proof of claim is ~~not~~ presented by the owner ~~to the holder~~ and if the owner's right to receive the property is ~~not~~ established to the ~~holder's~~ *department's* satisfaction ~~within 65 days from the date of the second published notice, the abandoned property will be placed, not later than 85 days after such publication date, in the custody of the department, to whom all further claims must thereafter be directed~~, *the property will be returned to the owner.*

(3) The department is not required to publish in ~~such~~ *the* notice any item of less than $100 unless the department considers ~~such~~ publication to be in the public interest.

(4) This section is not applicable to sums payable on travelers' checks or money orders presumed abandoned under 70-9-201."

Section 4. Section 70-9-303, MCA, is amended to read:

"70-9-303. **Payment or delivery of abandoned property to department — service charges.** (1) ~~Every~~ *A* person who has filed a report as provided by 70-9-301 shall~~, within 20 days after the time specified in 70-9-302 for claiming the property from the holder or, in the case of sums payable on travelers' checks or money orders presumed abandoned under 70-9-201, within 20 days after the filing of the report,~~ pay or deliver to the department of revenue all abandoned property specified in ~~this~~ *the* report *at the time the report is filed*~~, except that if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in 70-9-302 or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the department but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment~~.

(2) ~~No~~ *A* service, handling, maintenance, or other charge or fee of any kind may *not* be deducted or withheld from any property subject to escheat under this chapter unless specifically permitted by this chapter.

(3) Even when specifically permitted by this chapter, ~~such~~ charges or fees may not be excluded, withheld, or deducted from property subject to this chapter if, under its normal procedure, the holder would not have excluded, withheld, or deducted ~~such~~ *the* charges or fees ~~had~~ *if* the property *had* been claimed by the owner prior to being reported or remitted to the department."

Section 5. Section 70-9-307, MCA, is amended to read:

"70-9-307. **Period of limitations not to prevent presumption or affect duties — limitation on department action.** (1) The expiration of any period of time specified by statute or court order during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property *does not:*

(a) ~~shall not~~ prevent the money or property from being presumed abandoned property or affect any duty to file a report required by parts 1 through 3 or to pay or deliver abandoned property to the department~~.~~*; or*

(b) constitute a defense in an action or proceeding brought by or on behalf of the department against the federal government, a state government, a local government, or an officer or employee of the federal, state, or local government for the payment or delivery of abandoned property to the department pursuant to this chapter or to enforce or collect a penalty imposed by this chapter.

(2) ~~No~~ *Except as provided in subsection (1)(b), an* action or proceeding may *not* be commenced by the department with respect to ~~any~~ *a* duty of a holder under parts 1 through 3 more than 10 years after the duty arose."

Section 6. Section 3, Chapter 14, Laws of 1989, is amended to read:

"Section 3. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, ~~1988~~ *1976.*"

Section 7. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 70, chapter 9, and the provisions of Title 70, chapter 9, apply to [section 1].

Section 8. **Repealer.** Section 70-9-313, MCA, is repealed.

Section 9. **Effective dates — applicability.** (1) [Sections 2, 3, 4, 6, 8, and this section] are effective on passage and approval.

(2) [Sections 1, 5, and 7] are effective October 1, 1991.

(3) [Sections 1 and 5] apply to all abandoned property held after September 30, 1991, regardless of when the property became presumptively abandoned.

Approved April 26, 1991.

CHAPTER NO. 655

[SB 205]

AN ACT TO REQUIRE STATE AGENCIES TO ENTER INTO A COOPERATIVE AGREEMENT REGARDING THE PROVISION OF CHILDREN'S SERVICES; TO SPECIFY THE REQUIREMENTS FOR A COOPERATIVE AGREEMENT BETWEEN STATE AGENCIES; TO REQUIRE ESTABLISHMENT OF LOCAL INTERAGENCY STAFFING GROUPS; TO DESIGNATE THE DEPARTMENT OF FAMILY SERVICES AS THE LEAD AGENCY IN COORDINATING AND PLANNING SERVICES TO CHILDREN; TO PROVIDE FOR ACCESS BY THE INTERAGENCY STAFFING GROUP TO CERTAIN RECORDS; AMENDING SECTIONS 41-3-107, 41-3-205, 41-5-602, 41-5-603, AND 52-1-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** It is the purpose of [sections 1 through 3] to strengthen and improve children's services in Montana by requiring interagency cooperation regarding the provision of services to children.

Section 2. **Definitions.** For purposes of [sections 1 through 3], unless the context requires otherwise, the following definitions apply:

(1) "Children with multiagency service needs" means children under 18 years of age who have a need for services that are available from more than one state agency.

(2) "Services" means publicly funded social services for children, including public education, child protective services, mental health services, child health care, and related services.

(3) "State agency" means:

(a) the department of family services provided for in 2-15-2401;

(b) the department of health and environmental sciences provided for in 2-15-2101;

(c) the department of institutions provided for in 2-15-2301;

(d) the board of crime control provided for in 2-15-2006;

(e) the department of social and rehabilitation services provided for in 2-15-2201; and

(f) the superintendent of public instruction provided for in 2-15-701.

Section 3. **Cooperative agreement regarding children's services.** (1) State agencies shall enter into a cooperative agreement for the purpose of coordinating services to children with multiagency service needs. However, the existing state and community interagency service delivery and planning process for developmental disabilities may not be affected by this section.

(2) The cooperative agreement may:

(a) include a functional definition of "children with multiagency service needs";

(b) identify the responsibilities of each state agency in relation to children with multiagency service needs;

(c) describe agreements to recognize duplicated services and to fill gaps in services to children with multiagency service needs;

(d) define a process for the resolution of disputes between state agencies that relate to specific areas of an agency's service responsibilities;

(e) establish local interagency staffing groups that consist of the following members:

(i) a local representative from each state agency who is authorized to commit resources and make decisions on behalf of the agency he represents;

(ii) representatives of local school districts, youth probation offices, and other public agencies serving youth; and

(iii) representatives of local private youth service agencies;

(f) provide that if a state agency is not able to provide all the services that a child requires, the agency may submit the child's case history to the local staffing group for the provision of multiagency services to the child;

(g) provide that a local interagency staffing group shall meet at the request of any one of its members to consider the provision of services to a child with multiagency service needs;

(h) provide for confidentiality of a child's case records in the same manner as provided in 41-3-205; and

(i) provide for review and necessary revision of the cooperative agreement at least once annually.

(3) For purposes of [sections 1 through 3], the department of family services is designated as the lead agency in coordinating and planning services to children with multiagency service needs. Other state agencies shall cooperate with the department of family services to assure minimum duplication and maximum coordination of services for children in Montana.

Section 4. Section 41-3-107, MCA, is amended to read:

"**41-3-107. Interagency cooperation.** *(1)* To effectuate the purposes of this chapter, the department of family services shall cooperate with and shall seek the cooperation and involvement of all appropriate public and private agencies, including health, education, social services, and law enforcement agencies; juvenile courts; and any other agency, organization, or program providing or concerned with human services related to the prevention, identification, or treatment of child abuse or neglect. Such cooperation and involvement may not include joint case management but may include joint policy planning, public education, information services, staff development, and other training.

(2) The department shall enter into a cooperative agreement with other state agencies, as provided in [section 3], for the purpose of implementing this section."

Section 5. Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department of social and rehabilitation services, the department of family services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state or any other state:

(a) a department, agency, or organization, including federal agencies, legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

(c) a licensed health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or his guardian ad litem;

(f) the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(g) a department or agency investigating an applicant for a license to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a substantiated report and the applicant is notified of the investigation;

(h) an employee of the department if disclosure of the records is necessary for administration of programs designed to benefit the child;

(i) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(j) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(k) a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case involving child abuse or neglect;

(l) a foster care review committee established under 41-3-1115; ~~or~~

(m) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202*; or*

(n) members of a local interagency staffing group provided for in [section 3].

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a).

(5) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

Section 6. Section 41-5-602, MCA, is amended to read:

"41-5-602. **Law enforcement records.** (1) No law enforcement records concerning a youth, except traffic records, may be open to public inspection or their contents disclosed to the public unless the records are directly related to an offense to which publicity must be allowed under subsection (2) of 41-5-601 or unless inspection is ordered by the court.

(2) Inspection of law enforcement records concerning a youth, which records are not open to public inspection under subsection (1), is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the department if it is investigating, supervising, or providing services to the youth;

(c) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(d) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(e) law enforcement officers of Montana, when necessary for the discharge of their immediate duties;

(f) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence investigation;

(g) the county attorney; ~~or~~

(h) the youth, his parent, guardian, or counsel*; or*

(i) members of a local interagency staffing group provided for in [section 3]."

Section 7. Section 41-5-603, MCA, is amended to read:

"41-5-603. **Youth court and department records.** (1) Youth court and youth court-related department records, including social, medical, and psychological records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon such party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority; *and*

(g) members of a local interagency staffing group provided for in [section 3].

(2) All or any part of records information secured from records listed in subsection (1) of this section, when presented to and used by the court in a proceeding under this chapter, shall also be made available to the counsel for the parties to the proceedings.

(3) Petitions, motions, and other pleadings filed in a case, including findings, verdicts, orders, and decrees, shall be open to public inspection only when related to an offense for which access must be allowed under 41-5-601.

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court or the department shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this chapter to receive such information, unless otherwise ordered by the judge.

(5) After youth court and department records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in subsection (1); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority."

Section 8. Section 52-1-103, MCA, is amended to read:

"**52-1-103. Powers and duties of department.** The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) act as the lead agency in coordinating and planning services to children with multiagency service needs;

~~(2)~~*(3)* provide funding for and place youth alleged or adjudicated to be delinquent or in need of supervision who are referred or committed to the department;

~~(3)~~*(4)* provide the following functions, as necessary, for youth in need of care:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

(d) protective services day care; and

(e) adoption;

~~(4)~~*(5)* administer youth correctional facilities;

~~(5)~~*(6)* provide supervision, care, and control of youth released from a state youth correctional facility;

~~(6)~~*(7)* license youth care facilities, child placing agencies, day-care facilities, community homes for developmentally disabled persons, community homes for severely disabled persons, and adult foster care facilities;

~~(7)~~*(8)* act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;

~~(8)~~*(9)* administer interstate compacts for children and delinquent youth;

~~(9)~~*(10)* (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

(b) administer elder abuse prevention services;

~~(10)~~*(11)* (a) make a written evaluation of each plan developed by the local youth services advisory councils, as provided in 52-1-203, indicating those portions of each plan that will be implemented by the department, those portions that will not be implemented, and the reasons for not implementing those portions;

(b) develop a statewide youth services and resources plan that takes into consideration local needs as reflected in plans developed by the local youth services advisory councils;

~~(11)~~*(12)* administer services to the aged;

~~(12)~~*(13)* provide consultant services to:

(a) facilities providing care for needy, indigent, handicapped, or dependent adults; and

(b) youth care facilities;

~~(13)~~*(14)* utilize at maximum efficiency the resources of state government in a coordinated effort to:

(a) provide for children in need of temporary protection or correctional services; and

(b) coordinate and apply the principles of modern institutional administration to the institutions in the department;

~~(14)~~*(15)* subject to the functions of the department of administration, lease or purchase lands for use by institutions in the department and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration:

(a) the needs of all institutions in the department for the food products that can be grown or produced on the lands; and

(b) the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions in the department;

~~(15)~~*(16)* utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

~~(16)~~*(17)* propose programs with specific goals and objectives to the legislature to meet the projected long-range needs of institutions in the department, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions in the department;

~~(17)~~*(18)* contract, as necessary, with the county board of welfare for administration of child and adult protection services for that county; and

~~(18)~~*(19)* adopt rules necessary to carry out the purposes of 41-3-1126, 41-5-527 through 41-5-529, and this chapter."

Section 9. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 53, chapter 4, and the provisions of Title 53, chapter 4, apply to [sections 1 through 3].

Section 10. **Effective date.** [This act] is effective July 1, 1991.

Approved April 26, 1991.

CHAPTER NO. 656

[SB 228]

AN ACT INCREASING THE SALARIES PAID SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES; PROVIDING ADDITIONAL REVENUE TO FUND A PORTION OF THE INCREASE; AMENDING SECTIONS 2-16-404, 3-5-211, AND 25-1-201, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

WHEREAS, the salaries of Montana Supreme Court Justices and District Court Judges have failed to rise over the last decade to a point that threatens the long-term ability of the judiciary to retain and attract the best qualified candidates for judicial offices; and

WHEREAS, the salaries of both Supreme Court Justices and District Court Judges in Montana are ranked 50th in the nation; and

WHEREAS, the salaries of Supreme Court Justices and District Court Judges in Montana and neighboring states are:

	CHIEF	DISTRICT	
STATE	JUSTICE	JUSTICE	JUDGE
Montana	$57,722	$56,452	$55,178
North Dakota	70,243	68,342	62,969
Wyoming	72,000	72,000	68,750
*Idaho	76,201	74,701	70,014
South Dakota	66,700	64,700	60,423
Washington	89,300	89,300	80,500
*Effective July 1, 1991			
AVERAGE:	$72,028	$70,916	$66,306; and

WHEREAS, the ranking between Montana and other states has seriously declined in the past decade from a ranking of 38th in the United States in 1977 to 50th for the last 5 years; and

WHEREAS, the Legislature is committed to an equitable system for setting salaries, based on comparable worth and related levels of responsibility.

THEREFORE, it is the purpose of this legislation to allow Montana Supreme Court Justices and District Court Judges to receive salaries comparable to the average salary of justices and judges in other western states.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-16-404, MCA, is amended to read:

"**2-16-404. Salaries of supreme court justices.** (1) The salary of the chief justice of the supreme court is ~~$54,722 for the fiscal year beginning July 1, 1989, and $57,722 for each fiscal year thereafter~~ *as follows:*

(a) $59,722 beginning July 1, 1991;

(b) $61,722 beginning January 1, 1992;

(c) $63,722 beginning July 1, 1992;

(d) $65,722 beginning January 1, 1993, and each fiscal year thereafter.

(2) The salary of a justice of the supreme court is ~~$53,452 for the fiscal year beginning July 1, 1989, and $56,452 for each fiscal year thereafter~~ *as follows:*

(a) $58,452 beginning July 1, 1991;

(b) $60,452 beginning January 1, 1992;

(c) $62,452 beginning July 1, 1992;

(d) $64,452 beginning January 1, 1993, and each fiscal year thereafter."

Section 2. Section 3-5-211, MCA, is amended to read:

"**3-5-211. Salaries and expenses of district judges.** (1) The annual salary of each district judge is ~~$52,178 for the fiscal year beginning July 1, 1989, and $55,178 for each fiscal year thereafter~~ *as follows:*

(a) $57,178 beginning July 1, 1991;

(b) $59,178 beginning January 1, 1992;

(c) $61,178 beginning July 1, 1992;

(d) $63,178 beginning January 1, 1993, and each fiscal year thereafter.

(2) Actual and necessary expenses for each district judge shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties."

Section 3. Section 25-1-201, MCA, is amended to read:

"**25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, ~~$60~~ *$70*; for filing a complaint in intervention, from the intervenor, ~~$60~~ *$70*; for filing a petition for dissolution of marriage, a fee of ~~$100~~ *$110*; and for filing a petition for legal separation, a fee of ~~$100~~ *$110*;

(b) from each defendant or respondent, on his appearance, ~~$40~~ *$50*;

(c) on the entry of judgment, from the prevailing party, ~~$25~~ *$35*;

(d) for preparing copies of papers on file in his office, 50 cents per page for the first five pages of each file, per request, and 25 cents per page thereafter;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, $25;

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, ~~$50~~ *$60*, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, ~~$35~~ *$45*;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100.

(2) Except as provided in subsections (3) through ~~(7)~~ *(8)*, 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, ~~and~~ $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, $40 must be deposited in the state general fund, $35 must be remitted to the state to be deposited as provided in 19-5-404, $5 must be deposited in the children's trust fund account established by 41-3-702, ~~and~~ $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on his appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15;

(iv) on the entry of judgment as provided in subsection (1)(h), $20;

(v) for issuing an execution or order of sale as provided in subsection (1)(i), $3; and

(vi) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be remitted to the state to be deposited as provided in 19-5-404.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund $10 of each fee collected under the provisions of subsections (1)(a) through (1)(c) and (1)(m) and (1)(n) to fund a portion of judicial salaries."

Section 4. Section 25-1-201, MCA, is amended to read:

"**25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, ~~$60~~ *$80*; for filing a complaint in intervention, from the intervenor, ~~$60~~ *$80*; for filing a petition for dissolution of marriage, a fee of ~~$100~~ *$120*; and for filing a petition for legal separation, a fee of ~~$100~~ *$120*;

(b) from each defendant or respondent, on his appearance, ~~$40~~ *$60*;

(c) on the entry of judgment, from the prevailing party, ~~$25~~ *$45*;

(d) for preparing copies of papers on file in his office, 50 cents per page for the first five pages of each file, per request, and 25 cents per page thereafter;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, $25;

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, ~~$50~~ *$70*, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, ~~$35~~ *$55*;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100.

(2) Except as provided in subsections (3) through ~~(7)~~ *(8)*, 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, ~~and~~ $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, $40 must be deposited in the state general fund, $35 must be remitted to the state to be deposited as provided in 19-5-404, $5 must be deposited in the children's trust fund account established by 41-3-702, ~~and~~ $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on his appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15;

(iv) on the entry of judgment as provided in subsection (1)(h), $20;

(v) for issuing an execution or order of sale as provided in subsection (1)(i), $3; and

(vi) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be remitted to the state to be deposited as provided in 19-5-404.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c) and (1)(m) and (1)(n) to fund a portion of judicial salaries."

Section 5. **Termination.** [Section 3] terminates June 30, 1992.

Section 6. **Effective dates.** (1) [Sections 1 through 3, 5, and this section] are effective July 1, 1991.

(2) [Section 4] is effective July 1, 1992.

Approved April 25, 1991.

CHAPTER NO. 657

[SB 229]

AN ACT RELATING TO THE STATE BUDGET PROCESS AND THE CONSTITUTIONAL SEPARATION OF POWERS AMONG THE SEPARATE BRANCHES OF STATE GOVERNMENT; PROVIDING THAT JUDICIAL BRANCH BUDGET PROPOSALS MUST BE SUBMITTED TO THE LEGISLATURE; AND AMENDING SECTION 17-7-122, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-122, MCA, is amended to read:

"**17-7-122. Submission of budget to legislature.** (1) The governor shall, following the receipt of the preliminary budget from the budget director, have prepared a budget for the ensuing biennium and shall submit ~~said~~ *the* budget to each member of the legislature at the time of the convening of the legislature.

(2) Legislative branch requests ~~shall~~ *must* be included in the budget submitted by the governor without changes.

(3) Judicial branch requests must be included in the budget submitted by the governor, but expenditures above current level funding need not be part of the balanced financial plan pursuant to 17-7-123."

Approved April 26, 1991.

CHAPTER NO. 658

[SB 275]

AN ACT REPEALING CERTAIN NUISANCE FEES AND TAXES; ELIMINATING THE REQUIREMENT FOR A $1 FEE TO OBTAIN A TAX CLEARANCE CERTIFICATE; REPEALING THE COAL RETAILERS' LICENSE TAX; REPEALING THE LAWS ON STATE STORE LICENSES; AMENDING SECTION 15-31-552, MCA; REPEALING SECTIONS 15-57-101, 15-57-102, 15-57-103, 15-57-104, 15-57-105, 15-57-106, 15-57-107, 15-57-108, 15-57-109, 15-57-110, 15-58-101, 15-58-102, 15-58-103, 15-58-104, 15-58-105, 15-58-106, 15-58-107, 15-58-108, 15-58-109, 15-58-110, 15-58-111, 15-58-121, 15-58-122, 15-58-123, 15-58-124, 15-58-125, AND 15-58-126, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-552, MCA, is amended to read:

"**15-31-552. Corporation license tax clearance certificates furnished ~~— fee~~.** Upon request of a corporation ~~and upon the payment of $1,~~ the department of revenue may furnish to it a certificate to the effect that all taxes have been paid, that a return has been filed, and that all information has been supplied as required by the provisions of this chapter."

Section 2. **Repeal of coal retailers' license tax.** Sections 15-58-101, 15-58-102, 15-58-103, 15-58-104, 15-58-105, 15-58-106, 15-58-107, 15-58-108, 15-58-109, 15-58-110, 15-58-111, 15-58-121, 15-58-122, 15-58-123, 15-58-124, 15-58-125, and 15-58-126, MCA, are repealed.

Section 3. **Repealer.** Sections 15-57-101, 15-57-102, 15-57-103, 15-57-104, 15-57-105, 15-57-106, 15-57-107, 15-57-108, 15-57-109, and 15-57-110, MCA, are repealed.

Section 4. **Applicability.** [Sections 1 and 2] apply retroactively, within the meaning of 1-2-109, to January 1, 1991.

Section 5. **Effective dates.** (1) [Sections 1 and 2] are effective on passage and approval.

(2) [Section 3] is effective December 31, 1991.

Approved April 26, 1991.

CHAPTER NO. 659

[SB 313]

AN ACT CLARIFYING STATE WATER STORAGE POLICY AND THE ROLE OF STORAGE IN SOLVING WATER PROBLEMS; ESTABLISHING GUIDELINES FOR SETTING PRIORITIES AMONG NEW STORAGE AND REHABILITATION STORAGE PROJECTS; REQUIRING A STUDY OF THE FEASIBILITY OF ASSESSING RECREATIONAL USER FEES TO REPAY WATER STORAGE PROJECT COSTS; REQUIRING A STUDY OF THE FEASIBILITY OF COLLECTING LARGER FEES FROM CONSUMPTIVE WATER USERS WHO BENEFIT FROM THE DEVELOPMENT OF NEW STATE-OWNED WATER STORAGE PROJECTS OR FROM THE REHABILITATION OF EXISTING STATE-OWNED WATER STORAGE PROJECTS; REQUIRING A STUDY OF WATER STORAGE LAWS AND REGULATIONS BY THE WATER POLICY COMMITTEE; CREATING A WATER STORAGE STATE SPECIAL REVENUE ACCOUNT; ALLOCATING ADDITIONAL TAX REVENUES FOR WATER DEVELOPMENT; ALLOCATING 25% OF THE MONEY AVAILABLE AS GRANTS IN THE WATER DEVELOPMENT STATE SPECIAL REVENUE ACCOUNT AND RENEWABLE RESOURCE DEVELOPMENT ACCOUNT TO THE DEVELOPMENT OF WATER STORAGE PROJECTS; ELIMINATING THE 10-YEAR LIMIT ON PROJECT DEVELOPMENT PLANS REQUIRED IN APPLICATIONS FOR LARGE WATER USE PERMITS; AMENDING SECTIONS 85-1-604, 85-2-310, AND 90-2-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill to provide guidance in the preparation of rules and other matters pertaining to the allocation of grants and loans from the water storage state special revenue account. This bill is introduced as a result of and should be interpreted consistently with the 1990 state water plan section on water storage. It is the legislature's intent that money may not be expended from the water storage state special revenue account during fiscal years 1992 and 1993. Rather, money deposited in the account is to accumulate for expenditure during fiscal years 1994 and 1995. Deposits to the account are to be placed in short-term investments and accrue interest, which is also to be deposited in the water storage state special revenue account.

Rules are to be adopted and implemented that govern the process of application, administrative application review and ranking, and conditions for the disbursal of grants and loans as soon as possible after this bill is enacted. Applications for grants and loans from the account are to be accepted by May 1992. These application and administrative recommendations will be considered during the 1993 legislative session, and that legislature may appropriate money accumulated in the account for expenditure during fiscal years 1994 and 1995.

It is also the legislature's intent that rules governing the allocation of money from the water storage state special revenue account do not limit the amount that may be provided to any one applicant. Also, private entities, as well as public entities, are to be eligible for grants and loans from the account.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 4] may be cited as the "Water Storage Policy Act".

Section 2. **Purpose.** The purpose of [sections 1 through 4] is to define the role of water storage in solving water management problems and, if water storage projects provide the best solutions to those problems, to facilitate the development of the projects.

Section 3. **Water storage policy.** (1) The legislature recognizes that water resource needs are growing, existing water facilities are aging and in need of repair, and new water storage projects have become more difficult to complete. Other types of action will be needed to solve many emerging problems, but if water storage is the best way to meet growing water needs and solve problems, then it should be actively pursued.

(2) In determining the best solution for a particular water management problem, the state shall:

(a) carefully define the problem;

(b) identify all options to solve the problem, including water storage;

(c) determine whether water is physically and legally available to solve the problem; and

(d) select the option that best meets the following criteria:

(i) technical feasibility;

(ii) financial feasibility;

(iii) economic feasibility;

(iv) political feasibility;

(v) legal feasibility; and

(vi) environmental feasibility.

Section 4. **Prioritization of water storage projects — governor's report.** (1) The governor shall submit to each regular session of the legislature a report identifying specific water storage projects proposed for development, including the rehabilitation of existing projects and new project proposals. The report must contain:

(a) a list of water storage project priorities;

(b) an implementation strategy for each priority project that identifies the resources (including specific budget requests), government actions, and other actions needed to accomplish the project; and

(c) a progress report on the development of water storage projects during the previous 2 years.

(2) In setting priorities among new water storage projects, the governor shall consider whether a project:

(a) solves a severe water problem;

(b) provides multiple uses and benefits;

(c) provides for public uses;

(d) shows strong evidence of broad citizen support;

(e) is able to obtain nonstate sources of funding;

(f) protects and seeks to enhance social, ecological, cultural, and aesthetic values;

(g) improves local and state economic development;

(h) could resolve Indian and federal reserved water rights issues;

(i) supports water conservation activities; and

(j) promotes the use of water reserved under Montana law.

(3) In setting priorities among water storage rehabilitation projects, the governor shall consider whether the project:

(a) is needed to protect public safety;

(b) has impacts if not repaired or rehabilitated; and

(c) accomplishes the goals listed in subsections (2)(a) through (2)(j).

(4) In establishing budget priorities for the allocation of state water storage development funds:

(a) first preference must be given to projects that resolve threats to life and property posed by high-hazard facilities that are in an unsafe condition;

(b) second preference must be given to projects that improve or expand existing water storage facilities; and

(c) third preference must be given to the planning and construction of new water storage facilities.

Section 5. **Study of recreational user fees.** (1) The department of fish, wildlife, and parks, with the cooperation of the department of natural resources and conservation, shall conduct and coordinate a study that assesses the feasibility of charging recreational beneficiaries of water storage projects fees to assist in the repayment of a portion of those project costs associated with recreational opportunities. Options to be assessed include but are not limited to:

(a) requiring entrance fees for the recreational use of water storage facilities;

(b) requiring purchase of a water development stamp as a prerequisite for purchase of a fishing, duck hunting, boating, or other license for which water is an integral part of the recreational experience;

(c) increasing the motorboat fuels tax;

(d) requiring purchase of a land and water conservation license by anyone using public lands or water; and

(e) obtaining funding from the department of fish, wildlife, and parks that is derived from taxes or fees on recreational activities.

(2) A written report of the study findings must be submitted to the water policy committee by July 1, 1992.

Section 6. **Study of water user fees.** (1) The department of natural resources and conservation shall conduct and coordinate a study to assess the feasibility of increasing the fees charged to diversionary water users to assist in the repayment of a greater portion of new state-owned water storage projects' costs or existing state-owned water storage projects' rehabilitation costs. This study should include a historical analysis of existing state-owned water storage projects' costs and associated fees.

(2) A written report of the study findings must be submitted to the water policy committee by July 1, 1992.

Section 7. **Study of dam safety and water reservation laws and regulations.** (1) The water policy committee, with the cooperation of the department of natural resources and conservation, shall conduct a study of the Montana Dam Safety Act and implementing regulations to determine:

(a) the acceptable degree of risk to public safety and the appropriate allocation of responsibility for that risk among the public, government, and dam owners;

(b) whether the definition of a high-hazard dam should be modified;

(c) whether the high-hazard dam classification should be expanded into a risk scale that allows structural design requirements to reflect probable risk to life and property; and

(d) whether the department of natural resources and conservation should be given greater discretion to substitute alternative means of addressing risks, such as early warning systems, for structural design requirements.

(2) The water policy committee shall also conduct a study to determine whether the statutory restriction against allowing private entities to obtain water reservations is an impediment to the development of water storage projects. Specifically, the study must evaluate the desirability of:

(a) allowing private entities to apply for and obtain water reservations; and

(b) designating a public entity with responsibility to advance water reservation applications for private entities that are precluded from applying for and receiving a water reservation under 85-2-316.

Section 8. **Water storage state special revenue account created — revenues allocated — appropriations from account.** (1) There is a water storage state special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the water storage state special revenue account:

(a) money from the water development state special revenue account as provided in 85-1-604; and

(b) money from the renewable resource development account as provided in 90-2-111.

(3) Money that was not encumbered or expended from the water storage state special revenue account during the previous biennium must remain in the account.

(4) The purpose of the water storage state special revenue account is to provide money for loans and grants exclusively for water storage projects, including the purchase or lease of property; planning, feasibility, and design studies; and other costs related to construction, rehabilitation, expansion, and modification of water storage projects.

(5) The department shall administer this section as an integral part of the water development program, using, to the extent possible, the same procedures for soliciting, determining eligibility, and rating water storage

project proposals and for administering grants and loans, subject to the same limitations, as applied to other water development grants and loans.

(6) The following preferences must be considered in ranking proposals for water storage grants and loans:

(a) first preference is for the rehabilitation of water storage projects that resolve threats to life and property;

(b) second preference is for the improvement or expansion of existing water storage projects; and

(c) third preference is for the development of new water storage projects.

Section 9. Section 85-1-604, MCA, is amended to read:

"**85-1-604. Water development state special revenue account created — revenues allocated — limitations on appropriations from account.** (1) There is created a water development state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the water development debt service fund pursuant to 85-1-603, there shall be paid into the water development state special revenue account:

(a) all revenues of the works and other money as provided in 85-1-332;

(b) 30% of the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the water development debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619; and

(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests.

(3) Appropriations may be made from the water development state special revenue account for the following purposes and subject to the following conditions:

(a) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection (3)(a) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(b).

(b) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(a) and only that amount may be appropriated from the account for:

(i) the rehabilitation of state-owned projects and works, including the rehabilitation of spillways of state-owned dams;

(ii) the formulation of downstream emergency warning and evacuation plans for state-owned dams;

(iii) the development of the hydropower potential of state-owned dams;

(iv) assistance in the implementation of the water reservations established under 85-2-316 of conservation districts;

(v) the promotion of the development of offstream and tributary storage;

(vi) the promotion of joint state-tribal, state-federal, and state-tribal-federal water development;

(vii) projects or programs that improve water use efficiency, including development of new, efficient water systems and rehabilitation of older, less efficient water systems;

(viii) administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, office space, and other necessities incurred in the administration of the water development program except the administration of loans and grants; and

(ix) any other expenditures that meet the policies and objectives of the state water development program.

(c) An amount less than or equal to that paid into the account from the sources provided for in (c) and (d) of subsection (2) and only that amount may be appropriated from the account for loans and grants for water development projects and activities; for purchase of liens and operation of property as provided in 85-1-615; for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, and office space; for the servicing of loans, including arrangements for obtaining security interests; and for other necessities incurred in administering the loans and grants.

(4) An amount equal to 25% of the money available for grants under subsection (3)(c) must be transferred to the water storage state special revenue account created in [section 8]."

Section 10. Section 85-2-310, MCA, is amended to read:

"85-2-310. **Action on application.** (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons therefor by certified mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within 30 days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable time line~~, not to exceed 10 years from the time of issuance of a permit,~~ for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement fee, if any, is not paid as required by 85-2-124."

Section 11. Section 90-2-111, MCA, is amended to read:

"**90-2-111. Grants to state and local government.** (1) The department of natural resources and conservation may recommend to the governor that grants from the renewable resource development account provided for by this part be made to any department, agency, board, commission, or other division of state government or to any political subdivision of state government.

(2) The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies, and other subdivisions of state and federal government and of other interested and affected persons.

(3) The governor shall submit those grant proposals having his approval to the legislature by the 20th day of any legislative session. Those grant proposals approved by the legislature shall be administered by the department.

(4) The grants provided for by this section may be made for the purchase, lease, or construction of projects for the conservation, management, utilization, development, or preservation of the land, vegetation, fish, wildlife, recreational, and other renewable resources in the state; for the purpose of feasibility and design studies for such projects; for development of plans for the rehabilitation, expansion, or modification of existing projects; and for such other and further similar purposes as the legislature may approve.

(5) In recommending grants under this section, the department and the governor shall consider the special requirements and benefits of proposals that provide for the long-term compilation and management of information on the natural resources of Montana. These proposals contribute to the efficient management of renewable resources, benefit a variety of public and private users, and require a continuing commitment of resources to maintain currency and utility. In consequence of these values and conditions, projects providing for the long-term compilation and management of

natural resource information may be considered for funding in consecutive funding cycles and may not be penalized for having received funds previously from the renewable resource development program.

(6) An amount equal to 25% of the money available for grants from the renewable resource development program must be transferred to the water storage state special revenue account created in [section 8].

~~(6)~~*(7)* The department may adopt rules as required to govern the terms and conditions for making grants pursuant to this section."

Section 12. **Codification instruction.** (1) [Sections 1 through 4] are intended to be codified as an integral part of Title 85, chapter 1, and the provisions of Title 85, chapter 1, apply to [sections 1 through 4].

(2) [Section 8] is intended to be codified as an integral part of Title 85, chapter 1, part 6, and the provisions of Title 85, chapter 1, part 6, apply to [section 8].

Section 13. **Effective date.** [This act] is effective July 1, 1991.

Approved April 26, 1991.

CHAPTER NO. 660

[SB 331]

AN ACT TO GENERALLY REVISE PROVISIONS RELATED TO THE DUTIES OF COUNTY CORONERS AND JURORS IN CORONER'S INQUESTS; TO PROVIDE FOR THE DUTIES OF A CORONER IN INQUIRIES AND INQUESTS, INCLUDING THE POWER TO SEARCH AND SEIZE AND TO SUBPOENA; TO REQUIRE REPORTING OF ALL FETAL DEATHS; AMENDING SECTIONS 3-15-203, 7-4-2911, 7-4-2915, 44-3-404, 46-4-101, 46-4-103, 46-4-201, 46-4-202, 46-4-205, AND 46-4-206, MCA; AND REPEALING SECTIONS 7-4-2912, 7-4-2916, 44-3-403, 46-4-102, AND 46-4-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Coroner's authority to seize and preserve evidence.** (1) A county coroner may enter any room, dwelling, building, or other place in which he has probable cause to believe that a dead human body or evidence of the circumstances of a death that requires investigation may be found. If refused entry, a coroner who is investigating a death pursuant to his authority may apply to a judge authorized to issue search warrants for a warrant to enter the premises and to search for and seize evidence of the cause of a death, including a dead human body.

(2) The application for a search warrant must:

(a) state facts sufficient to show probable cause that a human body or evidence of the circumstances of death is present in the place to be searched;

(b) particularly describe the place to be searched; and

(c) particularly describe the things to be seized.

(3) To preserve evidence of the cause of death, a coroner may:

(a) place under his custody and control any dwelling, building, item, vehicle, aircraft, railroad engine or train, vessel, enclosure, or open area for a period of not more than 10 days; and

(b) forbid entrance by an unauthorized person into any area specified in subsection (3)(a).

(4) A person may not enter an area that is restricted pursuant to subsection (3) without the permission of the coroner or the law enforcement agency having jurisdiction if there is also a criminal investigation in progress.

Section 2. **Powers of coroner.** In the performance of his duties under this chapter, the coroner may:

(1) pronounce the fact of death of any human being under circumstances in which he has a duty to inquire pursuant to [section 4];

(2) certify and amend death certificates as considered necessary in circumstances under which he has a duty to inquire pursuant to [section 4];

(3) issue subpoenas pursuant to [section 7];

(4) order autopsies as provided in 46-4-103;

(5) conduct examinations and tests as considered necessary to determine the cause, manner, and circumstances of death and identification of a dead human body as provided in 46-4-101 and [section 8];

(6) order a dead human body to be disinterred or removed from its place of disposition, with or without the consent of the next of kin, under circumstances in which he has a duty to inquire pursuant to [section 4];

(7) conduct inquests pursuant to 46-4-201; and

(8) order cessation of any activity by any person or agency, other than the law enforcement agency having jurisdiction, that may obstruct or hinder the orderly conduct of an inquiry to the collection of information or evidence needed for an inquiry.

Section 3. **Inquiry defined.** For the purposes of [sections 1 through 8], an inquiry by a county coroner is an informal examination of a death and its attendant circumstances to determine whether:

(1) an inquest, which is a formal inquiry, should be held;

(2) the reporting physician should certify the death;

(3) any further action or examination should be made concerning a death; or

(4) there is anything unusual or remarkable about a death that may warrant further action by the county attorney or the law enforcement agency that has jurisdiction.

Section 4. **Human deaths requiring inquiry by coroner.** The coroner shall inquire into and determine the cause and manner of death and all circumstances surrounding a human death:

(1) that was caused or is suspected to have been caused:

(a) in any degree by an injury, either recent or remote in origin; or

(b) by the deceased or any other person that was the result of an act or omission, including but not limited to:

(i) a criminal or suspected criminal act;

(ii) a medically suspicious death, unusual death, or death of unknown circumstances, including any fetal death; or

(iii) an accidental death;

(c) by an agent, disease, or medical condition that poses a threat to public health;

(2) whenever the death occurred:

(a) while the deceased was incarcerated in a prison or jail or confined to a correctional or detention facility owned and operated by the state or a political subdivision of the state;

(b) while the deceased was in the custody of, or was being taken into the custody of, a law enforcement agency or a peace officer;

(c) during or as a result of the deceased's employment;

(d) less than 24 hours after the deceased was admitted to a medical facility or if the deceased was dead upon arrival at a medical facility; or

(e) in a manner that was unattended or unwitnessed and the deceased was not attended by a physician at any time in the 30-day period prior to death;

(3) if the dead human body is to be cremated or lacks proper medical certification or burial or transmit permits; or

(4) that occurred under suspicious circumstances.

Section 5. **Inquiry report.** The coroner shall make a full report of the facts discovered in all human deaths requiring an inquiry under the provisions of [section 4]. The report must be made in triplicate on a form provided by the division of forensic science of the department of justice. The coroner and the medical examiner shall each retain one copy and shall deliver the other copy to the county attorney. If the coroner orders an autopsy during the course of an inquiry, he shall also provide the medical examiner with a copy of the autopsy report. The forms must be completed and distributed as provided in this section as promptly as practicable.

Section 6. **Reporting fetal deaths.** A licensed nurse, a midwife, a physician's assistant-certified, an emergency medical technician, a birthing assistant, or any other person who assists in the delivery that occurs outside a licensed medical facility of a fetus that is believed or declared to be dead shall report the death by the earliest means available to the coroner of the county in which the death occurred.

Section 7. **Subpoenaing of witnesses and documents.** (1) In an inquiry or inquest, a coroner may:

(a) issue subpoenas for witnesses as provided in 46-4-203; and

(b) issue subpoenas commanding the production of books, records, papers, documents, and other objects as may be necessary and proper to the inquiry or inquest.

(2) Any material subpoenaed pursuant to subsection (1)(b) is confidential criminal justice information, as defined in 44-5-103, and public access to the information may be obtained only in accordance with 44-5-303. However, any material produced at an inquest is public information.

(3) Disobedience of a subpoena issued under 46-4-203 or this section is punishable in the same manner as disobedience of a subpoena issued by a justice of the peace as provided in Title 3, chapter 10, part 4.

Section 8. **Examinations and tests.** The coroner may direct a properly qualified expert to conduct any test or examination that he reasonably believes is necessary to determine the cause, manner, and circumstances of a death or to identify a dead human body. The coroner may also require examination by the next of kin or any other person when necessary to identify a dead human body.

Section 9. Section 3-15-203, MCA, is amended to read:

"3-15-203. **Fees in courts not of record and coroner's inquests.** (1) A jury panel member~~,~~ in ~~both~~ civil ~~and~~ *actions,* criminal actions, ~~shall receive~~ *and coroner inquests is entitled to* a fee of $12 per day for attendance before a court not of record and a mileage allowance, as provided in 2-18-503, for traveling each way between his residence and the court. A jury panel member selected for a case ~~shall receive~~ *is entitled to* an additional $13 per day while serving.

(2) In civil actions, the jurors' fees must be paid by the party demanding the jury and taxed as costs against the losing party.

(3) ~~Jurors in coroner's inquests shall receive a fee of $7.50 per day.~~

~~(4)~~ A juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice or who has been summoned as a special juror and not sworn in the trial of the case shall forfeit per diem and mileage."

Section 10. Section 7-4-2911, MCA, is amended to read:

"7-4-2911. **Duties of county coroner.** *The county coroner shall:*

(1) ~~The coroner must~~ hold inquests as provided in Title 46, chapter 4, parts 1 and 2~~.~~*;*

(2) inquire into the cause, manner, and circumstances of all human deaths as required in [section 4] and establish the identity of the deceased person;

(3) provide decent disposal of an unclaimed dead human body and unclaimed parts of bodies believed to be human;

(4) maintain records of inquiries as required by good practice and by law;

(5) as soon as practicable upon identifying a dead human body, provide for notifying the next of kin of the deceased of the fact of death in any death into which he is making an inquiry;

(6) if no law enforcement agency has jurisdiction of the case, preserve evidence involving any human death, pursuant to his authority, including placing under his control, to the extent necessary, any personal and real property that may be related to or involved in the death;

(7) witness and certify deaths that are the result of a judicial order;

(8) inquire into any human death when no physician or surgeon licensed in the state will sign a death certificate;

(9) notify the county attorney and the law enforcement agency having jurisdiction of all deaths requiring inquiry pursuant to [section 3]; and

~~(2)~~*(10)* ~~In~~ *in* the cases specified in 25-3-205, ~~the coroner must~~ discharge the duties of sheriff. If acting as sheriff, the coroner is allowed the same salary as sheriff or the same fees as constable for like services."

Section 11. Section 7-4-2915, MCA, is amended to read:

"7-4-2915. **~~Dead~~ *Custody and disposition of* bodies ~~to be~~ held pending investigation.** *(1) In the course of an inquiry authorized under the provisions of [section 4], the coroner may take custody of a dead human body and cause it to be removed from the site of death to a facility designated by the coroner.*

(2) A dead *human* body in the custody of a county coroner ~~shall~~ *must* be held until ~~such time as~~ the coroner, after consultation with appropriate law enforcement officials and the county attorney, establishes that it is not necessary to hold the body to determine the reasonable and true cause of death or that the body is no longer necessary to assist any local investigations.

(3) If the identity of a dead human body is unknown or if those entitled to custody of a body do not claim it, the coroner shall take custody of the body even if the circumstances of the death do not otherwise require an inquiry by the coroner.

(4) A dead human body in the custody of the coroner may be released by him to the custody of a person who is entitled to custody or to a funeral home.

(5) The coroner must release to a funeral home a dead human body that is not designated to be released to a specific funeral home by the deceased prior to death, by the deceased's next of kin, or by a friend of the deceased who will take financial responsibility for the disposition of the body. The coroner shall rotate the release of bodies to funeral homes in a manner that is fair and equitable. The coroner may not release a body to a funeral home if the funeral home has requested in writing by December 1 of the preceding year that it does not wish to participate in the release of bodies under this section."

Section 12. Section 44-3-404, MCA, is amended to read:

"**44-3-404. Criminal penalty.** A person is guilty of a misdemeanor and may be fined not more than $500 or imprisoned in the county jail for not more than 1 year, or both, if he:

(1) purposely fails to report or conceals a death, *including a fetal death*;

(2) refuses to make available prior medical or other information in a death investigation; ~~or~~

(3) without an order from the coroner or state medical examiner, purposely touches, removes, or disturbs a corpse, its clothing, or anything near the corpse ~~under investigation with the intent to alter the evidence or circumstances surrounding the death~~*; or*

(4) knowingly or purposely disobeys a cessation order of a coroner."

Section 13. Section 46-4-101, MCA, is amended to read:

"**46-4-101. Jurisdiction — death and cause of death in different counties.** *(1) The coroner of the county where a dead human body is found has jurisdiction if:*

(a) the place of death is unknown;

(b) the dead human body was shipped into the county without proper permits; or

(c) the death occurred while the deceased was in transit in the state.

(2) When death occurs as a direct result of acts or events ~~which~~ *that* occurred in another county, the coroner of ~~either~~ *the* county ~~shall have~~ *where the acts or events causing death occurred has* jurisdiction. If a ~~conflict of jurisdiction should arise or should said coroners fail~~ *coroner that has*

jurisdiction of a death fails to act, the ~~coroner of the county where the death occurred shall have the primary~~ *state medical examiner has* jurisdiction.

(3) A county coroner has primary jurisdiction in the county in which he is appointed or elected to serve; however, a qualified coroner may serve in another county upon the request of the coroner or county attorney of that county. A coroner may travel to another county to inquire into a death pursuant to [section 4]."

Section 14. Section 46-4-103, MCA, is amended to read:

"**46-4-103. Autopsy — when conducted, ~~record,~~ scope.** (1) If in the opinion of the coroner an autopsy is advisable, he shall order one *performed on any dead human body for which the death requires an inquiry* and shall retain a medical examiner *or associate medical examiner* to perform it. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. *Consent of the family or next of kin of the deceased is not required for an autopsy that is ordered by the coroner, county attorney, or attorney general.* In ordering an autopsy the coroner, *county attorney, or attorney general* shall order the body to be exhumed if it has been interred.

~~(2) A full record of the facts found shall be made on a form provided by the division of forensic science in triplicate, the coroner and medical examiner retaining one copy and delivering the other to the county attorney.~~

~~(3)~~*(2)* The right to conduct an autopsy ~~shall include~~ *includes* the right to retain ~~such~~ specimens ~~as~~ the medical examiner performing the autopsy ~~deems~~ *considers* necessary.

~~(4)~~*(3)* The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy ~~or~~, investigation, *or inquiry* is initiated at the request of the county attorney or county coroner.

(4) If a county does not provide a morgue or other facility for post-mortem examination, the county coroner may order the use of a funeral home or an appropriate hospital facility for the examination."

Section 15. Section 46-4-201, MCA, is amended to read:

"**46-4-201. Inquest — definition, when held, how conducted.** (1) An inquest is a formal inquiry into the causes of and circumstances surrounding the death of any person *and is conducted by the coroner before a coroner's jury.*

(2) The coroner shall hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. However, ~~when~~ *if* the death of any person occurs in a jail or penal institution, *while a person is being taken into custody or is in the custody of a peace officer,* or ~~from the use of a firearm~~ *is caused* by a peace officer, except where

criminal charges have been or will be filed, the county attorney shall ~~direct~~ *order* the coroner to hold an inquest.

(3) If an inquest is held, the proceedings ~~shall be~~ *are* public. The coroner shall conduct the inquest with the aid and assistance of the county attorney. ~~Such~~ *The coroner shall, and the county attorney may, examine each witness, after which the witness may be examined by the jurors. The* inquest is to be held in accordance with this part.

(4) (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of a person who:

(i) died in a jail or penal institution;

(ii) died while in the custody of a peace officer; or

(iii) was killed by a peace officer.

(b) If a coroner is disqualified under subsection (4)(a), the county attorney shall request a qualified coroner of a neighboring county to conduct the inquest. The expenses of a coroner fulfilling the request, including salary, must be paid by the requesting county."

Section 16. Section 46-4-202, MCA, is amended to read:

"**46-4-202. Summoning and swearing in of jurors — instructions.** (1) For holding ~~such~~ *an* inquest, the coroner ~~must~~ *shall* summon a jury of *at least 6 but* not more than ~~nine~~ *12* persons qualified by law to serve as jurors *and selected at random from a list of eligible jurors that is furnished to the coroner annually by the county clerk of court.*

(2) ~~When six or more of the jurors attend, they~~ *The jury selected by the coroner* must be sworn by the coroner to inquire who the person was and when, where, and by what means he came to his death and into the circumstances attending his death and to render a true verdict ~~thereon,~~ *on the death* according to the evidence offered to them or arising from the inspection of the body.

(3) The coroner ~~must~~ *shall* instruct the jurors as to their duties."

Section 17. Section 46-4-205, MCA, is amended to read:

"**46-4-205. Verdict of jury — form.** *The jury may view the body, and the county attorney may require the jury to view the body. The jury shall review the death scene and may do so by videotape, photographs, or slide transparencies.* After ~~inspecting~~ *viewing* the body *and the death scene* and hearing the testimony, the jury ~~must~~ *shall* render its verdict, which ~~shall~~ *must* be by majority vote, and certify the same in writing signed by ~~them and setting~~ *each juror. The verdict must set* forth:

(1) who the deceased person is~~,~~*;*

(2) when~~,~~ *and* where~~, and by what means~~ he came to his death~~,~~*;*

(3) if he came to his death by criminal means; and

(4) if he was killed or his death *was* occasioned by the act of another by criminal means, who committed the act, *if known. If the jury finds that the death was not by criminal means, that fact must be stated on the verdict form.*"

Section 18. Section 46-4-206, MCA, is amended to read:

"**46-4-206. Recording and filing of testimony and proceedings.** *Testimony before a coroner's jury must be given under oath.* The testimony of the witnesses examined *and proceedings* before the coroner's jury must be ~~reduced to writing~~ *recorded and transcribed by a competent stenographer appointed* by the coroner ~~or under his direction and forthwith filed by him with the inquisition.~~ *The record of the inquest and the verdict of the jury must be filed by the coroner* in the office of the clerk of the district court of the county *in which the inquest was held.* ~~The coroner must order the inquest proceedings recorded and transcribed by a qualified stenographer. Such recording and transcribing expenses shall~~ *The expenses of recording and transcribing must* be paid by the county upon claims duly rendered and certified to by the coroner in the same manner as other claims against the county are paid."

Section 19. **Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 46, chapter 4, and the provisions of Title 46, chapter 4, apply to [sections 1 through 8].

Section 20. **Coordination instruction.** (1) If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-4-201, then that section of Senate Bill No. 51 is void.

(2) If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-4-202, then that section of Senate Bill No. 51 is void.

(3) If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-4-205, then that section of Senate Bill No. 51 is void.

(4) If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-4-206, then that section of Senate Bill No. 51 is void.

Section 21. **Repealer.** Sections 7-4-2912, 7-4-2916, 44-3-403, 46-4-102, and 46-4-204, MCA, are repealed.

Approved April 26, 1991.

CHAPTER NO. 661

[SB 343]

AN ACT TO GRANT THE DEPARTMENT OF LABOR AND INDUSTRY DISCRETIONARY AUTHORITY IN DETERMINING THE AMOUNT

OWED THE UNINSURED EMPLOYERS' FUND BY AN UNINSURED EMPLOYER; AND AMENDING SECTION 39-71-504, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-504, MCA, is amended to read:

"**39-71-504. Funding of fund — option for agreement between department and injured employee.** The fund ~~shall be~~ *is* funded in the following manner:

(1) The department ~~shall~~ *may* require that the uninsured employer pay to the fund a penalty of either *up to* double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment for payroll paid by the uninsured employer for any time prior to July 1, 1977, may not be made.

(2) (a) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer. However, the uninsured employer's liability under this subsection (2)(a) may not exceed $50,000.

(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515.

(3) The department may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) shall be paid to the uninsured employers' fund rather than the subsequent injury fund.

(4) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer pursuant to subsection (2)(a)."

Approved April 26, 1991.

CHAPTER NO. 662

[SB 362]

AN ACT CREATING PARK RANGERS AND ESTABLISHING THEIR POWERS AND DUTIES; APPLYING PEACE OFFICER EMPLOYMENT, EDUCATION, AND CERTIFICATION STANDARDS TO PARK

RANGERS; EXPANDING AND CLARIFYING THE AUTHORITY OF WARDENS, EX OFFICIO WARDENS, AND PARK RANGERS TO ENFORCE LAWS CONTAINED IN TITLE 23, MCA, RELATING TO STATE PARKS; ESTABLISHING RESPONSIBILITY FOR PARK FEE VIOLATIONS INVOLVING VEHICLES; AMENDING SECTIONS 7-32-303, 23-1-105, 23-1-106, 23-2-410, 23-2-506, 23-2-641, 23-2-806, 77-5-104, 87-1-502, AND 87-1-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Park rangers — qualifications — powers and duties.** (1) The department is authorized to establish a corps of park rangers and to select and appoint park rangers who must be qualified by their experience, training, skill, and interest in the protection, conservation, and stewardship of the natural and cultural resources and parks administered by the department.

(2) Park rangers shall enforce the laws of this state and the rules of the department and commission that provide for the protection, conservation, and stewardship of the natural and cultural resources in the state parks system.

(3) Park rangers shall protect campers, picnickers, and other park users; keep the peace; supervise public use; and maintain public order in all units of the state parks system.

(4) Park rangers shall perform all other duties prescribed by the department.

Section 2. Section 23-1-106, MCA, is amended to read:

"**23-1-106. Rules — penalties —** ***enforcement.*** (1) The department may make rules governing the use, occupancy, and protection of the lands and property under its control.

(2) Any person who injures or damages any land or property under control of the department or private property thereon or therein or violates any of the rules made by the department relating to these areas is guilty of a misdemeanor and shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months.

(3) It is unlawful and a misdemeanor punishable as provided in subsection (2) to refuse to exhibit for inspection any park permit, proof of age, or proof of residency upon request by a fish and game warden, park ranger, or peace officer.

(4) The department shall enforce the provisions of this chapter and rules implementing this chapter. The director of the department shall employ all necessary and qualified personnel for enforcement purposes.

(5) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the

board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this chapter and rules of the department and the commission; and

(c) to report violations to the county attorney of the county in which they occur."

Section 3. **Enforcement powers of park rangers and game wardens.** (1) Park rangers appointed pursuant to [section 1] and fish and game wardens appointed pursuant to 87-1-501 are authorized officers with the authority to enforce the laws and adopted rules relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7.

(2) An authorized officer may:

(a) arrest, in accordance with Title 46, chapter 6, any person within an area managed by the department upon probable cause to believe that the person has committed an offense against chapters 1 and 2 of this title, except chapter 2, part 7, or rules of the department or the commission;

(b) enforce the disorderly conduct and public nuisance laws under 45-8-101 and 45-8-111 as they apply to the operation of motorboats on waters within areas managed by the department under this part; and

(c) exercise other powers of peace officers in the enforcement of:

(i) laws relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7;

(ii) rules of the department and the commission; and

(iii) judgments obtained for violations of the laws and rules specified in this subsection (2)(f).

Section 4. Section 23-1-105, MCA, is amended to read:

"**23-1-105. Fees and charges.** (1) The department shall have power to levy and collect reasonable fees or other charges for the use of privileges and conveniences as may be provided and to grant concessions as it considers advisable, except as provided in subsection (2). All money derived from the activities of the department ~~shall~~ *must* be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana as defined in 87-2-102 and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time the vehicle was being used without the consent of the registered owner."

Section 5. Section 23-2-410, MCA, is amended to read:

"**23-2-410. Penalty** — ***enforcement.*** *(1)* A person who violates a rule of the commission adopted pursuant to this part is guilty of a misdemeanor punishable by a fine of not less than $50 or more than $500, by imprisonment in a county jail for not more than 6 months, by both fine and imprisonment.

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department and the commission; and

(c) to report violations to the county attorney of the county in which they occur."

Section 6. Section 23-2-506, MCA, is amended to read:

"**23-2-506. Enforcement.** ~~It shall be the duty of the department to enforce the sections of this law. The state fish, wildlife, and parks director shall employ all the necessary personnel to comply with this section.~~ *(1) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:*

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department and the commission; and

(c) to report violations to the county attorney of the county in which they occur.

(2) All sheriffs and peace officers of the state of Montana and all United States coast guard law enforcement officers shall have authority to enforce provisions of this part, as amended."

Section 7. Section 23-2-641, MCA, is amended to read:

"**23-2-641. Enforcement.** (1) The following persons may enforce the provisions of 23-2-601 through 23-2-644: the enforcement officers employed by the department, with respect to violations relating to wildlife or birds, discharging firearms, or sound level limitations. However, with respect to the sale of any new snowmobile which is subject to the provisions of 23-2-601 through 23-2-644, the attorney general of the state of Montana shall, upon the request of the department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by 23-2-601 through 23-2-644.

(2) *(a)* The ~~department's enforcement personnel, the sheriffs~~ *department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:*

(i) of search, seizure, and arrest;

(ii) to investigate activities in this state regulated by this part and rules of the department and the commission; and

(iii) to report violations to the county attorney of the county in which they occur.

(b) Sheriffs and their deputies of the various counties of the state, the Montana highway patrol, and the police of each municipality shall enforce the provisions of 23-2-601 through 23-2-644."

Section 8. Section 23-2-806, MCA, is amended to read:

"**23-2-806. Enforcement.** *(1)* The department of fish, wildlife, and parks enforcement personnel, *park rangers,* sheriffs and their deputies, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this part.

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department and the commission; and

(c) to report violations to the county attorney of the county in which they occur.

(3) Park rangers may not carry firearms in the execution of their duties."

Section 9. Section 7-32-303, MCA, is amended to read:

"**7-32-303. Peace officer employment, education, and certification standards.** (1) For purposes of this section, unless the context clearly indicates otherwise, "peace officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, *park ranger,* campus security officer, or airport police officer.

(2) No sheriff of a county, mayor of a city, board, commission, or other person authorized by law to appoint peace officers in this state shall appoint any person as a peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the board of crime control:

(a) be a citizen of the United States;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which he could have been imprisoned in a federal or state penitentiary;

(e) be of good moral character, as determined by a thorough background investigation;

(f) be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;

(g) be examined by a licensed physician, who is not the applicant's personal physician, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect performance by the applicant of the duties of a peace officer;

(h) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to the accomplishment of the duties and functions of a peace officer; and

(i) possess or be eligible for a valid Montana driver's license.

(3) At the time of appointment a peace officer must take a formal oath of office.

(4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written notice thereof must be given to the board of crime control by the employing authority.

(5) (a) Except as provided in subsections (b) and (c) of this subsection, it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course

certified by the board of crime control. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(b) A peace officer who has been issued a basic certificate by the board of crime control and whose last date of employment as a peace officer was less than 36 months prior to the date of his present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (5)(a). If such peace officer's last date of employment as a peace officer was 36 or more but less than 60 months prior to the date of his present employment as a peace officer, he may satisfy his basic educational requirements as set forth in subsection (5)(c).

(c) A peace officer under the provisions of subsection (5)(b) or a peace officer who has completed a basic peace officer's course in another state and whose last date of employment as a peace officer was less than 60 months prior to the date of his present appointment as a peace officer may, within 1 year of his present employment or initial appointment as a peace officer within this state, satisfy his basic educational requirements by successfully passing a basic equivalency test administered by the Montana law enforcement academy and successfully completing a legal training course conducted by the academy. If the peace officer fails the basic equivalency test, he must complete the basic course within 120 days of the date of the test.

(6) The board of crime control may extend the 1-year time requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances which make the extension necessary. Factors which the board may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of his immediate family, absence of reasonable access to the basic course or the legal training course, and an unreasonable shortage of personnel within the department. The board may not grant an extension to exceed 180 days.

(7) A peace officer who has successfully met the employment standards and qualifications and the educational requirements of this section and who has completed a 1-year probationary term of employment shall, upon application to the board of crime control, be issued a basic certificate by the board, certifying that the peace officer has met all the basic qualifying peace officer standards of this state."

Section 10. Section 77-5-104, MCA, is amended to read:

"**77-5-104. Firewardens.** (1) The department shall appoint firewardens in ~~such~~ *the* number and localities as it considers necessary.

(2) The supervisors and rangers of the federal forest lands within this state, whenever they formally accept the duties and responsibilities of firewardens, may be appointed firewardens.

(3) The following are firewardens but may not receive any additional compensation by reason of the duties hereby imposed:

(a) sheriffs;

(b) undersheriffs;

(c) deputy sheriffs;

(d) state fish, wildlife, and parks wardens *and park rangers*;

(e) the state fish, wildlife, and parks director;

(f) the commissioner and employees of the department designated by him;

(g) officers of organized forest protection districts;

(h) members of the Montana highway patrol;

(i) officers of the national park service residing in Montana; and

(j) officers of the bureau of Indian affairs.

(4) The firewardens shall promptly report all fires to the department, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders."

Section 11. Section 87-1-502, MCA, is amended to read:

"**87-1-502. Qualifications, powers, and duties.** (1) Wardens ~~shall~~ *must* be qualified by their experience, training, and skill in protection, conservation, and propagation of wildlife, game, fur-bearing animals, fish, and game birds and interested in this work. They shall devote all of their time for which they are appointed to their official duties.

(2) They shall enforce the laws of this state and the rules of the department with reference to the protection, preservation, and propagation of game and fur-bearing animals, fish, and game birds.

(3) They shall see that persons who hunt, fish, or take game or fur-bearing animals, game birds, or fish have necessary licenses.

(4) They shall assist in the protection, conservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds and assist in the planting, distributing, feeding, and care of fish, game, fur-bearing animals, and game and nongame birds. They shall, when ordered by the department, assist in the destruction of predatory animals, birds, and rodents. They shall perform all other duties prescribed by the department and make a monthly report to the department correctly informing the department of their activities on each day of the preceding month with regard to the enforcement of the fish and game laws, showing where their duties called them and what they did. The reports ~~shall~~ *must* contain any pertinent recommendations the wardens may see fit to make.

(5) A warden may not compromise or settle violations of fish and game laws out of court.

(6) A warden has the authority to inspect any and all fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals at reasonable times and at any location other than a residence or dwelling. Upon request therefor, all persons having in their possession any fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals shall exhibit the same and all thereof to the warden for such inspection.

(7) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this title and rules of the department and the commission; and

(c) to report violations to the county attorney of the county in which they occur."

Section 12. Section 87-1-503, MCA, is amended to read:

"**87-1-503. Ex officio wardens.** All sheriffs and their deputies, constables, all peace officers of the state or any subdivision thereof, and all state forest officers, ~~such~~ other officers of the United States forest service or agents of the United States fish and wildlife service ~~which~~ *that* are assigned to duty in this state, and field personnel of the department, as the director may appoint, are hereby made ex officio wardens, without pay, except that the department may, in its discretion, allow traveling expenses as provided for in 2-18-501 through 2-18-503, which, if allowed, ~~shall~~ *must* be paid upon proper vouchers from the state fish and game funds. Ex officio wardens shall have the same powers with reference to the enforcement of the fish and game laws of this state *and the laws relating to parks and outdoor recreation contained in chapters 1 and 2 of Title 23, except chapter 2, part 7,* as regularly appointed wardens, and it is hereby made their duty to assist, whenever possible, in the enforcement of ~~said~~ *those* laws."

Section 13. **Codification instruction.** [Sections 1 and 3] are intended to be codified as an integral part of Title 23, chapter 1, part 1, and the provisions of Title 23, chapter 1, part 1, apply to [sections 1 and 3].

Section 14. **Effective date.** [This act] is effective on passage and approval.

Approved April 26, 1991.

CHAPTER NO. 663

[SB 366]

AN ACT REQUIRING HEALTH INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS TRANSACTING BUSINESS IN THIS STATE TO PROVIDE COVERAGE FOR MINIMUM MAMMOGRAPHY EXAMINATIONS; AMENDING SECTIONS 33-31-102 AND 53-6-101, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Coverage for mammography examinations.** (1) Each group or individual disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state and that provides coverage for a family member of the insured or subscriber must provide minimum mammography examination coverage.

(2) For the purpose of this section, "minimum mammography examination" means:

(a) one baseline mammogram for a woman who is 35 years of age or older and under 40 years of age;

(b) a mammogram every 2 years for any woman who is 40 years of age or older and under 50 years of age or more frequently if recommended by the woman's physician; and

(c) a mammogram each year for a woman who is 50 years of age or older.

(3) These services are subject to the terms of the applicable group or individual disability policy, certificate of insurance, or membership contract that establishes durational limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally. A minimum $70 payment must be made for each mammography examination performed.

Section 2. Section 33-31-102, MCA, is amended to read:

"**33-31-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction; and

(i) minimum mammography examination, as defined in [section 1]; and

~~(i)~~*(j)* treatment for phenylketonuria. "Treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status.

(2) "Commissioner" means the commissioner of insurance of the state of Montana.

(3) "Department of health" means the department of health and environmental sciences provided for in 2-15-2101.

(4) "Director" means the director of the department of health and environmental sciences provided for in 2-15-2101.

(5) "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

(6) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

(7) "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

(8) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

(9) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers.

(10) "Insurance producer" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(11) "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(12) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

(13) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or nurse specialist as specifically listed in 37-8-202 who treats any illness or injury within the scope and limitations of his practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

(14) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 3. Section 53-6-101, MCA, is amended to read:

"**53-6-101. Montana medicaid program — authorization of services.** (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of social and rehabilitation services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, *including minimum mammography examination as defined in [section 1]*;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) services provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(i) health services provided under a physician's orders by a public health department; and

(j) hospice care as defined in 42 U.S.C. 1396d(o).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23, if funds are specifically appropriated for the inclusion of these services in the Montana medicaid program;

(m) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(n) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(5) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(6) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost effective.

(7) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

(8) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(9) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(10) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted thereunder. *(Subsection (2)(j) terminates June 30, 1991—sec. 4, Ch. 633, L. 1989; Subsection (3)(m) terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)* "

Section 4. **Applicability.** [Sections 1 and 2] apply to policies or contracts delivered or issued for delivery or renewed in this state on or after January 1, 1992.

Section 5. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 1].

Approved April 26, 1991.

CHAPTER NO. 664

[SB 393]

AN ACT AUTHORIZING THE BOARD OF PHARMACY TO ESTABLISH STANDARDS FOR DRUG UTILIZATION REVIEW AND PATIENT COUNSELING BY PHARMACISTS; REQUIRING OUT-OF-STATE MAIL SERVICE PHARMACIES TO BE LICENSED BY THE BOARD AND TO COMPLY WITH PATIENT COUNSELING REQUIREMENTS THROUGH TOLL-FREE TELEPHONE NUMBERS; PROVIDING ADDITIONAL STANDARDS FOR OUT-OF-STATE MAIL SERVICE PHARMACIES; AND PROVIDING A PENALTY.

WHEREAS, the United States Congress has enacted a requirement in 42 U.S.C. 1396r-8 of the Social Security Act that states participating in Medicaid institute programs of drug utilization review and patient counseling by pharmacists; and

WHEREAS, similar changes in pharmacy practice could benefit the health and welfare of all Montanans and not just Medicaid recipients, and to that end the Board of Pharmacy should have the authority to set standards for pharmacists concerning drug utilization review and patient counseling, including standards for pharmacists who fill prescriptions by mail order from outside this state.

STATEMENT OF INTENT

A statement of intent is needed for this bill because it grants the board of pharmacy additional regulatory and rulemaking authority. In order to benefit all patient-consumers, the board may adopt rules similar to medicaid regulations governing drug utilization review and patient counseling. The board is also required to adopt rules to regulate the activities of out-of-state mail service pharmacies, including their licensing, reporting requirements, drug utilization review and patient counseling, and site inspections.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Standards for prospective drug utilization review and patient counseling.** (1) The board may by rule set standards for the provision of prospective drug utilization review information from a pharmacist to a patient before a prescription is dispensed to the patient or his representative. The review may include, when applicable, an appropriate level of screening for potential drug therapy problems due to therapeutic duplication, drug disease contraindications, drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse. The sources for the standards must be nationally recognized compendia as the board may designate.

(2) Under the standards provided for in this section, the pharmacist should offer to discuss those matters that, in his professional judgment, he considers significant to the patient's safe and proper use of the prescribed drug. The counseling should encompass the topics set forth in section 42 U.S.C. 1396r-8 of the Social Security Act.

(3) Communications between a pharmacist and a patient pursuant to the standards provided for in this section constitute health care information for the purposes of Title 50, chapter 16, part 5.

(4) Standards established by the board under this section apply to all patients seen by a pharmacist or to categories of patients as the board may designate. However, standards provided for in this section may not apply to inpatients of a health care facility in which a nurse or other licensed health care professional is authorized to administer the prescribed drug.

Section 2. **Legislative declaration.** The legislature recognizes that with the proliferation of alternate methods of health care delivery, there has arisen among third-party payers and insurance companies the desire to control the cost and utilization of pharmacy services through a variety of mechanisms, including the use of mail service pharmacies located outside this state. As a result, the legislature finds and declares that to continue to protect the consumer-patients of this state, all out-of-state mail service pharmacies that provide services to this state's residents must be licensed with the board, disclose specific information about their services, and provide pharmacy services at a high level of competence.

Section 3. **Out-of-state mail service pharmacy defined.** "Out-of-state mail service pharmacy" means a pharmacy located outside this state that:

(1) ships, mails, or delivers by any lawful means a dispensed legend drug to a resident in this state pursuant to a legally issued prescription;

(2) provides to a resident of this state information on drugs or devices that may include but is not limited to advice relating to therapeutic values, potential hazards, and uses; or

(3) counsels pharmacy patients residing in this state concerning adverse and therapeutic effects of drugs.

Section 4. **License requirements.** Every out-of-state mail service pharmacy must be licensed by the board. In order to be licensed by the board to do business in this state and for annual renewal of its license, an out-of-state mail service pharmacy:

(1) (a) must be licensed and in good standing in the state in which its dispensing facilities are located; and

(b) shall comply with all applicable laws, regulations, and standards of that state and the United States and, if requested by the board, provide evidence that it has so complied;

(2) shall submit an application in form and content as determined by the board, including information on ownership and location and the identity of a licensed pharmacist in charge of the out-of-state mail service pharmacy; and

(3) shall pay an initial license fee and annual renewal fee in an amount to be determined by the board.

Section 5. **Inspections.** If the licensing or regulatory agency of the state in which an out-of-state mail service pharmacy is domiciled fails or refuses to inspect the out-of-state mail service pharmacy after receiving a request for an inspection from the board of this state, the board may cancel the out-of-state pharmacy's right to do business in this state unless the out-of-state pharmacy agrees to an onsite inspection by the board of this state.

Section 6. **Product selection of prescribed drugs — notification.** (1) An out-of-state mail service pharmacy may not substitute a prescription drug unless the substitution is made in compliance with the laws of this state and the rules and regulations of the board.

(2) An out-of-state mail service pharmacy may not dispense a substitute drug product to a resident of this state without notifying the patient of the substitution either by telephone or in writing.

Section 7. **Patient communication — telephone service.** Every out-of-state mail service pharmacy shall provide a toll-free telephone service, available at least 6 days a week and for 40 hours a week, to facilitate communication as may be required under [sections 1 through 8], between patients in this state and a pharmacist who has access to the patient's records at the out-of-state mail service pharmacy. The toll-free telephone number must be affixed to all drug product containers dispensed to patients in this state.

Section 8. **Penalty.** In addition to all other penalties provided by law, a person violating [section 1 and sections 4 through 7] shall be fined not more than $250 for each violation.

Section 9. **Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 37, chapter 7, and the provisions of Title 37, chapter 7, apply to [sections 1 through 8].

Section 10. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 26, 1991.

CHAPTER NO. 665

[SB 394]

AN ACT TO REGULATE THE CONDUCT OF UTILIZATION REVIEWS BY HEALTH INSURERS AND OTHER THIRD-PARTY PAYORS; TO PROHIBIT A PERSON FROM CONDUCTING UTILIZATION REVIEWS UNLESS THE PERSON MAINTAINS WITH THE COMMISSIONER OF INSURANCE A UTILIZATION REVIEW PLAN; TO PROTECT PATIENTS AND HEALTH CARE PROVIDERS IN THE CONDUCT OF UTILIZATION REVIEWS BY REQUIRING CONCURRENCE OF A HEALTH CARE PROFESSIONAL IN A DETERMINATION RELATING TO THE NECESSITY OR APPROPRIATENESS OF HEALTH CARE SERVICES RENDERED TO A PATIENT; TO PROVIDE FOR THE APPEAL OF AN ADVERSE DECISION RESULTING FROM A UTILIZATION REVIEW; AND TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO ADOPT RULES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 7] authorizes the commissioner of insurance to adopt rules for the purpose of implementing [sections 1 through 9].

It is the intent of the legislature that the commissioner of insurance adopt rules necessary for the regulation of utilization reviews in this state. Rules adopted by the commissioner may include but are not limited to rules providing for:

(1) information to be included in the utilization review plan required in [section 3];

(2) utilization review criteria, standards, and procedures; and

(3) the protection of the confidentiality of medical records used in the course of utilization reviews.

Rules adopted by the commissioner of insurance must be consistent with the purposes of this bill as stated in [section 1] and must supplement the provisions of [sections 1 through 9].

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The legislature finds and declares that it is the purpose of [sections 1 through 9] to:

(1) promote the delivery of quality health care in a cost-effective manner;

(2) foster greater coordination between health care providers, third-party payors, and others who conduct utilization review activities;

(3) ensure access to health care services; and

(4) protect patients, employers, and health care providers by ensuring that utilization review activities result in informed decisions on the appropriateness of medical care made by those best qualified to be involved in the utilization review process.

Section 2. **Definitions.** As used in [sections 1 through 9] the following definitions apply:

(1) "Commissioner" means the commissioner of insurance provided for in 2-15-1903.

(2) "Health care provider" means a person, corporation, facility, or institution licensed by the state to provide or otherwise lawfully providing health care services, including but not limited to:

(a) a physician, health care facility as defined in 50-5-101, osteopath, dentist, nurse, optometrist, chiropractor, podiatrist, physical therapist, psychologist, licensed social worker, speech pathologist, audiologist, certified chemical dependency counselor, or licensed professional counselor; and

(b) an officer, employee, or agent of a person described in subsection (2)(a) acting in the course and scope of employment.

(3) "Health care services" means the health care and services provided by health care providers, including drugs, medicines, ambulance services, and other therapeutic and rehabilitative services and supplies.

(4) "Utilization review" means a system for review of health care services for a patient to determine the necessity or appropriateness of services, whether that review is prospective, concurrent, or retrospective, when the review will be utilized directly or indirectly in order to determine whether the health care services will be paid, covered, or provided. Utilization review does not include routine claim administration or determination that does not include determinations of medical necessity or appropriateness.

Section 3. **Utilization review plan.** A person may not conduct a utilization review of health care services provided or to be provided to a patient covered under a contract or plan for health care services issued in this state unless that person, at all times, maintains with the commissioner a current utilization review plan that includes:

(1) a description of review criteria, standards, and procedures to be used in evaluating proposed or delivered health care services that, to the extent possible, must:

(a) be based on nationally recognized criteria, standards, and procedures;

(b) reflect community standards of care, except that a utilization review plan for health care services under the general relief medical assistance or medicaid programs provided for in Title 53 need not reflect community standards of care;

(c) ensure quality of care; and

(d) ensure access to needed health care services;

(2) the provisions by which patients or providers may seek reconsideration or appeal of adverse decisions by the person conducting the utilization review;

(3) the type and qualifications of the personnel either employed or under contract to perform the utilization review;

(4) policies and procedures to ensure that a representative of the person conducting the utilization review is reasonably accessible to patients and health care providers at all times;

(5) policies and procedures to ensure compliance with all applicable state and federal laws to protect the confidentiality of individual medical records;

(6) a copy of the materials designed to inform applicable patients and health care providers of the requirements of the utilization review plan; and

(7) any other information as may be required by the commissioner that is necessary to implement [sections 1 through 9].

Section 4. **Conduct of utilization review.** A program of utilization review with regard to health care services provided or to be provided in this state must comply with the following:

(1) A determination that is made on appeal or reconsideration as provided in [section 6] and that is adverse to a patient or to an affected health care provider may not be made on a question relating to the necessity or appropriateness of a health care service without prior written findings, evaluation, and concurrence in the adverse determination by a health care professional trained in the relevant area of health care. Copies of the written findings, evaluation, and concurrence must be provided to the patient on request as provided in Title 33, chapter 19.

(2) A determination made on appeal or reconsideration, as provided in [section 6], that health care services rendered or to be rendered are medically inappropriate may not be made unless the health care professional performing the utilization review has made a reasonable attempt to consult with the patient's attending health care provider concerning the necessity or appropriateness of the health care service.

Section 5. **Commissioner not to approve or disapprove plans.** Nothing in [sections 1 through 9] may be construed as authorizing the commissioner to approve or disapprove a utilization review plan required in [section 3].

Section 6. **Appeal and assignment of claim.** (1) A patient or provider affected by an adverse decision has at least 30 days in which to appeal or seek reconsideration of the adverse decision by the person conducting the utilization review.

(2) A final decision on appeal or reconsideration must be made within 60 days of receipt of all relevant medical records by the person conducting the utilization review.

Section 7. **Commissioner to adopt rules.** The commissioner may adopt rules for the implementation of [sections 1 through 9], including but not limited to rules providing for:

(1) information to be included in the utilization review plan required in [section 3];

(2) utilization review criteria, standards, and procedures; and

(3) the protection of the confidentiality of medical records used in the course of utilization reviews.

Section 8. **Preemption of federal law.** If any provision of [sections 1 through 9] is preempted or duplicated by federal law or regulations as applied to any specific health care service, then the provision of [sections 1 through 9] that is preempted or duplicated by federal law or regulations does not apply to that health care service but only to the extent of the preemption or duplication.

Section 9. **Application of act — exemptions.** (1) The provisions of [sections 1 through 9] apply to a person or entity performing utilization reviews who is, or is affiliated with, under contract with, or acting on behalf of:

(a) a Montana business entity; or

(b) a third party that provides or administers health care benefits to citizens of this state including:

(i) a health insurer, nonprofit health service plan, health service corporation, employees' health and welfare fund, or preferred provider organization authorized to offer health insurance policies or contracts;

(ii) a health maintenance organization issued a certificate of authority in accordance with Title 33, chapter 31; or

(iii) a state agency.

(2) A general in-house utilization review for a health care provider, including an in-house utilization review that is conducted by or for a

long-term care facility and that is required by medicare or medicaid regulations, is exempt from the provisions of [sections 1 through 9] as long as the review does not directly result in the approval or denial of payment for health care services for a particular case.

(3) A peer review procedure conducted by a professional society or association of providers is exempt from the provisions of [sections 1 through 9].

Section 10. **Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 9].

Approved April 26, 1991.

CHAPTER NO. 666

[SB 420]

AN ACT CHANGING FROM PERMISSIVE TO MANDATORY THE PROVISION FOR A MEDICAL DEDUCTIBLE CLAUSE IN A WORKERS' COMPENSATION INSURANCE POLICY; AMENDING SECTION 39-71-434, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-434, MCA, is amended to read:

"**39-71-434. Deductible ~~option~~ *insurance policy provision* for medical benefits.** (1) In order to lower the amount an employer is required to pay to obtain workers' compensation insurance coverage under this chapter, a workers' compensation policy issued by the state compensation insurance fund under plan No. 3 or by a private insurer under plan No. 2 ~~may~~ *must* offer a deductible for the medical, hospital, and related services allowed under 39-71-704. The medical deductible must be offered in amounts of *at least* $500 ~~increments, up to a total of $2,500 per claim~~.

(2) If the insured employer chooses to ~~offer~~ *accept* a medical deductible, the insured employer is liable for the amount of the deductible for the medical benefits paid for each otherwise compensable claim of work injury suffered by an employee.

(3) The insured employer shall contract with the insurer to have the insurer pay the entire cost of the covered medical benefits directly to the provider of medical or related services and then seek reimbursement from the insured employer for the deductible amount. The insurer is entitled to reimbursement only for medical, hospital, and related services allowed under 39-71-704, up to the amount of the deductible.

(4) If an insured employer who has contracted with an insurer for a medical deductible does not pay the medical deductible amount to the insurer through reimbursement, the amount paid by the insurer on the claim may be included as benefits paid in a determination of the insured employer's rate."

Section 2. **Applicability.** [This act] applies to workers' compensation insurance policies issued or renewed on or after July 1, 1991.

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved April 26, 1991.

CHAPTER NO. 667

[HB 155]

AN ACT GENERALLY REVISING THE SALARY OF COUNTY ATTORNEYS; REQUIRING THE DEPARTMENT OF JUSTICE TO ADMINISTER THE STATE PORTION OF THE COUNTY ATTORNEYS' PAYROLL; MAKING THE BASE SALARY FOR A FULL-TIME COUNTY ATTORNEY $50,000 PER YEAR; INCREASING THE MONETARY CHARGE FOR A MISDEMEANOR CONVICTION; REALLOCATING JUSTICES' COURTS FEES; AMENDING SECTIONS 3-10-601, 7-4-2502, 7-4-2503, AND 46-18-236, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2502, MCA, is amended to read:

"**7-4-2502. Payment of salaries of county officials and assistants.** (1) Except as provided in subsection (2), the salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) (a) The salaries of the county attorney and deputy county attorneys authorized by 7-4-2703 are payable monthly, with the salary of the county attorney payable one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the state auditor.

(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause in the office of county attorney, certify the election or appointment to the ~~state auditor, who shall thereafter draw warrants for such salary in the same manner as for state officers~~ *department of justice. The department shall notify the state auditor of the salary of the county attorney. The auditor shall draw warrants for the county attorney salaries in the same manner as for state officers.* In case of a vacancy, the county commissioners shall immediately notify the

~~state auditor~~ *department of justice*, and the ~~auditor~~ *department* shall compute the salary due on the basis of the notification.

(3) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to fix the compensation of all county officers not otherwise fixed by law and to provide for the payment of the same and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level."

Section 2. Section 7-4-2503, MCA, is amended to read:

"**7-4-2503. Salary schedule for certain county officers.** (1) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties where the office is authorized, for the fiscal year beginning July 1, 1981, is computed by adding the annual base salary of:

(a) $14,000 for the counties of the first through fifth class to the population increment of $10 for each 100 persons or major fraction thereof included in the county's population as determined by the 1980 federal decennial census; or

(b) $12,000 for counties of the sixth and seventh class to the population increment of $20 per 100 persons or major fraction thereof in the county's population as determined by the 1980 federal decennial census.

(2) (a) An elected county superintendent of schools shall receive, in addition to the salary based upon subsection (1), the sum of $400 per year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 per year.

(b) The county sheriff shall receive, in addition to the salary based upon subsection (1), the sum of $2,000 per year.

(c) The county sheriff shall receive a longevity payment amounting to 1% of the base salary set forth in subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the base salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(3) (a) In each county with a population in excess of 30,000, the county attorney shall be a full-time official under 7-4-2704, and his salary for the fiscal year beginning July 1, ~~1981~~ *1991*, shall be ~~$36,500~~ *$50,000 per year.*

In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney for the fiscal year beginning July 1, ~~1981~~ *1991*, shall be ~~$36,500~~ *the same as that established for full-time county attorneys in subsection (3)(a).*

(c) Beginning on July 1, ~~1982~~ *1991*, and on July 1 of each succeeding year, each county attorney shall be entitled to an increase in salary calculated by adding to his annual salary on July 1, ~~1981~~ *1991*, an increment of ~~70%~~ *100%* of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. Unless restored pursuant to 7-4-2504(2), any cost-of-living increment that would have been received for such fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of his employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of his employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase, but, unless longevity increases are restored pursuant to 7-4-2504(2), the years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases.

(4) For each 10th year after the fiscal year beginning July 1, 1981, the latest federal decennial census statistics shall be the basis for computation of population increments under this section. During the intervening 9 years,

the computation of population increments applicable on July 1 of each year shall be based on the last calendar year's annual estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify."

Section 3. Section 3-10-601, MCA, is amended to read:

"**3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each justice of the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county wherein he holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) All fines, penalties, and forfeitures that this code requires to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated.

(3) The county treasurer shall, in the manner provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the state treasurer; and

(b) 50% to the county general fund.

(4) The state treasurer shall distribute money received under subsection (3) as follows:

(a) ~~23%~~ *27.88%* to the state general fund;

(b) ~~10%~~ *9.09%* to the fish and game account in the state special revenue fund;

(c) ~~12.5%~~ *11.76%* to the state highway account in the state special revenue fund;

(d) ~~36%~~ *33.86%* to the traffic education account in the state special revenue fund;

(e) ~~0.6%~~ *0.57%* to the department of livestock account in the state special revenue fund;

(f) ~~16.9%~~ *15.9%* to the crime victims compensation account in the state special revenue fund; and

(g) ~~1%~~ *0.94%* to the department of family services special revenue account for the battered spouses and domestic violence grant program."

Section 4. Section 46-18-236, MCA, is amended to read:

"**46-18-236. Imposition of charge upon conviction or forfeiture — administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a defendant upon his conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) ~~$10~~ *$15* for each misdemeanor charge; and

(b) the greater of $20 or 10% of the fine levied for each felony charge.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the defendant is not able to pay the fine and costs or that he is unable to pay within a reasonable time, the court must waive payment of the charge imposed by this section.

(3) The charge imposed by this section is not a fine and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charge imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charge.

(5) The charges collected under subsection (1), except those collected by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsection (1) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and his deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsection (1) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for such salaries may be used for the payment of any other county salaries."

Section 5. **Effective date.** [This act] is effective July 1, 1991.

Approved April 26, 1991.

CHAPTER NO. 668

[HB 738]

AN ACT TO AUTHORIZE A COUNTY, CITY, OR TOWN TO LEVY AN ADDITIONAL 2 MILLS FOR THE SUPPORT OF AMBULANCE SERVICES IF AUTHORIZED BY THE ELECTORATE; PROVIDING THAT THE ADDITIONAL MILLS AUTHORIZED BY THE ELECTORATE ARE NOT SUBJECT TO THE PROPERTY TAX LIMITATIONS OF TITLE 15, CHAPTER 10, PART 4; AMENDING SECTIONS 7-34-102 AND 15-10-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-34-102, MCA, is amended to read:

"**7-34-102. Special mill levy permitted.** *(1)* In addition to all other levies authorized by law, each county, city, or town may levy an annual tax up to 1 mill on the dollar of the taxable value of all taxable property within the county, city, or town to defray the costs incurred in providing ambulance service.

(2) In addition to the levy authorized by subsection (1), a county, city, or town may levy an additional 2 mills for the support of ambulance services if, at a regularly scheduled election, the electorate of the county, city, or town approves the imposition of the additional levy."

Section 2. Section 15-10-412, MCA, is amended to read:

"**15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status;

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements; or

(i) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit;

(f) conversion of the individual property from tax-exempt to taxable status; or

(g) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(5) Property in classes four, twelve, and fourteen is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four, class twelve, or class fourteen property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

(h) revolving funds to support any categories specified in this subsection (8);

(i) levies for economic development authorized pursuant to 90-5-112(4); and

(j) elementary and high school districts.

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support*:*

(i) a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

(ii) county, city, or town ambulance services authorized by a vote of the electorate under 7-34-102(2).

(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(12) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 26, 1991.

CHAPTER NO. 669

[HB 753]

AN ACT TO REVISE RESTRICTIONS ON GRANTING PROPERTY TAX EXEMPTIONS FOR BUSINESS INCUBATOR PROPERTY; AMENDING SECTION 15-24-1802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-1802, MCA, is amended to read:

"**15-24-1802. Business incubator tax exemption — procedure.** (1) A business incubator owned *or leased* and operated by a local economic development organization is eligible for an exemption from ~~certain local~~ property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the ~~affected~~ county, consolidated government, incorporated city or town, or school district *in which the property is located* shall approve the tax exemption by resolution, after *due* notice, *as defined in 76-15-103,* and hearing. *The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each business incubator in its respective jurisdiction. The governing body may not grant approval for the business incubator until all of the applicant's taxes have been paid in full or, if the property is leased to a business incubator, until all of the owner's property taxes on that property have been paid in full. Taxes paid under protest do not preclude approval.* Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns *or leases* and operates or will operate the business incubator.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the assessor shall make the assessment change for the tax exemption provided for in this section.

~~(3)~~*(4)* The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. ~~The exemption may not apply~~ *If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies* to levies ~~or~~ *and* assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law."

Section 2. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved April 26, 1991.

CHAPTER NO. 670

[HB 790]

AN ACT REVISING THE MONTANA INDIVIDUAL INCOME TAX CREDIT FOR ELDERLY FAMILY MEMBERS; LOWERING THE QUALIFYING AGE LIMIT TO 65 YEARS; DELETING THE PHYSICAL REQUIREMENT FOR AFFLICTION WITH ALZHEIMER'S DISEASE AND SUBSTITUTING THAT THE INDIVIDUAL MUST BE DETERMINED DISABLED FOR SOCIAL SECURITY PURPOSES; ESTABLISHING A HIGHER INCOME QUALIFICATION FOR A MARRIED INDIVIDUAL; PROVIDING THAT PAYMENTS FOR CARE IN A LICENSED LONG-TERM HEALTH CARE FACILITY ARE A QUALIFYING EXPENSE; ALLOWING PREMIUMS PAID FOR LONG-TERM HEALTH CARE INSURANCE AS A QUALIFYING EXPENSE; CLARIFYING THAT A CHARITABLE INSTITUTION HAS AN INSURABLE INTEREST IN CERTAIN INDIVIDUALS; AMENDING SECTIONS 15-30-121, 15-30-128, AND 33-15-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-128, MCA, is amended to read:

"**15-30-128. Credit for expense of caring for certain elderly family members.** (1) There is a credit against the tax imposed by this chapter for qualified elderly care expenses paid by an individual for the care of a qualifying family member during the taxable year.

(2) A qualifying family member is an individual who:

(a) is related to the taxpayer by blood or marriage;

(b) (i) is at least ~~70~~ *65* years of age; or

(ii) ~~is diagnosed by a physician as having senile dementia of the Alzheimer type~~ *has been determined to be disabled by the social security administration*; and

(c) has a family income of $15,000 or less *for an unmarried individual and $30,000 or less for a married individual* for the taxable year.

(3) For purposes of this section, "family income" means, in the case of an individual who is not married, the ~~adjusted~~ gross income, *including all nontaxable income,* of the individual or, in the case of a married individual, the ~~adjusted~~ gross income, *including all nontaxable income,* of the individual and the individual's spouse.

(4) Qualified elderly care expenses include:

(a) payments by the taxpayer for home health agency services ~~provided by an organization certified by the federal health care financing administration~~, *personal care attendant services and care in a long-term health care facility, as defined in 50-5-101, that is licensed by the department of health and environmental sciences,* homemaker services, adult day care, respite care, or health-care equipment and supplies:

(i) provided to the qualifying family member;

(ii) provided by an organization or individual not related to the taxpayer or the qualifying family member; and

(iii) not compensated for by insurance or otherwise;

(b) ~~subject to the limitations in subsection (4)(a), payments by the taxpayer for nursing home care of an individual who is diagnosed by a physician as having senile dementia of the Alzheimer type~~ *premiums paid for long-term care insurance coverage for a qualifying family member.*

(5) The percentage amount of credit allowable under this section is:

(a) for a taxpayer whose adjusted gross income does not exceed $25,000, 30% of qualified elderly care expenses; or

(b) for a taxpayer whose adjusted gross income exceeds $25,000, the greater of:

(i) 20% of qualified elderly care expenses; or

(ii) 30% of qualified elderly care expenses, less 1% for each $2,000 or fraction thereof by which the adjusted gross income of the taxpayer for the taxable year exceeds $25,000.

(6) The dollar amount of credit allowable under this section is:

(a) reduced by $1 for each dollar of the adjusted gross income over $50,000 for a taxpayer whose adjusted gross income exceeds $50,000;

(b) limited to $5,000 per qualifying family member in a taxable year and to $10,000 total for two or more family members in a taxable year;

(c) prorated among multiple taxpayers who each contribute to qualified elderly care expenses of the same qualified family member in a taxable year in the same proportion that their contributions bear to the total qualified elderly care expenses paid by those taxpayers for that qualified family member.

(7) A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section. The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the taxpayer has no tax liability.

(8) In the case of a married individual filing a separate return, the percentage amount of credit under subsection (5) and the dollar amount of credit under subsection (6) are limited to one-half of the figures indicated in those subsections."

Section 2. Section 15-30-121, MCA, is amended to read:

"**15-30-121. Deductions allowed in computing net income.** In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161, *including the contributions referred to in 33-15-201(5)(b),* and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) expenses of household and dependent care services as outlined in subsections (3)(a) through (3)(c) and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f) as follows:

(a) expenses for household and dependent care services necessary for gainful employment incurred for:

(i) a dependent under 15 years of age for whom an exemption can be claimed;

(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to care for himself because of physical or mental illness; and

(iii) a spouse who is unable to care for himself because of physical or mental illness;

(b) employment-related expenses incurred for the following services, but only if such expenses are incurred to enable the taxpayer to be gainfully employed:

(i) household services which are attributable to the care of the qualifying individual; and

(ii) care of an individual who qualifies under subsection (3)(a);

(c) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and his spouse;

(d) the amounts deductible in subsection (3)(a) through (3)(c) are subject to the following limitations:

(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent such expenses do not exceed $4,800;

(ii) expenses for services in the household are deductible under subsection (3)(a) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent such expenses incurred during the year do not exceed:

(A) $2,400 in the case of one qualifying individual;

(B) $3,600 in the case of two qualifying individuals; and

(C) $4,800 in the case of three or more qualifying individuals;

(e) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the taxable year during which the expenses are incurred, the amount of the employment-related expenses incurred must be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(f) for purposes of this subsection (3):

(i) married couples shall file a joint return or file separately on the same form;

(ii) if the taxpayer is married during any period of the taxable year, employment-related expenses incurred are deductible only if:

(A) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);

(iii) an individual legally separated from his spouse under a decree of divorce or of separate maintenance may not be considered as married;

(iv) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which was not otherwise deducted in computing taxable income; and

(6) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156."

Section 3. Section 33-15-201, MCA, is amended to read:

"**33-15-201. Restrictions on contracting for personal insurance — insurable interests — violation.** (1) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. But no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his personal representatives or to a person having, at the time when such contract was made, an insurable interest in the individual insured.

(2) If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement, or injury of the individual insured, the individual insured or his personal representative may maintain an action to recover such benefits from the person so receiving them.

(3) "Insurable interest" with reference to personal insurance includes only interests as follows:

(a) in the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection;

(b) in the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by or would be enhanced in value by the death, disablement, or injury of the individual insured.

(4) An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm or of shares of stock of a closed corporation or of an interest in such shares has an insurable interest in the life of each individual party to such contract and for the purposes of such contract only, in addition to any insurable interest which may otherwise exist as to the life of such individual.

(5) A charitable institution has an insurable interest in an individual if:

(a) the individual authorizes the charitable institution to purchase insurance naming the charitable institution as an irrevocable beneficiary; and

(b) the insurance is purchased with contributions made by the individual."

Section 4. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved April 26, 1991.

CHAPTER NO. 671

[SB 174]

AN ACT PROVIDING FOR CONTINUING EDUCATION FOR PSYCHOLOGISTS; AUTHORIZING A FEE FOR ADMINISTERING THE CONTINUING EDUCATION PROGRAM; CHANGING THE LENGTH OF TERM FOR MEMBERS OF THE BOARD OF PSYCHOLOGISTS; REQUIRING 2 YEARS OF SUPERVISED EXPERIENCE PRIOR TO APPLICATION FOR LICENSURE AS A PSYCHOLOGIST; AMENDING SECTIONS 2-15-1851, 37-17-202, 37-17-302, 37-17-306, AND 37-17-307, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants the board of psychologists the authority to make rules for establishing and administering a continuing education program for psychologists. It is intended that rules require the number of hours of continuing education necessary to maintain professional competency.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Continuing education required.** (1) A person's license to practice psychology may not be renewed unless the person has certified on a form prescribed by the board that he has obtained the number of hours of approved continuing education required by the board.

(2) A person demonstrating good cause for failing to obtain the required number of hours of continuing education through attendance of regularly accredited programs may comply with the continuing education requirement by completing an alternative program prescribed by the board. The board shall establish or approve alternative programs equivalent to the regularly accredited continuing education programs. The alternative programs may include home study courses, videotapes, examinations, or any other programs approved by the board.

Section 2. Section 2-15-1851, MCA, is amended to read:

"**2-15-1851. Board of psychologists.** (1) There is a board of psychologists.

(2) The board consists of five members appointed by the governor with the consent of the senate. One member must be a licensed psychologist in private practice, one member must be a licensed psychologist in public health, one member must be a licensed psychologist engaged in the teaching of psychology, and two members must be from the general public. A member may not ~~succeed himself~~ *serve consecutive 5-year terms* but may be reappointed after ~~3~~ *5* years following the termination of his previous appointment.

(3) Members shall serve staggered ~~3-year~~ *5-year* terms."

Section 3. Section 37-17-202, MCA, is amended to read:

"**37-17-202. Powers.** (1) The board may make reasonable and necessary rules for the proper performance of its duties and for the regulation of proceedings before it.

(2) In addition to the other powers and duties set forth, the board may:

(a) revoke and suspend licenses;

(b) conduct hearings upon complaints concerning persons licensed under this chapter;

(c) cause the prosecution and enjoinder of all persons violating this chapter, by the complaint of its secretary signed with the county attorney, in the county where the violation took place and incur necessary expenses therefor;

(d) study and review new developments in research, training, and the practice of psychology and make recommendations to the governor and other state officials regarding new and revised programs and legislation related to psychology which could be beneficial to the citizens of the state of Montana~~.~~;

(e) adopt rules for the administration of a continuing education program, including but not limited to accrediting education programs and establishing the number of hours of continuing education required for license renewal."

Section 4. Section 37-17-302, MCA, is amended to read:

"**37-17-302. Application — qualifications.** (1) Application for examination for licensing a psychologist shall be made on forms prescribed by the board.

(2) The board shall license as a psychologist any person who pays the prescribed fee, passes the prescribed examination, and submits evidence by oath that he:

(a) is a resident of or shows satisfactory evidence of intent to become a resident of this state at the time he is licensed;

(b) is at least 18 years of age;

(c) is of good moral character;

(d) (i) has received a doctoral degree in clinical psychology from an accredited college or university having an appropriate graduate program approved by the American psychological association;

(ii) has received a doctoral degree in psychology from an accredited college or university not approved by the American psychological association and has successfully completed a formal graduate retraining program in clinical psychology approved by the American psychological association; or

(iii) has received a doctoral degree in psychology from an accredited college or university, and whose course of studies meets minimum standards specified in rules by the board; and

(e) has completed at the time of application a minimum of 2 years of *supervised* experience in the practice, research, or teaching of psychology. One year of this experience shall be postdoctoral."

Section 5. Section 37-17-306, MCA, is amended to read:

"**37-17-306. Annual renewal.** (1) The license expires on January 1 following the date of its issuance or renewal and is invalid thereafter. The department shall notify each person licensed under this chapter relative to the date of the expiration of his license and the amount of his renewal fee. This notice shall be mailed to each licensed psychologist at his listed address at least 1 month before the expiration of the license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a person licensed to pay his

renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of 1 year or more will be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(3) The board may charge an additional fee for license renewal to be used for administering the continuing education program established in [section 1]."

Section 6. Section 37-17-307, MCA, is amended to read:

"**37-17-307. Fees — deposit of fees.** (1) The department shall collect the following fees, none of which is refundable:

(a) application fee;

(b) examination fee, an amount commensurate with the charge of the professional examination service and administrative costs of the department and as set by the board;

(c) certificate fee;

(d) renewal fee, *including an amount sufficient to cover the costs of administering the continuing education program.*

(2) Renewal certificates shall be secured annually and dated January 2.

(3) Fees received by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6)."

Section 7. **Transition — initial appointments.** (1) On September 1, 1991, the governor shall appoint one person to a 5-year term on the board of psychologists.

(2) On September 1, 1992, the governor shall appoint one person to a 5-year term on the board and one person to a 1-year term on the board. At the expiration of the 1-year term, the governor shall reappoint the same board member to a 5-year term. At the expiration of the 5-year term, appointments must be made in accordance with 2-15-1851.

(3) On September 1, 1993, the governor shall appoint one person to a 1-year term on the board and one person to a 2-year term. At the end of those terms, the governor shall reappoint those same board members each to a 5-year term. At the expiration of the 5-year terms, appointments must be made in accordance with 2-15-1851.

Section 8. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 17, and the provisions of Title 37, chapter 17, apply to [section 1].

Section 9. **Applicability.** [Section 2] applies to new appointments to the board of psychologists made after July 1, 1991.

Section 10. **Effective dates.** (1) [Sections 2, 3, 7 through 9, and this section] are effective July 1, 1991, except rules adopted by the board of psychologists may not be implemented until January 1, 1992.

(2) [Sections 1 and 4 through 6] are effective January 1, 1992.

Approved April 27, 1991.

CHAPTER NO. 672

[SB 178]

AN ACT TO CONFORM CERTAIN VEHICLE LENGTH LIMIT LAWS TO THE RECOMMENDATIONS OF THE WESTERN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS; TO INCREASE THE ALLOWABLE LENGTH FOR CERTAIN VEHICLES AND VEHICLE COMBINATIONS; TO REQUIRE A STUDY OF TURNPIKE DOUBLES; AND AMENDING SECTIONS 61-10-104, 61-10-124, AND 61-10-129, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-104, MCA, is amended to read:

"**61-10-104. Length — *definitions.*** (1) A single truck, bus, or any self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of ~~40~~ *45* feet.

(2) (a) When used in a truck tractor-semitrailer combination, the semitrailer may not exceed 53 feet in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. When used in a truck tractor-semitrailer-trailer or a truck tractor-semitrailer-semitrailer combination, the semitrailer and trailer or the two semitrailers may not exceed 28 1/2 feet each in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. Truck tractor-semitrailer, truck tractor-semitrailer-trailer, and truck tractor-semitrailer-semitrailer combinations are not subject to ~~an overall~~ *a* combination length limit.

(b) A stinger-steered automobile or boat transporter may not exceed 75 feet in length plus a maximum 3 feet of front overhang and 4 feet of rear overhang except as provided by 61-10-124. "Stinger-steered automobile or boat transporter" means a truck tractor-semitrailer combination that has a fifth wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of vehicles or assembled boats or boat hulls.

(c) All other combinations of vehicles may not have ~~an overall~~ *a combination* length~~, inclusive of front and rear bumpers,~~ in excess of 75 feet, except as provided by 61-10-124. If the combination consists of more than two units, the rear units of the combination shall be equipped with breakaway brakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than three motor vehicles attached to it by the triple saddle-mount method (that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway), nor may this combination have ~~an overall~~ *a combination* length~~, inclusive of front and rear bumpers,~~ in excess of 65 feet.

(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturers' rated capacity" may not tow more than one trailer or semitrailer, nor may this combination have ~~an overall~~ *a* length~~, inclusive of front and rear bumpers,~~ in excess of 65 feet.

(5) As used in this chapter, the following definitions apply:

(a) "Combination length" means the total length of a combination of vehicles, such as a truck tractor-semitrailer-trailer combination, measured from the front bumper of the motor vehicle to the back bumper or rear extremity of the last trailer, including the connection tongues.

(b) "Combined trailer length" means the total length of a combination of trailers measured from the front of the first trailer to the back of the last trailer, including the connection tongues and loads.

(c) "Length" means the total longitudinal dimension of a single vehicle, a trailer, or a semitrailer. The length of a trailer or semitrailer is measured from the front of the cargo-carrying unit to its rear, exclusive of safety or energy efficiency devices, air-conditioning units, air compressors, flexible fender extensions, splash and spray suppressant devices, bolsters, mechanical fastening devices, and hydraulic lift gates.

(d) "Rocky mountain double" means a combination of vehicles that includes a truck tractor pulling a long semitrailer and a shorter trailer."

Section 2. Section 61-10-124, MCA, is amended to read:

"**61-10-124. Special permits — fee — cranes.** (1) As used in this section, "crane" means a self-propelled single-unit vehicle consisting of not more than four axles and used for raising, shifting, and lowering heavy weights by means of a projecting swinging arm.

(2) Except as provided in subsections (3)(b), (3)(d), and (6), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through 61-10-110 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of highways.

(3) (a) Except as provided in subsections (3)(b), (3)(d), and (6), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; and an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. *A rocky mountain double may not exceed 81 feet in combined trailer length, the long semitrailer cargo unit of the combination may not exceed 48 feet in length. A rocky mountain double is not subject to a combination length limit.* Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsection (6). Special permits for vehicle combinations may specify and special permits under subsection (6) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (3)(a). The fee for this permit is $75. This permit covers a period of 1 year and expires on December 31 of each year with no grace period.

(c) With payment of the appropriate gross weight ~~fee~~ *fees* required by ~~61-10-203~~ *61-10-201 and 61-10-202* and with payment of the fee prescribed in subsection (2), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in *combination* length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is $125.

(4) Except as provided in subsection (3)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of highways, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(5) The owner or operator of a crane with a gross vehicle weight of less than 80,000 pounds may purchase a 30-day special permit for overweight if the crane has a current special mobile equipment identification plate and if the department of highways has approved the configuration of the crane

through a weight analysis completed within the same calendar year. The permit is not transferable, and the fee for the permit is $200.

(6) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system as defined in 60-1-103 and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) a combination of vehicles powered by a cab-over (tilt cab) type truck-tractor or a truck may not exceed overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck-tractor may not exceed overall length of 110 feet, inclusive of front and rear bumpers and overhang;

(d) no individual cargo unit of the combination may exceed 28 ½ feet in length and 102 inches in width;

(e) gross weight fees under 61-10-203 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) the combination must have a restricted route permit under 61-10-107(3) and a special overlength permit issued at a fee of $200 for a term permit or $20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is $200."

Section 3. Section 61-10-129, MCA, is amended to read:

"**61-10-129. Rules regarding overlength vehicles.** The department of highways may adopt rules to implement 61-10-124~~(4)~~ and may by rule prescribe standards for the qualifications of drivers operating special vehicle combinations under 61-10-124~~(4)~~ and for the equipping and operation of such combinations to enhance highway traffic safety."

Section 4. **Turnpike doubles — study.** (1) The department of highways shall conduct a study over the next 2 years of:

(a) all interchanges in Montana and the ability of the interchanges to accommodate twin 45s as turnpike doubles;

(b) the impact on highways of permitting twin 45s as turnpike doubles;

(c) terminal positions to interchanges; and

(d) the concept of permitting twin 45s as turnpike doubles.

(2) The department of highways shall report its finding of the study to the 53rd legislature.

Approved April 27, 1991.

CHAPTER NO. 673

[SB 215]

AN ACT CREATING A CAPITAL RESERVE ACCOUNT TO PROVIDE ADDITIONAL FINANCING FOR THE MONTANA HEALTH FACILITY AUTHORITY; ESTABLISHING REQUIREMENTS FOR ADMINISTRATION OF THE ACCOUNT; AUTHORIZING THE BOARD OF INVESTMENTS TO PROVIDE LOANS TO THE AUTHORITY AND TO PURCHASE BONDS AND NOTES ISSUED BY THE AUTHORITY; AMENDING SECTION 90-7-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is necessary to establish effective, low-cost financing options for the construction and development of health facilities in Montana; and

WHEREAS, health facility financing will promote affordable access and quality of health care services for the people of the state.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-7-102, MCA, is amended to read:

"**90-7-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Authority" means the Montana health facility authority created in 2-15-1815.

(2) "Capital reserve account" means the account established in [section 2].

~~(2)~~*(3)* "Costs" means costs allowed under 90-7-103.

~~(3)~~*(4)* "Health facility" means any facility provided for in 90-7-104.

~~(4)~~*(5)* "Health institution" means any public or private nonprofit hospital, corporation, or other organization authorized to provide or operate a health facility in this state.

~~(5)~~*(6)* "Participating health institution" means a health institution that undertakes the financing, refunding, or refinancing of obligations on the construction or acquisition of a health facility pursuant to the provisions of this chapter.

~~(6)~~*(7)* "Revenues" means, with respect to facilities, the rents, fees, charges, interest, principal repayments, and other income received or to be received by the authority from any source on account of such facilities."

Section 2. **Capital reserve account.** (1) There is a capital reserve account in the enterprise fund provided for in 90-7-202(17).

(2) The authority shall deposit into the capital reserve account:

(a) funds from state appropriations received for deposit into the account, as provided in [section 4], for bonds issued to finance capital projects for community health facilities that contract with the state to provide health care services;

(b) proceeds from the sale of bonds or notes to the extent provided in the resolutions or indentures of the authority authorizing their issuance;

(c) revenues from fees and charges imposed by the authority;

(d) income from the investment of funds belonging to the authority; and

(e) any other funds that may be available to the authority for the purpose of the account from any other source, including loans authorized under [section 5].

Section 3. **Administration of capital reserve account.** (1) The authority may pledge funds from the capital reserve account or a subaccount created in the capital reserve account as security for the payment of bonds and notes issued by the authority, as it may determine in the resolutions or indentures providing for their issuance.

(2) All funds held in the capital reserve account must be used solely for the payment of the principal and interest on bonds secured in whole or in part by the account or the debt service payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

(3) Funds in the capital reserve account may not, at any time, be withdrawn in an amount that reduces the account to an amount less than the sum of minimum capital reserve requirements established for the account except, with respect to bonds secured in whole or in part by the account, for the purpose of making payments, when due, of principal, interest, redemption premiums, and debt service fund payments for the payment of which other funds pledged are not available.

(4) Income or interest earned by or incremental to the capital reserve account due to its investment may be transferred to other accounts of the authority to the extent it does not reduce the amount of the capital reserve

account below the sum of minimum capital reserve requirements for the account.

Section 4. **Maintenance of capital reserve account.** (1) In order to assure the maintenance of the capital reserve account, the chairman of the authority shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the sum of minimum capital reserve requirements. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the minimum capital reserve requirements. All funds appropriated by the legislature for maintenance of the capital reserve account must be deposited in the account, as required in [section 2].

(2) All amounts appropriated to the authority under this section constitute advances to the authority and, subject to the rights of the holders of bonds or notes of the authority, must be repaid to the state general fund without interest from available operating revenues of the authority in excess of amounts required for the payment of bonds, notes, or other obligations of the authority, for maintenance of the capital reserve account, and for operating expenses.

Section 5. **Loans — purchase of bonds and notes.** Subject to the provisions of Title 17, chapter 6, the board of investments may, upon terms and conditions as the board considers reasonable:

(1) loan money to the authority for deposit in the capital reserve account; and

(2) purchase bonds and notes issued by the authority.

Section 6. **Codification instruction.** [Sections 2 through 5] are intended to be codified as an integral part of Title 90, chapter 7, part 3, and the provisions of Title 90, chapter 7, part 3, apply to [sections 2 through 5].

Section 7. **Effective date.** [This act] is effective July 1, 1991.

Approved April 27, 1991.

CHAPTER NO. 674

[SB 262]

AN ACT ALLOWING THE BOARD OF COUNTY COMMISSIONERS TO SET THE INTEREST RATE ON CONTRACTS FOR THE SALE OF TAX-DEED LAND; PROVIDING THAT THE INTEREST RATE MAY NOT EXCEED MORE THAN 4 PERCENTAGE POINTS ABOVE THE PRIME RATE; AMENDING SECTION 7-8-2304, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2304, MCA, is amended to read:

"**7-8-2304. Terms for sale of tax-deed land.** (1) A sale must be made for cash or, in the case of real property, on terms that the board of county commissioners approves.

(2) (a) If the sale is made on terms, at least 20% of the purchase price must be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed 5 years. All deferred payments bear interest at ~~the~~ *a* rate ~~of 8% per annum~~ *established by the board of county commissioners. The rate may not exceed more than 4 percentage points a year above the prime rate of major New York banks, as published in the Wall Street Journal within 7 days prior to the date of sale.*

(b) If a sale is made on terms, the chairman of the board shall execute a contract containing the terms that are provided by a contract approved by the department of revenue."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved April 27, 1991.

CHAPTER NO. 675

[SB 263]

AN ACT TO PROVIDE THAT THE GENERAL FUND OF A COUNTY IS TO BE REIMBURSED FOR TAX SALE EXPENSES BEFORE ANY DISTRIBUTION OF THE PROCEEDS OF A TAX-DEED SALE IS MADE; AMENDING SECTION 7-8-2306, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2306, MCA, is amended to read:

"**7-8-2306. Distribution of sale and lease proceeds.** The proceeds of ~~every~~ *each* sale or lease under this part or part 25 ~~shall~~ *must* be paid over to the county treasurer, who shall apportion and distribute the ~~same~~ *proceeds* in the following manner:

(1) (a) Upon a sale of ~~such~~ *the* property, the proceeds of each sale ~~up to the amount of $10 shall~~ *must* be credited to the county general fund ~~to reimburse such~~ for *reimbursement of* expenditures made ~~therefrom~~ *from it* in connection with the procurement of the tax deed and holding of the sale.

(b) Upon a sale of the property, if there ~~be~~ *is* any ~~amount~~ *money* remaining ~~of such proceeds~~ after the payment of the amount specified in subsection (1)(a) and ~~such~~ *the* remainder is:

(i) in excess of the aggregate amount of all taxes and assessments accrued against ~~such~~ *the* property for all funds and purposes, without penalty and interest, then ~~so~~ *as* much of ~~such~~ *the* remaining proceeds ~~shall~~ *must* be credited to each fund or purpose as ~~the same~~ *each fund or purpose* would have received had ~~such~~ *the* taxes been paid before becoming delinquent, and all excess ~~shall~~ *must* be credited to the general fund of the county; or

(ii) ~~is~~ less in amount than the aggregate amount of all taxes and assessments accrued against ~~such~~ *the* property for all funds and purposes, without penalty or interest, ~~such~~ *the* proceeds ~~shall~~ *must* be prorated between ~~such~~ *the* funds and purposes in the proportion that the amount of taxes and assessments accrued against ~~such~~ *the* property for each ~~such~~ fund or purpose bears to the aggregate amount of taxes and assessments accrued against ~~such~~ *the* property for all funds and purposes.

(2) ~~Whenever~~ *If* tax-deed lands have been sold and the county has reserved a royalty interest, any sums of money received from ~~such~~ *the* royalty interest ~~shall~~ *must* be credited to the general fund of the county, except that the board of county commissioners may allocate to the county road fund not more than 50% of the money received from reserved royalty interests.

(3) Upon a lease of the property, except as otherwise provided, the amount received as rent, royalty, or otherwise, including interest received on the payments under either a sale or lease, ~~shall~~ *must* be apportioned on the current year's levy and ~~shall~~ *must* be credited as earnings of tax-deed property and not considered as a credit to tax-deed accrued accounts as in the case of the principal received from sales of tax-deed lands."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved April 27, 1991.

CHAPTER NO. 676

[SB 280]

AN ACT TO REVISE AND STANDARDIZE THE ADMINISTRATION AND COLLECTION OF CERTAIN TAXES AND FEES BY THE DEPARTMENT OF REVENUE BY PROVIDING FOR UNIFORM DEFICIENCY ASSESSMENTS, UNIFORM STATUTES OF LIMITATION, AND CREDIT FOR OVERPAYMENTS FOR THE STATE EMERGENCY TELEPHONE SYSTEM FEE, THE TELEPHONE COMPANY LICENSE TAX, THE FREIGHT LINE COMPANY LICENSE TAX, THE LODGING FACILITY USE TAX, THE ANNUAL FEE ON RURAL COOPERATIVE UTILITIES, AND THE FEE ON REGULATED COMPANIES FOR THE OFFICE OF THE CONSUMER COUNSEL; AMENDING SECTIONS 10-4-211, 15-53-105, 15-53-111, 15-55-108, 15-65-112, 15-65-115, 35-18-503, 69-1-225, AND 69-1-226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-4-211, MCA, is amended to read:

"**10-4-211. Provider required to hold fee in trust for state — *penalty and interest.*** (1) Every provider required to collect the fee imposed by 10-4-201 holds it in trust for the state of Montana and for the payment thereof to the department of revenue in the manner and at the time provided by 10-4-204.

(2) *(a)* If a provider required to collect the fee fails to remit any amount held in trust for the state of Montana or if a subscriber fails to pay the fee~~,~~ ~~the~~ *on or before the last day of the month following the end of each calendar quarter, the department of revenue shall add to the amount of the delinquent fee, in addition to any other penalty provided by law, a penalty equal to 10% of the delinquent fee plus interest at the rate of 1% a month or fraction of a month computed on the amount of the delinquent fee plus any unpaid penalties and interest. Interest is computed from the date the fee is due until the date of payment.*

(b) The department of revenue may waive the penalty if the provider establishes that the failure to pay on time was due to reasonable cause and was not due to neglect.

(3) [(a) If the department of revenue determines that the amount of fee due is greater than the amount reported, it shall mail to the provider a notice of the additional fee proposed to be assessed. Within 30 days after mailing of the notice, the provider may file with the department of revenue a written protest against the proposed additional fee, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his additional liability. If a protest is not filed, the amount of the additional fee proposed to be assessed becomes final upon expiration of the 30-day period. If a protest is filed, the department of revenue shall reconsider the proposed assessment and, if the provider has so requested, shall grant the provider an oral hearing. After consideration of the protest and the evidence presented at an oral hearing, the department of revenue's action upon the protest is final when it mails notice of its action to the provider.]

(b) When a deficiency is determined and the additional fee becomes final, the department of revenue shall mail a notice and demand for payment to the provider. The fee is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return.

(c) If payment is not made within 10 days, the amount of the deficiency is considered delinquent. A 10% penalty must be added to the amount of the deficiency.

(4) The 10% penalty provided for in subsection (3)(c) may be waived by the department of revenue if the provider establishes that the failure to pay the proper amount of fees was due to reasonable cause and was not due to neglect.

(5) The department of revenue may enforce collection by the issuance of a warrant for distraint for the collection of the delinquent amount and all penalties, interest, and collection charges accrued thereon. The warrant is governed by the provisions of Title 15, chapter 1, part 7."

Section 2. Section 15-53-105, MCA, is amended to read:

"**15-53-105. Deficiency assessment — hearing — *penalty* — interest.** (1) ~~When~~ *If* the department of revenue determines that the amount of tax due is greater than the amount ~~disclosed by a return~~ *reported,* it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If ~~no~~ *a* protest is *not* filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department ~~must~~ *shall* reconsider the proposed assessment and, if the taxpayer has so requested, ~~must~~ *shall* grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at ~~any~~ *an* oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) *(a)* When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days ~~from the date of such~~ *after the* notice and demand *were mailed.* Interest on any deficiency assessment ~~shall bear~~ *bears* interest until paid, at the rate of 1% a month or fraction ~~thereof~~ *of a month,* computed from the original due date of the return.

(b) If payment is not made within 10 days, the amount of the deficiency is considered delinquent. A 10% penalty must be added to the amount of the deficiency."

Section 3. Section 15-53-111, MCA, is amended to read:

"**15-53-111. Penalty and interest for delinquency — waiver.** (1) License taxes due under this chapter become delinquent if not paid within 60 days after the end of each calendar quarter. The department of revenue shall add to the amount of all delinquent telephone company license taxes a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes ~~and penalty~~. Interest is computed from the date the license taxes were due to the date of payment.

(2) The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to file the statement required by 15-53-102 or pay the tax due is provided to the department."

Section 4. Section 15-55-108, MCA, is amended to read:

"**15-55-108. Penalty and interest for delinquency — waiver.** (1) License taxes due under this chapter become delinquent if not paid by March 1. The department shall add to the amount of all delinquent freight line company license taxes a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes ~~and penalty~~. Interest is computed from the date the license taxes were due to the date of payment.

(2) The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to file the statement required by 15-55-103 or pay the tax due is provided to the department."

Section 5. Section 15-65-112, MCA, is amended to read:

"**15-65-112. Collection and reporting.** (1) The owner or operator of a facility shall collect the tax imposed by 15-65-111.

(2) The owner or operator shall report to the department of revenue, at the end of each calendar quarter, the gross receipts collected during that quarter attributable to accommodation charges for the use of the facility. The report is due ~~within 30 days~~ *on or before the last day of the month* following the end of the calendar quarter and must be accompanied by a payment in an amount equal to the tax required to be collected under subsection (1)."

Section 6. Section 15-65-115, MCA, is amended to read:

"**15-65-115. Failure to pay or file — penalty — interest.** (1) An owner or operator of a facility who fails to file the report as required by 15-65-112 must be assessed a penalty of ~~2%~~ *10%* of the tax that should have been collected during the calendar quarter. Upon a showing of good cause, the department of revenue may waive the penalty.

(2) An owner or operator of a facility who fails to make payment or fails to report and make payment as required by 15-65-112 must be assessed a penalty of ~~2%~~ *10%* of the amount that was not paid. Upon a showing of good cause, the department may waive the penalty.

(3) *(a)* If an owner or operator of a facility fails to file the report required by 15-65-112 or if the department of revenue determines that the report understates the amount of tax due, the department may determine the amount of the tax due and assess that amount against the owner or operator.

[(b) If the department of revenue determines that the amount of tax due is greater than the amount reported or that the owner or operator of a facility failed to file a report, it shall mail to the owner or operator a notice of the additional tax proposed to be assessed. Within 30 days after mailing of the

notice, the owner or operator may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If a protest is not filed, the amount of the additional tax proposed to be assessed becomes final upon expiration of the 30-day period.]

(c) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the owner or operator. The tax is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return.

(4) The amount required to be paid under 15-65-112 accrues interest at the rate of 1% a month or part thereof from delinquency until paid."

Section 7. Section 35-18-503, MCA, is amended to read:

"**35-18-503. Annual fee to department of revenue — exemption from other taxes.** Cooperatives and foreign corporations transacting business in this state pursuant to the provisions of this chapter shall pay annually on or before July 1, to the department of revenue a fee of $10 for each 100 persons or fractions thereof to whom electricity or telephone service ~~is~~ *was* supplied *during the previous calendar year* within the state ~~but~~ *and,* except as provided in 10-4-201, shall be exempt from all other excise and income taxes of whatsoever kind or nature."

Section 8. Section 69-1-225, MCA, is amended to read:

"**69-1-225. Computation and collection of fee in absence of statement — penalty and interest.** (1) If a regulated company or an officer or employee of a regulated company fails, neglects, or refuses to file the statement required by 69-1-223(2), the department of revenue may after the time for filing has expired proceed to inform itself, as best it may, regarding the regulated company's gross operating revenue from all activities regulated by the commission within the state for the calendar quarter, quarters, or portion thereof and may determine and fix the amount of the consumer counsel fee due.

(2) ~~The department may add to the amount of the fee computed under subsection (1), in addition to any other penalty provided by law, a penalty of 10% thereof plus interest at the rate of 1% per month or fraction of month computed on the total amount of fee and penalty. Interest is computed from the date the fee is due to the date of payment.~~ *[If the department of revenue determines that the amount of fee due is greater than the amount reported or makes an estimate pursuant to subsection (1), it shall mail to the regulated company a notice of the fee proposed to be assessed. Within 30 days after mailing of the notice, the regulated company may file with the department a written protest against the proposed fee, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its liability.]*

(3) ~~The department of revenue shall mail to the regulated company a letter setting forth the amount of the fee, penalty, and interest and notifying the company that payment of the full amount of the fee, penalty, and interest must be remitted within 15 days of the regulated company's receipt of the letter; otherwise a lien may be filed.~~ *(a) When a deficiency is determined and the fee becomes final, the department shall mail a notice and demand for payment to the regulated company. The fee is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return.*

(b) If payment is not made within 10 days, the amount of the deficiency is considered delinquent. A 10% penalty must be added to the amount of the deficiency.

(4) The 10% penalty may be waived by the department of revenue if reasonable cause for failure and neglect to file the statement is provided to the department."

Section 9. Section 69-1-226, MCA, is amended to read:

"69-1-226. **Failure to pay fee — penalty and interest — collection of fee.** (1) If a regulated company or an officer or employee of a regulated company files the statement required by 69-1-223(2) but fails, neglects, or refuses to pay the fee due within the time required, the department of revenue may after the time for payment has expired add to the fee due, in addition to any other penalty provided by law, a penalty of 10% thereof plus interest at the rate of 1% per month or fraction of month computed on the total amount of the fee ~~and penalty~~. Interest is computed from the date the fee is due to the date of payment.

(2) The department of revenue shall mail to the regulated company a letter setting forth the amount of the fee, penalty, and interest and notifying the company that payment of the full amount of the fee, penalty, and interest must be remitted within ~~15~~ *10* days of the regulated company's receipt of the letter; otherwise a warrant for distraint may be filed.

(3) The 10% penalty may be waived by the department of revenue if reasonable cause for failure and neglect to make payment is provided to the department."

Section 10. **Penalty and interest for delinquency — waiver.** (1) Assessments due under this chapter are delinquent if not paid on or before December 31. The department of revenue shall add to the amount of each delinquent assessment a penalty of 10% of the amount of the assessment plus interest at the rate of 1% per month or fraction of a month computed on the total amount of assessment. Interest is computed from the date the assessment was due to the date of payment.

(2) The 10% penalty may be waived by the department of revenue if reasonable cause is established for the failure or neglect to file the return

required by 23-2-715 or to pay the assessment due to the department of revenue.

Section 11. **Credit for overpayment — interest on overpayment.** (1) If the department of revenue determines that the amount of fee, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or the taxpayer's successor through reorganization, merger, or consolidation or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments from the due date of the return or from the date of overpayment, whichever date is later, to the date the department of revenue approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for a refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department of revenue for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

Section 12. **Credit for overpayment — interest on overpayment.** (1) If the department of revenue determines that the amount of tax, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer, to the taxpayer's successor through reorganization, merger, or consolidation, or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments from the due date of the return or from the date of overpayment, whichever is later, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

Section 13. **Credit for overpayment — interest on overpayment.** (1) If the department of revenue determines that the amount of the assessment, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any assessment, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer, to the taxpayer's successor through reorganization, merger, or consolidation, or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments provided in 23-2-715(2) from the due date of the return or from the date of overpayment, whichever is later, to the date the department of revenue approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department of revenue for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

Section 14. **Statute of limitations.** (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which a statement of gross receipts is filed unless the notice of the proposed additional assessment is mailed within 5 years from the date the statement of gross receipts was filed. For purposes of this section, a statement of gross receipts filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment, consents in writing to an extended time, the assessment may be made at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a statement of gross receipts is filed after 5 years from the

last day prescribed for filing the statement of gross receipts or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim or the department of revenue determines the existence of the overpayment and approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a statement of gross receipts is required to be filed and the taxpayer fails to file the statement of gross receipts, the tax may be assessed or an action to collect the tax may be brought at any time. If a statement of gross receipts is required to be filed and the taxpayer files a fraudulent statement of gross receipts, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department of revenue.

Section 15. **Statute of limitations.** (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of the additional fee proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the fee, consents in writing to an assessment after that time, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim or the department of revenue determines the existence of the overpayment and approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department of revenue.

Section 16. **Penalty and interest for delinquency — waiver.** (1) Fees due under this chapter become delinquent if not paid on or before July 1 for the previous calendar year. The department of revenue shall add to the amount of each delinquent fee a penalty of 10% of the amount of the fee plus interest at the rate of 1% per month or fraction of a month computed on the total fee. Interest is computed from the date the fees were due to the date of payment.

(2) The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to pay the fee required by 35-18-503 is provided to the department.

Section 17. **Deficiency assessment — hearing — interest.** (1) If the department of revenue determines that the amount of fee due is greater than the amount reported, it shall mail to the taxpayer a notice of the additional fee proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional fee, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his additional liability. If a protest is not filed, the amount of the additional fee proposed to be assessed becomes final upon expiration of the 30-day period. If a protest is filed, the department shall reconsider the proposed assessment and, if the taxpayer has requested, shall grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at an oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) (a) When a deficiency is determined and the additional fee becomes final, the department shall mail a notice and demand for payment to the taxpayer. The fee is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return.

(b) If payment is not made within 10 days, the amount of the deficiency is considered delinquent. A 10% penalty must be added to the amount of the deficiency.

Section 18. **Codification instruction.** (1) [Sections 11 and 15] are intended to be codified as an integral part of Title 69, chapter 1, part 2, and the provisions of Title 69, chapter 1, part 2, apply to [sections 11 and 15].

(2) [Sections 11 and 15] are intended to be codified as an integral part of Title 10, chapter 4, part 2, and the provisions of Title 10, chapter 4, part 2, apply to [sections 11 and 15].

(3) [Section 12] is intended to be codified as an integral part of Title 15, chapter 65, part 1, and the provisions of Title 15, chapter 65, part 1, apply to [section 12].

(4) [Sections 10, 13, and 14] are intended to be codified as an integral part of Title 23, chapter 2, part 7, and the provisions of Title 23, chapter 2, part 7, apply to [sections 10, 13, and 14].

(5) [Sections 11 and 15 through 17] are intended to be codified as an integral part of Title 35, chapter 18, part 5, and the provisions of Title 35, chapter 18, part 5, apply to [sections 11 and 15 through 17].

Section 19. **Coordination instruction.** If Senate Bill No. 445 is passed and approved and if it includes a section adopting a uniform tax appeal procedure, the bracketed language contained in [sections 1, 6, and 8] is void, and the provisions of Senate Bill No. 445 govern taxpayer appeal procedures.

Section 20. **Applicability.** [This act] applies to all returns or statements due on or after July 1, 1991.

Section 21. **Effective date.** [This act] is effective on passage and approval.

Approved April 27, 1991.

CHAPTER NO. 677

[SB 368]

AN ACT ESTABLISHING ENFORCEMENT PROVISIONS FOR VIOLATIONS OF THE MONTANA WATER USE LAWS; PROVIDING FOR DISPOSITION OF PENALTIES; AMENDING SECTIONS 85-2-114, 85-2-122, AND 85-2-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-114, MCA, is amended to read:

"**85-2-114.** ~~**Prevention of waste**~~ ***Judicial enforcement.*** (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, ~~or~~ preventing water from moving to another person having a prior right to use the ~~same~~ *water, or violating a provision of this chapter,* it may, *after reasonable attempts have failed to obtain voluntary compliance as provided in subsection (4),* petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use; ~~or~~

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take such steps as may be necessary to remedy the waste, unlawful use, or interference~~.~~*; or*

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) ~~The~~ *Upon the issuance of an order or injunction, the* department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it, which notice shall be legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin such waste, unlawful use, ~~or~~ interference, *or violation.*

(4) The department must attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). The attempts to obtain voluntary compliance under this subsection may not exceed 3 working days."

Section 2. Section 85-2-122, MCA, is amended to read:

"**85-2-122. Penalties.** *(1)* A person who violates or refuses or neglects to comply with the provisions of this chapter, any order of the department, or any rule of the board is guilty of a misdemeanor.

(2) A person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the board is subject to a civil penalty not to exceed $1,000 per violation. Each day of violation constitutes a separate violation.

(3) Fines collected by the department or a district court under subsection (2) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114."

Section 3. Section 85-2-123, MCA, is amended to read:

"**85-2-123. Deposit of fees and penalties.** Except as provided in 85-2-124 and 85-2-241, all fees and penalties collected under this chapter shall be deposited in the water right appropriation account established in 85-2-318. ~~All~~ *Except for fines collected by a district court under 85-2-122, all* penalties or fines imposed by any court other than a justice's court for a violation of this chapter shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine."

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 27, 1991.

CHAPTER NO. 678

[SB 389]

AN ACT EXTENDING THE AUTHORITY OF THE LEGISLATIVE AUDITOR TO CONDUCT AUDITS OF ORGANIZATIONS REFERRED TO IN SECTION 2-3-203(2), MCA; REQUIRING THAT PRIOR TO TRANSFERRING FUNDS TO THE ORGANIZATION, THAT THE MEMBER REQUIRE A WRITTEN AUTHORIZATION OF CONSENT TO AUDIT; PROVIDING FOR PAYMENT OF THE AUDIT COSTS; PROVIDING CRITERIA FOR THE AUDIT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Audits of school-related organizations — costs — criteria.** (1) The legislative auditor may conduct or have conducted an audit of the records of organizations referred to in 2-3-203(2).

(2) Before public funds are transferred to the organization, a member shall obtain the organization's written consent to:

(a) the audit provided for in subsection (1); and

(b) pay the costs of the audit.

(3) An audit of an organization performed under this section must determine if:

(a) the organization is carrying out only those activities or programs authorized by state law and its articles of incorporation, bylaws, and policies;

(b) expenditures are made in furtherance of authorized activities in accordance with applicable laws and its articles of incorporation, bylaws, and policies;

(c) the organization properly collects and accounts for all revenues and receipts arising from its activities in accordance with generally accepted accounting principles;

(d) the assets of the organization or the assets in its custody are adequately safeguarded and are controlled and used in an efficient manner; and

(e) reports and financial statements fully disclose the nature and scope of the activities conducted and provide a proper basis for evaluating the operations of the organization.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 7, and the provisions of Title 2, chapter 7, apply to [section 1].

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved April 27, 1991.

CHAPTER NO. 679

[SB 409]

AN ACT CLARIFYING THE PROCEDURE FOR FORECLOSING ON MORTGAGES AND PLEDGES OF LEASEHOLD INTERESTS IN STATE LANDS; AMENDING SECTION 77-6-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-6-403, MCA, is amended to read:

"**77-6-403. Transfer of lease.** ~~Upon~~ *(1) Except as provided in subsection (2), upon* due proof ~~of the acquisition of such lease or leasehold interest by any person under or pursuant to such pledge agreement or mortgage,~~ *that a person has acquired through foreclosure or conveyance the pledgor's or mortgagor's leasehold interest,* the board shall transfer ~~said~~ *the* lease to ~~said person,~~ *that person,* who ~~shall thereupon be~~ *is* subject to all the conditions, obligations, and liabilities and entitled to all the rights and privileges provided for in ~~said~~ *the* lease. *To authorize transfer of a lease, a decree of foreclosure must specifically refer to the lease or the leased premises, but neither the board nor the department is required to be named as a party to the action. The plaintiff shall, however, file a copy of the complaint with the department at the time it is filed with the court.*

(2) Nothing in this section may be construed to require the board to complete the transfer of a lease to an assignee whom the board considers unqualified as a lessee of state lands."

Section 2. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 27, 1991.

CHAPTER NO. 680

[SB 412]

AN ACT TO PROVIDE FOR THE EQUALIZATION OF RESIDENTIAL PROPERTY BY PROVIDING THAT PROPERTY MEETING CERTAIN CONDITIONS WILL BE SUBJECT TO REAPPRAISAL; TO PROVIDE THAT THE DEPARTMENT'S SALES ASSESSMENT AREA AND PER-

CENTAGE ADJUSTMENTS WILL BE SUBJECT TO JUDICIAL REVIEW; TO REQUIRE THE DEPARTMENT OF REVENUE TO HOLD A PUBLIC HEARING IF THE PERCENTAGE ADJUSTMENT IS GREATER THAN 10 PERCENT; TO REQUIRE THE COUNTY ASSESSOR TO PROVIDE ADDITIONAL INFORMATION IF VALUATION OF PROPERTY INCREASES AS A RESULT OF THE SALES ASSESSMENT RATIO STUDY; TO REQUIRE THE BOARD OF COUNTY COMMISSIONERS TO APPOINT AN ADVISORY BOARD; TO PROVIDE THAT FOR TAX YEAR 1994 AND THEREAFTER, SALES ASSESSMENT RATIO ADJUSTMENTS WILL BE ELIMINATED AND ALL PROPERTY WILL BE REAPPRAISED EVERY 3 YEARS; AMENDING SECTIONS 15-1-101, 15-6-143, 15-7-102, 15-7-111, 15-7-201, AND 15-10-412, MCA, AND SECTION 10, CHAPTER 681, LAWS OF 1985; REPEALING SECTIONS 15-7-132 AND 15-7-133, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A PARTIAL TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-102, MCA, is amended to read:

"**15-7-102. Notice of classification and appraisal to owners — appeals.** (1) It shall be the duty of the department of revenue, through its agent as specified in subsection (2), to cause to be mailed to each owner and purchaser under contract for deed a notice of the classification of the land owned or being purchased by him and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(a) change in ownership;

(b) change in classification;

(c) change in valuation; or

(d) addition or subtraction of personal property affixed to the land.

(2) *(a)* The county assessor shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of his property and of changes over the prior tax year.

(b) If the valuation of the property described in subsection (1) increased from the prior tax year, the notice must include the following information:

(i) the valuation of the property in the prior tax year; and

(ii) a statement showing the amount of taxes that would be due on the property in the current tax year if the property were subject to the same mill levies imposed in the prior tax year.

(3) If the owner of any land and improvements is dissatisfied with the appraisal *as it reflects the market value of the property as determined by the department* or *with the* classification of his land or improvements, he may submit his objection in writing to the department's agent. *In an objection to the appraisal of the property, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property.* The department shall give reasonable notice to the taxpayer of the time and place of hearing and hear any testimony or other evidence that the taxpayer may desire to produce at that time and afford the opportunity to other interested persons to produce evidence at the hearing. After the hearing, the department shall determine the true and correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department must state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land shall be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a hearing as provided in subsection (3) is held or not, the department or its agent may not adjust an appraisal or classification upon taxpayer's objection unless:

(a) the taxpayer has submitted his objection in writing; and

(b) the department or its agent has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. Each county appraiser shall make the records available for inspection during regular office hours.

(6) *(a)* If any property owner feels aggrieved at the classification and/or the appraisal made by the department, he shall have the right to appeal to the county tax appeal board and then to the state tax appeal board, whose findings shall be final subject to the right of review in the courts. The property owner may appeal the base ~~year~~ valuation and the classification determination. *A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order. If any percentage adjustment required by the sales assessment ratio study provided in 15-7-111 is applied to the base value, the valuation of the property for the current year must be the same as the board's determination of market value and the property must continue to be assessed in the area designated by the department.* ~~The property owner may not appeal the yearly percentage adjustments that are specified in 15-7-111 and that may be made as a result of the sales assessment ratio study, the stratum, or area designations as specified in 15-7-111.~~

(b) If a property owner feels aggrieved by either the percentage adjustment or the area designation established by the department pursuant to 15-7-111, he may, within 60 days of the date the rules provided for in subsection (7) are adopted to implement 15-7-111(4)(b), file suit seeking a declaratory judgment action to review the department's determination of the percentage adjustment or area designation.

(c) The district court shall consolidate all such actions brought by property owners into one proceeding. If the suit encompasses more than one judicial district, the venue for action is the first judicial district of Lewis and Clark County.

(d) During the pendency of the action, the court may not restrain or enjoin the department from implementing either the percentage adjustments or area designations made by the department, but the court may direct that the increase in the property owner's tax be paid into the property tax protest fund of the county in which the property is located. Upon final judgment, the court may order all or a portion of the protested tax to be refunded to the property owner or such other remedy as the court considers appropriate.

(7) The percentage adjustments, stratum, and area designations must be adopted by administrative rule. An annual hearing must be held to accept testimony on the percentage adjustments, stratum, and area designations. The department shall present its findings and the proposed rules to the revenue oversight committee."

Section 2. Section 15-7-111, MCA, is amended to read:

"**15-7-111. Periodic revaluation of taxable property — publication of sales assessment ratio studies — appeal of revaluations —** ***public hearing.*** (1) The department of revenue shall administer and supervise a program for the revaluation of all taxable property within the state at least every 5 years. A comprehensive written reappraisal plan shall be promulgated by the department. The reappraisal plan adopted shall provide that all property in each county shall be revalued at least every 5 years. The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners in each county.

(2) The new values determined during a revaluation cycle must be provided to the taxpayers at the end of the revaluation cycle but may not be placed on the tax rolls until 1 year following the completion of the revaluation cycle.

(3) A taxpayer shall appeal the new value in advance of its placement on the tax rolls by filing an appeal pursuant to 15-15-102 before the first Monday in June or 15 days after receiving notice of the new valuation amount, whichever is later, or be barred from appealing for untimeliness.

(4) *(a)* For the taxable year beginning January 1, 1990, and for every taxable year thereafter, the department shall conduct a stratified sales assessment ratio study of all residential land and improvements, agricultural 1-acre homesites and improvements, and commercial land and improvements. *Residential improvements include condominiums but do not*

include mobile homes or housetrailers that are not taxed as an improvement as defined in 15-1-101. The sales assessment ratio based on property sales finalized and recorded by no later than November 1 must be used to determine appraisals for the immediately succeeding tax year.

(b) (i) For tax year 1991, if the result of the stratified sales assessment ratio performed pursuant to subsection (4)(a) on residential property for tax year 1990 shows for any area an assessment level of less than 80%, the department shall perform a reappraisal of the residential property in the area. The reappraisal must be performed using a computer-assisted mass appraisal system based on the market approach to value, using comparable sales of similar property. If insufficient sales are available for market modeling, the department shall reappraise the property using the cost approach to value.

(ii) For tax year 1992, if the result of the stratified sales assessment ratio performed pursuant to subsection (4)(a) on residential property for tax year 1991 shows for any area an assessment level of less than 80% or a coefficient of dispersion with respect to the value weighted mean ratio of more than 20%, rounded to the nearest 0.1%, and an adjustment multiplier of 1.01 or greater, the department shall perform a reappraisal of the residential property in the area. The reappraisal must be performed using the same criteria provided in (4)(b)(i).

(iii) For tax year 1993, if the result of the stratified sales assessment ratio performed pursuant to subsection (4)(a) on residential property for tax year 1992 shows for any area an adjustment multiplier of 1.01 or greater, the department shall perform a reappraisal of the residential property in the area. The reappraisal must be performed using the same criteria provided in (4)(b)(i).

(iv) For those areas subject to reappraisal under the provisions of subsection (4)(b)(i) for tax year 1992, the department shall compare the stratified sales assessment ratio performed in 1991 to the 1991 assessed value to determine whether the area will be subject to further appraisal. If that comparison of residential property shows for the area a coefficient of dispersion with respect to the value weighted mean ratio of more than 20%, rounded to the nearest 0.1%, and an adjustment multiplier of 1.01 or greater, the department shall reappraise the area. The reappraisal must be performed using the same criteria provided in (4)(b)(i).

(5) The study required in subsection (4) must be based on:

(a) commonly accepted statistical standards and methodology;

(b) a statistically valid sample of sales, using data from realty transfer certificates filed for up to 3 taxable years prior to the year the study is made, taking into account the dates of the included sales in the statistical analysis; and

(c) the assessments and sales for areas of the state that are economically, demographically, and geographically similar in order to determine the sales assessment ratios for a specific area.

(6) For purposes of conducting the study required by subsection (4), the department shall partition the state into as many as 100 areas for residential property and as many as 20 areas for commercial property. The areas must contain statistically sufficient numbers of sales and be as economically and demographically homogeneous as reasonably practicable.

(7) The department shall use the following procedure to validate sales information:

(a) Department staff who did not participate in the determination of appraised values are required to review the sales transactions evidenced by a realty transfer certificate. The review must be conducted to determine whether each sale used in the study was a valid, arm's-length transaction. Only valid, arm's-length sales may be used in the sales assessment ratio study.

(b) The sales information entered in the computer-assisted appraisal system is considered confidential, as provided in 15-7-308. However, the department shall annually publish a report containing the results of all sales assessment ratio studies done in each of the areas described in subsection (6). The report containing the results of the study must be made available to the public by request or by general disclosure.

(c) The department shall exclude from the sales assessment ratio study any parcels in which the improvements have been remodeled, reconstructed, or expanded between the time of the assessment and the time of the sales.

(d) The department shall exclude sales assessment ratios of less than 50% or greater than 200%.

(8) (a) The department shall have equalized property values throughout the state and may not make further adjustments to values under this section when the assessments for each stratum within each area identified in subsection (6) are rescaled to bring all ratios to *within plus or minus 5% of* common value 1 and when the sample size produces a standard error of less than 5%.

(b) Under the method described in subsection (8)(a), taxable property in each area is considered revalued for each tax year, based on the results of the sales assessment ratio study and the adjustments required by that study.

(c) Assessments in an area are considered equalized under subsection (8)(a) if the ratio for the area is within plus or minus 5% of common value 1.

(9) If the results of the stratified sales assessment ratio study required under this section show an increase in the percentage adjustment in excess of 10% in an area designation, the department shall conduct a public hearing in that area designation to present information showing the reasons for the increase."

Section 3. Section 15-7-201, MCA, is amended to read:

"**15-7-201. (Applicable to ~~1991~~ *1993* land valuation schedules) Legislative intent — value of agricultural property.** (1) Since the market value of many agricultural properties is based upon speculative purchases which do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties shall be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land shall be classified according to its use, which classifications shall include but not be limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land shall be assessed at a value that is fairly based on its productive capacity.

(4) In computing the agricultural land valuation schedules to take effect on ~~January 1, 1991, or on~~ the date that the revaluation cycle commencing January 2, 1986, takes effect pursuant to 15-7-111~~,~~ *and, thereafter, upon the effective date when each revaluation cycle takes effect,* the department of revenue shall determine the productive capacity value of all agricultural lands using the formula $V = I/R$ where:

(a) V is the per-acre productive capacity value of agricultural land in each land use and production category;

(b) I is the per-acre net income of agricultural land in each land use and production category and is to be determined by the department using the formula $I = (P - C) U$ where:

(i) I is the per-acre net income;

(ii) P is the per-unit price of the commodity being produced;

(iii) C is the per-unit production cost of the commodity being produced; and

(iv) U is the yield in units per acre; and

(c) R is the capitalization rate to be determined by the department as provided in subsection (9).

(5) Net income shall be:

(a) calculated for each year of a base period, which is the most recent 3-year period for which data are available, prior to a revaluation of property as provided in 15-7-111; and

(b) based on commodity price and production cost data for the base period from such sources as may be considered appropriate by the department, which sources shall include Montana state university.

(6) To the degree available, the department shall compile:

(a) commodity price data reflecting the average prices received per unit of measure by Montana farmers and ranchers. Such data may be obtained from all geographical areas of the state. Commodity prices may include wheat, barley, alfalfa hay, grass hay, corn for grain, corn for silage, sugar beets, dry beans, potatoes, cattle, and sheep. Government payments may be considered. Typical rental arrangements may be considered.

(b) production cost data reflecting average costs per unit of measure paid by Montana farmers and ranchers. Such data may be obtained from all geographical areas of the state. Such production costs may include costs relating to irrigation, fertilization, fuel, seed, weed control, hired labor, management, insurance, repairs and maintenance, and miscellaneous items. Variations in specific production cost data, when affected by different levels of production, and typical rental arrangements may be considered.

(7) The department shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics to review the data prepared by Montana state university and advise the department on the implementation of subsections (2) through (6). The advisory committee shall include one member of the Montana state university staff.

(8) Net income shall be determined separately for lands in irrigated use, nonirrigated use, and grazing use and shall be calculated for each use and production level according to the provisions of subsections (4) through (7).

(9) The capitalization rate shall be calculated for each year of the base period and is the annual average interest rate on agricultural loans as reported by the federal land bank association of Spokane, Washington, plus the effective tax rate in Montana.

(10) The effective tax rate shall be calculated by the department for each year of the base period by dividing the total estimated tax due on agricultural land in the state by the total productive capacity value of agricultural land in the state."

Section 4. Section 15-6-143, MCA, is amended to read:

"**15-6-143.** ~~*(Temporary)*~~ **Class thirteen property — description — taxable percentage.** (1) Class thirteen property includes all timberland.

(2) Timberland is contiguous land exceeding 15 acres in one ownership that is capable of producing timber that can be harvested in commercial quantity.

(3) Class thirteen property is taxed at ~~the percentage rate "P"~~ *4%* of the combined appraised value of the standing timber and grazing productivity of the property.

~~(4) For taxable years beginning January 1, 1986, and thereafter, the taxable percentage rate "P" applicable to class thirteen property is 30%/B, where B is the certified statewide percentage increase to be determined by the department of revenue as provided in subsection (5). The taxable~~

~~percentage rate "P" shall be rounded downward to the nearest 0.01% and shall be calculated by the department before July 1, 1986.~~

~~(5) (a) Prior to July 1, 1986, the department shall determine the certified statewide percentage increase for class thirteen property using the formula B = X/Y, where:~~

~~(i) X is the appraised value, as of January 1, 1986, of all property in the state, excluding use changes occurring during the preceding year, classified under class thirteen as class thirteen is described in this section; and~~

~~(ii) Y is the appraised value, as of January 1, 1985, of all property in the state that, as of January 1, 1986, would be classified under class thirteen as class thirteen is described in this section.~~

~~(b) B shall be rounded downward to the nearest 0.0001%.~~

~~(6) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a valuation has been made as provided in 15-7-111.~~ ~~*(Terminates January 1, 1991—sec. 10, Ch. 681, L. 1985.)*~~"

Section 5. Section 10, Chapter 681, Laws of 1985, is amended to read:

"Section 10. **Effective date — termination date.** This act is effective January 1, 1986, and ~~except for section 3,~~ *[section 1]* terminates January 1, 1991."

Section 6. Section 15-1-101, MCA, is amended to read:

"**15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to the raising of livestock, poultry, bees, and other species of domestic animals and wildlife in domestication or a captive environment, and the raising of field crops, fruit, and other animal and vegetable matter for food or fiber.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a nonprofit corporation as defined in 35-2-102 or used for the production of income, except that property described in subsection (ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as his stock in trade;

(E) all property described in 15-6-135; and

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(h) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(i) The term "livestock" means cattle, sheep, swine, goats, horses, mules, and asses.

(j) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(k) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(l) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(m) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(n) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(o) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(p) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

~~(q) The term "weighted mean assessment ratio" means the total of the assessed values divided by the total of the selling prices of all area sales in the stratum.~~

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Section 7. Section 15-7-102, MCA, is amended to read:

"**15-7-102. Notice of classification and appraisal to owners — appeals.** (1) It shall be the duty of the department of revenue, through its agent as specified in subsection (2), to cause to be mailed to each owner and purchaser under contract for deed a notice of the classification of the land owned or being purchased by him and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(a) change in ownership;

(b) change in classification;

(c) change in valuation; or

(d) addition or subtraction of personal property affixed to the land.

(2) The county assessor shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of his property and of changes over the prior tax year.

(3) If the owner of any land and improvements is dissatisfied with the appraisal *as it reflects the market value of the property as determined by the department* or *with the* classification of his land or improvements, he may submit his objection in writing to the department's agent. *In an objection to the appraisal of the property, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property.* The department shall give reasonable notice to the taxpayer of the time and place of hearing and hear any testimony or other evidence that the taxpayer may desire to produce at that time and afford the opportunity to other interested persons to produce evidence at the hearing. After the hearing, the department shall determine the true and correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department must state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land shall be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a hearing as provided in subsection (3) is held or not, the department or its agent may not adjust an appraisal or classification upon taxpayer's objection unless:

(a) the taxpayer has submitted his objection in writing; and

(b) the department or its agent has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. Each county appraiser shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved at the classification and/or the appraisal made by the department, he shall have the right to appeal to the county tax appeal board and then to the state tax appeal board, whose findings shall be final subject to the right of review in the courts. The property owner may appeal the base ~~year~~ valuation and the classification determination. *A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of*

the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order. ~~The property owner may not appeal the yearly percentage adjustments that are specified in 15-7-111 and that may be made as a result of the sales assessment ratio study, the stratum, or area designations as specified in 15-7-111.~~

~~(7) The percentage adjustments, stratum, and area designations must be adopted by administrative rule. An annual hearing must be held to accept testimony on the percentage adjustments, stratum, and area designations. The department shall present its findings and the proposed rules to the revenue oversight committee.~~"

Section 8. Section 15-7-111, MCA, is amended to read:

"**15-7-111. Periodic revaluation of taxable property** ~~**— publication of sales assessment ratio studies — appeal of revaluations.**~~ ~~(1)~~ The department of revenue shall administer and supervise a program for the revaluation of all taxable property within the state at least every ~~5~~ *3* years. A comprehensive written reappraisal plan shall be promulgated by the department. The reappraisal plan adopted shall provide that all property in each county shall be revalued at least every ~~5~~ *3* years. The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners in each county.

~~(2) The new values determined during a revaluation cycle must be provided to the taxpayers at the end of the revaluation cycle but may not be placed on the tax rolls until 1 year following the completion of the revaluation cycle.~~

~~(3) A taxpayer shall appeal the new value in advance of its placement on the tax rolls by filing an appeal pursuant to 15-15-102 before the first Monday in June or 15 days after receiving notice of the new valuation amount, whichever is later, or be barred from appealing for untimeliness.~~

~~(4) For the taxable year beginning January 1, 1990, and for every taxable year thereafter, the department shall conduct a stratified sales assessment ratio study of all residential land and improvements, agricultural 1-acre homesites and improvements, and commercial land and improvements. The sales assessment ratio based on property sales finalized and recorded by no later than November 1 must be used to determine appraisals for the immediately succeeding tax year.~~

~~(5) The study required in subsection (4) must be based on:~~

~~(a) commonly accepted statistical standards and methodology;~~

~~(b) a statistically valid sample of sales, using data from realty transfer certificates filed for up to 3 taxable years prior to the year the study is made, taking into account the dates of the included sales in the statistical analysis; and~~

~~(c) the assessments and sales for areas of the state that are economically, demographically, and geographically similar in order to determine the sales assessment ratios for a specific area.~~

~~(6) For purposes of conducting the study required by subsection (4), the department shall partition the state into as many as 100 areas for residential property and as many as 20 areas for commercial property. The areas must contain statistically sufficient numbers of sales and be as economically and demographically homogeneous as reasonably practicable.~~

~~(7) The department shall use the following procedure to validate sales information:~~

~~(a) Department staff who did not participate in the determination of appraised values are required to review the sales transactions evidenced by a realty transfer certificate. The review must be conducted to determine whether each sale used in the study was a valid, arm's-length transaction. Only valid, arm's-length sales may be used in the sales assessment ratio study.~~

~~(b) The sales information entered in the computer-assisted appraisal system is considered confidential, as provided in 15-7-308. However, the department shall annually publish a report containing the results of all sales-assessment ratio studies done in each of the areas described in subsection (6). The report containing the results of the study must be made available to the public by request or by general disclosure.~~

~~(c) The department shall exclude from the sales assessment ratio study any parcels in which the improvements have been remodeled, reconstructed, or expanded between the time of the assessment and the time of the sales.~~

~~(d) The department shall exclude sales assessment ratios of less than 50% or greater than 200%.~~

~~(8) (a) The department shall have equalized property values throughout the state and may not make further adjustments to values under this section when the assessments for each stratum within each area identified in subsection (6) are rescaled to bring all ratios to common value 1 and when the sample size produces a standard error of less than 5%.~~

~~(b) Under the method described in subsection (8)(a), taxable property in each area is considered revalued for each tax year, based on the results of the sales assessment ratio study and the adjustments required by that study.~~

~~(c) Assessments in an area are considered equalized under subsection (8)(a) if the ratio for the area is within plus or minus 5% of common value 1.~~"

Section 9. Section 15-10-412, MCA, is amended to read:

"**15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status; *or*

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements~~;~~ ~~or~~.

~~(i) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.~~

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit; *or*

(f) conversion of the individual property from tax-exempt to taxable status~~; or~~.

~~(g) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.~~

(5) Property in classes four, twelve, and fourteen is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four, class twelve, or class fourteen property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

(h) revolving funds to support any categories specified in this subsection (8);

(i) levies for economic development authorized pursuant to 90-5-112(4); and

(j) elementary and high school districts.

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(12) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402."

Section 10. **Repealer.** Sections 15-7-132 and 15-7-133, MCA, are repealed.

Section 11. **Sales assessment advisory board — duties.** (1) The board of county commissioners of each county shall appoint a seven-member sales assessment advisory board. The members of the board must be residents of the county in which they serve. The members of the board must be appointed as follows:

(a) two members who are certified appraisers;

(b) two members who are realtors; and

(c) three members who are from the general public.

(2) The term of membership is 3 years.

(3) The advisory board shall meet from time to time to review the department of revenue's determination of area designations, stratum, and percentage adjustments within the county and to recommend to the department changes the board considers necessary regarding the determination of area designations.

Section 12. **Coordination instruction.** If House Bill No. 340 is passed and approved and if it includes a section that amends 15-6-143, then the amendments made by [this act] to 15-6-143 are void.

Section 13. **Applicability dates.** (1) [Section 2] applies retroactively, within the meaning of 1-2-109, to property tax year 1991 and is applicable to taxable years 1992 and 1993.

(2) [Sections 6 through 9] apply to all taxable years beginning after December 31, 1993.

(3) [Section 5] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Section 14. **Termination.** [Sections 1 and 2] terminate December 31, 1993.

Section 15. **Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 6 through 10] are effective July 1, 1993.

Approved April 27, 1991.

CHAPTER NO. 681

[SB 440]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO BOARDS APPOINTED BY COUNTY COMMISSIONERS; AMENDING SECTIONS 7-16-2203, 7-16-2302, 7-16-2303, 7-21-3401, 7-22-2103, 7-22-2215, AND 7-22-2411, MCA; AND REPEALING SECTIONS 7-16-2304, 7-21-3402, 7-22-2104, AND 7-22-2412, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-16-2203, MCA, is amended to read:

"**7-16-2203. Board of trustees — appointment and term.** (1) The board of county commissioners of each county owning or acquiring a museum, facility for the arts, or collection of exhibits may, at the first regular meeting of the board after acquiring a museum, facility, or collection, appoint a board of trustees for the administration of the county museum fund as provided in this part.

(2) The board ~~consists of three responsible persons, electors and residents of the county. The initial terms of members must be staggered, with the term of one of the members expiring on June 30 of the next year, the term of the second member expiring on June 30 of the second year, and the term of the third member expiring on June 30 of the third year. The board shall, at its regular meeting in July of each year, appoint a member to the~~

~~board of trustees to take the place of the member whose term expired on June 30 immediately preceding~~ *of county commissioners shall, at a public meeting, pass a resolution establishing the number of members on the board of trustees and the terms of the appointments. The board of trustees must consist of at least three members and no more than nine members, and the members of the board must be residents of the county.*"

Section 2. Section 7-16-2302, MCA, is amended to read:

"**7-16-2302. Composition of park board — *appointment and term.*** *(1)* The board of park commissioners ~~shall be~~ *is* composed of the county commissioners and ~~six other persons appointed by~~ *as many other persons as* the county commissioners *determine are necessary.*

(2) The board of county commissioners shall, at a public meeting, pass a resolution establishing the number of members on the park board and the terms of the appointments. The park board must consist of at least three members and no more than nine members, and the members of the board must be residents of the county."

Section 3. Section 7-16-2303, MCA, is amended to read:

"**7-16-2303. Qualifications of park commissioners.** The ~~six~~ persons ~~to be so~~ appointed ~~shall~~ *must* have the same qualifications for the office of park commissioner as are required by 7-4-2201, for the office of county commissioner."

Section 4. Section 7-21-3401, MCA, is amended to read:

"**7-21-3401. Authorization to create county fair commission — *appointment and term.*** (1) The board of county commissioners may, at any regular meeting, appoint ~~from the electors of the county five responsible persons to constitute~~ a county fair commission~~, three of the members to be appointed for a term of 2 years and two for a term of 1 year and until their successors are appointed~~.

(2) ~~Each year thereafter, the~~ *The* board of county commissioners shall ~~appoint members of the county fair commission to succeed the members whose terms then expire~~, *at a public meeting, pass a resolution establishing the number of members of the fair commission and the terms of the appointments. The fair commission must consist of at least three members and no more than nine members, and the members of the board must be residents of the county.*"

Section 5. Section 7-22-2103, MCA, is amended to read:

"**7-22-2103. District weed board — *appointment and term.*** (1) The commissioners shall appoint a district weed board ~~consisting of three or five members, and:~~

~~(a) if a three-member board, two members shall be rural agricultural landowners within the district and one shall be a member-at-large; or~~

~~(b) if a five-member board, three members shall be rural agricultural landowners within the district, one member shall be a resident of a city or town within the district, and one shall be a member-at-large.~~

(2) The commissioners shall, at a public meeting, pass a resolution establishing the number of members of the district weed board and the terms of the appointments. The board must consist of at least three members and no more than nine members, and the members of the board must be residents of the district. A majority of the board members must be rural agricultural land owners.

~~(2)~~*(3)* The county extension agent in each county and other interested individuals may be appointed to serve as nonvoting members of that district's weed board.

~~(3)~~*(4)* The board members are public officers.

~~(4)~~*(5)* The board may call upon the county attorney for legal advice and services as it may require."

Section 6. Section 7-22-2215, MCA, is amended to read:

"**7-22-2215. Rodent control board.** (1) A governing body creating a rodent control district shall appoint a rodent control board ~~composed of not less than three or more than five members~~. The county extension agent is an ex officio member of the board. Each member of the board must be an elector and reside within the district.

(2) ~~Board members serve 3-year staggered terms. Of the members first appointed to a board, at least one shall serve a 1-year term and at least one shall serve a 2-year term~~ *The governing body shall, at a public meeting, pass a resolution establishing the number of members on the board and the terms of the appointments. The board must consist of at least three members and no more than nine members, and the members of the board must be residents of the district.*

(3) Each member of the board is entitled to:

(a) a mileage allowance as provided in 2-18-503 for the distance actually and necessarily traveled to perform official duties; and

(b) per diem expenses established by the governing body.

(4) The district weed board appointed under 7-22-2103 may be appointed by the governing body to also serve as the rodent control board, in which case the qualifications, terms, compensation, mileage, and expenses of the rodent control board are the same as those of the district weed board and subsections (1) through (3) do not apply."

Section 7. Section 7-22-2411, MCA, is amended to read:

"**7-22-2411. District to be governed by appointed mosquito control board — *appointment and term*.** (1) Upon the creation of any mosquito control district, the commissioners shall appoint a mosquito control board ~~composed of not less than three or more than five members~~.

(2) Each member of the mosquito control board shall be an elector within the boundaries of the district.

(3) The commissioners shall, at a public meeting, pass a resolution establishing the number of members of the board and the terms of the appointments. The board must consist of at least three members and no more than nine members, and the members of the board must be residents of the district.

~~(3)~~*(4)* The board is a body corporate and shall act as such, and the members are public officers.

~~(4)~~*(5)* The health officer having jurisdiction in the proposed district, the sanitarian or a member of his staff, and the county extension agent, if the county has any or all such officers, are ex officio members of the board without vote."

Section 8. **Repealer.** Sections 7-16-2304, 7-21-3402, 7-22-2104, and 7-22-2412, MCA, are repealed.

Approved April 27, 1991.

CHAPTER NO. 682

[HB 24]

AN ACT ESTABLISHING THE BEST INTERESTS OF THE CHILD AS THE STANDARD IN ADOPTION PROCEEDINGS; ALLOWING THE DEPARTMENT OF FAMILY SERVICES AND LICENSED CHILD-PLACING AGENCIES TO CONSIDER AGE, MARITAL STATUS, AND RELIGION IN ADOPTION PROCEEDINGS; AMENDING THE LAWS RELATING TO DISCRIMINATION TO ALLOW THE CONSIDERATION IN ADOPTION PROCEEDINGS OF INFORMATION CONCERNING FACTORS THAT MIGHT OTHERWISE BE PROHIBITED; AMENDING SECTIONS 49-1-102, 49-2-308, 49-3-204, AND 49-3-205, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Adoption policy — best interest of child standard — factors to be considered.** (1) It is the policy of the state of Montana to ensure that the best interests of the child are met by adoption proceedings.

(2) The primary purpose of adoption is to help a child become a permanent member of a nurturing family that can give him the care, protection, and opportunities essential for his healthy personal growth and development.

(3) The well-being of the adopted child is the main objective in the placement of children for adoption. The needs of the child must be the primary focus of adoption proceedings, with full recognition of the interdependent needs and interests of birth parents and adoptive parents.

(4) All relevant factors must be considered in determining the best interests of the child in an adoption proceeding. Factors relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child, and familial stability must be considered. In determining the best interests of the child, the following factors with regard to a prospective adoptive parent may be considered:

(a) age, as it relates to health, earning capacity, provisions for the support of a child, or other relevant circumstance;

(b) marital status, as it relates to the ability to serve as a parent in particularized circumstances; and

(c) religion, as it relates to the ability to provide the child with an opportunity for religious or spiritual and ethical development and as it relates to the express preference of a birth parent to have a child placed with or the express preference of a child to be placed with adoptive parents of a particular religious faith or denomination.

(5) For purposes of ensuring that the best interests of the child are met, the department and licensed child-placing agencies are authorized to gather and use, in an appropriate, nonarbitrary manner, information concerning the age, marital status, and religious beliefs of prospective adoptive parents. The authority granted by this subsection includes the authority to receive and to consider, consistent with the best interests of the child, the preferences of birth parents relating to the age, marital status, or religious beliefs of adoptive parents. Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

Section 2. Section 49-1-102, MCA, is amended to read:

"**49-1-102. Freedom from discrimination.** *(1)* The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental handicap, age, or national origin is recognized as and declared to be a civil right. This right ~~shall~~ *must* include but not be limited to:

~~(1)~~*(a)* the right to obtain and hold employment without discrimination; and

~~(2)~~*(b)* the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1). Consideration of religious factors by a licensed child-plac-

ing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section."

Section 3. Section 49-2-308, MCA, is amended to read:

"49-2-308. **Discrimination by the state.** *(1)* It is an unlawful discriminatory practice for the state or any of its political subdivisions:

~~(1)~~*(a)* to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin, unless based on reasonable grounds;

~~(2)~~*(b)* to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin or that the patronage of a person of a particular race, creed, religion, sex, marital status, color, age, or national origin or possessing a physical or mental handicap is unwelcome or not desired or solicited, unless based on reasonable grounds;

~~(3)~~*(c)* to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policymaking positions on the immediate staff of an elected officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1)."

Section 4. Section 49-3-204, MCA, is amended to read:

"49-3-204. **Licensing.** (1) A state or local governmental agency may not grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Each state or local governmental agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter. *This subsection does not prevent the department of family services from licensing a child-placing agency that gives nonarbitrary consideration in adoption proceedings to relevant information concerning the factors listed in this subsection. Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.*

(2) The state may not issue or renew a license under Title 16, chapter 4, to an applicant or licensee that excludes from its membership or from its goods, services, facilities, privileges, or advantages any individual on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization."

Section 5. Section 49-3-205, MCA, is amended to read:

"**49-3-205. Governmental services.** (1) All services of every state or local governmental agency must be performed without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) No state or local facility may be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan which has the effect of sanctioning discriminatory practices.

(3) Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.

(4) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in this section."

Section 6. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 40, chapter 8, part 1, and the provisions of Title 40, chapter 8, part 1, apply to [section 1].

Section 7. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. **Effective date.** [This act] is effective July 1, 1991.

Approved April 27, 1991.

CHAPTER NO. 683

[HB 25]

AN ACT AMENDING THE LAWS RELATING TO ADOPTIONS TO REQUIRE A 72-HOUR PERIOD AFTER BIRTH BEFORE A RELINQUISHMENT OF PARENTAL RIGHTS MAY BE EXECUTED; AMEND-

ING SECTIONS 40-6-125, 40-6-135, AND 40-8-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-6-125, MCA, is amended to read:

"**40-6-125. Children born out of wedlock — relinquishment — consent.** (1) If the mother of a child born out of wedlock proposes to relinquish the child for adoption and the relinquishment or consent of the birth father cannot be obtained, the child may not be placed for adoption until the parental rights of the father are terminated by the court as provided in this part, by the court pursuant to Title 41, chapter 3, or by a court of competent jurisdiction in another state or country.

(2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may execute a relinquishment, *in accordance with 40-6-135(2) through (5),* terminating her rights to the child. If the mother relinquishes the child, the agency of the state of Montana ~~or the~~, *a* licensed adoption agency, *or the person* to whom the child is relinquished may file a petition under this part or a petition of dependency or neglect pursuant to Title 41, chapter 3. Pending disposition of the petition, the court may enter an order authorizing temporary care of the child.

(3) At the request of the mother, her execution of a relinquishment ~~shall~~ *must* be delayed until after the court has determined the identity of the father and has awarded custody of the child to the father or terminated his rights under this part."

Section 2. Section 40-6-135, MCA, is amended to read:

"**40-6-135. Relinquishment of parental rights — form, execution, and revocation.** (1) ~~Any~~ *A* parent or guardian who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by executing a relinquishment by which all parental rights to the child are voluntarily relinquished to the department of family services ~~or~~, a licensed adoption agency, *or the prospective adoptive parents*. A parent may not execute a relinquishment to the department or a licensed adoption agency unless the department or the agency has agreed to accept custody of the child until the child is adopted.

(2) A relinquishment may be executed at any time, except that a birth mother may not execute a relinquishment before the child is 72 hours old.

~~(2)~~*(3)* Except as otherwise provided in this section, a relinquishment ~~shall~~ *must* be by a separate instrument executed before a notary public.

~~(3)~~*(4)* If the person from whom a relinquishment is required is a member of any of the armed services or is in prison, the relinquishment may be executed and acknowledged before any person authorized by law to administer oaths.

~~(4)~~*(5)* If the relinquishment is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the relinquishment was executed in accordance with the laws of that state or country and may not proceed unless it finds that the relinquishment was so executed.

~~(5)~~*(6)* Upon the filing of a properly and voluntarily executed relinquishment of a child by a parent or guardian, the court shall immediately issue an order terminating the rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated and if the department of family services or a licensed adoption agency has agreed to accept custody of the child until the child is adopted, the court shall issue an order committing the child to the department or to the licensed adoption agency to which the relinquishment was given.

~~(6)~~*(7)* Entry of an order terminating the rights of both parents pursuant to subsection ~~(5)~~ *(6)* terminates the jurisdiction of the district court over the child in any divorce or separate maintenance action.

~~(7)~~*(8)* Upon petition of a person who executed a relinquishment and of the department of family services or the licensed adoption agency to which the child was relinquished, the court with which the relinquishment was filed may grant a hearing to consider whether the relinquishment should be revoked. A relinquishment may not be revoked if the child has been placed for adoption. A verbatim record of testimony related to the petition ~~shall~~ *must* be made."

Section 3. Section 40-8-109, MCA, is amended to read:

"**40-8-109. Placement for adoption by parents.** (1) ~~No~~ *A* parent may *not* make a placement of a child for adoption with an individual who is not a stepparent or a member of the child's extended family unless the parent files with the district court for the county in which the prospective adoptive parent or the parent making the placement resides:

(a) a notice of parental placement; and

(b) a relinquishment of parental rights to the prospective adoptive parents executed voluntarily and in accordance with 40-6-135(2) through ~~(4)~~ *(5)*.

(2) The notice of parental placement and the relinquishment ~~shall~~ *must* be filed prior to a parent's placement of the child with an individual who intends to adopt the child. The notice of parental placement ~~shall~~ *must* contain the following information:

(a) the name and address of each birth parent, if known, and if unknown, the steps taken to ascertain the whereabouts of the parent or parents;

(b) the name and address of each prospective adoptive parent;

(c) the name and address or expected date and place of birth of the child; and

(d) the name and address of counsel, guardian ad litem, or other representative, if any, for each of the parties in (a) through (c) of subsection (2).

(3) Upon receipt of a notice of parental placement and a relinquishment, the court shall require that the department examine the child and conduct interviews with the birth parents and prospective adoptive parents and report to the court within 30 days but not earlier than 5 days after the birth of the child. The report must state whether the following requirements for placement have been met:

(a) that the decision to place was voluntarily made by the birth parents;

(b) that the department has no temporary authority to investigate or provide protective services to the family under 41-3-402;

(c) that the birth parents or their representatives have provided the court with the report required by 40-8-136;

(d) that the prospective adoptive parents have been provided a medical and social history of the child and birth parents; and

(e) that the proposed placement is in the child's best interest.

(4) The department may contract with licensed social workers and licensed child-placing agencies to conduct the investigations and prepare the report to the court ordered pursuant to subsection (3).

(5) The department may charge the prospective adoptive parents a fee, commensurate with costs, for the investigation and report.

(6) Within 45 days of filing of the notice of parental placement and the relinquishment, the court shall schedule a hearing to consider the proposed placement.

(7) (a) At least 5 days' notice of the time and place of the hearing must be given to the birth parents, the prospective adoptive parents, any named guardian ad litem, and the department.

(b) The hearing ~~shall be~~ *is* closed to all persons except those persons entitled to notice and their representatives or counsel.

(8) If the court finds that all requirements for placement have been met, the court may issue an order or schedule a hearing for the purpose of terminating parental rights and granting temporary custody to the prospective adoptive parents. The prospective adoptive parents ~~must~~ *shall* file their petition to adopt within 30 days of the order.

(9) If the court finds that all requirements for the adoptive placement have not been met, the court may issue any order appropriate to protect the child."

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved April 27, 1991.

CHAPTER NO. 684

[HB 26]

AN ACT RELATING TO PRIVATE, NONAGENCY ADOPTIONS; AUTHORIZING COUNSELING FOR THE BIRTH MOTHER IN AN ADOPTION BY A NONRELATIVE; REQUIRING A PREPLACEMENT INVESTIGATION OR HOME STUDY OF A NONRELATIVE, PROSPECTIVE ADOPTIVE PARENT AND HOME; DELETING THE REQUIREMENT THAT A PARENT RELINQUISH PARENTAL RIGHTS PRIOR TO PLACEMENT OF A CHILD IN A NONRELATIVE, PROSPECTIVE ADOPTIVE HOME; INCREASING THE MAXIMUM PENALTY FOR PAYING OR CHARGING EXCESSIVE ADOPTION PROCESS FEES FROM $1,000 TO $10,000; REQUIRING NONRELATIVE ADOPTIVE PARENTS AND THEIR REPRESENTATIVES TO FILE A REPORT OF AGREEMENTS AND DISBURSEMENTS RELATED TO THE ADOPTION PROCESS; AMENDING SECTIONS 40-8-103, 40-8-109, 40-8-135, AND 40-8-136, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-8-109, MCA, is amended to read:

"**40-8-109. Placement for adoption by ~~parents~~ *parent — adoption by nonrelative — requirements before relinquishment of parental rights.*** (1) ~~No~~ *A* parent ~~may make a placement of~~ *who proposes to place* a child for adoption with an individual who is not ~~a~~ *the child's* stepparent or a member of the child's extended family ~~unless the parent files~~ *shall file* with the district court for the county in which the prospective adoptive parent or the parent making the placement resides:

(a) a notice of parental placement; ~~and~~

(b) a relinquishment of parental rights to the prospective adoptive parents, executed voluntarily and in accordance with ~~40-6-135(2) through (4)~~ *subsection (8); and*

(c) the report of agreements and disbursements required under 40-8-136.

(2) *(a)* ~~The notice of parental placement and the relinquishment shall be filed prior to a parent's placement of the child with an individual who intends to adopt the child.~~ The notice of parental placement ~~shall~~ *must be signed by the parent making the placement and must* contain the following information:

~~(a)~~*(i)* the name and address of each birth parent, if known, and if unknown, the steps taken to ascertain the whereabouts of the parent or parents;

~~(b)~~*(ii)* the name and address of each prospective adoptive parent;

~~(c)~~*(iii)* the name and address or expected date and place of birth of the child; and

~~(d)~~*(iv)* the name and address of counsel, guardian ad litem, or other representative, if any, for each of the parties *listed* in ~~(a) through (c) of subsection (2)~~ *subsections (2)(a)(i) through (2)(a)(iii).*

(b) The district court shall provide a copy of the notice to the parent making the placement.

(3) Upon receipt of a notice of parental placement ~~and a relinquishment~~, the court shall require ~~that~~ the department ~~examine the child and conduct interviews with the birth parents and prospective adoptive parents~~ *to conduct an investigation* and report to the court within 30 days but not earlier than ~~5 days~~ *72 hours* after the birth of the child. The report must state *whether counseling for the birth parents is required and* whether the following requirements for placement have been met:

(a) that the decision to place was voluntarily made by the birth parents;

(b) that the department has no temporary authority to investigate or provide protective services to the family under 41-3-402;

(c) that the birth parents ~~or~~, *prospective adoptive parents, and* their representatives have provided the court with the report required by 40-8-136;

(d) that the prospective adoptive parents have been provided a medical and social history of the child and birth parents; ~~and~~

(e) that the requirements of [sections 2 and 3] have been met; and

~~(e)~~*(f)* that the proposed placement is in the child's best interest.

(4) The department may contract with licensed social workers and licensed child-placing agencies to conduct the investigations and prepare the report to the court ordered pursuant to subsection (3).

(5) The department may charge the prospective adoptive parents a fee, commensurate with costs, for the investigation and report.

(6) Within 45 days of filing of the notice of parental placement ~~and the relinquishment~~ *and the report required by 40-8-136*, the court shall schedule a hearing to consider the proposed *adoptive* placement.

(7) (a) At least 5 days' notice of the time and place of the hearing must be given to the birth parents, the prospective adoptive parents, any named guardian ad litem, and the department.

(b) The hearing ~~shall be~~ *is* closed to all persons except those persons entitled to notice and their representatives or counsel.

(8) A parent may not execute a relinquishment of parental rights to an individual who is not the child's stepparent or a member of the child's extended family until the following criteria have been met:

(a) not less than 72 hours have elapsed since the birth of the child, if the person relinquishing parental rights is the child's birth mother;

(b) the investigation or home study required by [section 2] has been performed; and

(c) the parent has received counseling in accordance with [section 3].

~~(8)~~*(9)* If the court finds that all requirements for *adoptive* placement have been met, the court may issue an order or schedule a hearing for the purpose of terminating parental rights and granting temporary custody to the prospective adoptive parents *or it may issue a final decree if a petition for adoption has been filed under 40-8-121.* The prospective adoptive parents ~~must~~ *shall* file their petition to adopt within 30 days of the order.

~~(9)~~*(10)* If the court finds that all requirements for the adoptive placement have not been met, the court may issue any order appropriate to protect the child, *including granting temporary custody to the prospective adoptive parents or issuing a final decree if a petition for adoption has been filed under 40-8-121.*

(11) The court shall send a copy of the final determination made by the court under this section to the central office of the department."

Section 2. **Placement for adoption by parent — adoption by nonrelative — preplacement investigation or home study required of prospective adoptive parent.** (1) A prospective adoptive parent who wishes to adopt a child under 40-8-109 shall initiate the nonagency adoption process by requesting an investigation or home study by the department or a licensed child-placing agency. During the investigation or home study process, the department or agency shall provide the prospective adoptive parent information regarding the nonagency adoption process and a copy of [section 3] and this section.

(2) The prospective adoptive parent and the home of the prospective adoptive parent must be studied and evaluated according to the department's or child-placing agency's standards for placement of a child.

(3) The department or child-placing agency that conducts the investigation or home study shall prepare a written report containing the results of the investigation or home study. The report must be attached to and made a part of the report required by 40-8-109(3).

Section 3. **Placement for adoption by parent — adoption by nonrelative — birth mother counseling required.** (1) In an adoption subject to 40-8-109, the department shall determine whether counseling of the birth parents is required.

(2) If required, counseling must be done by a staff person from the department or a licensed child-placing agency designated to provide this type of counseling.

(3) Counseling must consist of:

(a) an explanation and consideration of adoption procedures that are available to birth parents along with the alternative of nonrelinquishment to assist them in determining the best course of action;

(b) detailed information regarding the nonagency adoption process, including reviewing and providing a copy of [section 2] and this section; and

(c) a thorough explanation and consideration of the legal and personal impact of terminating parental rights and of adoption.

(4) The counselor shall prepare a written report containing a description of the topics covered and the results of the counseling, including his opinion indicating whether or not the birth parent understood all issues and was capable of informed consent. This report must be completed and filed with the court no later than the date the relinquishment of parental rights is executed.

(5) The counselor's report must be attached to and made a part of the report required by 40-8-109(3).

Section 4. **Placement for adoption by parent — adoption by relative — requirements.** A parent may relinquish parental rights for the purposes of adoption of a child to the child's stepparent or a member of the child's extended family. The relinquishment must be executed voluntarily and in accordance with 40-6-135(2) through (4). The relinquishment may be executed at any time, except that a birth mother may not execute a relinquishment before the child is 72 hours old.

Section 5. Section 40-8-135, MCA, is amended to read:

"**40-8-135.** ~~**Adoption**~~ ***Placement for adoption by parent — adoption by nonrelative*** **— fees — violation — penalty.** (1) Reasonable adoption fees may be ~~charged by the child's birth parent, birth parents, or guardian~~ *paid by the adoptive parent* for the actual cost of services documented in the report required by 40-8-136 and approved by the court. The cost of services must relate to:

(a) a petition for adoption;

(b) placement of a child;

(c) medical care or services;

(d) prenatal care;

(e) foster care; ~~or~~

(f) investigation or home study;

(g) counseling; or

~~(f)~~*(h)* other reasonable costs.

(2) A person who knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person anything of value greater

than that allowed under subsection (1) commits the offense of *paying or* charging excessive adoption process fees.

(3) A person convicted of the offense of *paying or* charging excessive adoption process fees may be fined an amount not to exceed ~~$1,000~~ *$10,000.*"

Section 6. Section 40-8-136, MCA, is amended to read:

"**40-8-136. ~~Report~~ *Placement for adoption by parent — adoption by nonrelative — report* of agreements and disbursements.** (1) Prior to a hearing under 40-8-109, the birth parents ~~or~~*, prospective adoptive parents, and* their representatives shall file with the court a report of agreements and disbursements, and they shall serve *a copy of* the report on the *central office of the* department.

(2) The report must contain:

(a) all oral and written agreements between the parties that relate to the future conduct of a party with respect to the child. If an oral agreement is reported, the substance of the agreement must be contained in the report and a copy of the report must be served on each party to the oral agreement. Copies of all written agreements must be attached to the report.

(b) a full accounting of all disbursements of anything of value made or agreed to be made by or on behalf of the identified adoptive parents in connection with proceedings under this chapter. This accounting must include any expenses related to:

(i) the birth of the child;

(ii) placement of the child with the identified adoptive parents, *including an investigation or home study*;

(iii) *counseling or* medical or hospital care received by the birth parent or child prior to or after the child's birth; and

(iv) services relating to the petition for adoption or the placement of the child that were received by or on behalf of a birth parent or any other person.

(c) a statement by each person furnishing information contained in the report, attesting to the correctness and truthfulness of the information furnished by that person."

Section 7. Section 40-8-103, MCA, is amended to read:

"**40-8-103. Definitions.** As used in this chapter, unless the context otherwise requires the following definitions apply:

(1) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(2) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(3) "Agency" means a public or voluntary agency licensed by any jurisdiction within the United States and expressly empowered to place children as a preliminary to a possible adoption.

(4) "Birth parent" means the mother or father of genetic origin of a child but does not include a putative father of a child.

(5) "Child" means any person under 18 years of age.

(6) "Court" means a Montana district court or a tribal court of any Montana Indian reservation.

(7) "Department" means the department of family services, as established and provided for in 2-15-2401.

(8) "Extended family member" means an adult who is the child's grandparent, aunt or uncle, *or* brother or sister~~, niece or nephew, or first cousin~~.

(9) "Home study" means the process of assisting the prospective adoptive parent or family to assess its own readiness to adopt and a determination by the department or a licensed child-placing agency of the compliance of the parent or family and its residence with applicable standards.

~~(9)~~*(10)* "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

~~(10)~~*(11)* "Placement for adoption" means the transfer of physical custody of a child with respect to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt the child.

~~(11)~~*(12)* "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual pursuant to 40-6-135, ~~or~~ 40-8-109, *or [section 4]*, whichever is applicable."

Section 8. **Codification instruction.** [Sections 2 through 4] are intended to be codified as an integral part of Title 40, chapter 8, part 1, and the provisions of Title 40, chapter 8, part 1, apply to [sections 2 through 4].

Section 9. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Effective date.** [This act] is effective July 1, 1991.

Approved April 27, 1991.

CHAPTER NO. 685

[HB 244]

AN ACT TO CLARIFY THE PROCEDURE FOR POLLING THE LEGISLATURE FOLLOWING VETO OF A BILL WHEN THE LEGISLATURE IS NOT IN SESSION; TO CLARIFY THE USE OF FACSIMILE SIGNATURES; AMENDING SECTIONS 5-2-105 AND 5-4-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-105, MCA, is amended to read:

"**5-2-105. Facsimile signatures authorized.** (1) As used in this section, "facsimile signature" means a reproduction of the manual signature of a legislator by engraving, imprinting, stamping, *facsimile transmission,* or other means.

(2) On state documents requiring a signature, a legislator may use a facsimile signature in lieu of his manual signature. Before using a facsimile signature, the legislator shall file a copy of ~~both~~ his manual ~~and~~ *or* facsimile ~~signatures~~ *signature,* certified by him under oath, with the presiding officer of the house of which he is a member."

Section 2. Section 5-4-306, MCA, is amended to read:

"**5-4-306. Return when legislature not in session.** (1) If, on the day the governor desires to return a bill without his approval and with his objections ~~thereto~~ *to the bill* to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his message to the presiding officer, secretary, clerk, or any member of such house. ~~Such~~ *The* delivery is as effectual as though returned in open session if the governor, on the first day the house is again in session, by message, notifies it of ~~such~~ *the* delivery and of the time when and the person to whom ~~such~~ *the* delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons for the veto to the secretary of state. ~~The~~ *If the bill was not approved by two-thirds of the members voting on the final vote on the bill, the* secretary of state shall within 5 *working* days *of receipt of the bill and veto message* mail a copy of the *title of the* bill and the veto message to each member of the legislature. If the bill was approved by two-thirds of the members ~~of each house present,~~ *voting on the final vote on the bill,* the secretary of state shall poll the members of the legislature. The secretary of state shall *within 5 working days of receipt of the bill and veto message send by certified mail to each legislator, at an address provided by the legislator,* ~~include with~~ *a copy of* the bill and the veto message, *instructions for casting a vote, and notice of* the date by which each legislator shall return his vote. The date for return must be within 30 days after the date on which the bill, ~~and~~ veto message, *and voting instructions* are sent. *A legislator may cast and return a vote by delivering it in person, mailing it,*

or sending a facsimile transmission of it to the office of the secretary of state. The secretary of state shall tally the votes within 1 working day after the date for return of the votes. If two-thirds or more of the members of each house vote to override the veto, the bill shall become law.

(3) The legislature may reconvene to reconsider any bill vetoed by the governor when the legislature is not in session by using the statutory procedure provided for convening in special session."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 27, 1991.

CHAPTER NO. 686

[HB 306]

AN ACT AMENDING WHEN A LOCAL AUTHORITY MAY ALTER SPEED LIMITS IN AREAS NEAR SCHOOLS OR DESIGNATED CROSSWALKS NEAR SCHOOLS; AMENDING SECTION 61-8-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-310, MCA, is amended to read:

"**61-8-310. When local authorities may and shall alter limits.** (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit thereon which:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 55 miles per hour during the nighttime; ~~or~~

(c) decreases the limit outside an urban district, but not to less than 15 miles per hour~~.~~*; or*

(d) decreases the limit in an area near a school or a designated crosswalk, as crosswalk is defined in 61-1-209, near a school to not less than 80%, rounded down to the nearest whole number evenly divisible by 5 but not less than 25 miles an hour, of the speed limit that would be set on the basis of an engineering and traffic investigation.

(2) A board of county commissioners may set limits as provided in subsection (1)(c) without an engineering and traffic investigation on a county road, as defined in 60-1-103.

(3) A local authority in its jurisdiction ~~shall~~ *may* determine ~~by an engineering and traffic investigation~~ the proper speed for all arterial streets and shall set a reasonable and safe limit thereon which may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(5) ~~The~~ *Except as provided in subsection (1)(d), the* commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions thereof in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 27, 1991.

CHAPTER NO. 687

[HB 451]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SEXUAL CRIMES; DEFINING FORCE FOR PURPOSES OF SEXUAL INTERCOURSE WITHOUT CONSENT; REMOVING SPOUSAL EXEMPTIONS; INCREASING PENALTIES; CLARIFYING THE BASIS FOR A PROSECUTION FOR THE CRIME OF DEVIATE SEXUAL CONDUCT; AMENDING SECTIONS 45-5-501, 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, AND 45-5-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-501, MCA, is amended to read:

"**45-5-501. Definition.** *(1)* As used in 45-5-503 ~~and 45-5-505~~, the term "without consent" means:

~~(1)~~*(a)* the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone; or

~~(2)~~*(b)* the victim is incapable of consent because he is:

~~(a)~~*(i)* mentally defective or incapacitated;

~~(b)~~*(ii)* physically helpless; or

~~(c)~~*(iii)* less than 16 years old.

(2) As used in subsection (1), "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat."

Section 2. Section 45-5-502, MCA, is amended to read:

"**45-5-502. Sexual assault.** (1) A person who knowingly subjects another ~~not his spouse~~ *person* to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, he shall be imprisoned in the state prison for any term not to exceed 20 years and may be fined not more than $50,000.

(4) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim."

Section 3. Section 45-5-503, MCA, is amended to read:

"**45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with ~~a person of the opposite sex~~ *another person* commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of his spouse as provided in 45-5-501~~(2)(c)~~ *(1)(b)(iii)*.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(b) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Section 4. Section 45-5-504, MCA, is amended to read:

"**45-5-504. Indecent exposure.** (1) A person who, for the purpose of arousing or gratifying sexual desire of himself or of any person ~~other than his spouse~~, exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) A person convicted of the offense of indecent exposure shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 5. Section 45-5-507, MCA, is amended to read:

"**45-5-507. Incest.** (1) A person commits the offense of incest if he knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact as defined in 45-2-101 with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to herein include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) A person convicted of incest shall be imprisoned in the state prison for any term not to exceed ~~10~~ *20* years or be fined an amount not to exceed $50,000, or both.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, he shall be imprisoned in the state prison for any term not to exceed 20 years and may be fined not more than $50,000.

(5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Section 6. Section 45-5-511, MCA, is amended to read:

"**45-5-511. Provisions generally applicable to sexual crimes.** (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

~~(2) Whenever the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as husband and wife regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart whether under a decree of judicial separation or otherwise. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the exclusion, to perform.~~

~~(3) In a prosecution under the preceding sections on sexual crimes (45-5-502 through 45-5-504) in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated, it is a defense to such prosecution that the victim was a voluntary social companion of the defendant and the intoxicating substance was voluntarily and knowingly taken.~~

~~(4)~~*(2)* No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this part except~~:~~

~~(a)~~ evidence of the victim's past sexual conduct with the offender~~;~~

~~(b)~~ *or* evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.

~~(5)~~*(3)* If the defendant proposes for any purpose to offer evidence described in subsection ~~(4)(a) or (4)(b)~~*(2)*, the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection ~~(4)~~*(2)*.

~~(6)~~*(4)* Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

~~(7)~~*(5)* Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent."

Section 7. Section 45-5-505, MCA, is amended to read:

"45-5-505. **Deviate sexual conduct.** (1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) A person convicted of deviate sexual conduct without consent shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

(4) The fact that a person seeks testing or receives treatment for the HIV-related virus or another sexually transmitted disease may not be used as a basis for a prosecution under this section and is not admissible in evidence in a prosecution under this section."

Section 8. **Coordination.** The amendment in section 1, Chapter 218, Laws of 1991, inserting subsection (2)(b) of 45-5-501 is void.

Section 9. **Effective date.** [This act] is effective on passage and approval.

Approved April 27, 1991.

CHAPTER NO. 688

[HB 471]

AN ACT TO GENERALLY REVISE THE LAW RELATING TO TRUSTS TO CLARIFY THAT A TRUST INCLUDES A TRUST CREATED IN CONNECTION WITH CERTAIN BONDS; CLARIFYING THAT THE DESIGNATION OF A TRUST IN A CONVEYANCE VESTS THE ESTATE IN THE TRUSTEE; AMENDING SECTIONS 72-33-108 AND 72-36-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-33-108, MCA, is amended to read:

"**72-33-108. Definitions.** As used in chapters 33 through 36, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and, as it relates to a charitable trust, includes any person entitled to enforce the trust.

(2) "Person" means an individual, a corporation, an organization, or other legal entity.

(3) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(4) "Trust" when not qualified by the word "resulting" or "constructive", includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust *and, unless otherwise provided in the trust instrument, a trust established in connection with bonds issued under Title 90, chapters 2 and 4 through 7.* The term does not include conservatorships, personal representatives, custodial arrangements pursuant to chapter 26

of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another.

(5) "Trustee" means the person holding property in trust. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(6) "Trustor" means the person who creates a trust.

(7) "Trust company" means an entity which has qualified to engage in and conduct a trust business in this state.

(8) "Trust property" means the property held in trust."

Section 2. Section 72-36-206, MCA, is amended to read:

"**72-36-206. Effects on real property transactions.** (1) This section relates only to conveyances of real property to or from a trust, and supplements, but does not modify other substantive provisions of chapters 33 through 36 relating to the creation or validity of trusts. This section does not affect conveyances recorded prior to October 1, 1989.

(2) Except as otherwise provided in chapters 33 through 36, a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in chapters 33 through 36.

(3) An instrument creating or amending a trust need not be recorded, but may be if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance (nor in a separately recorded instrument recorded in the same county as the conveyance and describing the same property as described in the conveyance), the conveyance shall be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without actual knowledge and who acted for a valuable consideration, despite any valid trust which may exist.

(5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real property to the trustee or in a separate trust instrument (or portion thereof, or abstract thereof) recorded in the same county, there are no limitations upon the trustee's power or authority to convey or encumber the real property in favor of third persons who were without actual knowledge and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a conveyance to a trustee cannot limit the trustee's power or authority to convey or encumber unless the limitations are set forth in the trust instrument (or portion

thereof or abstract thereof) which is also recorded in the county where the real property is located. An amendment to a recorded trust instrument may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same place.

(6) A subsequent conveyance from a person designated in the original conveyance as trustee (or from his successor trustee) conveys the whole estate vested in the trustee, except as limited by the terms of the conveyance. The identity of any successor trustee may be established by a recorded affidavit of the successor trustee specifying his name and address and the date and circumstances of his succession, and confirming that he is currently lawfully serving in such capacity.

(7) In an action or proceeding by a third person involving the real property granted to a trustee, the person designated as trustee in the original conveyance, or the successor trustee as established in subsection (6), or, if none, the person then actually serving as trustee, or, if none, any beneficiary designated by the court to represent the interests of the beneficiaries, shall be considered the only necessary representative of the trust and of all persons with an interest therein. A judgment is binding upon and conclusive against the trust and all persons interested therein as to all matters finally adjudicated in the judgment.

(8) The designation of the name of a trust in a recorded conveyance vests the estate in the trustee of the trust. A subsequent conveyance may be made by the trustee. The identity of a party serving as trustee may be established by a recorded affidavit of the party or by other recorded instrument, specifying the trustee's name and address and confirming that he is currently serving as the trustee."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 27, 1991.

CHAPTER NO. 689

[HB 500]

AN ACT CREATING A CAPITOL RESTORATION COMMISSION TO RAISE MONEY FOR THE ONGOING RESTORATION OF THE CAPITOL, TO SUGGEST CAPITOL IMPROVEMENTS, AND TO PLAN CAPITOL CENTENNIAL EVENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 7], "commission" means the capitol restoration commission established in [section 2].

Section 2. **Capitol restoration commission — composition — allocation.** (1) There is a capitol restoration commission consisting of:

(a) the governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and state auditor, who are ex officio members of the commission. Each ex officio member may appoint up to two members from the public sector or private sector who shall serve for 4 years.

(b) the director of the Montana historical society and the state architect, who shall serve on the committee and assist the committee with technical support.

(2) The governor is the president, and in his absence the secretary of state shall preside, and the director of the department of administration is the secretary of the commission. In the absence of either the president or the secretary, an officer pro tempore may be elected from the ex officio members.

(3) (a) The meetings of the commission are held at the call of the president.

(b) If an ex officio member is unable to attend a meeting of the commission, he may designate another individual to attend and represent him.

(4) The commission is allocated to the department of administration for administrative purposes only as prescribed in 2-15-121.

Section 3. **Legislative membership on commission.** The president of the senate and the speaker of the house of representatives are ex officio members of the commission. Each may appoint up to two members from the public or private sector who shall serve for 2 years.

Section 4. **Authority to incorporate as nonprofit organization.** The commission may incorporate as a nonprofit organization subject to the provisions of Title 35.

Section 5. **Commission activities — authority.** The commission may:

(1) raise money from the private sector for the ongoing historical restoration and preservation of the capitol;

(2) suggest capitol improvements, except changes in the location of the Montana senate chambers; and

(3) plan for the capitol centennial event.

Section 6. **Account established — use of funds.** (1) An account is established in the state special revenue fund, as provided in 17-2-102, into which all money raised by the commission must be deposited.

(2) The money deposited in the account must be used only for the historical restoration and preservation of the capitol upon the commission's approval and for the administrative expenses of the commission.

Section 7. **Compensation and expenses for members.** (1) Except as provided in subsection (2), each commission member is entitled to compensation in the amount determined by the commission president, not to exceed $25 for each day in which the commission member is actually and necessarily engaged in the performance of commission duties. A commission member is also entitled to travel expense reimbursement as provided in 2-18-501 through 2-18-503.

(2) Members of the commission who are full-time salaried officers or employees of the state or any political subdivision of the state are not entitled to compensation for their services as members of the commission but are entitled to reimbursement for travel expenses, as provided in 2-18-501 through 2-18-503, when engaged in commission activities.

Section 8. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 27, 1991.

CHAPTER NO. 690

[HB 511]

AN ACT PROVIDING THAT PROCEEDS FROM THE SEIZURE OR FORFEITURE OF PROPERTY RELATED TO CONTROLLED SUBSTANCES ARE STATUTORILY APPROPRIATED; AMENDING SECTIONS 17-7-502, 44-12-206, AND 44-13-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; *44-12-206; 44-13-102;* 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 2. Section 44-12-206, MCA, is amended to read:

"**44-12-206. Disposition of proceeds of sale.** (1) Whenever property is seized, forfeited, and sold under the provisions of this chapter, the net proceeds of the sale must be distributed as follows:

(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

(b) the remainder, if any, to the county treasurer of the county in which the property was seized, who shall establish and maintain a drug forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(c) through (1)(e);

(c) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer, who shall establish and maintain a drug forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(d) and (1)(e);

(d) if the property was seized by an employee of the state, the remainder, if any, to the account established in subsection (3), except as provided in subsection (1)(e); and

(e) if the property was seized as a result of the efforts of more than one law enforcement agency, the remainder, if any, to the accounts required by this subsection (1), pro rata in the proportions represented by the agencies' expenses of investigation, as determined by the attorney general.

(2) All proceeds from any source that are deposited into a county, city, or town drug forfeiture account must in each fiscal year be appropriated to and remain available until expended by the confiscating agency for drug laws enforcement and education concerning drugs.

(3) Net proceeds received by the state under subsections (1)(d) and (1)(e) must be deposited in an account in the state special revenue fund to the credit of the department of justice. The department may expend the money in the account~~, as appropriated by the legislature,~~ only for purposes of enforcement of drug laws. *An amount up to $125,000 each year is statutorily appropriated, as provided in 17-7-502, to the attorney general for enforcement of drug laws. Any expenditure in excess of $125,000 each fiscal year requires approval through budget amendment, as provided in Title 17, chapter 7, part 4.*

(4) The attorney general shall provide the legislature with a detailed, written report of the amounts and property credited to the account no later than 4 months after the end of each fiscal year. The attorney general may not disclose any information that would compromise any investigation or prosecution."

Section 3. Section 44-13-102, MCA, is amended to read:

"**44-13-102. Federal forfeitures deposited in account.** Property and money forfeited under federal law and provided to the state by the federal government to support state and local law enforcement programs must be deposited to the special law enforcement assistance account established in 44-13-101. *An amount up to $125,000 each fiscal year is statutorily appropriated, as provided in 17-7-502, to the attorney general for the support of state and local law enforcement programs. Any expenditure in excess of $125,000 each fiscal year requires approval through budget amendment, as provided in Title 17, chapter 7, part 4.*"

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved April 27, 1991.

CHAPTER NO. 691

[HB 567]

AN ACT TO MODERNIZE THE DUTIES OF THE ATTORNEY GENERAL; AMENDING SECTION 2-15-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-501, MCA, is amended to read:

"**2-15-501. General duties.** It is the duty of the attorney general:

(1) to ~~attend the supreme court and~~ prosecute or defend all causes *in the supreme court in* ~~to~~ which the state or any officer ~~thereof~~ *of the state* in his official capacity is a party *or in which the state has an interest* ~~and all causes to which any county may be a party unless the interest of the county is adverse to the state or some officer thereof acting in his official capacity~~;

(2) after judgment in any of the causes referred to in ~~the preceding~~ subsection *(1)*, to direct the issuing of ~~such~~ *a* process as may be necessary to carry the ~~same~~ *judgment* into execution;

~~(3) to account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county;~~

~~(4)~~*(3)* to keep a register of all cases ~~in which he is required to appear~~ *prosecuted or defended by him*, which must during business hours be open to the inspection of the public. ~~The register must show the county, district, and court in which the cases have been instituted and tried and whether they are civil or criminal. If civil, the register must show the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment, of any process issued thereon, and whether satisfied or not. If not satisfied, the register must show the return of the sheriff. If criminal, the register must show the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reason of the delay or prevention.~~ The attorney general must deliver the ~~same~~ *register* to his successor in office.

~~(5)~~*(4)* to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices and from time to time require of them reports as to the condition of public business entrusted to their charge. The supervisory powers granted to the attorney general by this subsection include the power to order and direct county attorneys in all matters pertaining to the duties of their office. The county attorney ~~must~~ *shall*, when ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding.

~~(6)~~*(5)* when required by the public service or directed by the governor, to assist the county attorney of any county in the discharge of his duties *or to prosecute or defend appropriate cases in which the state or any officer of the state in his official capacity is a party or in which the state has an interest*;

~~(7)~~*(6)* to give his opinion in writing, without fee, to the legislature or either house ~~thereof~~ *of the legislature*, to any state officer, board, or commission, to any county attorney, to the city attorney of any city or town, and to the board of county commissioners of any county of the state when required upon any question of law relating to their respective offices. He shall give any such opinion within 3 months following the date it is requested unless he certifies in writing to the requesting party that the question is of sufficient complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission, or department, the attorney general's opinion ~~shall be~~ *is* controlling unless overruled by a state district court or the supreme court.

~~(8) to bid upon and purchase in the name of the state and under the direction of the board of investments any property offered for sale under execution issued upon judgments in favor of or for the use of the state and to enter satisfaction, in whole or in part, of such judgments as the consideration for such purchases;~~

~~(9) whenever the property of a judgment debtor in any judgment mentioned in the preceding subsection has been sold under a prior judgment or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, under the direction of the board of investments, to redeem such property from such prior judgment, lien, or encumbrance. All sums of money necessary for such redemption must be paid out of any money appropriated for such purposes.~~

~~(10) when in his opinion it is necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as are necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must be paid out of any appropriations for the prosecution of delinquents;~~

~~(11)~~*(7)* to discharge the duties of a member of the board of examiners and state board of land commissioners ~~and other duties prescribed by law~~;

~~(12) to prescribe the form of blanks to be used by the clerks of the district courts in issuing commitments to the several state institutions, admission to which requires a court commitment~~

(8) to perform all other duties as required by law."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 27, 1991.

CHAPTER NO. 692

[HB 650]

AN ACT REQUIRING CERTAIN EMPLOYERS TO RESTORE EMPLOYEES ELECTED TO A CITY, COUNTY, OR STATE OFFICE TO THE SAME POSITION WITH THE SAME SENIORITY, STATUS, COMPENSATION, HOURS, LOCALITY, AND BENEFITS AS EXISTED PRIOR TO THE EMPLOYEES' PERIODS OF PUBLIC SERVICE; AND AMENDING SECTION 2-18-620, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-620, MCA, is amended to read:

"**2-18-620. Mandatory leave of absence for employees holding public office — return requirements.** (1) Employers of employees elected or appointed to a public office in the city, county, or state shall grant such employees leaves of absence, not to exceed 180 days per year, while they are performing public service. *Employees of an employer who employs 10 or more persons must, upon complying with the requirements of subsection (2), be restored to their positions, with the same seniority, status, compensation, hours, locality, and benefits as existed immediately prior to their leaves of absence for public service under this section.*

(2) Employees granted a leave shall make arrangements to return to work within 10 days following the completion of the service for which the leave was granted unless they are unable to do so because of illness or disabling injury certified to by a licensed physician.

(3) Any unemployment benefits paid to any person by application of this section shall not be charged against any employer under the unemployment insurance law."

Approved April 27, 1991.

CHAPTER NO. 693

[HB 914]

AN ACT AUTHORIZING A LOCAL GOVERNMENT TO EXEMPT FROM PROPERTY TAXES A BUILDING AND LAND SOLD OR DONATED TO A LOCAL ECONOMIC DEVELOPMENT ORGANIZATION FOR LATER SALE OR LEASE TO A PROFIT-ORIENTED, EMPLOYMENT-STIMULATING BUSINESS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** Unless the context requires otherwise, the following definitions apply to [sections 1 and 2]:

(1) "Building and land" means commercial improvements and land sold or donated to a local economic development organization for subsequent sale or lease to a profit-oriented, employment-stimulating business. The term includes commercial property that has not been used in a business for 6 months immediately preceding the sale or donation of the building and land to the local economic development organization.

(2) "Local economic development organization" means a private, nonprofit organization whose primary purposes are to develop the economy of its area and to provide assistance to businesses in that area.

Section 2. **Building and land tax exemption — procedure — termination.** (1) A building and land owned by a local economic development organization that the local economic development organization intends to sell or lease to a profit-oriented, employment-stimulating business are eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the affected county, consolidated government, incorporated city or town, or school district in which the building and land are located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). The governing body shall approve a tax exemption by a separate resolution. The governing body may not grant approval for the building and land until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation, as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or will own the building and land.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the assessor shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments

required under Title 15, chapter 10, 20-9-331, or 20-9-333 and other levies required under state law.

(5) When a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. [Upon termination of the exemption, the property must be assessed as provided in [section 1 of House Bill No. 757].]

Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [sections 1 and 2].

Section 4. **Coordination instruction.** If House Bill No. 757 is not passed and approved, the bracketed sentence in [section 2(4) of this act] is void.

Approved April 27, 1991.

CHAPTER NO. 694

[HB 970]

AN ACT TO GENERALLY REVISE THE TAX TREATMENT OF NEW AND EXPANDING INDUSTRY; REVISING THE DEFINITION OF A NEW INDUSTRY THAT QUALIFIES AS CLASS FIVE PROPERTY TO INCLUDE COMPANIES THAT ENGAGE IN TRANSPORTATION, WAREHOUSING, OR DISTRIBUTION OF COMMERCIAL PRODUCTS OR MATERIALS IF 50 PERCENT OR MORE OF THE INDUSTRY'S GROSS SALES OR RECEIPTS ARE EARNED FROM OUTSIDE THE STATE AND BUSINESSES THAT EARN 50 PERCENT OR MORE OF THEIR ANNUAL GROSS INCOME FROM OUT-OF-STATE SALES; REVISING THE DEFINITION OF A NEW OR EXPANDING INDUSTRY THAT QUALIFIES FOR CERTAIN PROPERTY TAX BENEFITS; REVISING THE DEFINITION OF A NEW CORPORATION QUALIFYING FOR THE NEW OR EXPANDED INDUSTRY CREDIT; REQUIRING THAT A GOVERNING BODY NOTIFY AFFECTED TAXING JURISDICTIONS BY CERTIFIED MAIL PRIOR TO APPROVAL OF A TAX BENEFIT; AMENDING SECTIONS 15-6-135, 15-24-1401, 15-24-1402, AND 15-31-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-135, MCA, is amended to read:

"15-6-135. Class five property — description — taxable percentage. (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in subsection (1)(b) of 15-6-137;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

(f) machinery and equipment used in electrolytic reduction facilities.

(2) (a) "Air and water pollution equipment" means facilities, machinery, or equipment used to reduce or control water or atmospheric pollution or contamination by removing, reducing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. The department of health and environmental sciences shall determine if such utilization is being made.

(b) The department of health and environmental sciences' determination as to air and water pollution equipment may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or the state tax appeal board. However, the appraised value of the equipment as determined by the department of revenue may be appealed to the county tax appeal board and the state tax appeal board.

(3) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials; ~~or~~

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the ~~1972~~ *1987* Standard Industrial Classification Manual prepared by the United States office of management and budget;

(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of the industry's gross sales or receipts are earned from outside the state; or

(v) earn 50% or more of their annual gross income from out-of-state sales.

(5) New industrial property does not include:

(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions *unless the business or profession meets the requirements of subsection (4)(b)(v)*;

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

(6) Class five property is taxed at 3% of its market value."

Section 2. Section 15-24-1401, MCA, is amended to read:

"**15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) "Expansion" means that the industry has added after July 1, 1987, at least ~~$250,000~~ *$50,000* worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) "Industry" includes but is not limited to a firm that engages in the:

(a) mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget;

(b) extraction or harvesting of minerals, ore, or forestry products; ~~or~~

(c) processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products;

(d) transportation, warehousing, or distribution of commercial products or materials if 50% or more of the industry's gross sales or receipts are earned from outside the state; or

(e) earn 50% or more of their annual gross income from out-of-state sales.

(3) "New" means that the ~~industry~~ *firm* is new to the jurisdiction approving the resolution provided for in 15-24-1402~~(3)~~*(2)* and has invested after July 1, 1987, at least ~~$500,000~~ *$125,000* worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial property under 15-6-135.

(4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1401 and 15-24-1402."

Section 3. Section 15-24-1402, MCA, is amended to read:

"**15-24-1402. New or expanding industry — assessment — *notification.*** (1) In the first 5 years after a construction permit is issued, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, shall be taxed at 50% of their taxable value. Each year thereafter, the percentage shall be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property shall be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as defined in 76-15-103 and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) The governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) shall include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination thereof is eligible for the tax benefits described in subsection (1).

(3) The taxpayer must apply to the county assessor on a form provided by the department of revenue for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body must indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the assessor shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. In no case may the benefit described in subsection (1) apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or otherwise required under state law.

(5) Prior to approving the resolution under this section, the governing body shall notify by certified mail all taxing jurisdictions affected by the tax benefit."

Section 4. Section 15-31-124, MCA, is amended to read:

"**15-31-124. New or expanded industry credit — definitions.** As used in 15-31-124 through 15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by 30% or more.

(3) "Manufacturing" means the process of mechanical or chemical transformation of materials or substances into new products, as described in the standard industrial classification manual of 1972 by the office of management and budget of the United States.

(4) *(a)* "New corporation" means a corporation engaging in manufacturing for the first time in this state. ~~and manufacturing a product not currently manufactured or substantially similar to a product currently manufactured by that corporation or any affiliate corporation in this state;~~ *A new corporation includes:*

(i) a manufacturing corporation existing outside of Montana that enters into manufacturing in the state;

(ii) a nonmanufacturing corporation within the state that enters into manufacturing in the state; or

(iii) a corporation newly formed in Montana and entering into manufacturing operations in the state.

(b) ~~it~~ *A new corporation* does not include:

(i) ~~reorganizing an~~ *a corporation reorganized from a previously* existing corporation *that has been engaged in manufacturing* in this state; or

(ii) ~~the creation of~~ a *corporation created as a* parent, subsidiary, or affiliate of *an existing corporation that has been engaged in manufacturing in this state of* which ~~50%~~ *20%* or more *of the ownership* is ~~owned or controlled~~ *held* by the ~~same person, corporation, or association~~ *corporation or by the stockholders of the corporation.*"

Section 5. **Effective date — applicability.** [This act] is effective on passage and approval and applies to taxable years beginning after December 31, 1991.

Approved April 27, 1991.

CHAPTER NO. 695

[HB 976]

AN ACT ESTABLISHING THE VALUE OF VERMICULITE FOR NET PROCEEDS PROPERTY TAX PURPOSES AND FOR RESOURCE INDEMNITY TRUST TAX PURPOSES; ESTABLISHING A SPECIFIC RESOURCE INDEMNITY TRUST TAX RATE FOR VERMICULITE; REVISING THE INFLATION ADJUSTMENT FOR THE NET PROCEEDS TAX ON TALC TO CONFORM WITH THAT FOR VERMICULITE; AMENDING SECTIONS 15-6-131, 15-8-111, 15-23-103, 15-23-106, 15-23-115, 15-23-502, 15-23-503, 15-23-515, 15-23-521, 15-38-103, AND 15-38-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Net proceeds for vermiculite — statement — value.** (1) A statement of gross yield and value, required in 15-23-502, that is filed by a producer of vermiculite must contain the following:

(a) the name and address of the owner, lessee, or operator of the mine, together with the name and address of any person owning or claiming a royalty interest in the mineral product of the mine or the proceeds derived from the sale of the mineral product, and the amount or amounts paid or yielded as royalty to each person during the period covered by the statement;

(b) the description and location of the mine;

(c) the number of tons of vermiculite extracted, produced, and treated or sold from the mine during the period covered by the statement;

(d) the amount and character of the vermiculite and the yield of the vermiculite from the mine, measured in tons, yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement; and

(e) the gross yield or value in dollars and cents.

(2) (a) For the purposes of this section, the gross yield or value of vermiculite is determined by multiplying the number of tons of vermiculite reported under subsection (1)(c) by:

(i) for the taxable year beginning January 1, 1991, $27; and

(ii) for the taxable years beginning January 1, 1992, and thereafter, the product obtained by multiplying $27 by the quotient of the PCE for the first quarter of the year previous to the taxable year for which the net proceed value is being calculated, divided by the PCE for the first quarter of the 1991 taxable year.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

Section 2. **Gross value of product for vermiculite.** As used in this part, when referring to vermiculite, "gross value of product" is the gross yield or value of vermiculite as determined in [section 1(2)].

Section 3. Section 15-6-131, MCA, is amended to read:

"**15-6-131. Class one property — description — taxable percentage.** (1) Class one property includes the annual net proceeds of all mines and mining claims except coal and metal mines.

(2) Class one property is taxed at 100% of its annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, for talc, as provided in 15-23-515 *or, for vermiculite, as provided in [section 1].*"

Section 4. Section 15-8-111, MCA, is amended to read:

"**15-8-111. Assessment — market value standard — exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri;

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual where the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Title 15 and Title 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515 *or [section 1]*.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-143, under class thirteen, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland.

(7) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town. *(Subsection (6)(d) terminates January 1, 1991—sec. 10, Ch. 681, L. 1985.)* "

Section 5. Section 15-23-103, MCA, is amended to read:

"**15-23-103. Due date of reports and returns — extensions.** (1) Except as provided in subsection (2) and 15-23-602, each report or return described in 15-23-301, 15-23-402, 15-23-502, or 15-23-701 shall be delivered to the department on or before March 31 each year.

(2) Each report or return for a natural gas or oil pipeline described in 15-23-301 must be delivered to the department on or before April 15 each year.

(3) Each report described in 15-23-201, ~~or~~ 15-23-515, *or [section 1]* must be delivered to the department before April 15 each year.

(4) The department may for good cause extend the time for filing a return or report for not more than 30 days."

Section 6. Section 15-23-106, MCA, is amended to read:

"**15-23-106. Transmission to the counties.** (1) On or before July 1, the department shall transmit to its agent in each county a statement listing:

(a) the assessed value of railroad property, as determined under 15-23-202, apportioned to the county, including the length or other description of such property;

(b) the assessed value of utility property, as determined under 15-23-303, apportioned to the county, including the length or other description of such property;

(c) the assessed value of property of airline companies, as determined under 15-23-403, apportioned to the county; 90% of the value of the property of airline companies apportioned to any county by reason of a state airport being located in the county shall be stated separately from the remaining assessed value of the property of airline companies apportioned to the county;

(d) the assessed value of the net proceeds and royalties from mines and oil and gas wells in the county, as determined under 15-23-503, 15-23-505, 15-23-515, *[section 1]*, 15-23-603, and 15-23-605; and

(e) the assessed value of the gross proceeds from coal mines, as described in 15-23-701.

(2) The agent of the department shall enter the assessed values so transmitted in the assessment book in a manner prescribed by the department."

Section 7. Section 15-23-115, MCA, is amended to read:

"**15-23-115. Interest.** If the department determines that a taxpayer has incorrectly reported a value under 15-23-502, 15-23-515, *[section 1]*, 15-23-602, 15-23-701, or 15-23-802, the department shall inform its agents at the county level of such determination, and if any additional tax is due, there must be added thereto until paid in full interest at the rate of 1% a month or fraction thereof from the date the original tax was due and payable. In no instance will a taxpayer subject to imposition of interest pursuant to this section be also subject to the penalty and interest provisions contained in 15-16-102."

Section 8. Section 15-23-502, MCA, is amended to read:

"**15-23-502. Net proceeds tax — statement of yield.** Every person engaged in mining, extracting, or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or source whatever precious stones or gems, vermiculite, bentonite, or other valuable mineral, except coal and metals, must on or before March 31 each year make out a statement of the gross yield and value of the above-named metals or minerals from each mine owned or worked by such person during the year preceding January 1 of the year in which such statement is made. Such statement shall be in the form prescribed by the department of revenue and must be verified by the oath of the person completing the statement or the manager, superintendent, agent, president, or vice-president, if a corporation, association, or partnership, and must be delivered to the department on or before March 31. Except as provided in 15-23-515 *and [section 1]*, the statement shall show the following:

(1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement;

(2) the description and location of the mine;

(3) the number of tons of ore or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of such ores, mineral products, or deposits and the yield of such ores, mineral products, or deposits from such mine in constituents of commercial value; that is, commercially valuable constituents of the ores, mineral products, or deposits, measured by standard units of measurement, yielded to such person so engaged in mining and to each royalty holder, if any, during the period covered by the statement;

(5) the gross yield or value in dollars and cents;

(6) cost of extracting from the mine;

(7) cost of transporting to place of reduction or sale;

(8) cost of reduction or sale;

(9) cost of marketing the product and conversion of same into money;

(10) cost of construction, repairs, and betterments of mines and cost of repairs and replacements of reduction works;

(11) the assessed valuation of reduction works for the calendar year for which such return is made;

(12) cost of fire insurance, workers' compensation insurance, boiler and machinery insurance, and public liability insurance paid for the mine, reduction works, or beneficiation process;

(13) cost of welfare and retirement fund payments provided for in wage contracts;

(14) cost of testing extracted minerals for the purpose of satisfying federal or state health and safety laws or regulations, the cost of plant security in Montana, the cost of assaying and sampling the extracted minerals, and the costs incurred in Montana for engineering and geological services for existing mining operations but not including any such services beyond the stage of reduction and beneficiation of the minerals; and

(15) cost of mine reclamation."

Section 9. Section 15-23-503, MCA, is amended to read:

"15-23-503. **Net proceeds — how computed.** (1) The department of revenue shall calculate from the returns the gross product yielded from a mine and its gross value for the year covered by the statement and shall calculate and compute the net proceeds of the mine yielded to the person engaged in mining. Except as provided in 15-23-515 *and [section 1]*, net proceeds shall be determined by subtracting from the value of the gross product of the mine the following:

(a) all royalty paid or apportioned in cash or in kind by the person engaged in mining;

(b) all money expended for necessary labor, machinery, and supplies needed and used in the mining operations and developments;

(c) all money expended for improvements, repairs, and betterments necessary in and about the working of the mine, except as provided in this section;

(d) all money expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine;

(e) depreciation in the sum of 6% of the assessed valuation of the milling and reduction works for the calendar year for which the return is made;

(f) all money actually expended for transporting the ores and mineral products or deposits from the mines to the mill or reduction works or to the place of sale and for extracting the metals and minerals and for marketing the product and the conversion of the product into money;

(g) all money expended for insurance and welfare and retirement costs reported in the statement required in 15-23-502;

(h) all money expended for necessary labor, equipment, and supplies for testing minerals extracted to satisfy federal or state health and safety laws or regulations, for plant security in Montana, for assaying and sampling the extracted minerals, for the cost of reclamation at the site of the mine, and for engineering and geological services conducted in Montana for existing mining operations but not including services beyond the stage of reduction and beneficiation of the minerals.

(2) In computing the deductions allowable for repairs, improvements, and betterments to the mine, the department shall allow 10% of the cost each year for a period of 10 years.

(3) Money invested in mines or improvements may not be allowed as a deduction unless all machinery, equipment, and buildings represented by the money are returned to the county in which the mine is located for assessment purposes at the level of assessment of all other property in the county.

(4) Money invested in the mines and improvements during any year except the year for which such statement is made and except as provided in this section may not be included in the expenditures, and the expenditures may not include the salary or any portion of the salary of any person or officer not actually engaged in the working of the mine or superintending the management of the mine."

Section 10. Section 15-23-515, MCA, is amended to read:

"**15-23-515. Net proceeds for talc — statement — value.** (1) A statement of gross yield and value, required in 15-23-502, that is filed by a producer of talc must contain the following:

(a) the name and address of the owner or lessee or operator of the mine, together with the name and address of any person owning or claiming a royalty interest in the mineral product of the mine or the proceeds derived from the sale of the mineral product, and the amount or amounts paid or yielded as royalty to each person during the period covered by the statement;

(b) the description and location of the mine;

(c) the number of tons of talc extracted, produced, and treated or sold from the mine during the period covered by the statement;

(d) the amount and character of the talc and the yield of the talc from the mine, measured in tons, yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement; and

(e) the gross yield or value in dollars and cents.

(2) (a) For the purposes of this section, the gross yield or value of talc is determined by multiplying the number of tons of talc reported under subsection (1)(c) by:

(i) for the taxable year beginning January 1, 1989, $4.25; and

(ii) for the taxable years beginning January 1, 1990, and thereafter, the product obtained by multiplying $4.25 by the quotient of the PCE for the first quarter of *the year previous to* the taxable year for which the net proceed value is being calculated, divided by the PCE for the first quarter of the 1989 taxable year.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce."

Section 11. Section 15-23-521, MCA, is amended to read:

"**15-23-521. Examination of records by department.** The department of revenue may at any time examine the records of any person specified in this part as the records may pertain to the yield of ore or mineral products or deposit in order to verify the statements made by the person. If from the examination or from other information, the department finds any statement or any material part of a statement willfully false or fraudulent, the department must assess in the same manner as provided for in 15-23-503, ~~or~~ 15-23-515, *or [section 1]*."

Section 12. Section 15-38-103, MCA, is amended to read:

"**15-38-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Department" means department of revenue.

(2) "Gross value of product" means, except as provided in 15-38-126 *and [section 2]*, the market value of any merchantable mineral extracted or produced during the taxable year.

(3) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(4) "Total environment" means air, water, soil, flora, and fauna and the social, economic, and cultural conditions that influence communities and individual citizens."

Section 13. Section 15-38-104, MCA, is amended to read:

"**15-38-104. Tax on mineral production.** (1) Except as provided in ~~subsection~~ *subsections* (2) *and (3)*, the annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing a mineral is $25, plus an additional amount computed on the gross value of product that was derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 1/2 of 1% of the amount of gross value of product at the time of extraction from the ground, if in excess of $5,000. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners may be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(2) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing talc is $25 plus an additional amount computed on the gross value of product for talc derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 4%.

(3) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing vermiculite is $25 plus an additional amount computed on the gross value of product for vermiculite derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 2%."

Section 14. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 23, part 5, and the provisions of Title 15, chapter 23, part 5, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 38, part 1, and the provisions of Title 15, chapter 38, part 1, apply to [section 2].

Section 15. **Effective date — retroactive applicability.** (1) [This act] is effective on passage and approval and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989.

Approved April 27, 1991.

CHAPTER NO. 696

[HB 993]

AN ACT TO REQUIRE A YOUTH'S PARENTS OR GUARDIANS TO PAY A CONTRIBUTION TOWARD THE COST OF OUT-OF-HOME CARE PROVIDED BY THE DEPARTMENT OF FAMILY SERVICES IF THEY ARE FINANCIALLY ABLE TO PAY; TO REQUIRE CONTRIBUTIONS BY A YOUTH'S PARENTS OR GUARDIANS TO BE BASED ON UNIFORM CHILD SUPPORT GUIDELINES; TO AUTHORIZE THE COLLECTION OF CONTRIBUTIONS BY MEANS OF AUTOMATIC INCOME WITHHOLDING; TO ALLOCATE PROCEEDS FROM THE CONTRIBUTIONS OF PARENTS AND GUARDIANS TO THE DEPARTMENT OF FAMILY SERVICES; AMENDING SECTIONS 41-3-208, 41-3-403, 41-3-406, 41-3-408, 41-4-102, 41-5-403, 41-5-522, 41-5-523, AND 41-5-524, MCA; REPEALING SECTIONS 41-3-1123, 41-3-1124, AND 41-3-1125, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-403, MCA, is amended to read:

"41-3-403. **Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting such relief as may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, shall be served by a peace officer or a representative of the department of family services on the person or persons named therein. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon thereafter as possible.

(c) The order shall require the person served to comply immediately with the terms thereof or to appear before the court issuing the order on the date specified and show cause why he has not complied with the order. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise provided herein, the rules of civil procedure shall apply.

(d) Upon a failure to comply or show cause the court may hold the person in contempt or place temporary legal custody of the youth with the department of family services until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department of family services worker;

(b) medical and psychological evaluation of youth or parents, guardians, or person having legal custody;

(c) require the youth, parents, guardians, or person having legal custody to receive counseling services;

(d) place the youth in temporary medical facility or facility for protection of the youth;

(e) require the parents, guardian, or other person having custody to furnish such services as the court may designate;

(f) inquire into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and order contribution for those costs pursuant to the requirements of 41-3-406(3) through (6);

~~(f)~~*(g)* such other temporary disposition as may be required in the best interest of the youth."

Section 2. Section 41-3-406, MCA, is amended to read:

"41-3-406. **Dispositional hearing — *contributions by parents or guardians for youth's care.*** *(1)* If a youth is found to be ~~abused, neglected, or dependent~~ *a youth in need of care* under 41-3-404, the court ~~after the dispositional hearing~~ may enter its judgment making any of the following dispositions to protect the welfare of the youth:

~~(1)~~*(a)* permit the youth to remain with his parents or guardian subject to those conditions and limitations the court may prescribe;

~~(2)~~*(b)* grant an order of limited emancipation to a youth who is 16 years of age or older as provided in 41-3-408;

~~(3)~~*(c)* transfer legal custody to any of the following:

~~(a)~~*(i)* *the* department of family services;

~~(b)~~*(ii)* a child-placing agency *that is* willing and able to assume responsibility for the education, care, and maintenance of the youth and ~~which~~ *that* is licensed or otherwise authorized by law to receive and provide care of the youth; or

~~(c)~~*(iii)* a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

~~(4)~~*(d)* order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling;

~~(5)~~*(e)* order such further care and treatment as the court ~~may deem~~ *considers* in the best interest of the youth.

(2) If the youth is transferred to the custody of the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(3) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (2), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(4) (a) Except as provided in subsection (4)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) there is an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).

(6) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 3. Section 41-5-403, MCA, is amended to read:

"**41-5-403. Disposition permitted under informal adjustment — *contributions by parents or guardians for youth's care.*** (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth ~~for~~ *in* substitute care ~~into~~ *in* a youth care facility, as defined in 41-3-1102, and as determined by the department;

(c) placement of the youth ~~in~~ *with* a private agency responsible for the care and rehabilitation of ~~such a~~ *the* youth as determined by the department;

(d) restitution upon approval of the youth court judge.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim; however, the ability of the victim or his insurer to stand any loss may not be considered in any case.

(3) If the youth violates ~~his~~ *an* aftercare agreement as provided for in 53-30-226, he must be returned to the court for further disposition. ~~No~~ *A* youth may *not* be placed in a state youth correctional facility under informal adjustment.

(4) If the youth is placed in substitute care requiring payment by the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(5) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(6) (a) Except as provided in subsection (6)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) there is an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(7) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 4. Section 41-5-523, MCA, is amended to read:

"41-5-523. *(Temporary)* **Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home; provided, however, that:

(i) in the case of a youth in need of supervision, the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from his home. The court shall include such determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a youth correctional facility if the judge finds that such placement is necessary for the protection of the public;

(c) order restitution by the youth or his parents;

(d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(e) require the performance of community service;

(f) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish such services as the court may designate;

(i) order such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. Upon release or discharge from the mental health facility, the youth must be returned to the court for further disposition in accordance with this section unless the court order has expired or the court no longer retains jurisdiction under 41-5-205.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision may not be placed in a youth correctional facility.

(b) A youth may not be held in a youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(c) No youth may be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a youth correctional facility must be supervised by the department. A youth placed in any other placement must be supervised by the youth probation officer of the youth court having jurisdiction over the youth.

(4) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department for a period not to exceed 45 days. The department shall determine the place and manner of evaluation.

(5) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court commits a youth to the department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

41-5-523. *(Effective July 1, 1991)* **Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be *a* delinquent *youth* or *a youth* in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home; provided, however, that:

(i) in the case of a youth in need of supervision, the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from his home. The court shall include such determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a *state* youth correctional facility if the judge finds that such placement is necessary for the protection of the public;

(c) order restitution by the youth or his parents;

(d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(e) require the performance of community service;

(f) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish such services as the court may designate;

(i) order such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. Upon release or discharge from the mental health facility, the youth must be returned to the court for further disposition in accordance with this section unless the court order has expired or the court no longer retains jurisdiction under 41-5-205.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision may not be placed in a *state* youth correctional facility.

(b) A youth may not be held in a *state* youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(c) No youth may be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a youth correctional facility must be supervised by the department. A youth placed in any other placement must be supervised by the youth probation officer of the youth court having jurisdiction over the youth.

(4) At any time after the youth has been taken into custody and before final disposition, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated for a period not to exceed 45 days. The county commissioners are responsible for the cost of the evaluation and may contract with the department or other public or private agencies to obtain evaluation services.

(5) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court commits a youth to the department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(8) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(9) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (8), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(10) (a) Except as provided in subsection (10)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) there is an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(11) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (9).

(12) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 5. Section 41-5-524, MCA, is amended to read:

"**41-5-524. Consent decree with petition.** (1) At any time after the filing of a petition alleging ~~delinquency or~~ *that a youth is a delinquent youth or a youth in* need of supervision and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the child under supervision under this section shall be known as a "consent decree". The procedures used and dispositions permitted under this section shall conform to the procedures and dispositions specified in 41-5-401 through 41-5-403 relating to consent adjustments without petition *and the responsibility of the youth's parents or guardians to pay a contribution for the costs of placement in substitute care*.

(2) If the youth or his counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(3) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging ~~delinquency or~~ *that the youth is a delinquent youth or a youth in* need of supervision is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition shall be continued to conclusion as if the consent decree had never been entered.

(4) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition shall be dismissed with prejudice.

Nothing in this subsection precludes a civil suit against the youth for damages arising from his conduct.

(5) In all cases where the terms of the consent decree shall extend for a period in excess of 6 months, the probation officer shall at the end of each 6-month period submit a report which shall be reviewed by the court."

Section 6. **Parental contributions account — allocation of proceeds.** (1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under 41-3-406, 41-5-403, 41-5-523, or 41-5-524 must be deposited in the account.

(3) All money in the account, except any amount required to be returned to federal or county sources, is allocated to the department to carry out its duties under 52-1-103.

Section 7. Section 41-3-208, MCA, is amended to read:

"**41-3-208. Rulemaking authority.** (1) The department of family services shall adopt rules to govern the procedures used by department personnel in preparing and processing reports and in making investigations authorized by this chapter ~~or 41-3-1123~~.

(2) The department may adopt rules to govern the disclosure of case records containing reports of child abuse and neglect."

Section 8. Section 41-3-408, MCA, is amended to read:

"**41-3-408. Limited emancipation.** (1) The court, after the dispositional hearing provided for in 41-3-406, may, upon the request of a youth who is 16 years of age or older, enter an order granting limited emancipation to the youth.

(2) Limited emancipation may be granted only if the court has found:

(a) that limited emancipation is in the youth's best interests;

(b) that the youth desires limited emancipation;

(c) that there exists no public interest compelling denial of limited emancipation;

(d) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations incurred as a result of limited emancipation;

(e) that the youth, as shown by prior conduct and preparation, understands and may be expected to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;

(f) that the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education; and

(g) that the youth will undergo periodic counseling with an appropriate advisor.

(3) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the following:

(a) the right to live independently of in-house supervision;

(b) the right to live in housing of the youth's choice;

(c) the right to directly receive and expend money to which the youth is entitled and to conduct his own financial affairs;

(d) the right to enter into contractual agreements and incur debts;

(e) the right to obtain access to medical treatment and records upon the youth's own authorization; and

(f) the right to obtain a license to operate equipment or perform a service.

(4) An order of limited emancipation must include a provision requiring that the youth make periodic reports to the court upon terms prescribed by the court.

(5) If ~~no order for contribution is made under 41-3-1124 and~~ the court determines that a youth to whom limited emancipation is granted does not have sufficient funds to finance transition to limited emancipated status, the court may order the department to provide such funds, not to exceed $500, directly to the youth. The youth shall account to the court for the disposition of such funds and shall repay all such money to the department within 1 year of the order of limited emancipation unless the court for cause orders an extension.

(6) The court, on its own motion or on the motion of any parties to the dispositional hearing, may modify or revoke the order upon a showing that:

(a) the youth has committed a material violation of the law;

(b) the youth is failing to diligently pursue graduation from high school;

(c) the youth has violated a condition of the limited emancipation order;

(d) the best interests of the youth are no longer served by limited emancipation; or

(e) the youth has discontinued periodic counseling with approved advisors.

(7) The department shall mail a copy of this part to all high school counseling offices."

Section 9. Section 41-4-102, MCA, is amended to read:

"**41-4-102. Financial responsibility.** Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of Title 40, chapter 5 (Revised Uniform Reciprocal Enforcement of Support Act), ~~and 41-3-1122, 41-3-404, and 41-3-1123~~ *41-3-406, and 41-3-1122* also may be invoked."

Section 10. Section 41-5-522, MCA, is amended to read:

"**41-5-522. Dispositional hearing.** (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of *the* financial ~~liability as provided in 41-3-1123 and 41-3-1124~~ *ability of the youth's parents or guardians to pay a contribution for the cost of care, commitment, and treatment of the youth as required in 41-5-523.*

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include but not be limited to the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

(6) In determining whether restitution, as authorized by 41-5-523, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim; however, the ability of the victim or his insurer to stand any loss may not be considered in any case."

Section 11. **Repealer.** Sections 41-3-1123, 41-3-1124, and 41-3-1125, MCA, are repealed.

Section 12. **Codification instruction.** [Section 6] is intended to be codified as an integral part of Title 41, chapter 5, part 5, and the provisions of Title 41, chapter 5, part 5, apply to [section 6].

Section 13. **Effective date.** [This act] is effective July 1, 1991.

Approved April 27, 1991.

CHAPTER NO. 697

[HB 1012]

AN ACT REQUIRING NEGOTIATIONS BETWEEN THE STATE AND TRIBAL GOVERNMENTS FOR COLLECTION OF A CIGARETTE SALES TAX FROM NON-INDIAN PURCHASERS FOR CIGARETTES SOLD ON INDIAN RESERVATIONS; REQUIRING THE DEPARTMENT OF REVENUE TO REPORT FINDINGS CONCERNING NEGOTIATIONS TO THE INTERIM COMMITTEE ON INDIAN AFFAIRS; REQUIRING THE INTERIM COMMITTEE ON INDIAN AFFAIRS TO PROPOSE LEGISLATION TO THE 53RD LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Revenue oversight — state and tribal negotiations — report to legislature.** (1) The legislature directs the department of revenue to:

(a) discuss and negotiate alternative methods for the collection of cigarette taxes, including the possibility of future tribal taxation, with the tribal governments of each Montana reservation or their designated representatives, the Montana tribal chairman's association, and the state coordinator of Indian affairs;

(b) discuss and negotiate with individual Indian tribes in Montana the possibility of resolving other state taxation issues, including but not limited to the imposition of fuel and alcohol taxes on Indian reservations, through state-tribal cooperative agreements; and

(c) report its findings on negotiations with tribal authorities on a comprehensive state-tribal taxation agreement or proposed legislation to the interim committee on Indian affairs prior to the 53rd legislative session.

(2) The legislature also directs the interim committee on Indian affairs to work with the Montana tribal chairman's association, the state coordinator of Indian affairs, and individual tribes to:

(a) monitor negotiations conducted pursuant to subsection (1)(a) for proposed cigarette tax collection;

(b) consider alternatives for cigarette tax collection, including possible cooperative agreements to avoid dual taxation by state and tribal governments;

(c) after public hearings and consultation with tobacco wholesalers and retailers, propose legislation to the 53rd legislature to provide for collection of the cigarette sales tax from non-Indian purchasers for cigarettes sold on Indian reservations. The legislation must include a mechanism to prevent dual taxation by providing for revenue sharing between the state and a tribal government that has adopted an ordinance imposing a cigarette tax that is identical to that imposed by the state.

(d) identify other unresolved taxation issues, including but not limited to the imposition of fuel and alcohol taxes on Indian reservations, between the state and Montana Indian tribes; and

(e) propose legislation to the 53rd legislature that would facilitate a cooperative government-to-government resolution of all Indian reservation taxation issues.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Termination.** [This act] terminates July 1, 1993.

Approved April 27, 1991.

CHAPTER NO. 698

[HB 309]

AN ACT ALLOCATING A PORTION OF THE DISTRIBUTOR'S GASOLINE LICENSE TAX FOR OFF-HIGHWAY VEHICLE PROGRAMS; AMENDING SECTION 60-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-3-201, MCA, is amended to read:

"**60-3-201. Distribution and use of proceeds of gasoline dealers' license tax.** (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of revenue's suspense account for gasoline tax refund, ~~shall~~ *must* be used and expended as provided in this section. ~~So much~~ *The portion* of that money on hand at any time ~~as may be~~ *that is* needed to pay highway bonds and interest ~~thereon~~ *on highway bonds* when due and to accumulate and maintain a reserve ~~therefor~~ *for that purpose*, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, ~~shall~~ *must* be deposited in the highway bond account in the debt service fund established by 17-2-102. Subject to that provision~~,~~*:*

(a) 9/10 of 1% of all money ~~shall~~ *must* be deposited in the state park account~~,~~*;*

(b) 1/2 of 1% of all money ~~shall~~ *must* be deposited in a snowmobile account in the state special revenue fund~~,~~*;*

(c) 1/8 of 1% of all money must be deposited in an off-highway vehicle account in the state special revenue fund; and

(d) 1/25 of 1% of all money ~~shall~~ *must* be deposited in the aeronautics revenue fund of the department of commerce under the provisions of 67-1-301.

(e) The remainder of the money ~~shall~~ *must* be used*:*

(i) by the department of highways on the federal-aid highways in this state selected and designated under Title 23, U.S.C., ~~and~~ on highways leading from each county seat in the state to the federal highway system of federal-aid roads ~~where~~ *if* the county seat is not on the system, and on the other roads ~~which~~ *that* have been or may be authorized by the laws of Montana*;* ~~and~~

(ii) for collection of the license taxes*;* and

(iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state in accordance with 60-3-204 through 60-3-206. Nothing in this title conflicts with Title 23, U.S.C., and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the state special revenue fund ~~shall~~ *may* be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost and to promote snowmobile safety~~. For the 2 years following July 1, 1977, 15% of the amount deposited in the snowmobile account each year shall be used to promote snowmobile safety. Thereafter~~, *and* 10% of the amount deposited in the snowmobile account ~~shall~~ *must* be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than 1/2 of 1% is used for propelling snowmobiles on public lands of this state.

(6) (a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to develop and maintain facilities open to the general public at no admission cost, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the off-highway vehicle account must be used to promote off-highway vehicle safety. Up to 10% of the money deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway vehicles.

(b) The legislature finds that of all fuel sold in this state for consumption in internal combustion engines, not less than 1/8 of 1% is used for propelling off-highway vehicles in this state.

~~(6)~~*(7)* Money credited to the aeronautics account of the department of commerce ~~shall~~ *may* be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds that of all the fuel sold in this state for consumption in internal combustion engines, not less than 1/25 of 1% is used for propelling aircraft in this state."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved April 29, 1991.

CHAPTER NO. 699

[HB 672]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO INSURANCE; ESTABLISHING CONSUMER PROTECTION MEASURES RELATING TO RELATIONSHIPS WITH LONG-TERM CARE

FACILITIES, PREMIUM INCREASES, DISCRIMINATION IN INSURANCE, AND PREEXISTING CONDITIONS; AND AMENDING SECTIONS 33-1-502, 33-15-1106, 33-18-210, 33-20-101, 33-20-121, 33-20-131, AND 33-22-508, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Prohibited relations with long-term care facility.** An insurance producer that owns, manages, supervises, operates, maintains, or works in a long-term care facility as defined in 37-9-101 may not solicit, negotiate, transact, or effectuate a life or disability policy or certificate of insurance for a resident of a long-term care facility.

Section 2. **Premium increase restriction — exception.** (1) An insurer may not increase a premium in an individual's or an individual group's disability insurance policy more frequently than once during a 12-month period unless failure to increase the premium more frequently than once during the 12-month period would:

(a) place the insurer in violation of the laws of this state; or

(b) cause the financial impairment of the insurer to the extent that further transaction of insurance by the insurer injures or is hazardous to its policyholders or to the public.

(2) Subsection (1) does not apply to a premium increase necessitated by a state or federal law, court decision, or rule adopted by an agency of competent jurisdiction of the state or federal government.

Section 3. **Preexisting conditions.** (1) A policy or certificate of disability insurance may not exclude coverage for a condition for which medical advice or treatment was recommended by or received from a provider of health care services unless the condition occurred within 5 years preceding the effective date of coverage of an insured person. The condition may only be excluded for a maximum of 12 months.

(2) An insurer may use an application form designed to elicit the complete health history of an applicant and, on the basis of the answers on that application, perform underwriting in accordance with the insurer's established underwriting standards.

Section 4. Section 33-15-1106, MCA, is amended to read:

"**33-15-1106. Renewal with altered terms.** (1) If an insurer offers or purports to renew a policy but on less favorable terms, at a higher rate, or at a higher rating plan, the new terms, rate, or rating plan take effect on the policy renewal date only if the insurer has mailed or delivered notice of the new terms, rate, or rating plan to the insured at least 30 days before the expiration date. If the insured has not been so notified, he may cancel the renewal policy within 30 days after receiving the notice. The insurer shall continue coverage for a period of not less than 30 days after mailing or delivery of the notice. If the insured terminates the policy within the 30-day period, the insurer shall calculate *the* earned premium pro rata based upon the prior policy's rate. The new rate is effective only after the required 30-day notification period has been met. If the insured does not terminate the policy, the premium increase and other changes are effective the day following the prior policy's expiration or anniversary date.

(2) This section does not apply if~~:~~

~~(a) the change is a rate or rating plan filed with the commissioner and applicable to the entire classification or classification system to which the policy belongs; or~~

~~(b)~~ the increase in the rate or the rating plan, or both, results from a classification change based on the altered nature or extent of the risk insured against."

Section 5. Section 33-18-210, MCA, is amended to read:

"**33-18-210. Unfair discrimination and rebates prohibited — property, casualty, and surety insurances.** (1) ~~No~~ *A* title, property, casualty, or surety insurer or ~~any~~ *an* employee, representative, insurance producer, or solicitor ~~thereof~~ *of an insurer* may *not,* as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, ~~any~~ *a:*

(a) rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy; ~~any~~

(b) special favor or advantage in the dividends or other benefits to accrue ~~thereon~~ *on the policy*; or ~~any~~

(c) valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) ~~No~~ *An* insured named in a policy or ~~any~~ *an* employee of the insured may *not* knowingly receive or accept, directly or indirectly, ~~any such~~ *a:*

(a) rebate, discount, abatement, credit, or reduction of premium;

(b) special favor or advantage; or

(c) valuable consideration or inducement.

(3) ~~No such~~ *An* insurer may *not* make or permit ~~any~~ unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable ~~thereon~~ *on insurance,* or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) ~~Nothing in this~~ *This* section may *not* be construed as prohibiting the payment of commissions or other compensation to duly licensed insurance producers or solicitors or as prohibiting an insurer from allowing or

returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

(5) ~~No such~~ *An* insurer may *not* make or permit ~~any~~ unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

(a) the refusal, cancellation, or limitation is for a business purpose ~~which~~ *that* is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(6) ~~No such~~ *An* insurer may *not* make or permit ~~any~~ unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property, unless:

(a) the refusal, cancellation, or limitation is for a business purpose ~~which~~ *that* is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(7) ~~No such~~ *An* insurer may *not* refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the sex or marital status of the individual, but an insurer may take marital status into account for the purpose of defining persons eligible for dependents' benefits.

(8) ~~No such~~ *An* insurer may *not* terminate or modify coverage or refuse to issue or refuse to renew ~~any~~ *a* property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired; however, this subsection does not apply to accident and health insurance sold by a casualty insurer, and this subsection ~~is~~ *may* not ~~to~~ be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract.

(9) An insurer may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available to an individual based solely on adverse information contained in a driving record that is 3 years old or older.

(10) An insurer may not charge points or surcharge a private passenger motor vehicle policy because of a claim submitted under the insured's policy if the insured was not at fault."

Section 6. Section 33-20-101, MCA, is amended to read:

"**33-20-101. Scope.** ~~Parts~~ *(1) Except as provided in subsection (2), parts* 1 through 5 of this chapter apply only to contracts of life insurance and annuities, other than reinsurance, group life insurance, and group annuities.

(2) Section 33-20-131 applies to group life insurance and group annuities."

Section 7. Section 33-20-121, MCA, is amended to read:

"**33-20-121. Prohibited provisions — limitations on liability.** (1) ~~No~~ *A* policy of life insurance may *not* be delivered or issued for delivery in this state if it contains ~~any of the following provisions~~ *a provision*:

(a) ~~a provision~~ for a period shorter than that provided by statute within which an action at law or in equity may be commenced on the policy; *or*

(b) ~~a provision which~~ *that* excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified ~~therein~~ *in the policy* in the event of death ~~under any one or more of the following circumstances~~:

(i) ~~death~~ as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces or of any act or hazard of ~~such~~ war or action or of service in the military, naval, or air forces or in civilian forces auxiliary thereto or from any cause while a member of ~~such~~ military, naval, or air forces of any country at war, declared or undeclared, or of any country engaged in ~~such~~ military action;

(ii) ~~death~~ as a result of aviation or any air travel or flight;

(iii) ~~death~~ as a result of a specified hazardous occupation or occupations;

(iv) ~~death~~ while the insured is a resident outside the continental United States and Canada; or

(v) ~~death~~ within 2 years from the date of issue of the policy as a result of suicide, while seriously mentally ill or otherwise. *If a life insurance policy contains a dependent rider, the dependent coverage may be continued upon payment of the premium for the dependent rider.*

(2) A policy ~~which~~ *that* contains ~~any~~ *an* exclusion or restriction pursuant to subsection (1) ~~of this section shall~~ *must* also provide that in the event of death under the circumstances to which ~~any such~~ *the* exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioner's reserve valuation method ~~upon~~ *on* the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits (or if the policy provides for no such benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy), with adjustment for indebtedness or dividend credit.

(3) This section does not apply to industrial life insurance, group life insurance, disability insurance, reinsurance, or annuities or to ~~any~~ *a* provision in a life insurance policy relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(4) ~~Nothing contained in this~~ *This* section ~~prohibits any~~ *does not prohibit a* provision ~~which~~ *that* in the opinion of the commissioner is more favorable to the policyholder than a provision permitted by this section."

Section 8. Section 33-20-131, MCA, is amended to read:

"**33-20-131. Policy loan *or certificate loan.*** (1) ~~Except~~ *Subject to the provisions of 33-20-101(2) and except* as provided in 33-20-132 through 33-20-136, there ~~shall~~ *must* be a provision that after 3 full years' premiums have been paid and after the policy *or certificate* has a cash surrender value and while ~~no~~ *a* premium is *not* in default beyond the grace period for payment, the insurer will advance, on proper assignment or pledge of the policy *or certificate* and on the sole security ~~thereof~~ *of the policy or certificate,* at a specified rate of interest not exceeding 6% a year, an amount equal to or, at the option of the party entitled ~~thereto~~ *to the loan,* less than the loan value of the policy *or certificate.* The commissioner may authorize a rate of interest in excess of 6%, but not in excess of 8% a year (or 7.4% if payable annually in advance), for policies *or certificates* issued on or after January 1, 1980, if the insurer provides adequate written certification that the holders of ~~such~~ *the* policies will benefit fully from the increased earnings of the insurer resulting from the use of an interest rate in excess of the 6% per annum, such as from higher interest income to the company on policy *or certificate* loans, higher investment yield resulting from a reduction in policy *or certificate* loans because of the higher policy *or certificate* loan interest rate, and any additional income to the company resulting from the use of ~~such~~ *the* higher interest rate in any manner ~~whatsoever~~. These benefits to the policyholder ~~shall~~ *must* be reflected through higher dividends, ~~or~~ lower premiums, or both. The loan value of the policy ~~shall~~ *must* be at least equal to the cash surrender value at the end of the then current policy *or certificate* year, provided that the insurer may deduct, either from ~~such~~ *the* loan value or from the proceeds of the loan, any existing indebtedness not already deducted in determining ~~such~~ *the* cash surrender value (including ~~any~~ interest then accrued but not due), ~~any~~ *an* unpaid balance of the premium for the current policy *or certificate* year, and interest on the loan to the end of the current policy *or certificate* year unless the policyowner by written notice to the insurer elects to defer payment of interest until it has accrued. The policy *or certificate* may also provide that if interest on ~~any~~ indebtedness is not paid when due, it ~~shall then~~ *must* be added to the existing indebtedness and ~~shall~~ *must* bear interest at the same rate, and that if and when the total indebtedness on the policy *or certificate,* including interest due or accrued, equals or exceeds the amount of ~~the~~ *its* loan value ~~thereof~~, ~~then~~ the policy ~~shall terminate~~ *or certificate terminates* and ~~become~~ *is* void. The policy ~~shall~~ *or certificate must* reserve to the insurer the right to defer the granting of a loan, other than for the payment of ~~any~~ *a* premium to the insurer, for 6 months after application ~~therefor~~ *for the loan.* The policy *or certificate,* at the insurer's option, may provide for *an* automatic premium loan, subject to an election of the party entitled to elect.

(2) This section ~~shall~~ *does* not apply to term policies or to term insurance benefits provided by rider or supplemental policy provisions or to industrial life insurance policies."

Section 9. Section 33-22-508, MCA, is amended to read:

"**33-22-508. Conversion on termination of eligibility.** (1) A group disability insurance policy issued or renewed after October 1, 1981, ~~shall~~ *must* contain a provision that if the insurance or any portion of it on a person, his dependents, or family members covered under the policy ceases because of termination of his employment or of his membership in the class or classes eligible for coverage under the policy or as a result of his employer discontinuing his business or as a result of his employer discontinuing the group disability insurance policy and not providing for any other group disability insurance or plan, ~~such~~ *and if the* person ~~shall, provided he~~ had been insured for a period of 3 months, ~~be~~ *he is* entitled to have issued to him by the insurer, without evidence of insurability, *group coverage or* an individual policy *issued by the insurer or, in the absence of an individual policy issued by the insurer, a group policy issued by the insurer,* of hospital or medical service insurance on himself, his dependents, or family members~~;~~ ~~provided~~ *if* application for the individual policy ~~shall be~~ *is* made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy *or group policy,* at the option of the insured, ~~shall~~ *may* be on any ~~of the forms~~ *form* then customarily issued by the insurer to individual *or group* policyholders, with the exception of ~~those policies whose~~ *a policy the* eligibility *for which* is determined by affiliation other than by employment with a common entity.

(3) The premium on the individual policy ~~shall~~ *or group policy must* be at the insurer's then customary rate applicable to the coverage of the individual *or group* policy."

Section 10. Section 33-1-502, MCA, is amended to read:

"**33-1-502. Grounds for disapproval.** The commissioner shall disapprove any form filed under 33-1-501 or withdraw any previous approval thereof only if the form:

(1) is in any respect in violation of or does not comply with this code;

(2) contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract, including a provision in a casualty insurance form permitting defense costs within limits, except as permitted by the commissioner in his discretion;

(3) has any title, heading, or other indication of its provisions which is misleading;

(4) is printed or otherwise reproduced in such manner as to render any provision of the form substantially illegible;

(5) contains any provision that violates the provisions of 49-2-309."

Section 11. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 33, chapter 17, part 11, and the provisions of Title 33, chapter 17, part 11, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 33, chapter 22, part 2, and the provisions of Title 33, chapter 22, part 2, apply to [section 3].

Approved April 29, 1991.

CHAPTER NO. 700

[HB 699]

AN ACT TO EXEMPT TRAVERTINE AND BUILDING STONE FROM MINES NET PROCEEDS TAXATION; AMENDING SECTIONS 15-6-131 AND 15-23-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-131, MCA, is amended to read:

"**15-6-131. Class one property — description — taxable percentage.** (1) Class one property includes the annual net proceeds of all mines and mining claims except coal, *travertine, building stone,* and metal mines.

(2) Class one property is taxed at 100% of its annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, for talc, as provided in 15-23-515."

Section 2. Section 15-23-502, MCA, is amended to read:

"**15-23-502. Net proceeds tax — statement of yield.** Every person engaged in mining, extracting, or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or source whatever precious stones or gems, vermiculite, bentonite, or other valuable mineral, except coal, *travertine, building stone,* and metals, must on or before March 31 each year make out a statement of the gross yield and value of the above-named metals or minerals from each mine owned or worked by such person during the year preceding January 1 of the year in which such statement is made. Such statement shall be in the form prescribed by the department of revenue and must be verified by the oath of the person completing the statement or the manager, superintendent, agent, president, or vice-president, if a corporation, association, or partnership, and must be delivered to the department on or before March 31. Except as provided in 15-23-515, the statement shall show the following:

(1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement;

(2) the description and location of the mine;

(3) the number of tons of ore or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of such ores, mineral products, or deposits and the yield of such ores, mineral products, or deposits from such mine in constituents of commercial value; that is, commercially valuable constituents of the ores, mineral products, or deposits, measured by standard units of measurement, yielded to such person so engaged in mining and to each royalty holder, if any, during the period covered by the statement;

(5) the gross yield or value in dollars and cents;

(6) cost of extracting from the mine;

(7) cost of transporting to place of reduction or sale;

(8) cost of reduction or sale;

(9) cost of marketing the product and conversion of same into money;

(10) cost of construction, repairs, and betterments of mines and cost of repairs and replacements of reduction works;

(11) the assessed valuation of reduction works for the calendar year for which such return is made;

(12) cost of fire insurance, workers' compensation insurance, boiler and machinery insurance, and public liability insurance paid for the mine, reduction works, or beneficiation process;

(13) cost of welfare and retirement fund payments provided for in wage contracts;

(14) cost of testing extracted minerals for the purpose of satisfying federal or state health and safety laws or regulations, the cost of plant security in Montana, the cost of assaying and sampling the extracted minerals, and the costs incurred in Montana for engineering and geological services for existing mining operations but not including any such services beyond the stage of reduction and beneficiation of the minerals; and

(15) cost of mine reclamation."

Section 3. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990.

Section 4. **Termination.** [This act] terminates December 31, 1993.

Approved April 26, 1991.

CHAPTER NO. 701

[HB 763]

AN ACT TO MAKE PERMANENT THE MOTORCYCLE SAFETY TRAINING PROGRAM; TO CONSOLIDATE THE MOTORCYCLE SAFETY TRAINING PROGRAM WITH THE TRAFFIC EDUCATION PROGRAM; TO PROVIDE FOR TRANSFER OF MONEY FROM THE MOTORCYCLE SAFETY TRAINING ACCOUNT TO THE STATE TRAFFIC EDUCATION ACCOUNT; AMENDING SECTIONS 17-7-502, 20-7-501, 20-7-502, 20-7-504, 61-2-404, AND 61-2-405, MCA; REPEALING SECTION 61-2-406, MCA, AND SECTION 10, CHAPTER 324, LAWS OF 1989; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-2-404, MCA, is amended to read:

"**61-2-404.** ~~*(Temporary)*~~ **Motorcycle safety training course — fee.** ~~(1) The superintendent shall conduct motorcycle safety training courses throughout the state to the extent that funds are available.~~

~~(2)~~*(1)* The superintendent may charge a fee for the cost of conducting motorcycle safety training courses. The fee must be deposited in the ~~motorcycle safety training~~ *state traffic education* account, as provided in ~~61-2-406~~ *20-7-504.*

~~(3)~~*(2)* The superintendent may contract with qualified persons throughout the state to conduct motorcycle safety training *courses* outside of the formal education system at times and places that will attract the greatest number of students.

~~(4)~~*(3)* ~~(a)~~ State agencies and subdivisions of the state may provide facilities such as classrooms and outdoor paved areas or other resources for conducting motorcycle safety *training* courses.

~~(b)~~*(4)* Subject to the availability of funds, the superintendent may pay for construction, repair, or purchases or award grants from the ~~motorcycle safety training~~ *state traffic education* account to provide facilities for motorcycle safety training courses. ~~*(Terminates June 30, 1993—sec. 10, Ch. 324, L. 1989.)*~~"

Section 2. Section 61-2-405, MCA, is amended to read:

"61-2-405. ~~*(Temporary)*~~ **Motorcycle registration fee — exemptions.** (1) A motorcycle safety training fee of $2.50 must be assessed on each motorcycle required by 61-3-301 to be registered for licensing.

(2) The county treasurer shall collect the fee and remit the fee to the state treasurer for deposit in the ~~motorcycle safety training~~ *state traffic education* account, as provided in ~~61-2-406~~ *20-7-504.*

(3) Exempt from payment of the fee specified in subsection (1) are vehicles:

(a) leased or owned by the state or a county or municipality;

(b) used for transportation by a nonresident or migratory worker temporarily employed in agricultural work in this state; ~~and~~ *or*

(c) displaying dealer plates, as provided in 61-4-103, while owned by a dealer. ~~*(Terminates June 30, 1993—sec. 10, Ch. 324, L. 1989.)*~~"

Section 3. **Transfer of money.** Any money remaining in the motorcycle safety training account after [the effective date of this act] is transferred into the state traffic education account provided for in 20-7-504.

Section 4. Section 20-7-501, MCA, is amended to read:

"20-7-501. **Definitions.** As used in this title, unless the context clearly indicates otherwise the following definitions apply:

(1) "Traffic education" means instruction in the motor vehicle laws *or motorcycle laws,* in the acceptance of personal responsibility on the public highways, in the causes and consequences of traffic accidents, and in the skills necessary for the safe operation of motor vehicles *or motorcycles.*

(2) "Traffic education course" means a course of traffic education which has been approved by the superintendent of public instruction.

(3) "Teacher of traffic education" means an instructor approved by the superintendent of public instruction to teach traffic education.

(4) "Traffic education account" means the state treasury account in the state special revenue fund for the deposit and disbursement of state traffic education revenue.

(5) "Motorcycle safety training course" means a course for beginning and experienced motorcycle riders with both classroom and on-road components that has been approved by the superintendent of public instruction and that is designed to teach motorcyclists how to safely operate their vehicles.

(6) "Instructor of motorcycle safety training" means an instructor approved by the superintendent of public instruction to instruct motorcycle safety training."

Section 5. Section 20-7-502, MCA, is amended to read:

"**20-7-502. Duties of superintendent of public instruction.** The superintendent of public instruction shall:

(1) develop, administer, and supervise ~~the~~ *a* program of instruction in traffic education;

(2) establish basic course requirements in ~~classroom-instruction-and behind-the-wheel~~ instruction for traffic education;

(3) establish the ~~classroom-instruction and-the-behind-the-wheel-instruction~~ qualifications for a teacher of traffic education *and an instructor of motorcycle safety training. Qualifications for an instructor of motorcycle safety training must be based upon national standards promulgated by the motorcycle safety foundation or a similar organization recognized by the superintendent*~~;~~.

(4) approve teachers of traffic education *and instructors of motorcycle safety training* when ~~such~~ *the* teachers *or instructors* are qualified;

(5) establish criteria for traffic education *and motorcycle safety training* course approval based on the basic course requirements, teacher of traffic education qualifications, and the requirements of law;

(6) approve traffic education courses when ~~such~~ *the* courses meet the criteria for approval;

(7) promulgate a policy for the distribution of the traffic education ~~moneys~~ *money* to approved traffic education courses and annually order the distribution of the proceeds of the traffic education account in the manner required by law; ~~and~~

(8) assist districts with the conduct of traffic education*; and*

(9) periodically conduct on-site driver education program reviews and motorcycle safety training course monitoring."

Section 6. Section 20-7-504, MCA, is amended to read:

"**20-7-504. State traffic education account — proceeds earmarked for ~~the~~ account.** (1) There is a traffic education account in the treasury of the state of Montana. There ~~shall~~ *must* be paid into this account a portion of the fines and forfeitures collected in any court except a justice's court from persons apprehended or arrested by highway patrol officers or department of highways peace officers for any violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 relating to the operation or use of motor vehicles in the following amounts:

(a) if a fine is imposed, 25% of the fine imposed;

(b) if multiple offenses are involved, 25% of the total sum of all fines imposed;

(c) if a fine is suspended, in whole or in part, 25% of the fine actually paid; and

(d) if any deposit of bail is made for an offense to which this section applies and the bail is forfeited, 25% of the forfeited bail.

(2) A portion of all money from the collection of fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses ~~shall~~ *must* be contributed to the traffic education account as provided in 61-5-121.

(3) Money collected and accrued from motorcycle safety training courses, designated grants, and motorcycle registration fees or an amount equal to that amount must be deposited in the state traffic education account as provided in 61-2-404 and 61-2-405 and must be available to support only approved motorcycle rider safety training courses, appropriate motorcycle safety instructor training, and other related motorcycle safety training activities."

Section 7. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; ~~61-2-406;~~ 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313;

76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 8. **Repealer.** Section 61-2-406, MCA, and section 10, Chapter 324, Laws of 1989, are repealed.

Section 9. **Coordination instruction.** If House Bill No. 560, including provisions amending 61-5-121 to deposit money in the motorcycle safety training account, is passed and approved, then [section 1 of House Bill No. 560] is void and the code commissioner shall change "motorcycle safety training account" in 61-5-121, as amended by House Bill No. 560, to "state traffic education account".

Section 10. **Codification instruction.** Sections 61-2-401, 61-2-402, 61-2-403, 61-2-404, and 61-2-405 are intended to be renumbered and codified as an integral part of Title 20, chapter 7, part 5.

Section 11. **Effective date.** [This act] is effective July 1, 1991.

Approved April 27, 1991.

CHAPTER NO. 702

[HB 787]

AN ACT TO REVISE RESTRICTIONS ON GRANTING PROPERTY TAX EXEMPTIONS FOR INDUSTRIAL PARK PROPERTY; AMENDING SECTION 15-24-1902, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-1902, MCA, is amended to read:

"**15-24-1902. Industrial park tax exemption — procedure — termination.** (1) An industrial park owned and operated by a local economic development organization or a port authority is eligible for an exemption from ~~certain local~~ property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the ~~affected~~ county, consolidated government, ~~or~~ incorporated city or town, *or school district in which the property is located* shall approve the tax exemption by resolution, after *due* notice, *as defined in 76-15-103,* and hearing. *The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each business incubator in its respective jurisdiction. The governing body may not grant approval for the industrial park until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.* Prior to holding the hearing, the governing body shall determine that:

(a) the local economic development organization:

(i) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(ii) is engaged in economic development and business assistance work in the area; and

(iii) owns and operates or will own and operate the industrial development park; or

(b) the port authority legally exists under the provisions of 7-14-1101 or 7-14-1102.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the assessor shall make the assessment change for the tax exemption provided for in this section.

~~(3)~~*(4)* The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. ~~The exemption may not apply~~ *If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies* to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

~~(4)~~*(5)* If a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. *[Upon termination of the exemption, the property must be assessed as provided in [section 1 of House Bill No. 757].]*"

Section 2. **Coordination instruction.** If House Bill No. 757 is not passed and approved, the bracketed sentence in 15-24-1902(5) amended in [section 1] is void.

Section 3. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved April 27, 1991.

CHAPTER NO. 703

[HB 809]

AN ACT INCREASING THE TAX ON FIRE INSURANCE PREMIUMS FOR MAINTENANCE OF STATE FIRE PREVENTION AND INVESTIGATION ACTIVITIES; AMENDING SECTION 50-3-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-3-109, MCA, is amended to read:

"**50-3-109. Tax on fire insurance premiums for maintenance of state fire ~~marshal's office~~ *prevention and investigation activities of department of justice*.** Each insurer authorized to effect insurance on risks enumerated in 19-11-512 doing business in this state shall pay to the state auditor and commissioner of insurance ex officio during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, a tax of ~~3/4 of 1%~~ *1%* on the fire portion of the direct premiums on such risks received during the calendar year next preceding after deducting cancellations and return premiums."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved April 29, 1991.

CHAPTER NO. 704

[HB 864]

AN ACT TRANSFERRING THE STATE DISTRICT COURT FUNDING ADMINISTRATION FROM THE DEPARTMENT OF COMMERCE TO THE STATE TO BE ADMINISTERED BY THE SUPREME COURT ADMINISTRATOR; AMENDING SECTIONS 3-1-702, 3-5-604, 3-5-901, 3-5-902, 3-5-903, 7-6-2352, 46-8-201, 46-15-104, AND 46-18-235, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-702, MCA, is amended to read:

"**3-1-702. Duties.** The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide such information to the legislature upon request;

(3) recommend to the supreme court improvements in the judiciary; ~~and~~

(4) administer state funding for district courts as provided in chapter 5, part 9; and

~~(4)~~*(5)* perform such other duties as the supreme court may assign."

Section 2. Section 3-5-604, MCA, is amended to read:

"**3-5-604. Transcript of proceedings.** (1) Each reporter must furnish, upon request, with all reasonable diligence, to a party or his attorney in a case in which he has attended the trial or hearing a transcript from his stenographic notes of the testimony and proceedings of the trial or hearing or a part thereof, upon payment by the person requiring the same of $2 per page for the original transcript, 50 cents per page for the first copy, 25 cents per page for each additional copy.

(2) If the county attorney, attorney general, or judge requires a transcript in a criminal case, the reporter is entitled to his fees therefor, but he must furnish it. Upon furnishing it, he shall receive a certificate for the sum to which he is entitled. The reporter shall submit the certificate to the ~~department of commerce which~~ *supreme court administrator who,* in accordance with 3-5-902, is responsible for the prompt payment of all or a portion of the amount due the reporter. If the ~~department~~ *state,* in accordance with 3-5-902, pays none or only a portion of the amount due, the county shall pay the balance upon receipt of a statement from the reporter.

(3) If the judge requires a copy in a civil case to assist him in rendering a decision, the reporter must furnish the same without charge therefor. In civil cases, all transcripts required by the county shall be furnished, and only the reporter's actual costs of preparation may be paid by the county.

(4) If it appears to the judge that a defendant in a criminal case is unable to pay for a transcript, it shall be furnished to him and paid for by the state in the manner provided in subsection (2) to the extent funds are available. The county shall pay the remainder as required in 3-5-901."

Section 3. Section 3-5-901, MCA, is amended to read:

"**3-5-901. State assumption of certain district court expenses.** (1) ~~Effective July 1, 1985, the~~ *The* state shall, to the extent that money is appropriated, fund the following district court expenses in criminal cases only:

(a) salaries of court reporters;

(b) transcripts of proceedings;

(c) witness fees and necessary expenses;

(d) juror fees;

(e) indigent defense; and

(f) psychiatric examinations.

(2) The ~~department of commerce~~ *supreme court administrator*, in consultation with the district judges for each judicial district, shall include within the ~~department's~~ *supreme court's* biennial budget request to the legislature a request for funding the expenses listed in subsection (1).

(3) (a) If money appropriated for the expenses listed in subsection (1):

(i) exceeds the amount necessary to fully fund those expenses, the excess amount must be used for district court grants as provided in 7-6-2352; or

(ii) is insufficient to fully fund those expenses, the county is responsible for payment of the balance.

(b) If no money is appropriated, the county is responsible for payment of all expenses."

Section 4. Section 3-5-902, MCA, is amended to read:

"**3-5-902. Fiscal administration for payment of court expenses.** The ~~department of commerce~~ *supreme court administrator* shall:

(1) establish procedures for disbursement of funds for payment of district court expenses listed in 3-5-901, including prorating of those funds if they are insufficient to cover all expenses listed in 3-5-901;

(2) ~~develop~~ *require the use of* a uniform accounting system ~~for use~~ by the counties in reporting court expenses at a detailed level for budgeting and auditing purposes; and

(3) ~~provide for~~ *require* annual auditing of district court expenses to assure normal operations and consistency in reporting of expenditures."

Section 5. Section 3-5-903, MCA, is amended to read:

"**3-5-903. Reimbursement for juror and witness fees.** According to procedures ~~established~~ *required* by the ~~department of commerce~~ *supreme court administrator* under 3-5-902(1), each clerk of district court shall submit to the ~~department~~ *administrator* a detailed statement containing a list of witnesses and jurors for criminal cases only and the amount of per diem and mileage paid to each by the county. Upon receipt and verification of the statement, the ~~department~~ *administrator* shall promptly reimburse the designated county for the cost of witness and juror fees on a full or prorated basis in accordance with 3-5-902. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in such fund."

Section 6. Section 7-6-2352, MCA, is amended to read:

"**7-6-2352. State grants to district courts — rules.** (1) The ~~department of commerce~~ *state* shall make grants, to the extent funds are available after expenses provided for in 3-5-901 are funded, to the governing body of a county for the district courts for assistance, as provided in this section.

(2) The governing body of a county may apply to the ~~department of commerce~~ *supreme court administrator* for a grant by filing a written request on forms provided by the ~~department~~ *administrator* by July 20 for the previous fiscal year unless the ~~department~~ *administrator* grants a time extension upon request of the county. In its request for a grant, a county must certify that:

(a) all expenditures from the district court fund have been lawfully made;

(b) no transfers from the district court fund have been or will be made to any other fund; and

(c) no expenditures have been made from the district court fund that are not specifically authorized by 7-6-2511 and 7-6-2351.

(3) To the extent funds are available, the ~~department of commerce~~ *state* shall award a grant if the county's district court expenditures for the previous fiscal year exceeded the sum of:

(a) the product of the maximum mill levy authorized by law for district court purposes, whether or not assessed, multiplied by the previous year's taxable valuation of the county; and

(b) all revenues, except district court grants, required by law to be deposited in the district court fund for the previous fiscal year.

(4) Eligible court expenditures for grant purposes include all costs of the county associated with the operation and maintenance of the district court, from whatever fund paid, except costs for building and capital items and library maintenance, replacement, and acquisition.

(5) The ~~department of commerce~~ *supreme court administrator* shall notify each eligible county as soon as possible of ~~its~~ *the state's* intention to award a grant to that county and the amount of the award.

(6) The grant received by the county shall be placed in the district court fund.

(7) After all grants are awarded, the ~~department of commerce~~ *supreme court administrator* shall *provide for the* audit *of* each approved grant request. The ~~department shall charge each~~ county receiving a grant *shall*

pay an audit fee in the same amount as the costs incurred in conducting the audit.

(8) If the audit of a grant recipient discloses that the recipient received a grant in excess of the amount for which it was eligible, the recipient shall repay the excess to the ~~department of commerce~~ *state.* The ~~department~~ *supreme court administrator* shall redistribute any repaid excess amounts to the other counties that received grants from the appropriation from which the overpayment was made, on the same basis as the original awards. No county is eligible for a district court grant if it owes the ~~department~~ *state* a refund of a prior year's overpayment.

(9) The ~~department of commerce~~ *supreme court administrator, in consultation with the supreme court,* shall prescribe rules and forms necessary to effectively administer this section. The ~~department~~ *administrator* may require a county to provide any information considered necessary for the administration of the program."

Section 7. Section 46-8-201, MCA, is amended to read:

"**46-8-201. Remuneration of appointed counsel.** (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable as provided in 3-5-901 to the county in which the proceeding arose, the ~~department of commerce~~ *state,* or both, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; and

(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice and the charge is prosecuted by personnel of the state agency that made the charge, the expense must be borne by the prosecuting state agency."

Section 8. Section 46-15-104, MCA, is amended to read:

"**46-15-104. Expenses of witness.** (1) When a person attends before a magistrate, grand jury, or court as a witness in a criminal case upon a subpoena or in pursuance of an undertaking, the judge, at his discretion, by a written order may direct the clerk of the court to draw his warrant upon the county treasurer in favor of such witness for a reasonable sum, to be specified in the order, for the necessary expenses of the witness.

(2) According to procedures ~~established~~ *required* by the ~~department of commerce~~ *supreme court administrator* under 3-5-902(1), the clerk of district court shall submit to the ~~department~~ *administrator* a detailed state-

ment containing a list of witnesses and the amount of expenses paid to each by the county. Upon receipt and verification of the statement, the ~~department~~ *administrator* shall promptly reimburse the designated county for all or a portion of the cost of witness expenses. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in such fund."

Section 9. Section 46-18-235, MCA, is amended to read:

"**46-18-235. Disposition of money collected as fines and costs.** The money collected by a court, except money collected by a justice's court, as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 shall be paid to the county general fund of the county in which the court is held, except that:

(1) if the costs assessed include any district court expense listed in 3-5-901, the money collected from assessment of these costs must be paid to the ~~department of commerce~~ *state* for deposit into the state general fund to the extent the expenses were paid by the state;

(2) if the fine was imposed for a violation of Title 45, chapter 9, the court may order the money paid into the drug forfeiture account maintained under 44-12-206 for the law enforcement agency which made the arrest from which the conviction and fine arose; and

(3) if the fine was imposed for a violation of 45-5-206, 50% of the amount collected, except for fines collected by a justice court and distributed pursuant to 3-10-601, must be deposited in the state special revenue fund for use of the department of family services in the battered spouses and domestic violence grant program created by 40-2-401."

Section 10. **Effective date.** [This act] is effective July 1, 1991.

Approved April 27, 1991.

CHAPTER NO. 705

[HB 869]

AN ACT TO AMEND THE DEFINITION OF "AGRICULTURAL" IN RELATION TO TAX LAWS TO INCLUDE SOD, ORNAMENTAL, NURSERY, AND HORTICULTURAL CROPS RAISED ON PROPERTY THAT CONSISTS OF AT LEAST 10 ACRES; AMENDING SECTIONS 15-1-101 AND 15-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-101, MCA, is amended to read:

"**15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to*:*

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of ~~livestock, poultry, bees, and other species of~~ domestic animals and wildlife in domestication or a captive environment~~, and the raising of field crops, fruit, and other animal and vegetable matter for food or fiber~~.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a nonprofit corporation as defined in 35-2-102 or used for the production of income, except that property described in subsection (ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as his stock in trade;

(E) all property described in 15-6-135; and

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(h) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(i) The term "livestock" means cattle, sheep, swine, goats, horses, mules, and asses.

(j) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(k) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(l) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(m) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(n) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(o) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(p) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(q) The term "weighted mean assessment ratio" means the total of the assessed values divided by the total of the selling prices of all area sales in the stratum.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Section 2. Section 15-7-202, MCA, is amended to read:

"**15-7-202. Eligibility of land for valuation as agricultural.** (1) Contiguous parcels of land totaling 20 acres or more under one ownership shall be eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a commercial or industrial use.

(2) ~~Contiguous~~ *Except as provided in subsection (8), contiguous* or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use shall be eligible for valuation, assessment, and taxation as herein provided each year the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of ~~livestock, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber~~ *agricultural products as defined in 15-1-101*; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) shall not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land shall not be classified or valued as agricultural if it is subdivided with stated restrictions prohibiting its use for agricultural purposes.

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise shall not be considered a bona fide agricultural operation.

(6) If land has been valued, assessed, and taxed as agricultural land in any year, it shall continue to be so valued, assessed, and taxed until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(7) For the purposes of this part, growing timber is not an agricultural use.

(8) Subject to the provisions of subsections (2)(a) and (2)(b), property upon which sod, ornamental, nursery, or horticultural crops are raised, grown, or produced must consist of at least 10 acres before the property is eligible to be classified as agricultural land. Improvements devoted to crop production described in this subsection may not be included in class fourteen property. (Subsection (7) terminates January 1, 1991—sec. 10, Ch. 681, L. 1985.) "

Section 3. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved April 29, 1991.

CHAPTER NO. 706

[HB 896]

AN ACT TO GENERALLY REVISE CERTAIN STATUTES PERTAINING TO THE POWERS AND DUTIES OF THE STATE FIRE MARSHAL; CHANGING CERTAIN STATUTORY REFERENCES TO THE STATE FIRE MARSHAL TO THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 2-15-1519, 2-15-2005, 2-15-2108, 50-3-101, 50-3-102, 50-3-103, 50-3-106, 50-39-101, 50-39-102, 50-39-103, 50-39-104, 50-39-105, 50-61-101, 50-61-102, 50-61-106, 50-61-114, 50-61-115, 50-61-117, 50-61-118, 50-61-121, 50-62-101, 50-62-102, 50-62-103, 50-62-104, 50-62-105, 50-62-106, 50-62-107, 50-62-110, 50-62-111, 50-63-101, 50-63-201, 50-63-203, 50-78-301, 52-2-733, AND 52-2-734, MCA; REPEALING SECTIONS 50-3-104, 50-3-105, 50-3-107, 50-3-108, 50-39-201, 50-39-202, 50-39-203, 50-61-104, 50-61-105, 50-61-107, 50-61-108, 50-61-109, 50-61-110, 50-61-111, 50-62-108, 50-62-109, 50-63-301, 50-63-302, 50-63-303, 50-63-304, 50-63-305, 50-63-306, 50-63-307, AND 50-63-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Name of fire marshal changed — instructions to code commissioner.** (1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes.

Section 2. Section 2-15-1519, MCA, is amended to read:

"**2-15-1519. Fire services training advisory council.** (1) The board of regents shall appoint a fire services training advisory council to work with the director of the fire services training school. The membership of the council shall include the following:

(a) a fire chief;

(b) a volunteer firefighter;

(c) a paid firefighter;

(d) a fire service instructor;

(e) a person involved in fire prevention;

(f) a representative of the insurance industry; and

(g) a professional educator.

(2) The board shall solicit and consider the recommendations of appropriate organizations and associations of fire service personnel in making appointments under subsection (1) of this section.

(3) Members appointed shall serve for a 4-year term and may be removed for cause. If a vacancy occurs, a member shall be appointed to fill the unexpired term. A member may be reappointed.

(4) ~~The state fire marshal~~ *A representative of the state fire prevention and investigation program of the department of justice*, a fire control officer designated by the commissioner of state lands, and the director of the fire services training school are ex officio members of the council."

Section 3. Section 2-15-2005, MCA, is amended to read:

"**2-15-2005. State fire ~~marshal~~ *prevention and investigation program* — advisory council.** (1) There is a state fire ~~marshal~~ *prevention and investigation program* in the department of justice ~~who is~~ *and* under the supervision and control of the attorney general.

(2) A person appointed *to administer the fire prevention and investigation program shall represent the state of Montana as the state fire marshal and must be a person qualified by experience, training, and high professional competence in matters of fire service and safety.* ~~state fire marshal shall have:~~

~~(a) at least 10 years of progressively responsible experience in fire protection;~~

~~(b) a 2-year associate degree in fire protection engineering from a recognized institution of higher education and 2 years' experience in fire protection; or~~

~~(c) a degree from a recognized institution of higher education in fire protection engineering or fire protection technology.~~

(3) The attorney general shall create a fire ~~marshal~~ *prevention and investigation* advisory council in accordance with procedures provided in 2-15-122."

Section 4. Section 2-15-2108, MCA, is amended to read:

"**2-15-2108. Petroleum tank release compensation board.** (1) There is a petroleum tank release compensation board.

(2) The board consists of seven members appointed by the governor as follows:

(a) the director of the department of health and environmental sciences or his representative;

(b) ~~the state fire marshal or his representative~~ *a representative of the state fire prevention and investigation program of the department of justice*;

(c) a representative of the petroleum services industry;

(d) a representative of independent petroleum marketers and chain retailers;

(e) a representative of the general public;

(f) a representative of service station dealers; and

(g) a representative of the insurance industry.

(3) The board shall elect a chairman.

(4) The term of membership is 3 years.

(5) Members shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503."

Section 5. Section 50-3-101, MCA, is amended to read:

"**50-3-101.** ~~**Fire marshal defined**~~ ***Definitions.*** In this chapter, *"department" means the department of justice and* "fire ~~marshal~~ *prevention and investigation program"* ~~or "state fire marshal"~~ means the state fire ~~marshal~~ *prevention and investigation program of the department of justice* provided for in 2-15-2005."

Section 6. Section 50-3-102, MCA, is amended to read:

"**50-3-102. Powers and duties of *department regarding* state fire ~~marshal~~ *prevention and investigation.*** (1) For the purpose of reducing the state's fire loss, the ~~state fire marshal~~ *department* shall:

~~(a) make at least one inspection a year of each state institution and submit a copy of the report to the department of institutions with recommendations in regard to fire prevention, fire protection, and public safety;~~

~~(b) make at least one inspection a year of each unit of the Montana university system and submit a copy of the report to the commissioner of higher education with recommendations in regard to fire prevention, fire protection, and public safety;~~

(a) inspect each unit of the Montana university system and other state buildings, including state institutions, as often as its budget and other inspection duties allow, but no more frequently than once each year unless requested by the commissioner of higher education for buildings in the university system, by the department of institutions for state institutions, or by the department of administration for all other state buildings. A copy of the inspection report for units of the university system must be given to the commissioner of higher education, a copy of the inspection report for state institutions must be given to the department of institutions, and a copy of the inspection report for all other state buildings must be given to the department of administration. The department of justice shall advise the commissioner of higher education and the directors of the departments of institutions and administration concerning fire prevention, fire protection, and public safety when it distributes the reports.

~~(c)~~*(b)* inspect public, business, or industrial buildings, *as provided in chapter 61,* and require conformance to law and rules promulgated under the provisions of this chapter;

~~(d)~~*(c)* assist local fire and law enforcement authorities in arson investigations and *may initiate or* supervise ~~such~~ *these* investigations when, in ~~his~~ *its* judgment, *the initiation or* supervision is necessary;

~~(e) review all training programs on investigation of accidental and incendiary fires;~~

~~(f)~~*(d)* provide fire prevention and fire protection information to public officials and the general public;

~~(g) encourage and assist local fire authorities in fire prevention programs and adopt standards and implement a program to encourage fire departments to meet such standards;~~

~~(h)~~*(e)* ~~be~~ *serve as* the state entity primarily responsible for promoting fire safety at the state level ~~and to represent the state in structural fire matters~~;

~~(i)~~*(f)* encourage coordination of all services and agencies in ~~structural~~ fire *prevention* matters to reduce duplication and fill voids in services;

~~(j)~~*(g)* establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices; *and*

~~(k)~~*(h)* keep ~~in his office~~ a record of all fires occurring in the state, the origin of the fires, and all facts, statistics, and circumstances relating ~~thereto which~~ *to the fires that* have been determined by investigations under the provisions of chapter 63. ~~of this title; and, except~~ *Except* for statements of witnesses given during an investigation, ~~and~~ information that may be held in confidence under 50-63-403, *and criminal justice information subject to restrictions on dissemination in accordance with Title 44, chapter 5,* the record ~~shall~~ *must* be open at all times to public inspection~~; and~~

~~(l) make an annual report to the attorney general containing a detailed statement of his official action and the transactions of his department, and the attorney general shall, in turn, submit the report to the governor with such recommendations and comments thereon as he considers necessary~~.

(2) The ~~state fire marshal~~ *department* may adopt rules necessary for safeguarding life and property from the hazards of fire and carrying into effect the fire prevention laws of this state.

(3) The ~~state fire marshal~~ *department* shall adopt rules based on nationally recognized standards necessary for safeguarding life and property from the hazards associated with the manufacture, transportation, storage, sale, and use of explosive materials.

(4) If necessary to safeguard life and property under rules promulgated pursuant to this section, the ~~state fire marshal~~ *department* may maintain an action to enjoin the use of all or a portion of a building or restrain a specific activity until there is compliance with the rules."

Section 7. Section 50-3-103, MCA, is amended to read:

"**50-3-103. Rules promulgated by ~~state fire marshal~~ *department*.** (1) Rules promulgated by the ~~state fire marshal~~ *department* by authority of 50-3-102 ~~shall~~ *must* be reasonable and calculated to effect the purposes of this chapter. They ~~shall~~ *must* include but *are* not ~~be~~ limited to requirements for design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction; building restrictions within congested districts; exit facilities from structures; *fire extinguishers,* fire alarm systems, and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating, and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas, and similar products; calcium carbide and acetylene generators; flammable motion picture film~~,~~*;* combustible fibers; hazardous chemicals *or materials*; rubbish~~,~~*;* ~~open flame~~ *open-flame* devices; parking of vehicles; dust explosions; lightning protection; storage of smokeless powder and small arms primers; and other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of commerce and filing with the secretary of state.

(3) ~~Standards of the national fire protection association, United States bureau of standards, and American insurance association~~ *Federal or other nationally recognized standards for fire protection* may be adopted in whole or in part by reference.

(4) Rules ~~shall~~ *must* be adopted as prescribed in the Montana Administrative Procedure Act.

(5) ~~Any~~ *A* person violating any rule made under the provisions of this part ~~shall be~~ *is* guilty of a misdemeanor."

Section 8. Section 50-3-106, MCA, is amended to read:

"**50-3-106. Appointment of special ~~deputy state fire marshals~~ *fire inspectors.*** (1) ~~The state fire marshal may appoint special deputy state fire marshals throughout the state and define their duties.~~ *Special fire inspectors may be appointed to perform any function of the fire prevention and investigation program.*

(2) When performing these duties or attending a training course ~~conducted by the state fire marshal~~ *approved by the department,* special ~~deputy fire marshals~~ *fire inspectors* may be paid at a rate not to exceed $56 a day plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended."

Section 9. Section 50-39-101, MCA, is amended to read:

"**50-39-101. Certificate of registration, permit, and license required.** A natural person ~~must~~ *shall* obtain a certificate of registration from the ~~state fire marshal~~ *department of justice* prior to servicing or installing ~~of~~ fire extinguishers, fire alarm systems, or fire extinguishing systems. A person or firm ~~must~~ *shall* obtain from the ~~fire marshal~~ *department* a permit to sell or a license to install fire extinguishers, fire alarm systems, or fire extinguishing systems prior to engaging in ~~such~~ *the* business."

Section 10. Section 50-39-102, MCA, is amended to read:

"**50-39-102. Application for certificate, permit, and license.** (1) Applications for licenses, permits, or certificates ~~shall~~ *must* be made on a form prescribed by the ~~state fire marshal~~ *department of justice.*

(2) The ~~fire marshal~~ *department* shall issue a license to an applicant who submits satisfactory proof that he is properly equipped and staffed to provide the services to be licensed and who pays the required fee.

(3) The ~~fire marshal~~ *department* shall issue a certificate of registration to an applicant who scores a passing grade on an examination devised by the ~~fire marshal~~ *department* and who pays the required fee.

(4) The ~~fire marshal~~ *department* shall issue a sales permit to an applicant who submits the information required by the ~~fire marshal~~ *department* on the application form, who submits satisfactory proof that he deals only in equipment that meets the standards and regulations of the ~~state fire marshal~~ *department,* and who pays the required fee."

Section 11. Section 50-39-103, MCA, is amended to read:

"**50-39-103. Inspections and examinations authorized.** The ~~state fire marshal~~ *department of justice* may conduct inspections, examinations, or hearings prior to the issuance of licenses, permits, or certificates."

Section 12. Section 50-39-104, MCA, is amended to read:

"**50-39-104. Revocations and suspensions authorized.** The ~~state fire marshal~~ *department of justice* may revoke, suspend, or refuse to issue a license, permit, or certificate for violation of the provisions of this part or any rules promulgated by the ~~fire marshal~~ *department* under applicable law."

Section 13. Section 50-39-105, MCA, is amended to read:

"**50-39-105. Fees.** (1) The ~~state fire marshal or his representative~~ *department of justice* shall charge a fee~~, not to exceed a total of $25,~~ for the inspection and issuance of licenses, permits, and certificates. *The fee may not exceed $50 for each license, permit, or certificate issued.*

(2) All fees collected under this section ~~shall~~ *must* be paid into the ~~general fund~~ *fire prevention and investigation account in the state special revenue fund.*"

Section 14. Section 50-61-101, MCA, is amended to read:

"**50-61-101. Purpose of chapter.** The purpose and intent of this chapter ~~is~~ *are* to provide for the public safety in case of fire in those occupancies specified in 50-61-103~~; to provide for fire escapes, fire-fighting apparatus, fire alarms;~~ and to provide for inspection of ~~such~~ *the* buildings and premises by specified officers."

Section 15. Section 50-61-102, MCA, is amended to read:

"**50-61-102. ~~Fire marshal~~ *Department of justice* to administer chapter.** *(1)* The ~~state fire marshal~~ *department of justice* has general charge and supervision of the enforcement of this chapter, and the officers enumerated in 50-61-114 shall act under ~~his~~ *its* general charge and supervision, shall assist ~~him~~ *the department* in giving effect to this chapter, and are subject to ~~his~~ *its* direction and the rules adopted under 50-3-102 and 50-3-103 for the enforcement of 50-61-120 and 50-61-121 and this chapter.

(2) Upon its approval of a fire code and a plan for enforcement of the code filed by a municipality or district, the department may certify a municipal or district fire inspection program for local enforcement."

Section 16. Section 50-61-106, MCA, is amended to read:

"**50-61-106. Unlawful to obstruct fire ~~escape~~ *exit*.** It ~~shall be~~ *is* unlawful to obstruct in any manner ~~whatsoever~~ any fire ~~escape~~ *exit, or any hallway, corridor, or entranceway leading to a fire exit,* required by ~~the provisions of this chapter or hallway, corridor, or entranceway leading thereto~~ *rules adopted by the department of justice.*"

Section 17. Section 50-61-114, MCA, is amended to read:

"**50-61-114. Fire chief and ~~county sheriff~~ *fire inspector* to make inspections.** The chief of the fire department of each municipality or district ~~where~~ *when* a fire ~~department~~ *inspection program* is established ~~and the county sheriff or deputy fire marshals~~ *or a fire inspector of the department of justice* ~~where~~ *when* no fire ~~department~~ *inspection program* exists ~~shall~~, for the purpose of examining the premises for violations of this chapter and rules adopted under 50-3-103 for the enforcement of this chapter:

(1) *shall* enter into school buildings at least once each 12 months; and

(2) *may* enter into all other buildings and upon all other premises within ~~their~~ *his* jurisdiction, *according to priority schedules established by the department for conducting inspections of buildings and premises* ~~at least once each 18 months~~."

Section 18. Section 50-61-115, MCA, is amended to read:

"**50-61-115. Notice of violations.** (1) When a building is found ~~which requires the erection of fire escapes and upon which fire escapes have not been erected according to the provisions of this chapter or if fire hoses, fire extinguishers, fire alarms, or other fire apparatus is found to be lacking or defective or not in good working condition,~~ *that is not in compliance with fire safety rules promulgated by the department of justice,* the person making the inspection or the ~~state fire marshal~~ *department* shall serve a written notice upon the party whose duty it is to ~~erect the fire escapes or maintain such fire apparatus~~ *maintain the safety of the building.*

(2) The notice ~~shall~~ *must* specify the time within which ~~the fire escapes shall be erected or~~ the defective conditions *must be* remedied, which may not be more than 90 days.

(3) The notice is served if delivered to the person to be notified, if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the post office directed to the ~~last known~~ *last-known* address of the person to be notified. Whenever buildings are managed and controlled by a board of trustees, board of commissioners,

or other governing body, the notice is served if delivered to the president, secretary, or treasurer of the board of trustees, board of commissioners, or other governing body."

Section 19. Section 50-61-117, MCA, is amended to read:

"**50-61-117.** ~~**Duty of fire marshal to file complaints of violations —duty of county attorney to prosecute complaints**~~ ***Prosecution of violations.*** It ~~shall be~~ *is* the duty of the ~~state fire marshal or any person authorized to act in his stead~~ *department of justice or other authorized officer* to ~~file complaint for~~ *furnish the county attorney with all evidence of* violations of ~~the provisions of this chapter in any court of competent jurisdiction~~ *rules adopted by the department* within the county where said violations occur, and, *if the evidence discloses the fact that a violation has occurred,* it ~~shall be~~ *is* the duty of the county attorney of ~~such~~ *the* county to ~~forthwith~~ prosecute ~~all such complaints so filed~~ *the person committing the violation in the same manner as in other cases.*"

Section 20. Section 50-61-118, MCA, is amended to read:

"**50-61-118. Injunction authorized.** In addition to the other remedies and penalties ~~herein~~ provided *in this chapter,* upon the failure of any of the parties charged with the duty to ~~erect fire escapes or to install and maintain fire alarms or fire extinguishers or other fire apparatus~~ *maintain the safety of the building premises* in accordance with ~~this chapter~~ *rules adopted by the department of justice,* the attorney general of the state or ~~any~~ *the* county attorney of the county where the building is located shall bring an action against the owner, lessee, and occupants of the building for an injunction enjoining the further occupancy of it until it is in compliance with this chapter. The action may be brought in the county where ~~such~~ *the* building is located."

Section 21. Section 50-61-121, MCA, is amended to read:

"**50-61-121. Restrictions on storage of smokeless powder and small arms primers.** (1) A retail establishment may stock up to 400 pounds of smokeless powder on the premises of a building with a sprinkler system or 200 pounds on the premises of a building without a sprinkler system if storage of this stock conforms to the following conditions:

(a) no more than 20 pounds are on display in a customer service area;

(b) the storage area is clearly posted as off limits to customers;

(c) the storage area is clearly posted prohibiting smoking or any open flame or sparks; and

(d) the storage area is a room designed and constructed to restrict smoke travel that is separate from the customer service area, that has a self-closing entrance door, and that conforms to one of the following:

(i) It is constructed of material sufficient to achieve a 1-hour fire resistant-rated barrier between the storage area and the customer service area. The smokeless powder must be stored in cabinets made of wood or equivalent material that is at least 1 inch thick, and each cabinet must contain no more than 200 pounds of smokeless powder. Cabinets must be separated by 25 feet.

(ii) It is protected by a fire suppression sprinkler system approved by the state fire ~~marshal~~ *prevention and investigation program of the department of justice* or a fire marshal of the local jurisdiction, and the storage area has cabinets as provided for in subsection (1)(d)(i).

(iii) Smokeless powder stock is contained in a cabinet with casters and constructed of wood at least 1 inch thick that is covered on all sides with 5/8-inch sheetrock.

(2) A retail establishment may stock up to 250,000 small arms primers if storage of this stock conforms to the following conditions:

(a) no more than 20,000 primers in a building with a sprinkler system or 10,000 primers in a building without a sprinkler system are on display in a customer service area;

(b) the storage area must conform to the conditions imposed in subsections (1)(a) through (1)(d), except that no more than 125,000 small arms primers may be stored in one cabinet, and the minimum required separation between cabinets is 15 feet; and

(c) small arms primers are retained in packaging approved by the U.S. department of transportation."

Section 22. Section 50-62-101, MCA, is amended to read:

"**50-62-101. Entering of buildings for purpose of examination authorized.** The ~~state fire marshal, his deputies and subordinates,~~ *officers of the state fire prevention and investigation program of the department of justice or* the chief of the fire department of each municipality or district where a fire department is established~~, or the county sheriff where no fire department exists~~ at all reasonable hours may, *as authorized by law,* enter into all buildings and upon all premises within ~~their~~ *his* jurisdiction for the purpose of determining whether the building or premise conforms to laws and rules relating to fire hazards and fire safety."

Section 23. Section 50-62-102, MCA, is amended to read:

"**50-62-102. Structures *or conditions* creating fire hazard a public nuisance — *order to remedy.*** *(1)* ~~Any~~ *If any* building or other structure ~~which~~ *that* for want of proper repair; by reason of age, dilapidated condition, defective or poorly installed wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus, *or the existence of any combustible materials, flammable conditions, or other fire hazards*; or for any other cause or reason is especially liable to fire and ~~which~~ *is dangerous to the safety of the building premises or to the public or* is so situated as to endanger other buildings and property in the vicinity ~~is hereby declared,~~ *the state fire prevention and investigation program of the department of justice or other officer may declare the building or other* *structure* to be a public nuisance *and proceed according to 50-62-103 or subsection (2) of this section.*

(2) If the state fire prevention and investigation program, an officer of the program, or an officer mentioned in 50-62-101 determines that a building or other structure constitutes a public nuisance for any reason identified in subsection (1), the department or other officer shall order the hazardous condition or material to be removed or remedied. The order must be in writing and directed generally to the owner, lessee, agent, or occupant of the building or structure.

(3) If the hazardous condition or material can be removed or remedied within a period of 24 hours, the order must contain notice that the condition or material must be remedied or removed. The owner, lessee, agent, or occupant upon whom the notice is served who fails to comply with the notice is liable for any expenses incurred in the removal or remedying of the hazardous condition or material by the fire prevention and investigation program or other officer mentioned in 50-62-101."

Section 24. Section 50-62-103, MCA, is amended to read:

"**50-62-103. Service of order to repair *hazardous condition* or demolish structure.** (1) If the ~~state fire marshal, a deputy state fire marshal,~~ *fire prevention and investigation program of the department of justice* or any officer mentioned in 50-62-101, upon an examination or inspection, ~~finds~~ *determines* that a building or other structure ~~which for want of proper repair or by reason of age and dilapidated condition, defective or poorly installed electric wiring or equipment, defective chimneys, defective gas connections or defective heating apparatus or for any other cause or reason is especially liable to fire and is so situated as to endanger other buildings or property in the vicinity, he~~ *constitutes a public nuisance for any reason identified in 50-62-102 and the condition cannot be removed or remedied within 24 hours, the program or officer* shall order the ~~structure~~ *hazardous condition* to be repaired~~,~~ *or the structure to be* torn down~~,~~ or demolished and all ~~materials removed and all~~ dangerous conditions remedied.

(2) The order shall be in writing, shall recite the grounds therefor, and shall be filed in the office of the clerk of the district court of the county in which the building or structure ordered to be altered, repaired, or demolished is situated, and thereupon all further proceedings for the enforcement thereof shall be had in that court.

(3) A copy of the order filed as aforesaid, together with a written notice that it has been filed and will be put in force unless the owner, occupant, or tenant shall file with the clerk of the court his objections or answer thereto within the time specified in 50-62-104, shall be served upon the owner and any purchaser under contract for deed of the building or structure directed to be altered, repaired, or demolished. If there is a tenant occupying the building, service shall also be made upon him. Service shall be made upon the owner and occupant, if there is one, personally either within or without the state.

(4) If the whereabouts of the owner or any purchaser under contract for deed is unknown and cannot be ascertained by the ~~state fire marshal~~ *department of justice* by the exercise of reasonable diligence, then upon ~~his~~ filing in the office of the clerk of the district court ~~his~~ *an* affidavit to this effect, service of the notice upon the owner or any purchaser under contract for deed may be made by the clerk of the district court by publication of it once in each week for 3 successive weeks in a newspaper printed and published in the county in which the building or structure is located and by posting a copy thereof in a conspicuous place upon the building or structure, and the service so made is complete upon the expiration of the publication period. Proof of service of the notice shall be filed in the office of the clerk of the district court within 5 days after the service thereof."

Section 25. Section 50-62-104, MCA, is amended to read:

"**50-62-104. Answer of owner or occupant.** (1) The owner of any building so condemned or any occupant or lessee upon whom such notice or order shall be served, within 20 days from the date of such service, may file with the clerk of the district court and serve upon the ~~said state fire marshal, a deputy state fire marshal,~~ *department of justice* or any officer mentioned in 50-62-101 written objections to said order in the form of a verified answer denying the existence of any of the facts therein cited which he desires to controvert.

(2) If an answer be filed and served, the court shall hear and determine the issues so raised and give judgment thereon."

Section 26. Section 50-62-105, MCA, is amended to read:

"**50-62-105. Default judgment.** If no answer is so filed and served, the owner and all other persons in interest shall be deemed to be in default, and thereupon the court shall affirm the order of condemnation and direct the ~~state fire marshal~~ *department of justice or other officer* to proceed with the enforcement thereof."

Section 27. Section 50-62-106, MCA, is amended to read:

"**50-62-106. Hearing and judgment.** (1) The court, upon application of the ~~state fire marshal, deputy state fire marshal,~~ *department of justice* or any officer mentioned in 50-62-101~~,~~ shall make its order fixing a time and place for such hearing, which time shall be within 20 days from the date of the filing of the answer or as soon thereafter as the matter may be heard.

(2) If~~,~~ upon ~~such~~ trial the order shall be sustained, judgment shall be given accordingly and a time shall be fixed within which the building or structure shall be altered, destroyed, or repaired in compliance with such order, but otherwise the court shall annul or set aside the order of condemnation."

Section 28. Section 50-62-107, MCA, is amended to read:

"**50-62-107. Proceedings on failure to comply with order.** (1) If the owner or other party in interest shall fail to comply with the order of condemnation of a building or structure within the time fixed by the court in case a trial is had therein, then the ~~state fire marshal~~ *department of justice* or any other officer authorized in 50-62-101 may proceed to cause such building or structure to be altered, repaired, or demolished in accordance with the directions contained in such order.

(2) Where a building or structure is demolished in accordance with such order, the ~~state fire marshal~~ *department* or any other officer authorized in 50-62-101 may sell or dispose of the salvaged materials therefrom at public auction upon 5 days' posted notice. ~~This person~~ *The department or other officer* shall keep an accurate account of the expenses incurred in carrying out the order and shall credit thereon the proceeds of such salvage sale, if any, and shall report ~~his action~~ thereon with a statement of said expenses or the balance thereof, the expense incurred ~~by him~~, and the amount, if any, received from such salvage sale to the court for approval and allowance. The court shall examine, correct if necessary, and allow said expense account, and said amount so allowed shall constitute a lien against the real estate on which said building or structure is or was situated. If the amount thereof is not paid by the owner or other party in interest within 3 months after the account has been examined and approved by the court, the real estate upon which said building or structure is or was situated shall be sold under proper order of court by the sheriff of the county in which the same is situated in the manner provided by law for the sale of real estate upon execution, and the proceeds of said sale shall be paid into the treasury of the governmental unit which incurred the expenses. If the amount received as salvage or on sale shall exceed the expense incurred by the governmental unit, the court shall direct the payment of the surplus to those parties with encumbrances, mortgages, or liens on the real estate in order of their priority and any surplus thereafter to the owner or the payment of the same into court for their use and benefit."

Section 29. Section 50-62-110, MCA, is amended to read:

"**50-62-110. Appeal to ~~state fire marshal~~ *department of justice*.** If the owner or occupant deems himself aggrieved by an order of an officer under this chapter, he may appeal to the ~~state fire marshal~~ *department of justice* within 24 hours and the cause of the complaint shall at once be investigated by direction of the ~~state fire marshal~~ *department*. Unless such order is revoked by the ~~state fire marshal~~ *department*, it shall remain in force and forthwith be complied with by such owner or occupant."

Section 30. Section 50-62-111, MCA, is amended to read:

"**50-62-111. Penalty for failure to comply with order to correct.** An owner or occupant of buildings or premises who fails to comply with the orders of the authorities named in this chapter shall be *guilty of a misdemeanor and shall be* fined not less than $10 or more than ~~$50~~ *$500* for each day's neglect."

Section 31. Section 50-63-101, MCA, is amended to read:

"**50-63-101. Examination of premises where fire occurred authorized.** In the performance of the duties imposed by the provisions of this chapter, ~~the state fire marshal and each of his subordinates at all times of day or night~~ *officers of the department of justice* may, *as authorized by law,* enter upon and examine any building or premises where a fire has occurred and other buildings and premises adjoining or near thereto."

Section 32. Section 50-63-201, MCA, is amended to read:

"**50-63-201. Cause of fire to be investigated.** The cause, origin, and circumstances of each fire by which property has been destroyed or damaged shall be investigated to determine the exact cause and circumstances. The ~~state fire marshal~~ *department of justice* may superintend and direct the investigation ~~if he deems it necessary~~."

Section 33. Section 50-63-203, MCA, is amended to read:

"**50-63-203. Reports to be filed with ~~fire marshal~~ *department of justice*.** (1) If it appears that the fire was of suspicious origin, ~~or~~ if there was a loss of human life, *or if it is determined that a criminal investigation is necessary,* the official responsible for the investigation shall notify the ~~state fire marshal~~ *department of justice and the appropriate law enforcement agency* within 24 hours and shall file a written report of the cause with the ~~state fire marshal~~ *department* within 10 days.

(2) If the property was insured, as soon as any adjustment has been made, a person representing the insurance company shall notify the ~~state fire marshal~~ *department* of the amount of adjustment and the apparent cause and circumstances of the fire on forms furnished by the ~~state fire marshal~~ *department.*

(3) Each official responsible for investigating fires shall file a fire incident report on each ~~and every~~ fire with the ~~state fire marshal~~ *department.* Reports shall be on forms and shall contain information prescribed by the ~~state fire marshal~~ *department.* These reports shall be sent to the ~~state fire marshal~~ *department* on a ~~weekly~~ *monthly* basis *or at intervals determined necessary by the department.*"

Section 34. Section 52-2-733, MCA, is amended to read:

"**52-2-733. Periodic visits to facilities by department — investigations — consultation with licensees and registrants.** (1) The department or its authorized representative shall make periodic visits to all licensed day-care centers to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any day-care center, group day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of this part.

(3) The department must visit and inspect at least 20% of all registered family day-care homes and group day-care homes in each of the governor's planning regions annually.

(4) The department shall make annual unannounced visits to day-care centers.

(5) Upon request of the department, the department of health and environmental sciences or the state fire ~~marshal or his designee~~ *prevention and investigation program of the department of justice* shall inspect any day care facility for which a license or registration certificate is applied for or issued and shall report its findings to the department.

(6) Upon request, the department shall give consultation to every licensee and registrant who desires to upgrade the services of his program.

(7) Nothing in this section may be construed to require the department to conduct an inspection of each day-care facility applying for a registration certificate under the provisions of this part."

Section 35. Section 52-2-734, MCA, is amended to read:

"**52-2-734. Fire safety — certification required.** (1) The state fire ~~marshal~~ *prevention and investigation program* of the department of justice shall adopt and enforce rules for the protection of children in day-care centers from fire hazards and arrange for such inspections and investigations as it considers necessary.

(2) Before a license can be issued to operate a day-care center, each applicant shall submit to the department a certificate of approval from the *state* fire ~~marshal~~ *prevention and investigation program* of the department of justice ~~or his designee,~~ indicating that fire safety rules have been met."

Section 36. Section 50-78-301, MCA, is amended to read:

"**50-78-301. Emergency and community information.** (1) An employer shall comply with the provisions of the federal Emergency Planning and Community Right-to-Know Act of 1986 or be subject to the enforcement provisions thereof.

(2) The local fire chief must be permitted onsite inspection of hazardous chemicals in any workplace, including workplaces under the control of a state agency, for the purposes of planning fire department activities in case of an emergency and reviewing compliance with this chapter. For a workplace that employs fire safety personnel, the local fire chief shall consult with the responsible fire safety official to clarify respective roles and response procedures in the event of an emergency.

(3) As a result of an inspection, the local fire chief may note and report for possible action by the county attorney or other appropriate law enforcement official any violation by an employer of a provision of this chapter or any other law pertaining to hazardous chemicals or fire safety.

(4) The local fire chief shall consult at least annually on safety and emergency considerations with each person responsible for the operation of any research, educational, or testing laboratory workplace. The consultation may result in recommendations or, under the provisions of ~~50-62-108~~ *50-62-102*, orders by the fire chief to be implemented by the laboratory operator to enhance public safety, to reduce the likelihood of emergency incidents, or to improve emergency response in the event of an accident. The person responsible for the operation of the laboratory shall contact the local fire chief at any time there is a significant change in the location or nature of the hazardous chemicals in the workplace, initiation of any new and potentially dangerous method of processing or reacting hazardous chemicals, or any other operational change affecting emergency response considerations."

Section 37. **Repealer.** Sections 50-3-104, 50-3-105, 50-3-107, 50-3-108, 50-39-201, 50-39-202, 50-39-203, 50-61-104, 50-61-105, 50-61-107, 50-61-108, 50-61-109, 50-61-110, 50-61-111, 50-62-108, 50-62-109, 50-63-301, 50-63-302, 50-63-303, 50-63-304, 50-63-305, 50-63-306, 50-63-307, and 50-63-308, MCA, are repealed.

Section 38. **Coordination instruction.** If House Bill No. 809 is not passed and approved creating a fire prevention and investigation account in the state special revenue fund, then [section 13(2) of this act] is void.

Section 39. **Effective date.** [This act] is effective on passage and approval.

Approved April 29, 1991.

CHAPTER NO. 707

[HB 903]

AN ACT APPROPRIATING FUNDS TO THE SUPREME COURT FOR COURT AUTOMATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation — purpose — department of social and rehabilitation services to deposit certain funds to general fund — court automation report.** (1) There is appropriated from the state general fund to the supreme court $420,000 for the 1993 biennium for court automation projects.

(2) There is appropriated from the federal special revenue account to the supreme court $200,000 for the 1993 biennium for court automation projects.

(3) The funds appropriated by this section to the supreme court must be used to pay necessary costs for court automation projects to improve information systems, case management systems, and the administration of justice.

(4) Prior to July 1, 1991, the department of social and rehabilitation services shall deposit to the credit of the state general fund all money in the federal special revenue account (number 03143) associated with the former department of community affairs grant closeouts reported in the April 1990 legislative audit by the office of the legislative auditor.

(5) The supreme court shall report to the 1993 legislature the status of judicial automation.

Section 2. **Coordination instruction.** If House Bill No. 2 is passed and approved and if it contains a narrative prepared by the legislative fiscal analyst on supreme court operations relating to legislative intent for [this act], then that narrative is void.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 29, 1991.

CHAPTER NO. 708

[HB 994]

AN ACT REQUIRING THE LICENSING OF PUBLIC SWIMMING POOLS AND PUBLIC BATHING PLACES; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER A LICENSING PROGRAM AND TO ADOPT RULES; ESTABLISHING LICENSE FEES; PROVIDING FOR THE VALIDATION OF LICENSES BY LOCAL HEALTH OFFICERS OR BOARDS; AUTHORIZING THE DEPARTMENT TO ENTER INTO COOPERATIVE AGREEMENTS FOR THE INSPECTION OF PUBLIC SWIMMING POOLS AND PUBLIC BATHING PLACES AND FOR ENFORCEMENT; PROVIDING FOR THE PAYMENT OF A PORTION OF THE FEES TO LOCAL GOVERNMENTS FOR INSPECTION AND ENFORCEMENT; PROVIDING FOR ADMINISTRATIVE AND JUDICIAL ENFORCEMENT; PROVIDING FOR THE RECOVERY OF ENFORCEMENT COSTS AND FOR CIVIL PENALTIES; AMENDING SECTIONS 50-2-118, 50-53-102, 50-53-103, AND 50-53-104, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 2] requires the department of health and environmental sciences to adopt rules relating to licensing of public swimming pools and public bathing places, enforcement procedures, cooperative agreements, procedures for hearings to be held by local boards of health, and performance standards for local boards of health, health officers, and sanitarians. Sanitation and safety standards contained in rules already adopted by the department and currently published in Title 16, chapter 10, subchapters 12, 13, and 15, Administrative Rules of Montana, may be incorporated into new department rules as standards for licensing public swimming pools and public bathing places.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-53-102, MCA, is amended to read:

"**50-53-102. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(2) "Local board of health" or "board" means a local board as defined in 50-2-101.

(3) "Local health officer" or "officer" means a local health officer as defined in 50-2-101.

~~(2)~~*(4)* "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

~~(3)~~*(5)* "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

~~(4)~~*(6)* "Public swimming pool" means an artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of his family, or their invited guests; or

(b) medicinal hot water baths for individual use."

Section 2. Section 50-53-103, MCA, is amended to read:

"**50-53-103.** ~~**Sanitation and safety**~~ ***Department*** **rules.** (1) The department shall adopt rules *relating to the operation of public swimming pools and public bathing places, including rules:*

(a) setting standards to ensure sanitation and safety in public swimming pools and public bathing places to protect public health and safety*;*

(b) relating to the licensing of operators of public swimming pools and public bathing places;

(c) providing procedures for the enforcement of the laws and rules relating to public swimming pools and public bathing places;

(d) relating to cooperative agreements between the department and local boards of health; and

(e) setting performance standards for local boards of health, local health officers, and sanitarians to meet as a condition to receipt of funds provided by the department pursuant to [section 17].

(2) Any rule relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings or installation of equipment in buildings is effective only when it has been adopted by the department of commerce as part of the state building code and filed with the secretary of state pursuant to 50-60-204."

Section 3. Section 50-53-104, MCA, is amended to read:

"50-53-104. **Powers of health officers — *enforcement authority*.** Authorized employees of the department and local boards of health may:

(1) at reasonable times inspect public swimming pools and public bathing places *and otherwise conduct investigations* to determine if provisions of this chapter and rules of the department *have been or* are being violated *and make reports to the department concerning the inspections*;

(2) request an injunction from the district court to enjoin actions in violation of this chapter or rules adopted by the department;

(3) bring actions to abate nuisances maintained in violation of this chapter in the manner provided by law for the summary abatement of other public nuisances;

(4) ~~enforce rules adopted by the department~~ *file complaints with the district court for assessment of the penalties provided for in [section 15] or for recovery of costs provided for in [section 16], or both.*"

Section 4. **License required — exemption — validation.** (1) Except as provided in subsection (3), a person may not operate a public swimming pool or public bathing place without annually obtaining a license from the department.

(2) A separate license is required for each public swimming pool or public bathing place unless more than one public swimming pool is operated on the same premises by the same person, in which case a single license is required for all public swimming pools on the premises.

(3) The state or a political subdivision of the state owning or operating a public swimming pool or public bathing place is not required to obtain a license under subsection (1) but must comply with the health and safety requirements in 50-53-101 through 50-53-109 and [sections 4 through 17] and the rules of the department.

(4) A license issued by the department is not valid unless signed in accordance with [section 7] or in accordance with [section 8], in the case of an appeal.

Section 5. **Application for and right to license.** (1) An application for both an original and renewal license to operate a public swimming pool or public bathing place must be made to the department, must contain the information required by the department, and must be accompanied by the fee provided for in [section 6].

(2) A license must be issued to an applicant who has satisfied the requirements for a license provided in 50-53-101 through 50-53-109, [sections 4 through 17], and department rules.

(3) Upon issuing a license, the department shall forward the license to the appropriate local health officer for validation as provided in [section 7].

Section 6. **License fee and late fee — disposition.** (1) (a) Except as provided in subsection (1)(b), each application for an original or renewal license must be accompanied by a license fee of $75.

(b) The fee for an original or renewal license for a public swimming pool or public bathing place operated in conjunction with a public accommodation is $50.

(2) An operator of a public swimming pool or public bathing place who fails to renew a license by the expiration date provided in [section 9] and who operates the public swimming pool or public bathing place in the license year for which no renewal fee was paid shall, upon renewal, pay to the department a late renewal fee of $25 in addition to the renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for any operation without a license.

(3) The department shall deposit 85% of the fees collected under subsection (1) in the state special revenue fund to the credit of the local board inspection fund account created by 50-2-108. Money deposited in the local board inspection fund account is subject to appropriation by the legislature for the purposes of [section 17].

(4) The department shall deposit 15% of the fees collected under subsection (1) and all the fees collected under subsection (2) in an account in the state special revenue fund to be appropriated by the legislature to the department for the enforcement of 50-53-101 through 50-53-109 and [sections 4 through 17].

Section 7. **Validation of license required — validation by local officer.** (1) A license issued by the department under 50-53-101 through 50-53-109 and [sections 4 through 17] is not valid until it is signed by the local health officer of the jurisdiction in which the public swimming pool or public bathing place is located.

(2) The local health officer shall, within 15 days of receipt of the license, validate or refuse to validate the license. Failure of the officer to validate a license is a refusal for the purposes of [section 8].

Section 8. **Refusal of health officer to validate — appeal to board.** (1) A local health officer may refuse to validate a license issued by the department under 50-53-101 through 50-53-109 and [sections 4 through 17] only if the officer determines that the license applicant has not met the requirements for the issuance of a license under 50-53-101 through 50-53-109, [sections 4 through 17], and the rules of the department. If the local health officer refuses to validate a license, the officer shall notify the license applicant and the department of the refusal within 5 days of his decision. The notice must state the grounds for the refusal.

(2) The license applicant may appeal the decision of the local health officer to the local board of health by filing a written notice of appeal with the officer and the board within 30 days of the officer's refusal or within 30 days of the expiration of the period for the officer's decision under [section 7], whichever is first.

(3) Upon filing the notice of appeal, the license applicant is entitled to a hearing before the board to determine the applicant's eligibility for a license under 50-53-101 through 50-53-109, [sections 4 through 17], and the rules of the department. The hearing must be held pursuant to the contested case procedure of the Montana Administrative Procedure Act. If the board finds that the applicant is entitled to a validated license, the chairman of the board shall validate the license by signing the license.

Section 9. **License expiration — nontransferability.** (1) A license issued under 50-53-101 through 50-53-109 and [sections 4 through 17] expires on December 31 of the year of issuance unless it is suspended or canceled by the department before that date.

(2) A license issued under 50-53-101 through 50-53-109 and [sections 4 through 17] is not transferable.

Section 10. **Cooperative agreements — inspections.** (1) The department may enter into cooperative agreements with local boards of health to authorize those boards to act as agents of the department and to conduct inspections of and enforce applicable statutes and department rules relating to public swimming pools and public bathing places within the jurisdictions of the respective boards.

(2) The department or a local board of health, pursuant to a cooperative agreement, shall annually conduct:

(a) at least one full facility inspection and one critical point inspection of each public swimming pool or public bathing place operated throughout the year; and

(b) at least one full facility inspection of each seasonal public swimming pool or public bathing place.

Section 11. **Denial, suspension, or cancellation of license — multiple pool facility.** (1) The department may deny, suspend, or cancel a license if it finds that the license applicant or licensee has violated 50-53-101 through 50-53-109, [sections 4 through 17], or the rules of the department and has failed or refused to remedy or correct the violation in accordance with the procedure provided in [section 13].

(2) If the license of an operator who operates more than one public swimming pool under one license is denied, suspended, or canceled, the use of all of the public swimming pools on the premises must cease unless the department determines that the violation for which the license was denied, suspended, or canceled does not affect the operation or the use of all of the public swimming pools on the premises.

Section 12. **Administrative enforcement — notice — department hearing.** (1) A license may not be denied, suspended, or canceled or corrective action may not be ordered by the department unless the department delivers to the license applicant or licensee a written notice of violation that contains a written statement of the facts constituting the violation and a citation to the statute or rule of the department alleged to have been violated. No further administrative enforcement action may be taken by the department pursuant to the notice if within 10 days after receipt of the notice, the license applicant or licensee complies with the provisions of [section 13].

(2) The department may combine with any notice issued under subsection (1) an order for the suspension or cancellation of a license or for corrective action as the department finds necessary to remedy the violation evidenced in the notice. The order becomes final 10 days after service unless within that time the license applicant or licensee requests a hearing pursuant to subsection (4) or submits a corrective action plan in accordance with [section 13].

(3) The department may combine with any notice or order issued under subsection (1) or (2) an order for the license applicant or licensee to appear before the department within a time specified by the department and show cause why the department should not deny, suspend, or cancel the license or otherwise order compliance with 50-53-101 through 50-53-109, [sections 4 through 17], and the rules of the department.

(4) A hearing requested by a license applicant or licensee must be made in writing to the department and must specify the mistake in the facts or law relied on by the department. A hearing held pursuant to this section must be held in accordance with the contested case procedure of the Montana Administrative Procedure Act. Following a hearing, the department may issue an appropriate order. Service of notice or an order mailed by the department is complete upon mailing.

Section 13. **Compliance with corrective action plan as bar to further administrative enforcement.** The department may not deny, suspend, or cancel the license or require corrective action of an operator of a public swimming pool or public bathing place who received a notice of violation from the department pursuant to [section 12] if:

(1) the operator submits a plan to correct the violation to the department within 10 days of service of the notice;

(2) the department approves the plan in writing, including the time in which the plan must be complied with; and

(3) the operator complies with the plan within the time period prescribed by the department.

Section 14. **Return of license for alteration or destruction.** Upon cancellation of a license or the right to operate one or more public swimming pools under a single license for the premises, the operator of the public swimming pool shall return the license to the department for destruction of the license or deletion of the listing of the public swimming pool affected by the cancellation. Cancellation by the department of a license to operate a public swimming pool is effective notwithstanding the refusal or failure of an operator to return the license to the department.

Section 15. **Civil penalties — other enforcement not barred.** (1) A person who violates a provision of 50-53-101 through 50-53-109 and [sections 4 through 17], the rules of the department implementing those sections, an order of the department, or any condition of a license issued by the department is subject to a civil penalty not to exceed $500 for each violation.

(2) An action for collection of a civil penalty under this section does not bar administrative enforcement under [section 12], an action for injunctive relief under 50-53-104, or enforcement under 50-53-109.

Section 16. **Recovery of costs by department or local jurisdiction.** In a civil or criminal action brought by the department or a local jurisdiction to enforce the requirements of 50-53-101 through 50-53-109 and [sections 4 through 17], the rules of the department, or any condition of a license or to assess civil penalties and in an action brought by the department to enforce an order of the department, the court may, in the case of an intentional violation of 50-53-101 through 50-53-109 and [sections 4 through 17], assess the operator of the public swimming pool or public bathing facility for the costs of any investigation and the costs of the civil or criminal action, including reasonable attorney fees.

Section 17. **Department to pay board for inspections or enforcement, or both.** (1) By June 30 of each year, the department shall pay to a local board of health established under 50-2-104, 50-2-106, or 50-2-107 an amount from the local board inspection fund account, created by 50-2-108, for the purpose of inspecting public swimming pools and public bathing places licensed under 50-53-101 through 50-53-109 and [sections 4 through 17] or for taking appropriate enforcement action with respect to the public swimming pools and public bathing places, or for both inspection and enforcement. The payment required by this section must be made to a board only if the board and any local health officer and sanitarian for the jurisdiction of the board meet the program performance standards established by department rules.

(2) Money received by the board pursuant to subsection (1) may be used only for the purpose of inspections and enforcement under 50-53-101 through 50-53-109 and [sections 4 through 17] and must be used to supplement and not supplant other money received by the board for the same purpose.

(3) The department may use money in the local board inspection fund account appropriated to the department for the enforcement of 50-53-101 through 50-53-109, [sections 4 through 17], and the rules of the department and for inspections to determine compliance with those sections and rules in any local jurisdiction not receiving payment under subsection (1).

Section 18. Section 50-2-118, MCA, is amended to read:

"**50-2-118. Powers and duties of local health officers.** (1) Local health officers or their authorized representatives shall:

(a) make inspections for sanitary conditions;

(b) as directed by the local board, issue written orders for the destruction and removal of filth which might cause disease;

(c) with written approval of the department, order buildings or facilities where people congregate closed during epidemics;

(d) on forms provided by the department, report communicable diseases to the department each week;

(e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of his activities, on forms and containing information required by the department;

(f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) of this section to the department;

(g) as prescribed by rules adopted by the department, establish and maintain quarantines;

(h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) notify the department of his appointment and changes in membership of the local board;

(j) file a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated;

(k) validate state licenses issued by the department in accordance with chapters 50~~, 51, and 52~~ *through 53* of this title.

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

(4) A local health officer who is not a physician shall not act as a physician to anyone."

Section 19. **Codification instruction.** [Sections 4 through 17] are intended to be codified as an integral part of Title 50, chapter 53, and the provisions of Title 50, chapter 53, apply to [sections 4 through 17].

Section 20. **Effective dates.** (1) [Sections 2, 6, and this section] are effective on passage and approval.

(2) [Sections 1, 3 through 5, and 7 through 19] are effective January 1, 1992.

Approved April 27, 1991.

CHAPTER NO. 709

[SB 53]

AN ACT LEGALIZING THE SHAKING OR CHOOSING OF ONE OR MORE DICE FOR A DRINK OR FOR THE PLAYING OF A JUKEBOX; AND LEGALIZING THE DICE GAME COMMONLY KNOWN AS SHAKE-A-DAY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Shaking dice for a drink or music or in a shake-a-day game.** (1) It is legal for a customer in an establishment licensed for the sale of alcoholic beverages to be consumed on the premises to:

(a) shake or choose one or more dice, alone or with an owner or employee of the establishment, to determine whether the customer or the establishment shall pay for the customer's drink or to determine whether the customer or the establishment shall immediately pay a predetermined amount of money, not to exceed $2, for music from a jukebox in the establishment; or

(b) play the dice game commonly known as shake-a-day, in which a customer may once each day pay an amount of money predetermined by the establishment, but not more than 50 cents, and shake a number of dice predetermined by the establishment in an attempt to roll a certain combination simulating a poker hand predetermined by the establishment and, if the combination is rolled, win all money paid to play the game since the last winning combination was rolled. The establishment may, before a game begins, limit the amount that will be won and use the remaining money played on that game to start the pot for the next game, thus enhancing the incentive to play the next game in the early stages of the next game. All money paid to play games must be paid out as winnings.

(2) Nothing in this section authorizes the dice game of craps or any other dice game not specifically described in this section.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 23, chapter 5, part 1, and the provisions of Title 23, chapter 5, parts 1 through 6, apply to [section 1].

Approved April 27, 1991.

CHAPTER NO. 710

[SB 57]

AN ACT ALLOWING THE USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION IN CERTAIN CRIMINAL PROCEDURES; ALLOWING TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION IN INITIAL APPEARANCES, BAIL HEARINGS, PRELIMINARY EXAMINATIONS, AND ARRAIGNMENTS; AND AMENDING SECTIONS 46-7-101, 46-9-201, 46-9-202, 46-10-202, 46-12-103, AND 46-12-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-7-101, MCA, is amended to read:

"**46-7-101. Bringing arrested person before a court — *use of two-way electronic audio-video communication.*** (1) ~~Any~~ *A* person making an arrest under a warrant shall take the arrested person without unnecessary delay before the judge issuing the warrant or, if he is absent or unable to act, before the nearest or most accessible judge of the same county. If an arrest is made in a county other than the one in which the warrant was issued, the arrested person ~~shall~~ *must* be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made.

(2) ~~Any~~ *A* person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest or most accessible judge in the same county, and a complaint stating the charges against the arrested person ~~shall~~ *must* be filed ~~forthwith~~ *immediately.*

(3) A defendant's initial appearance before a judge may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other and so that the defendant and his counsel, if any, can communicate privately. A judge may order a defendant's physical appearance in court for an initial appearance hearing."

Section 2. Section 46-9-201, MCA, is amended to read:

"**46-9-201. Who may admit to bail.** ~~Any~~ *A* judge may admit *to bail* any defendant properly appearing before him in ~~such~~ *a bail* proceeding ~~to bail~~. When bound over to any court or judge having jurisdiction of the offense charged, bail ~~shall~~ *must* be continued provided *that* the court or judge having jurisdiction may increase, reduce, or substitute bail. On appeal, ~~any~~ *a* judge before whom the trial was had or ~~any~~ *a* judge having the power to issue a writ of habeas corpus may admit the defendant to bail. *For purposes of this section, a defendant's appearance before a judge may be either by physical appearance before the court or by two-way electronic audio-video communication as provided in 46-9-202.*"

Section 3. Section 46-9-202, MCA, is amended to read:

"**46-9-202. Giving bail before another court or judge — *use of two-way electronic audio-video communication.*** *(1)* The defendant, when arrested for a bailable offense, must be taken without unnecessary delay before the nearest or most accessible judge in order that bail may be fixed. If the defendant is brought before a judge other than the court in which the charge is pending, the judge ~~must~~ *shall* establish and accept bail and set the time for the appearance of the defendant in the court in which the charge is pending. Upon acceptance of bail, the judge ~~must~~ *shall* deliver the bail without delay to the court in which the charge is pending.

(2) The requirement that a defendant be taken before a judge for setting of bail may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and his counsel, if any, can communicate privately, and so that the defendant and his counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that his counsel be in the defendant's physical presence during the two-way electronic audio-video communication. A judge may order a defendant's physical appearance in court for the hearing of an application for admission to bail."

Section 4. Section 46-10-202, MCA, is amended to read:

"**46-10-202. Presentation of evidence.** (1) The defendant may not enter a plea. The justice shall hear the evidence without unnecessary delay. All witnesses must be examined in the presence of the defendant. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. *For purposes of this section, a preliminary examination conducted by the use of two-way electronic audio-video communication that allows all of the participants to be observed and heard by all other participants and that allows the defendant to cross-examine witnesses is considered to be an examination of a witness in the presence of the defendant. Two-way electronic audio-visual communication may not be used unless the defendant's counsel is physically present with his client, unless this requirement is waived by the defendant.*

(2) During the examination of ~~any~~ *a* witness or when the defendant is making a statement or testifying, the justice may, and on the request of the defendant or state shall, exclude all other witnesses. He may also cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

(3) For purposes of a hearing under this chapter, a defendant may, in the discretion of the court, appear before the court either by physical appearance or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and his counsel, if any, can communicate privately, and so that the defendant and his counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that his counsel be in the defendant's physical presence during the two-way electronic audio-video communication. A judge may order a defendant's physical appearance in court for a preliminary examination."

Section 5. Section 46-12-103, MCA, is amended to read:

"**46-12-103. Presence of defendant — *use of two-way electronic audio-video communication.*** If the offense charged is a felony, the defendant must be ~~personally~~ present for arraignment *either by physical appearance or by two-way electronic audio-video communication.* If the offense charged is a misdemeanor, he may appear by counsel *or be present either by physical appearance or by two-way electronic audio-video communication."*

Section 6. Section 46-12-201, MCA, is amended to read:

"**46-12-201. General rules of procedure for arraignment — *use of two-way electronic audio-video communication — exception.*** *(1)* The arraignment in any court in this state must be conducted in the following manner:

~~(1)~~*(a)* The arraignment must be in open court. *For purposes of this chapter, an arraignment that is conducted by the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an arraignment in open court.*

~~(2)~~*(b)* The court must inquire of the defendant or his counsel the defendant's true name, and if the defendant's true name ~~be~~ *is* given as any other than that used in the charge, the court must order the defendant's name to be substituted for the name under which he is charged. The subsequent proceedings must be conducted with the defendant charged under that name, but in the discretion of the court, the defendant may also be referred to by the name by which he was first charged.

~~(3)~~*(c)* The court must determine whether the defendant is under any disability ~~which~~ *that* would prevent the court in its discretion from proceeding with the arraignment. The arraignment may be continued until such time as the court determines the defendant is able to proceed.

(2) Whenever the law requires that a defendant in a misdemeanor or felony case be taken before a court for an arraignment, this requirement may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and his counsel, if any, can communicate privately, and so that the defendant and his counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that his counsel be in the defendant's physical presence during the two-way electronic audio-video communication.

(3) A judge may order a defendant's physical appearance in court for arraignment. In a felony case, a judge may not accept a plea of guilty from a defendant not physically present in the courtroom."

Approved April 27, 1991.

CHAPTER NO. 711

[SB 82]

AN ACT STANDARDIZING THE FUNDING MECHANISM FOR ELEMENTARY AND HIGH SCHOOL DISTRICT TRANSPORTATION SCHEDULES BY DIVIDING THE COSTS BETWEEN THE STATE AND COUNTY; REQUIRING A REPORT TO THE 1993 LEGISLATURE; AMENDING SECTIONS 15-23-607, 15-23-703, 17-3-213, 20-7-422, 20-9-212, 20-9-334, 20-9-366, 20-9-367, 20-9-368, 20-10-141, 20-10-142, 20-10-143, 20-10-144, 20-10-145, AND 20-10-146, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature recognizes its responsibility to develop a more equalized system of funding school transportation. It is the intent of the Legislature that this bill, which allows the Office of Public Instruction to develop data not currently available to monitor current spending by the school, be considered simply the first step toward providing a long-term solution to school transportation equalization problems in Montana. The Legislature also intends, as provided in [section 16], that the Office of Public Instruction continue to collect school transportation data and that equitable funding methods for school transportation be addressed by the 53rd Legislature.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-213, MCA, is amended to read:

"**17-3-213. Allocation to general road fund and countywide school levies.** (1) The forest reserve funds so apportioned to each county must be apportioned by the county treasurer in each county as follows:

(a) to the general road fund, 66 ⅔% of the total amount received;

(b) to the following countywide school levies, 33 ⅓% of the total sum received:

(i) county equalization for elementary schools provided for in 20-9-331; and

(ii) county equalization for high schools provided for in 20-9-333;

(iii) the ~~high school~~ *county* transportation fund provided for in ~~20-10-143~~ *20-10-146*; and

(iv) the elementary and high school district retirement fund obligations provided for in 20-9-501.

(2) The apportionment of money to the funds provided for under subsection (1)(b) must be made by the county superintendent based on the proportion that the mill levy of each fund bears to the total number of mills for all the funds. Whenever the total amount of money available for apportionment under this section is greater than the total requirements of a levy, the excess money and any interest income must be retained in a separate reserve fund, to be reapportioned in the ensuing school fiscal year to the levies designated in subsection (1)(b).

(3) In counties in which special road districts have been created according to law, the board of county commissioners shall distribute a proportionate share of the 66 ⅔% of the total amount received for the general road fund to the special road districts within the county based upon the percentage that the total area of the road district bears to the total area of the entire county."

Section 2. Section 15-23-607, MCA, is amended to read:

"**15-23-607. County assessors to compute taxes.** (1) Immediately after the board of county commissioners has fixed tax levies on the second Monday in August, the county assessor shall, subject to the provisions of 15-23-612, compute the taxes on net proceeds, as provided in subsection (2) of this section, and royalty assessments and shall deliver the book to the county treasurer on or before September 15. The county treasurer shall proceed to give full notice of the assessments to the operator and shall collect the taxes as provided by law.

(2) For interim production or new production, as defined in 15-23-601, the county assessor may not levy or assess any mills against the value of the interim production or new production, but shall instead levy a tax as follows:

(a) for interim production or new production of petroleum or other mineral or crude oil, 7% of net proceeds, as described in 15-23-603(2); or

(b) for interim production or new production of natural gas, 12% of net proceeds, as described in 15-23-603(2).

(3) The amount of tax levied in subsections (2)(a) and (2)(b), divided by the appropriate tax rate and multiplied by 60%, must be treated as taxable value for county bonding purposes.

(4) The taxable value of net proceeds for the purpose of computing guaranteed tax base aid for schools *and counties under the provisions of 20-9-366* is the amount of tax received by a district in the previous year divided by the number of mills levied by the district in the previous year, multiplied by 1,000. This amount must be added to the district, county, and statewide taxable value when computing guaranteed tax base aid under 20-9-368.

(5) The operator or producer is liable for the payment of the taxes that, except as provided in 15-16-121, are payable by and must be collected from the operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines. However, the operator may at his option withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon the royalty or royalty interest. After the withholding, any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests."

Section 3. Section 15-23-703, MCA, is amended to read:

"**15-23-703. Taxation of gross proceeds — taxable value for bonding and guaranteed tax base aid to schools.** (1) The county assessor shall compute from the reported gross proceeds from coal a tax roll that he shall transmit to the county treasurer on or before September 15 each year. The county assessor may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall proceed to give full notice to each coal producer of the taxes due and to collect the taxes as provided in 15-16-101.

(2) For bonding, county classification, and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102(5).

(3) The taxable value of gross proceeds for the purpose of computing guaranteed tax base aid for schools *and counties under the provisions of 20-9-366* is the amount of tax received by a district in the previous year divided by the number of mills levied by the district in the previous year, multiplied by 1,000. This amount must be added to the district, county, and statewide taxable value when computing guaranteed tax base aid under 20-9-368.

(4) The county treasurer shall credit all taxes collected under this part:

(a) to the state and to the counties that levied mills against production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in the year 1989 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills against production or used nontax revenue, such as Public Law 81-874 money, in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in 1989 in the school district."

Section 4. Section 20-7-442, MCA, is amended to read:

"**20-7-442. State transportation reimbursement for special education children.** Districts providing children with transportation to a special education class or program and complying with the special education transportation regulations promulgated by the superintendent of public instruction shall be eligible for a transportation reimbursement. The reimbursement shall be calculated from a schedule established by the superintendent of public instruction with the state providing ~~two-thirds~~ *100%* of the reimbursement ~~and the county in which the children reside providing the remainder~~."

Section 5. Section 20-9-212, MCA, is amended to read:

"**20-9-212. Duties of county treasurer.** The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts which are entitled to a portion of the money according to the apportionments ordered by the county superintendent. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary foundation programs;

(b) the basic special tax for high schools in support of the high school foundation programs;

(c) the county tax in support of the ~~county's high school~~ transportation ~~obligation~~ *schedules*;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, which may be authorized by law and levied by the county commissioners~~;~~.

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures for each budgeted fund included in the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included in the final budget of each district and for each nonbudgeted fund established by each district;

(5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school money and properly endorsed by their holders;

(6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if no fund is designated by law. Interest and penalties on delinquent school taxes shall be credited to the same fund and district for which the original taxes were levied.

(7) send all revenue received for a joint district, part of which is situated in his county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months thereafter until the end of the school fiscal year;

(8) at the direction of the trustees of a district, assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(9) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(10) invest the money of any district as directed by the trustees of the district within 3 working days of the direction;

(11) each month give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, outstanding warrants, registered warrants, amounts and types of revenue received, and the cash balance;

(12) remit promptly to the state treasurer receipts for the county tax for a vocational-technical center when levied by the board of county commissioners under the provisions of 20-16-202; and

(13) invest the money received from the basic county tax in support of the elementary foundation programs and the basic special tax in support of the high school foundation programs within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) and (1)(b)."

Section 6. Section 20-9-334, MCA, is amended to read:

"**20-9-334. Apportionment of county equalization moneys by county superintendent.** The county superintendent shall separately apportion the revenues deposited in the basic county tax account and the revenues deposited in the basic special tax for high schools account to the several districts of the county on a monthly basis. The apportionments shall be known as "county equalization moneys". Before the county superintendent makes the monthly apportionments, he shall~~:~~

~~(1) deduct from the revenues available in the basic county tax account the amount required for the month to pay the county's obligation for elementary transportation reimbursements; and~~

~~(2)~~ deduct from the revenues available in the basic special tax for high schools account the amount required for the month to pay the county's obligation for high school out-of-county tuition."

Section 7. Section 20-9-366, MCA, is amended to read:

"**20-9-366. Definitions.** As used in 20-9-366 through 20-9-369, the following definitions apply:

(1) "County *retirement* mill value per elementary ANB" or "county *retirement* mill value per high school ANB" means the sum of the current taxable valuation of all property in the county plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of nonlevy revenue for the support of schools, other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of nonlevy revenue received by a district in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000.

(2) "District mill value per ANB" means the current taxable valuation of all property in the district plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of nonlevy revenue for the support of schools, other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year foundation program schedule amount. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of nonlevy revenue received by a district in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance

tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000.

(3) "Guaranteed overschedule general fund budget" means that portion of a district's general fund budget in excess of the foundation program amount for the district, as provided in 20-9-316 through 20-9-321, but not exceeding 135% of the district's foundation program amount, and which excess is authorized under the provisions of 20-9-145 and 20-9-353.

(4) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", *for permissive and retirement guaranteed tax base purposes,* means the sum of the current taxable valuation of all property in the state plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of nonlevy revenue for the support of schools, other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of nonlevy revenue received by a district in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000."

Section 8. Section 20-9-367, MCA, is amended to read:

"**20-9-367. Eligibility to receive guaranteed tax base aid.** (1) If the district mill value per ANB of any elementary or high school district is less than the corresponding statewide mill value per ANB, the district may receive guaranteed tax base aid based on the number of mills levied in the district in support of its guaranteed overschedule permissive amount of the general fund budget.

(2) If the county *retirement* mill value per elementary ANB or *county retirement mill value per* high school ANB is less than the corresponding statewide mill value per ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county."

Section 9. Section 20-9-368, MCA, is amended to read:

"**20-9-368. Amount of guaranteed tax base aid — reversion.** (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets ~~of~~ *for* the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets ~~of~~ *for* the high school districts in the county.

(3) The amount of guaranteed tax base aid per ANB that a district may receive in support of its guaranteed overschedule permissive amount of the general fund budget is the difference between the district mill value per ANB and the corresponding statewide mill value per ANB, multiplied by the number of mills levied in support of the district's guaranteed overschedule permissive amount of the general fund budget.

(4) Guaranteed tax base aid provided to any county or district under this section is earmarked to finance the fund or portion of the fund for which it is provided. If the actual expenditures from the fund or portion of the fund for which guaranteed tax base aid is earmarked are less than the amount budgeted, the guaranteed tax base aid reverts in proportion to the amount budgeted but not expended. If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344."

Section 10. Section 20-10-141, MCA, is amended to read:

"**20-10-141. Schedule of maximum reimbursement by mileage rates.** (1) The following mileage rates for school transportation constitute the maximum reimbursement to districts for school transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates ~~shall~~ *may* not limit the amount ~~which~~ *that* a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school transportation during the ensuing school fiscal year. All bus miles traveled on routes approved by the county transportation committee are reimbursable. Nonbus mileage is reimbursable for a vehicle driven by a bus driver to and from an overnight location of a school bus when the location is more than 10 miles from the school. A district may approve additional bus or nonbus miles within its own district or approved service area but may not claim reimbursement for ~~such~~ *the* mileage. Any vehicle, the operation of which is reimbursed for bus mileage under the rate provisions of this schedule, ~~shall~~ *must* be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) The rate per bus mile traveled ~~shall~~ *must* be determined in accordance with the following schedule when the number of eligible transportees that board a school bus on an approved route is not less than one-half of its rated capacity:

(a) ~~72 cents in fiscal 1984 and 80~~ *85* cents ~~in fiscal 1985 and each year thereafter~~ per bus mile for a school bus with a rated capacity of not less than 12 but not more than 45 children; and

(b) when the rated capacity is more than 45 children, an additional ~~2~~ *2.13* cents per bus mile for each additional child in the rated capacity in excess of 45 ~~shall~~ *must* be added to a base rate of ~~72 cents in fiscal 1984 and 80~~ *85* cents ~~in fiscal 1985 and each year thereafter~~ per bus mile.

(3) Reimbursement for nonbus mileage provided for in subsection (1) may not exceed 50% of the maximum reimbursement rate determined under subsection (2).

(4) When the number of eligible transportees boarding a school bus on an approved route is less than one-half of its rated capacity, the rate per bus mile traveled ~~shall~~ *must* be computed as follows:

(a) determine the number of eligible transportees that board the school bus on the route;

(b) multiply the number determined in subsection (4)(a) by two and round off to the nearest whole number; and

(c) use the adjusted rated capacity determined in subsection (4)(b) as the rated capacity of the bus to determine the rate per bus mile traveled from the rate schedule in subsection (2).

(5) The rated capacity ~~shall be~~ *is* the number of riding positions of a school bus as determined under the policy adopted by the board of public education."

Section 11. Section 20-10-142, MCA, is amended to read:

"**20-10-142. Schedule of maximum reimbursement for individual transportation.** The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates also shall constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. The schedules provided in this section shall not be altered by any authority other than the legislature of the state of Montana. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school or to schools located within 3 miles of one another, the total reimbursement per day of attendance shall be determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by 2, subtracting 6 miles from the product so obtained, and multiplying the difference by ~~20~~ *21.25* cents provided that:

(a) if two or more eligible transportees are transported by a parent or guardian to two or more schools located within 3 miles of one another and if such schools are operated by different school districts, the total amount of the reimbursement shall be divided equally between the districts;

(b) if two or more eligible transportees are transported by a parent or guardian to two or more schools located more than 3 miles from one another, the parent or guardian shall be separately reimbursed for transporting the eligible transportee or transportees to each school;

(c) if a parent transports two or more eligible transportees to a school and a bus stop which school and bus stop are located within 3 miles of one another, the total reimbursement shall be determined under the provisions of this subsection and shall be divided equally between the district operating the school and the district operating the bus;

(d) if a parent transporting two or more eligible transportees to a school or bus stop must, because of varying arrival and departure times, make more than one round-trip journey to the bus stop or school, the total reimbursement allowed by this section shall be limited to one round trip per day for each scheduled arrival or departure time;

(e) notwithstanding subsection (1)(a), (1)(b), (1)(c), or (1)(d), no reimbursement may be less than 25 cents a day.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus route approved by the trustees for the transportation of the transportee or transportees, the total reimbursement per day of attendance shall be determined by multiplying the distance in miles between the residence and the bus stop by 2, subtracting 3 miles from the product so obtained, and multiplying the difference by ~~20~~ *22.5* cents provided that:

(a) if the eligible transportees transported attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally; and

(b) if the parent or guardian is required to transport the eligible transportees to more than one bus, the parent or guardian shall be separately reimbursed for transportation to each bus.

(3) Where, due to excessive distances, impassable roads, or other special circumstances of isolation the rates prescribed in subsection (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, his parent or guardian may request an increase in the reimbursement rate. Such a request for increased rates due to isolation shall be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances which exist to justify the increase. Before any increased rate due to isolation can be paid to the requesting parent or guardian, such rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation committee and the superintendent of public instruc-

tion, the trustees shall pay such increased rate due to isolation. The increased rate shall be 1 1/2 times the rate prescribed in subsection (1) above.

(4) When the isolated conditions of the household where an eligible transportee resides require such eligible transportee to live away from the household in order to attend school, he shall be eligible for the room and board reimbursement. Approval to receive the room and board reimbursement shall be obtained in the same manner prescribed in subsection (3) above. The per diem rate for room and board shall be ~~$5~~ *$5.31* for one eligible transportee and ~~$3~~ *$3.19* for each additional eligible transportee of the same household.

(5) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate shall be the cost of such study, provided that the course of instruction is approved by the trustees and supervised by the district."

Section 12. Section 20-10-143, MCA, is amended to read:

"**20-10-143. Budgeting for transportation and transmittal of transportation contracts.** (1) The trustees of ~~any~~ *a* district furnishing transportation to pupils who are residents of ~~such~~ *the* district shall ~~have the authority and it shall be their duty to~~ provide a transportation fund budget that is adequate to finance ~~such~~ *the* district's transportation contractual obligations and any other transportation expenditures necessary for the conduct of its transportation program. The transportation fund budget ~~shall~~ *must* include:

(a) an adequate amount to finance the maintenance and operation of district owned and operated school buses;

(b) the annual contracted amount for the maintenance and operation of school buses by a private party;

(c) the annual contracted amount for individual transportation, including any increased amount due to isolation, which ~~shall~~ *may* not exceed the schedule amounts prescribed in 20-10-142;

(d) any amount necessary for the purchase, rental, or insurance of school buses; and

(e) any other amount necessary to finance the administration, operation, or maintenance of the transportation program of the district, as determined by the trustees.

(2) The trustees may include a contingency amount in the transportation fund budget for the purpose of enabling the district to fulfill ~~any~~ *an* obligation to provide transportation in accordance with ~~the transportation law~~ *this title* for*:*

(a) ~~any~~ pupils not residing in the district at the time of the adoption of the preliminary budget and who subsequently became residents of ~~such~~ *the* district during the school fiscal year*; or*

(b) pupils who have become eligible transportees since the adoption of the preliminary budget because their legal residence has been changed. The budgeted contingency amount ~~shall~~ *may* not exceed 10% of the transportation schedule amount as calculated under the provisions of 20-10-141 and 20-10-142 for all transportation services authorized by ~~such schedule~~ *the schedules* and provided by the district unless 10% of ~~such~~ *the* transportation schedule amount ~~shall be~~ *is* less than $100, in which case $100 ~~shall be~~ *is* the maximum limitation for ~~such~~ *the* budgeted contingency amount.

(3) ~~As provided in 20-9-162, an emergency~~ *A budget amendment to the* transportation fund budget may be adopted subject to the provisions of ~~the emergency budgeting law~~ *20-9-161 through 20-9-166.*

(4) The transportation fund budgeted expenditures appropriated by the trustees ~~shall~~ *must* be reported on the regular budget form prescribed by the superintendent of public instruction in accordance with 20-9-103, and the adoption of the transportation fund budget ~~shall~~ *must* be completed in accordance with the school budgeting laws. When the adopted preliminary budget is sent to the county superintendent, the trustees shall also send copies of all completed transportation contracts for school bus transportation and individual transportation to the county superintendent. ~~Such~~ *The* contracts ~~shall~~ *must* substantiate all contracted transportation services incorporated in the preliminary budget, and after the county superintendent has utilized the contracts for ~~such~~ *that* purpose but before the fourth Monday of July, he shall send all the transportation contracts received ~~by him~~ to the superintendent of public instruction. When the county superintendent determines a deviation between the preliminary transportation fund budget amount for contracted transportation services and the contracted amount for ~~such~~ *the* services, he shall immediately call the deviation to the attention of the appropriate trustees and shall allow the trustees to change the preliminary budgeted amount to compensate for ~~such~~ *the* deviation."

Section 13. Section 20-10-144, MCA, is amended to read:

"**20-10-144. Computation of revenues and net tax levy requirements for ~~the~~ *district* transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget must be reduced to the limitation amount and used in this determination of the schedule amount.

(2) *(a)* The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, is divided by ~~3~~ *2* and ~~the resulting one-third amount~~ is used to determine the available state and county revenue to be budgeted on the following basis:

~~(a)~~*(i)* ~~the resulting one-third~~ *one-half* ~~amount~~ is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be ~~two-thirds~~ *100%* of the schedule amount attributed to the transportation of special education pupils; *and*

~~(b)~~*(ii)* ~~the resulting one-third~~ *one-half* ~~amount, except as provided for joint elementary districts in subsection (2)(e),~~ is the budgeted county transportation *fund* reimbursement ~~for elementary districts~~ and must be financed ~~by the basic county tax under the provisions of 20-9-334;~~

~~(c) the resulting one-third amount multiplied by 2 is the budgeted county transportation reimbursement amount for high school districts financed under the provisions of subsection (5), except as provided for joint high school districts in subsection (2)(e), and~~ *in the manner provided in 20-10-146* ~~except that the county transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be one-third of the schedule amount attributed to the transportation of special education pupils;~~.

~~(d)~~*(b)* ~~when~~ *When* the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and cash reappropriated must be used to reduce the county financing obligation in subsection ~~(2)(b) or (2)(c)~~ *(2)(a)(ii)* and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection ~~(2)(a); and~~*(2)(a)(i).*

~~(e)~~*(c)* ~~the~~ *The* county revenue requirement for a joint district, after the application of any district money under subsection ~~(2)(d)~~ *(2)(b)*, must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act; ~~plus~~

(b) anticipated payments from other districts for providing school bus transportation services for the district; ~~plus~~

(c) anticipated payments from a parent or guardian for providing school bus transportation services for his child; ~~plus~~

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4); ~~plus~~

(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204; ~~plus~~

(f) ~~gross proceeds taxes from coal~~ *anticipated revenue from coal gross proceeds* under 15-23-703; ~~plus~~

(g) *anticipated* net proceeds taxes for interim production and new production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; ~~plus~~

(h) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year ~~which~~ *that* may be used to finance the transportation fund; ~~plus~~ *and*

(i) any ~~cash~~ *fund balance* available for reappropriation as determined by subtracting the amount of the end-of-the-year ~~cash~~ *fund* balance earmarked as the transportation fund ~~cash~~ *operating* reserve for the ensuing school fiscal year by the trustees from the end-of-the-year ~~cash~~ *fund* balance in the transportation fund. The ~~cash~~ *operating* reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount ~~and, for an elementary district, adding the difference to the district obligation to finance one-third of the schedule amount as determined in subsection (2)~~; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) ~~The county levy requirement for the financing of the county transportation reimbursement to high school districts is computed by adding all requirements for all the high school districts of the county, including the county's obligation for reimbursements in joint high school districts.~~

~~(6)~~ The transportation fund levy requirements determined in subsection (4) for each district ~~and in subsection (5) for the county~~ must be reported to the county commissioners on the second Monday of August by the county superintendent as the transportation fund levy requirements for the district ~~and for the county~~, and the ~~levies~~ *levy* must be made by the county commissioners in accordance with 20-9-142."

Section 14. Section 20-10-145, MCA, is amended to read:

"**20-10-145. State transportation reimbursement.** (1) ~~Any~~ *A* district providing school bus transportation or individual transportation in accordance with ~~the transportation law~~ *this title*, board of public education transportation policy, and superintendent of public instruction transportation rules ~~shall~~ *must* receive a state reimbursement of its transportation expenditures under the transportation reimbursement rate provisions of 20-10-141 and 20-10-142. The state transportation reimbursement ~~shall not exceed one-third~~ *is one-half* of the reimbursement amounts ~~established in such sections or one-third~~ *or one-half* of the district's transportation fund budget, whichever is smaller, and ~~shall~~ *must* be computed on the basis of the number of days the transportation services were actually rendered, *not to exceed 180 pupil-instruction days*. In determining the amount of the state transportation reimbursement, ~~no~~ *an* amount claimed by a district ~~shall~~ *may not* be considered for reimbursement unless ~~such~~ *the* amount has been paid in the regular manner provided for the payment of other financial obligations of the district.

(2) Requests for the state transportation reimbursement ~~shall~~ *must* be made by each district semiannually during the school fiscal year on the claim forms and procedure promulgated by the superintendent of public instruction. The claims for state transportation reimbursements ~~shall~~ *must* be routed by the district to the county superintendent, who after reviewing ~~such~~ *the* claims shall send them to the superintendent of public instruction. The superintendent of public instruction shall establish the validity and accuracy of the claims for the state transportation reimbursements by determining ~~their~~ compliance with ~~the transportation law~~ *this title*, board of public education transportation policy, and the transportation rules of the superintendent of public instruction. After making any necessary adjustments to ~~such~~ *the* claims, ~~he shall cause their~~ *the superintendent of public instruction shall order* payment by ordering a disbursement from the state ~~moneys~~ *money* appropriated by the legislature of the state of Montana for the state transportation reimbursement. ~~Such~~ *The* payment of all the district's claims within one county ~~shall~~ *must* be made to the county treasurer of ~~such~~ *the* county, and the county superintendent shall apportion ~~such~~ *the* payment in accordance with the apportionment order supplied by the superintendent of public instruction."

Section 15. Section 20-10-146, MCA, is amended to read:

"**20-10-146. County transportation reimbursement.** (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with ~~the transportation law~~ *this title,* board of public education transportation policy, and the transportation rules of the superintendent of public instruction ~~shall~~ *must* be the same as the state transportation reimbursement payment except that:

(a) ~~the high school apportionment of the county transportation reimbursement shall be twice the state transportation reimbursement payment;~~

~~(b)~~ if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144~~(2)(d)~~*(2)(b),* the annual apportionment ~~shall be~~ *is* limited to ~~such~~ *the* budget amount;

~~(c) when a district receives a state transportation reimbursement of two-thirds the schedule amount for the transportation of special education pupils, the apportionment of the high school county transportation reimbursement shall be adjusted to provide only a one-third high school county reimbursement of the transportation of special education pupils;~~ and

~~(d)~~*(b)* when the county transportation reimbursement for a school bus has been prorated between two or more counties because ~~such~~ *the* school bus is conveying pupils of more than one district located in ~~such~~ *the* counties, the apportionment of the county transportation reimbursement ~~shall~~ *must* be adjusted to pay the amount computed under ~~such~~ *the* proration.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(ii) net proceeds taxes and local government severance taxes on other oil and gas production occurring after December 31, 1988;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund. The county transportation fund operating reserve may not be more than 35% of the final county transportation fund budget for the ensuing school fiscal year and must be used for the purpose of paying transportation fund warrants under the county transportation fund budget;

(v) federal forest reserve funds allocated under the provisions of 17-3-213; and

(vi) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) notwithstanding the provisions of subsection (3), subtracting the money available as determined in subsection (2)(b) to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the second Monday of August by the county superintendent and a levy must be set by the county commissioners in accordance with 20-9-142.

~~(2)~~*(4)* The county superintendent shall apportion the ~~elementary~~ county transportation reimbursement from the proceeds of the ~~county basic levy and the high school county transportation reimbursement from the proceeds of the county tax for high school transportation~~ *county transportation fund.* The county superintendent shall order the county treasurer to make ~~such~~ *the* apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

Section 16. **Study of transportation funding.** (1) During the 1991-92 interim, the office of public instruction is directed to collect data and to study methods for equalizing school transportation funding.

(2) The office of public instruction is further directed to report its findings and conclusions and make recommendations for improvements in school transportation funding to the 53rd legislature.

Section 17. **Effective date.** [This act] is effective July 1, 1991.

Approved April 29, 1991.

CHAPTER NO. 712

[SB 111]

AN ACT ENCOURAGING BUSINESS INVOLVEMENT IN THE RECLAMATION AND RECYCLING OF MATERIALS; PROVIDING TAX CREDITS FOR INVESTMENTS IN DEPRECIABLE PROPERTY TO COLLECT OR PROCESS RECLAIMABLE MATERIAL OR TO MANUFACTURE A PRODUCT FROM RECLAIMED MATERIAL; PROVIDING A LIMITATION TO THE TAX CREDIT; PROVIDING AN ADDITIONAL 5 PERCENT TAX DEDUCTION FOR BUSINESS-RELATED USE OF RECYCLED MATERIALS; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is necessary for this bill because [section 5] grants rulemaking authority to the department of revenue. This bill allows rulemaking to proceed prior to the effective date of the act to allow the department ample time prior to the time the bill goes into effect to hold hearings and elicit the views of taxpayers, the public, and groups interested in the reclamation and recycling of materials.

The legislature expects the department to adopt rules that will promote the reclamation of materials that would normally be discarded, by encouraging the collection, processing, and reuse of reclaimable and recycled materials by businesses.

The bill addresses four levels of business involvement in the reclamation and recycling of materials:

(1) Retail businesses are encouraged to purchase equipment to collect reclaimable material from consumers.

(2) Recyclers are encouraged to purchase equipment to collect reclaimable material from businesses and other sources and process the material.

(3) Manufacturers are encouraged to purchase equipment to manufacture products from reclaimed material.

(4) All businesses are offered an additional business-related tax deduction to use recycled products in the course of their business.

The scope of the business activity to qualify for a tax credit should be broad. Retail grocery stores and other businesses should be encouraged to collect reclaimable material by receiving a tax credit for equipment they purchase to collect the material, even if they do not directly receive a business-related profit from the equipment or collection operation. Recyclers are encouraged to purchase collection and processing equipment, and manufacturers are encouraged to purchase equipment to make products from reclaimed material.

The rules should be inflexible in allowing dual roles for equipment—the qualifying equipment should be used primarily for the purposes of this bill. The rules should be flexible in determining the specifics of what are to be defined as reclaimable materials and recycled materials. The in-state advantages to building industry based upon reclamation and recycling may have local and interstate benefits that far outweigh the cost of a tax credit and additional deduction.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For the purposes of [sections 1 through 5], unless otherwise required by the context, the following definitions apply:

(1) "Collect" means the collection and delivery of reclaimable materials to a recycling or reclaimable materials processing facility.

(2) "Reclaimable material" means material that has useful physical or chemical properties after serving a specific purpose and that would normally be disposed of as solid waste, as defined in 75-10-203, by a consumer, processor, or manufacturer.

(3) "Recycled material" means a substance that is produced from at least 90% reclaimed material.

Section 2. **Amount and duration of credit — how claimed.** (1) An individual, corporation, partnership, or small business corporation, as defined in 15-31-201, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for investments in depreciable property to collect or process reclaimable material or to manufacture a product from reclaimed material, if the taxpayer qualifies under [section 3].

(2) Subject to [section 3(2)], a taxpayer qualifying for a credit under [section 3] is entitled to claim a credit in an amount equal to 25% of the cost of the property purchased to collect or process reclaimable material or to manufacture a product from reclaimed material only in the year in which the property was purchased. If qualifying property was purchased prior to January 1, 1992, but on or after January 1, 1990, a taxpayer is entitled to a credit for tax year 1992.

Section 3. **Credit for investment in property used to collect or process reclaimable material or to manufacture a product from reclaimed material.** (1) The following requirements must be met to be entitled to a tax credit for investment in property to collect or process reclaimable material or to manufacture a product from reclaimed material:

(a) The investment must be for depreciable property used primarily to collect or process reclaimable material or to manufacture a product from reclaimed material.

(b) (i) The taxpayer claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that collects or processes reclaimable material or that manufactures a product from reclaimed material. For the purposes of this section, a business qualifies as a business that collects reclaimable material if it gathers reclaimable material for later sale or processing for another business that has as its primary business function the collection or processing of reclaimable material or the manufacture of a product from reclaimed material. The collection of reclaimable material may be a minor or nonprofit part of a business otherwise engaged in a retail trade or other business activity.

(ii) The taxpayer may but need not operate or conduct a business that collects or processes reclaimable material or manufactures a product from reclaimed material. If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection

(1)(b), and must have been collecting or processing reclaimable material or manufacturing a product from reclaimed material during the tax year for which the credit is claimed.

(d) The reclaimed material collected, processed, or used to manufacture a product may not be an industrial waste generated by the person claiming the tax credit.

(2) A credit under this section may be claimed by a taxpayer for a business only if the qualifying property was purchased on or after January 1, 1990, but before January 1, 1996.

(3) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(4) A tax credit otherwise allowable under this section that is not used by the taxpayer in the taxable year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year.

(5) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(6) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary to collect or process reclaimable material or to manufacture a product from reclaimed material. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

Section 4. **Limitation of credit.** Notwithstanding the provisions of [sections 2 and 3], a tax credit may not be claimed for an investment in property used to produce energy from reclaimed material.

Section 5. **Deduction for purchase of recycled material.** In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct an additional amount equal to 5% of the taxpayer's expenditures for the purchase of recycled material that was otherwise deductible by the taxpayer as business-related expense in Montana.

Section 6. **Department to make rules.** The department of revenue shall prescribe rules necessary to carry out the purposes of [sections 1 through 6].

Section 7. **Reports by department of revenue.** The department of revenue shall report to the 53rd legislature and the 54th legislature on the amounts of the credit claimed under [sections 2 and 3], the number and types of businesses claiming the credit, and the general effectiveness of the credit.

Section 8. **Effective date — applicability — rulemaking.** (1) Except for the purposes of subsection (2), [this act] is effective December 31, 1991, and applies to tax years beginning after December 31, 1991.

(2) For the purposes of promulgating administrative rules to implement [sections 1 through 5], [this act] is effective on passage and approval.

Section 9. **Termination.** [This act] terminates December 31, 1995.

Approved April 29, 1991.

CHAPTER NO. 713

[SB 251]

AN ACT ALLOWING THE DEPARTMENT OF JUSTICE TO IMPOSE A SUSPENSION WITHOUT PAY FOR UP TO 10 DAYS ON HIGHWAY PATROL OFFICERS WITHOUT REQUIRING A PRESUSPENSION HEARING; ALLOWING 30 DAYS FOR A DECISION IN DISCIPLINARY HEARINGS; REQUIRING REPRESENTATION AT THE OFFICER'S EXPENSE AT A HEARING; PROVIDING FOR WAIVER OF A HEARING; AND AMENDING SECTIONS 44-1-701, 44-1-803, 44-1-804, AND 44-1-806, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Waiver.** A patrol officer may waive in writing his rights under Title 44, chapter 1, parts 7 and 8, and accept discipline considered appropriate by the department of justice.

Section 2. Section 44-1-701, MCA, is amended to read:

"**44-1-701. Authority of department of justice to suspend~~,~~** ***or*** **demote~~, or reprimand~~.** When the department of justice has cause to believe that any member of the highway patrol has violated any of the grounds for suspension, demotion, or discharge ~~or his conduct has warranted reprimanding~~, it may ~~suspend, demote, or reprimand the member~~ *impose a suspension without pay for up to 10 days without filing charges and conducting a hearing under part 8.*"

Section 3. Section 44-1-803, MCA, is amended to read:

"**44-1-803. Rights of accused.** The accused patrol officer shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf. He shall be entitled to be represented by counsel, *at his own expense,* at such hearing."

Section 4. Section 44-1-804, MCA, is amended to read:

"**44-1-804. Rendering and filing of decision.** The department of justice shall, within ~~15~~ *30* days after such hearing *or within the additional time to which the accused patrol officer consents,* render its decision in writing and file same in its office, with the chief, and with the patrol officer accused."

Section 5. Section 44-1-806, MCA, is amended to read:

"**44-1-806. Disciplinary action.** If after a hearing the department of justice finds that any charge or charges made against the patrol officer are true, it may punish the offending party by ~~reprimand,~~ suspension without pay, demotion, or discharge."

Section 6. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 44, chapter 1, part 9, and the provisions of Title 44, chapter 1, part 9, apply to [section 1].

Approved April 27, 1991.

CHAPTER NO. 714

[SB 256]

AN ACT AMENDING THE PREFERRED PROVIDER AGREEMENTS ACT TO REQUIRE HEALTH CARE INSURERS TO ENTER INTO PREFERRED PROVIDER AGREEMENTS WITH ALL HEALTH CARE PROVIDERS WILLING TO PROVIDE HEALTH CARE SERVICES UNDER A PREFERRED PROVIDER AGREEMENT; AMENDING SECTION 33-22-1704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-1704, MCA, is amended to read:

"**33-22-1704. Preferred provider agreements authorized.** (1) Notwithstanding any other provision of law to the contrary, a health care insurer may:

(a) enter into agreements with providers relating to health care services that may be rendered to insureds or subscribers on whose behalf the health care insurer is providing health care coverage, including preferred provider agreements relating to:

(i) the amounts an insured may be charged for services rendered; and

(ii) the amount and manner of payment to the provider; and

(b) issue or administer policies or subscriber contracts in this state that include incentives for the insured to use the services of a provider that has entered into an agreement with the insurer pursuant to subsection (1)(a).

(2) A health care insurer shall establish terms and conditions to be met by providers wishing to enter into an agreement with the health care insurer under subsection (1)(a). These terms and conditions may not discriminate against or among providers. For the purposes of this subsection, price differences among hospitals or other institutional providers produced by a process of individual negotiation or by price differences among different geographical areas or different specialties do not constitute discrimination. A health care insurer may not deny a provider the right to enter into an agreement under subsection (1)(a) if the provider is willing to meet the terms and conditions established in that agreement.

~~(2)~~*(3)* A preferred provider agreement issued or delivered in this state may not unfairly deny health benefits for health care services covered.

~~(3) This part does not require that an insurer negotiate or enter into agreements with any specific provider or class of providers.~~"

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Termination.** [This act] terminates July 1, 1993.

Approved April 29, 1991.

CHAPTER NO. 715

[SB 318]

AN ACT SUBJECTING PICKUP CAMPERS TO THE SAME IDENTIFICATION AND TITLE PROVISIONS AS OTHER RECREATIONAL VEHICLES; ALLOWING A PURCHASER OF A CAMPER A GRACE PERIOD FOR THE PAYMENT OF THE TAX OR FEE; AMENDING SECTIONS 61-1-102, 61-1-129, 61-3-107, 61-3-524, AND 61-3-525, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-102, MCA, is amended to read:

"**61-1-102. Motor vehicle.** "Motor vehicle" means ~~every~~ *a* vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state, except that for the purpose of chapter 3, the term also includes trailers, semitrailers, and housetrailers. *For the purpose of chapter 3, parts 1 and 2, the term also includes campers.* The term does not include a bicycle as defined in 61-1-123."

Section 2. Section 61-1-129, MCA, is amended to read:

"**61-1-129. Camper.** The term "camper" as used in *61-1-102,* 61-3-524, and 61-3-525 includes but is not limited to truck camper, chassis-mounted camper, cab over, half cab over, non cab over, telescopic, and telescopic cab over, but does not include a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached."

Section 3. Section 61-3-107, MCA, is amended to read:

"**61-3-107. Identification number for trailers *and campers*.** ~~Any~~ *A* trailer, semitrailer, ~~or~~ housetrailer ~~which,~~ *or camper that* does not have a manufacturer's or other identifying number thereon ~~shall~~ *must* be assigned an identification number by the department upon registration of ~~such~~ *the* motor vehicle. The owner or other person lawfully in possession of ~~such~~ *the* motor vehicle shall stamp ~~such~~ *the* number ~~so~~ assigned by the department upon the *entrance of the camper or on the* principal right frame member of ~~said~~ *the* motor vehicle near the front end ~~thereof~~ *of the vehicle* where it may be clearly and readily seen~~,~~. ~~and said~~ *The* stamping ~~shall~~ *must* be promptly accomplished after notice of the assigned number by the department. The department may withhold registration until satisfactory proof by affidavit of ~~such~~ *the* stamping is filed with it."

Section 4. Section 61-3-524, MCA, is amended to read:

"**61-3-524. Tax-paid decal required on camper — application for decal — application fee — issuance — *disposition of fee*.** (1) ~~No~~ *A* camper, subject to taxation in Montana, may *not* be operated by ~~any~~ *a* person on the public highways or streets in this state unless there is displayed in a conspicuous place ~~thereon~~ *on the camper* a decal as visual proof that the tax has been paid ~~thereon~~ *on the camper* for the current year.

(2) Application for the issuance of the decal ~~shall~~ *must* be made to ~~the department of revenue or~~ the county treasurer~~,~~ *in the county of the owner's residence, accompanied by an application fee of $1,* upon ~~forms~~ *a form* to be furnished *by the department of revenue* for this purpose, which may be obtained ~~from the department or~~ at the county treasurer's office ~~in the county wherein the owner resides,~~ and ~~is to~~ *which must* provide for substantially the following information:

(a) name of owner;

(b) address;

(c) name of manufacturer;

(d) model number;

(e) make;

(f) year of manufacture;

(g) statement evidencing payment of the property tax; and

(h) such other information as the department may require.

(3) *(a)* The ~~application must be signed by the~~ county treasurer ~~and transmitted by him~~ *shall sign the application and transmit the application* to the department ~~accompanied by an application fee~~ of ~~$1~~ *justice.*

(b) Upon receipt of the application in approved form, the ~~department or~~ county treasurer shall issue to the applicant a *numbered* decal in the style and design prescribed by the department *of revenue* and of a different color than the preceding year~~, numbered numerically~~."

Section 5. Section 61-3-525, MCA, is amended to read:

"**61-3-525. Annual application for decals.** Application may be made to the ~~department of revenue or~~ county treasurer for the issuance of camper decals annually when the motor vehicle to which the camper is customarily attached is registered."

Section 6. **Application for camper certificate of ownership.** A person applying for a certificate of ownership of a camper shall furnish proof of ownership in the form of a notarized bill of sale or a conditional sales contract.

Section 7. **Grace period for registration and payment of tax or fee — penalty for failure to pay tax or fee.** (1) Unless the tax or fee provided in 61-3-523 and 61-3-524 for the year has been paid, upon the purchase of a new camper, the purchaser has 20 days from the date of purchase to pay the tax or to apply for the camper decal fee, or both, as if the camper were being taxed for the first time in that registration year. The purchaser may operate or transport a camper on the highways of Montana without a tax-paid decal during the 20-day period if the operator of the camper or of the vehicle upon which the camper is transported has in his possession a 20-day certificate issued by a dealer, if the camper was purchased from a dealer, or a vehicle purchase certificate issued pursuant to 61-3-317 or other evidence of purchase of the camper.

(2) A purchaser who fails to make application and pay the tax within the time provided in subsection (1) is subject to a penalty of $10, which must be collected by the county treasurer when the tax is paid and must be in addition to the fees otherwise provided by law.

Section 8. **Codification instruction.** [Sections 6 and 7] are intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61, chapter 3, part 5, apply to [sections 6 and 7].

Section 9. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 10. **Applicability.** [This act] applies to a newly manufactured camper sold by a recreational vehicle dealer or transferred after September 30, 1991.

Approved April 29, 1991.

CHAPTER NO. 716

[SB 348]

AN ACT AUTHORIZING THE DEPARTMENT OF FAMILY SERVICES TO PROVIDE PROTECTIVE SERVICES TO CERTAIN OLDER AND DEVELOPMENTALLY DISABLED PERSONS; ESTABLISHING AUTHORITY FOR GATHERING AND SUBMITTING EVIDENCE OF ABUSE OR NEGLECT OF OLDER AND DEVELOPMENTALLY DISABLED PERSONS; AND AMENDING SECTIONS 53-5-503 AND 53-5-504, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-5-503, MCA, is amended to read:

"**53-5-503. Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a developmentally disabled person without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Developmentally disabled person" means a person 18 years of age or older who is developmentally disabled as defined in 53-20-102.

(3) "Exploitation" means the unreasonable use of an older person or a developmentally disabled person, his money, or his property to the advantage of another by means of duress, menace, fraud, or undue influence.

(4) "Incapacitated person" has the meaning given in 72-5-101.

~~(4)~~*(5)* "Long-term care facility" means a facility defined in 50-5-101.

~~(5)~~*(6)* "Mental injury" means an identifiable and substantial impairment of an older person's intellectual or psychological functioning or well-being.

~~(6)~~*(7)* "Neglect" means the failure of a guardian, employee of a public or private residential institution, facility, home, or agency, or any other person legally responsible in a residential setting for an older person's or a developmentally disabled person's welfare to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the developmentally disabled person.

~~(7)~~*(8)* "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 53-5-525(2), the person 60 years of age or older must be unable to protect himself from abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

~~(8)~~*(9)* "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function."

Section 2. Section 53-5-504, MCA, is amended to read:

"53-5-504. **Duties of department of family services.** (1) The department shall investigate reports of abuse, neglect, or exploitation received pursuant to 53-5-511(1)(a).

(2) The department of family services shall prepare an annual report of the information obtained pursuant to the reporting requirement of this part.

(3) The department shall, when appropriate, provide protective services under Title 53, chapter 5, part 2, or under Title 53, chapter 20, part 4, for a person alleged to have been abused, neglected, or exploited.

(4) If a person alleged to be abused, neglected, or exploited pursuant to this part or his caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to 53-5-511(1)(a), the district court in the county where the person is found may order a law enforcement officer or a department social worker to enter the premises to conduct an investigation upon finding there is probable cause to believe the person is abused, neglected, or exploited.

(5) If a representative of the department has reasonable grounds to believe that an older or developmentally disabled person alleged to be abused or neglected is suffering from abuse or neglect that presents a substantial risk of death or serious physical injury, the department may:

(a) provide voluntary protective services as provided in subsection (3); or

(b) if the department representative has reasonable grounds to believe that the person is incapacitated, provide emergency protective services as follows:

(i) arrange or facilitate an appropriate emergency protective service placement;

(ii) transport or arrange for the transport of the person to the appropriate placement;

(iii) not later than 2 judicial days following placement of the person, either:

(A) provide voluntary protective services as provided under subsection (3); or

(B) petition the district court to act as temporary guardian or appoint a temporary guardian as provided in 72-5-317."

Section 3. **Evidence of abuse or neglect to be gathered and submitted.** (1) A person or agency receiving a report of suspected abuse or neglect under 53-5-511 shall prepare a written description of the conditions regarded as evidence of abuse or neglect and may, with the consent of an allegedly abused or neglected older person or developmentally disabled person or without consent of the person if it appears that the person is an incapacitated person, take or cause to be taken photographs of an area of trauma visible on the body of the allegedly abused or neglected person and regarded as evidence of abuse or neglect.

(2) A physician required to report under 53-5-511 may, with the consent of an allegedly abused or neglected older person or developmentally disabled person or without consent of the person if it appears that the person is an incapacitated person, require x-rays or other appropriate medical tests or procedures that would, in the professional opinion of the physician, assist in establishing evidence related to the allegation of abuse or neglect.

(3) Evidence authorized to be gathered under this section must be submitted with the report required under 53-5-511 to the authorities designated in 53-5-511 as soon as possible after submission of the report.

Section 4. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 53, chapter 5, part 5, and the provisions of Title 53, chapter 5, part 5, apply to [section 3].

Approved April 27, 1991.

CHAPTER NO. 717

[SB 390]

AN ACT MAKING CERTAIN PERSONAL PROPERTY ELIGIBLE FOR PROPERTY TAX RELIEF WHEN DESTROYED BY NATURAL DISASTER; DEFINING A FIRE CAUSED BY OTHER THAN THE TAXPAYER'S ARSON TO BE A NATURAL DISASTER; REQUIRING THE TAXPAYER UNDER PENALTY TO NOTIFY THE DEPARTMENT OF REVENUE IF HE REPLACES DESTROYED PERSONAL PROPERTY; PROVIDING THAT PERSONAL PROPERTY REPLACING DESTROYED PERSONAL PROPERTY BE TAXED ON A PRO RATA BASIS; AMENDING SECTION 15-16-611, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-611, MCA, is amended to read:

"**15-16-611. Reduction of property tax for property destroyed by natural disaster** — ***proration of taxes on replaced property.*** (1) The department of revenue shall, upon showing by a taxpayer that some or all of the improvements on his real property or a trailer or mobile home, as described in 15-6-142, *or that personal property taxed under Title 15, chapter 6, part 1,* ~~have~~ *has* been destroyed to such an extent that ~~such~~ *the* improvements *or personal property* ~~have~~ *has* been rendered unsuitable for ~~their~~ *its* previous use by natural disaster, adjust the taxable value on the property, accounting for the destruction.

(2) The county treasurer shall adjust the tax due and payable for the current year on the property under 15-16-102 *or on personal property under 15-16-113 or 15-24-202* as provided in subsection (3) of this section.

(3) To determine the amount of tax due for destroyed property, the county treasurer shall:

(a) multiply the amount of tax levied and assessed on the original taxable value of the property for the year by the ratio that the number of days in the year that the property existed before destruction bears to 365; and

(b) multiply the amount of tax levied and assessed on the adjusted taxable value of the property for the remainder of the year by the ratio that the number of days remaining in the year after the destruction of the property bears to 365.

(4) This section does not apply to delinquent taxes owed on the destroyed property for a year prior to the year in which the property was destroyed.

(5) A taxpayer receiving a reduction in taxes on personal property under this section shall notify the department if he replaces the destroyed personal property in the same tax year that the personal property was destroyed. The tax on the personal property replacing the destroyed personal property must be prorated according to the ratio that the number of days remaining in the year after the property was replaced bears to 365. A taxpayer who fails to notify the department within 30 days from the date of the replacement of the personal property is subject to the penalty prescribed in 15-1-303.

~~(5)~~*(6)* For the purposes of this section, "natural disaster" includes but is not limited to fire, flood, earthquake, or wind. *A fire is considered a natural disaster regardless of the origin of the fire. However, if the taxpayer is convicted of arson for burning the property, property taxes may not be adjusted. If they had already been adjusted prior to the conviction, the original amount must be collected.*"

Section 2. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved April 27, 1991.

CHAPTER NO. 718

[SB 415]

AN ACT ESTABLISHING A STATE PARKS RECREATIONAL VEHICLE FEE ON ALL RECREATIONAL VEHICLES, CAMPERS, MOTOR HOMES, AND TRAVEL TRAILERS; SETTING THE FEE; AND PROVIDING THAT FEE PROCEEDS MAY BE EARMARKED FOR STATE PARKS TO PROVIDE RECREATIONAL VEHICLE SERVICES AND FACILITIES.

WHEREAS, there are approximately 35,000 recreational vehicles owned by Montana residents; and

WHEREAS, recreational vehicle users represent a substantial proportion of state parks visitors; and

WHEREAS, recreational vehicle users require special services not needed by picnickers or tent campers; and

WHEREAS, the Legislature finds it appropriate to assess a fee on recreational vehicles, campers, motor homes, and travel trailers and to earmark the revenue for state parks for recreational vehicle services and facilities; and

WHEREAS, the Legislature requests the Department of Fish, Wildlife, and Parks, in properly expending fee proceeds, to seek the advice of and consult with recreational vehicle owners on the most appropriate ways to expend the funds to improve recreational vehicle services in state parks.

Be it enacted by the Legislature of the State of Montana:

Section 1. **State parks recreational vehicle fee — collection and expenditure — exception.** (1) There is a fee of $3.50 imposed on the registration or reregistration of each recreational vehicle as defined in 61-1-132, camper as defined in 61-1-129, motor home as defined in 61-1-130, and travel trailer as defined in 61-1-131. The fee is in addition to annual registration fees and is due and payable at the time of registration.

(2) The fee must be collected by the county treasurer and submitted to the department of revenue to be expended as provided in this section. The department of revenue shall place the fee proceeds in the state treasury in the special revenue fund established in 23-1-105 to the credit of the department of fish, wildlife, and parks. The funds may be used to provide recreational vehicle services and facilities in state parks.

(3) The fee imposed by subsection (1) need not be paid by a dealer for vehicles that constitute the inventory of the dealership.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61, chapter 3, part 5, apply to [section 1].

Approved April 29, 1991.

CHAPTER NO. 719

[SB 456]

AN ACT TO REMOVE THE LIMITATION ON SCHOOL DISTRICT TRUSTEES FOR THE ISSUANCE OF SHORT-TERM OBLIGATIONS TO THE BOARD OF INVESTMENTS; AMENDING SECTION 20-9-471, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-471, MCA, is amended to read:

"**20-9-471. Issuance of short-term obligations — authorization — conditions.** (1) The trustees of a school district may, without a vote of the electors of the district, issue and sell to the board of investments short-term obligations for the purpose of financing all or a portion of:

(a) the costs of vehicles and equipment;

(b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, and electrical systems;

(c) any other ~~capital~~ expenditure the district is otherwise authorized to make, subject to subsection (4), *including the payment of settlements of legal claims and judgments*; and

(d) the costs associated with the issuance and sale of the short-term obligations.

(2) The term of the short-term obligation may not exceed 5 full fiscal years.

(3) At the time of issuing the obligation, there must exist an amount in the budget for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of such principal and interest.

(4) The proceeds of the short-term obligation may not be used to acquire real property or construct a facility.

(5) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

(6) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments at par, at a discount or with a premium, and upon any other terms and conditions that the trustees determine to be in the best interests of the district.

(7) The principal amount of the short-term obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation established in 20-9-406."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 29, 1991.

CHAPTER NO. 720

[HB 509]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO STATE EMPLOYEE COMPENSATION; ARTICULATING A MARKET-BASED PAY PHILOSOPHY; PROVIDING PAY ADJUSTMENTS TO EMPLOYEES IN THE STATEWIDE, TEACHERS', LIQUOR STORE OCCUPATIONS, AND BLUE-COLLAR PAY PLANS; PROVIDING PAY ADJUSTMENTS FOR CERTAIN ELECTED AND APPOINTED OFFICIALS AND CERTAIN OTHER STATE EMPLOYEES; REQUIRING THAT EACH AGENCY NEGOTIATE SHIFT DIFFERENTIALS AND HAZARDOUS DUTY PAY WITH EMPLOYEES; PROVIDING GROUP BENEFITS ADJUSTMENTS; PROVIDING AN APPROPRIATION TO FUND THE PAY ADJUSTMENTS; AMENDING SECTIONS 2-16-405, 2-18-101, 2-18-301, 2-18-303, 2-18-304, 2-18-305, 2-18-312, 2-18-313, 2-18-314, 2-18-315, 2-18-703, 5-2-301, 13-37-106, AND 15-2-102, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

In order to recruit and retain competent and qualified public employees to perform required services for the state, it is the intent of the legislature to provide for a state employee compensation system based on the prevailing compensation practices found in relevant public sector and private sector labor markets.

(1) To achieve this goal, 2-18-301 requires that the department of administration provide a salary survey report to the legislature. The report may include, but is not limited to:

(a) data showing the average salaries paid to employees in Montana's labor market for comparable positions;

(b) recommendations for administering the pay increases provided in 2-18-303; and

(c) recommendations for adjusting the pay schedules provided in 2-18-312 in order to maintain an internally equitable and competitive salary structure for Montana state employees.

(2) Labor markets relevant to state employees must have positions comparable to those in Montana state government and must compete with state government for qualified employees.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-101, MCA, is amended to read:

"**2-18-101. Definitions.** As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Base salary" means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

(b) overtime;

(c) fringe benefits as defined in 39-2-903; and

(d) the longevity allowance provided in 2-18-304.

~~(2)~~*(3)* "Board" means the board of personnel appeals established in 2-15-1705.

~~(3)~~*(4)* "Class" means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to designate each position allocated to the class, similar qualifications may be required of persons appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

~~(4)~~*(5)* "Class specification" means a written descriptive statement of the duties and responsibilities characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and qualifications necessary to perform the work of the class.

~~(5)~~*(6)* "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under provisions of 2-18-703.

~~(6)~~*(7)* "Department" means the department of administration created in 2-15-1001.

~~(7)~~*(8)* Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104 from the statewide classification system.

(9) "Entry salary" means the entry-level base salary for each grade provided in 2-18-312.

~~(8)~~*(10)* "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this chapter.

~~(9)~~*(11)* "Job sharing" means the sharing by two or more persons of a position that is considered an aggregate or permanent position.

(12) "Market salary" means the average base salary that other employers pay to employees in occupations comparable to occupations in a grade provided in 2-18-312, as determined by the department's salary survey of the relevant labor market.

~~(10)~~*(13)* "Permanent position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget.

~~(11)~~*(14)* "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period in a permanent position.

~~(12)~~*(15)* "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

~~(13)~~*(16)* "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

~~(14)~~*(17)* "Program" means a combination of planned efforts to provide a service.

~~(15)~~*(18)* "Seasonal position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and which is a permanent position but which is interrupted by the seasonal nature of the position.

~~(16)~~*(19)* "Temporary position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months."

Section 2. Section 2-18-301, MCA, is amended to read:

"**2-18-301. Purpose and intent of part — rules.** (1) The purpose of this part is to provide the *market-based* compensation necessary to attract and retain competent and qualified employees in order to perform the services the state is required to provide to its citizens.

(2) It is the intent of the legislature that~~, for the biennium ending June 30, 1991, the:~~ *compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104 and excluding employees compensated under 2-18-313, 2-18-314, and 2-18-315, be based on an analysis of the labor market as provided by the department in a salary survey report to the legislature at the start of each legislative session.*

~~(a)~~*(3) Except as provided in 2-18-305(4) and [section 11],* pay schedules provided for in 2-18-312 through 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the ~~51st~~ *52nd* legislature~~;~~.

~~(b)~~*(4)* ~~pay~~ *Pay* levels provided for in 2-18-312 through 2-18-315 may not be increased through collective bargaining after adjournment of the ~~51st~~ *52nd* legislature~~; and~~.

~~(c)~~*(5)* ~~total~~ *Total* funds required to implement the pay schedules provided for in 2-18-312 through 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the ~~51st~~ *52nd* legislature.

~~(3)~~*(6)* The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

~~(4)~~*(7)* The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part."

Section 3. Section 2-18-303, MCA, is amended to read:

"**2-18-303. Procedures for utilizing pay schedules.** (1) The pay schedules provided in 2-18-312 must be implemented as follows:

(a) The pay schedules provided in 2-18-312 indicate the ~~annual compensation~~ *entry salary and market salary* for the fiscal years ending June 30, ~~1990~~ *1992,* and June 30, ~~1991~~ *1993,* for each grade ~~and step~~ for positions classified under the provisions of part 2 of this chapter.

(b) Each ~~new~~ employee ~~shall advance from step 1 to step 2 of a grade after successfully completing 6 months of probationary service. The anniversary date of an employee must be established at the end of the probationary period in accordance with rules promulgated by the department~~ *newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections (7) and (8).*

(c) ~~(i) The compensation of each employee~~ *Except as provided in subsection (1)(g),* on the first day of the first *complete* pay period in fiscal year ~~1990~~ *1992,* ~~is that amount corresponding to the grade and step occupied~~ *each employee hired before July 1, 1991, is entitled to the amount of his base salary as it was* on ~~the last day of fiscal year 1989.~~ *June 30, 1991, plus the following increases:*

(i) an increase of 60 cents an hour above the employee's base salary as it was on June 30, 1991; and

(ii) an additional increase of 1/8 of 1% of his base salary as it is after the 60-cent-an-hour increase, for each full percentage point that the employee's base salary, as it is after the 60-cent-an-hour increase, is below the market salary for the employee's assigned grade.

(d) Except as provided in subsection (1)(g), on the first day of the first pay period in fiscal year 1993, each employee hired before July 1, 1992, is entitled to the amount of the employee's base salary as it was on June 30, 1992, plus an increase calculated as follows:

(i) add 45 cents an hour to the employee's base salary as it was on June 30, 1992; then

(ii) add an amount equal to 1/8 of 1% of the amount computed in subsection (1)(d)(i) for each full percentage point that the employee's base salary, as it is after the 45-cent-an-hour increase, is below the market salary for the employee's assigned grade; then

(iii) from the sum calculated in subsection (1)(d)(ii), subtract 20 cents an hour.

(~~ii~~)*(e)* ~~The compensation of each employee~~ *Except as provided in subsection (1)(g),* on the first day of the first pay period in ~~fiscal year 1991~~ *January 1993,* ~~is that amount corresponding to the grade and step occupied~~ *each employee hired before January 1, 1993, is entitled to the amount of the employee's base salary as it was* on ~~the last day of fiscal year 1990.~~ *December 31, 1992, plus an increase of 20 cents an hour above the employee's base salary as it was on December 31, 1992.*

(f) The department shall determine the number of full percentage points that an employee's base salary is below the market salary by dividing the employee's base salary by the market salary for his assigned grade, multiplying the result by 100, and subtracting that total from 100.

(g) An employee's base salary may be no less than the entry salary for his assigned grade.

(h) Except as provided in subsections (5) through (8), an employee's base salary may not exceed the market salary by a percentage greater than the percentage that the market salary for the employee's grade exceeds the entry salary for that grade. The salary of an employee may not be reduced because of this provision.

(2) The pay schedules provided in 2-18-312 and the provisions of subsection (1) do not apply to those teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in 2-18-313 through 2-18-315.

(3) The pay schedules provided in 2-18-313 through 2-18-315 must be implemented as follows:

(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for the contracted school term for teachers employed under the authority of the department of institutions or the department of family services for fiscal years ~~1990~~ *1992* and ~~1991~~ *1993*.

~~(ii) On the first day of the first pay period in July 1989, each teacher shall advance three steps on the appropriate pay schedule for fiscal year 1990 from the step that he occupied on June 30, 1989.~~

~~(iii)~~*(ii)* The compensation of each teacher on the first day of the first pay period in July ~~1990~~ *1991* is that amount corresponding to ~~his~~ *the teacher's* level of academic achievement and ~~the step occupied on June 30, 1990~~ *years of experience.*

(iii) On the first day of the first pay period of each fiscal year, each teacher shall advance one step on the appropriate pay schedule adopted in 2-18-313.

(b) (i) The pay schedules provided in 2-18-314 indicate the maximum hourly compensation for fiscal years ending June 30, ~~1990~~ *1992*, and June 30, ~~1991~~ *1993*, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year ~~1990~~ *1992* or ~~1991~~ *1993* is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(c) (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, ~~1990~~ *1992*, and June 30, ~~1991~~ *1993*, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year ~~1990~~ *1992* or ~~1991~~ *1993* is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) A member of a bargaining unit may not receive the amounts indicated in the respective pay schedules provided in 2-18-312 through 2-18-315 until the bargaining unit of which he is a member ratifies a completely integrated collective bargaining agreement covering the biennium ending June 30, ~~1991~~ *1993*.

(ii) If negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) are not completed by July 1, ~~1989~~ *1991*, retroactivity to that date may be negotiated.

(iii) If negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) are not completed by July 1, ~~1989~~ *1991*, members of the bargaining unit involved must continue to receive the compensation they were receiving as of June 30, ~~1989~~ *1991*.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules provided in 2-18-312 through 2-18-315 may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312 through 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

(7) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may apply to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305. *To maintain the internal equity of the statewide pay plan provided for in 2-18-312 and subsection (1) of this section, when a majority of registered nurses classified under the provisions of part 2 of this chapter have been granted a pay plan exception through a collectively bargained agreement, then all other classified registered nurses, including those employed in the university system, must be paid a salary equivalent to the salary negotiated in the negotiated agreement, except that in no case may the salary of a classified registered nurse be reduced by this provision.*

(8) The department shall review the competitiveness of the compensation provided to ~~registered nurses and other~~ *all* occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. Insofar as these adjustments may apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305."

Section 4. Section 2-18-304, MCA, is amended to read:

"**2-18-304. Longevity allowance.** (1) *(a)* In addition to the compensation provided for in 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed 5 years of uninterrupted state service shall receive the ~~larger~~ *greater* of*:*

(i) $10 a month*;* or

(ii) ~~10%~~ *9/10 of 1%* of ~~the difference between~~ the *employee's* base *salary* ~~compensation for his grade and step (where applicable) and the base compensation for the next highest grade and corresponding step (where applicable)~~ multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

(b) Service to the state is not interrupted by authorized leaves of absence.

(2) (a) For the purpose of determining years of service under this section, an employee must be credited with 1 year of service for each period of:

(i) 2,080 hours of service following his date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which he is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following his date of employment in which he was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any one month. An employee of a school at a state institution or the university system must be credited with 1 year of service if he is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section."

Section 5. Section 2-18-305, MCA, is amended to read:

"**2-18-305. Allocation between wages and group benefits.** (1) The dollar amounts shown in the respective pay schedules provided in ~~2-18-312,~~ 2-18-313, 2-18-314, ~~or~~ *and* 2-18-315~~, as the case may be,~~ represent the maximum amount allocated by the state for wages and group benefits, exclusive of longevity as defined in 2-18-304 *for an employee covered by a pay schedule provided in 2-18-313, 2-18-314, or 2-18-315.*

(2) Except as provided in subsection ~~(2)~~*(4)* ~~of this section~~, ~~that~~ *the* amount specifically allocated for group benefits ~~shall~~ *must* be determined by 2-18-703.

(3) (a) An employee covered under the pay schedules provided in 2-18-312 who elects not to be covered by a state employee group benefit plan under the provisions of 2-18-703 must receive as wages his base salary, including adjustments provided in 2-18-303(1)(c) through (1)(e) and 2-18-304.

(b) An employee *covered under the pay schedules provided in 2-18-313, 2-18-314, or 2-18-315* who elects not to be covered by a state employee group benefit plan ~~will~~ *shall, under the provisions of 2-18-703,* receive as wages the amount shown in the appropriate pay schedule less the state contribution for group benefits as determined by 2-18-703.

~~(2)~~*(4)* Employees may, through collective bargaining, determine the allocation ~~of the amounts shown in the pay schedules provided in 2-18-312, 2-18-313, 2-18-314, or 2-18-315, as the case may be,~~ between wages and group benefits, except that in no case may the group benefits allocation be less than the amounts provided in 2-18-703."

Section 6. Section 2-18-312, MCA, is amended to read:

Annual Hours — 2080

Note: ~~Includes~~ *Does Not Include* Insurance

Pay Matrix — State

Matrix Type — Annual

~~STEP~~

~~GRADE~~	~~1~~	~~2~~	~~3~~	~~4~~	~~5~~	~~6~~	~~7~~	~~8~~	~~9~~	~~10~~	~~11~~	~~12~~	~~13~~
~~1~~	~~10,132~~	~~10,830~~	~~11,041~~	~~11,247~~	~~11,457~~	~~11,671~~	~~11,890~~	~~12,113~~	~~12,340~~	~~12,572~~	~~12,809~~	~~13,050~~	~~13,542~~
~~2~~	~~10,914~~	~~11,357~~	~~11,580~~	~~11,786~~	~~12,007~~	~~12,232~~	~~12,462~~	~~12,696~~	~~12,935~~	~~13,179~~	~~13,428~~	~~13,682~~	~~14,209~~
~~3~~	~~11,138~~	~~11,921~~	~~12,145~~	~~12,373~~	~~12,606~~	~~12,843~~	~~13,085~~	~~13,332~~	~~13,584~~	~~13,841~~	~~14,103~~	~~14,370~~	~~14,916~~
~~4~~	~~11,711~~	~~12,537~~	~~12,773~~	~~13,014~~	~~13,259~~	~~13,509~~	~~13,764~~	~~14,024~~	~~14,290~~	~~14,561~~	~~14,837~~	~~15,119~~	~~15,694~~
~~5~~	~~12,343~~	~~13,216~~	~~13,466~~	~~13,721~~	~~13,981~~	~~14,246~~	~~14,516~~	~~14,792~~	~~15,073~~	~~15,360~~	~~15,652~~	~~15,950~~	~~16,558~~
~~6~~	~~13,035~~	~~13,960~~	~~14,224~~	~~14,494~~	~~14,768~~	~~15,059~~	~~15,339~~	~~15,628~~	~~15,920~~	~~16,230~~	~~16,540~~	~~16,856~~	~~17,501~~
~~7~~	~~13,802~~	~~14,785~~	~~15,066~~	~~15,353~~	~~15,645~~	~~15,943~~	~~16,247~~	~~16,557~~	~~16,873~~	~~17,196~~	~~17,525~~	~~17,861~~	~~18,546~~
~~8~~	~~14,629~~	~~15,674~~	~~15,973~~	~~16,278~~	~~16,589~~	~~16,906~~	~~17,229~~	~~17,559~~	~~17,895~~	~~18,238~~	~~18,588~~	~~18,946~~	~~19,673~~
~~9~~	~~15,547~~	~~16,662~~	~~16,980~~	~~17,305~~	~~17,636~~	~~17,974~~	~~18,319~~	~~18,671~~	~~19,030~~	~~19,396~~	~~19,769~~	~~20,150~~	~~20,929~~
~~10~~	~~16,553~~	~~17,743~~	~~18,083~~	~~18,430~~	~~18,784~~	~~19,146~~	~~19,513~~	~~19,888~~	~~20,271~~	~~20,662~~	~~21,060~~	~~21,466~~	~~22,295~~
~~11~~	~~17,652~~	~~18,925~~	~~19,289~~	~~19,660~~	~~20,038~~	~~20,424~~	~~20,818~~	~~21,220~~	~~21,630~~	~~22,048~~	~~22,474~~	~~22,909~~	~~23,796~~
~~12~~	~~18,868~~	~~20,233~~	~~20,623~~	~~21,021~~	~~21,427~~	~~21,841~~	~~22,263~~	~~22,693~~	~~23,132~~	~~23,580~~	~~24,037~~	~~24,503~~	~~25,477~~
~~13~~	~~20,204~~	~~21,669~~	~~22,088~~	~~22,515~~	~~22,951~~	~~23,395~~	~~23,848~~	~~24,310~~	~~24,788~~	~~25,281~~	~~25,783~~	~~26,295~~	~~27,341~~
~~14~~	~~21,880~~	~~23,471~~	~~23,929~~	~~24,399~~	~~24,872~~	~~25,360~~	~~25,870~~	~~26,384~~	~~26,909~~	~~27,444~~	~~27,991~~	~~28,547~~	~~29,683~~
~~15~~	~~23,625~~	~~25,360~~	~~25,873~~	~~26,388~~	~~26,912~~	~~27,447~~	~~27,994~~	~~28,550~~	~~29,118~~	~~29,697~~	~~30,289~~	~~30,891~~	~~32,121~~
~~16~~	~~25,613~~	~~27,529~~	~~28,077~~	~~28,635~~	~~29,205~~	~~29,789~~	~~30,379~~	~~30,984~~	~~31,601~~	~~32,230~~	~~32,872~~	~~33,527~~	~~34,862~~
~~17~~	~~27,787~~	~~29,867~~	~~30,462~~	~~31,069~~	~~31,687~~	~~32,317~~	~~32,961~~	~~33,617~~	~~34,289~~	~~34,969~~	~~35,665~~	~~36,375~~	~~37,825~~
~~18~~	~~30,190~~	~~32,451~~	~~33,097~~	~~33,759~~	~~34,429~~	~~35,114~~	~~35,813~~	~~36,527~~	~~37,255~~	~~37,997~~	~~38,754~~	~~39,529~~	~~41,101~~
~~19~~	~~32,831~~	~~35,291~~	~~35,994~~	~~36,710~~	~~37,441~~	~~38,187~~	~~38,948~~	~~39,724~~	~~40,516~~	~~41,323~~	~~42,146~~	~~42,989~~	~~42,989~~
~~20~~	~~35,714~~	~~38,391~~	~~39,156~~	~~39,936~~	~~40,731~~	~~41,543~~	~~42,371~~	~~43,216~~	~~44,077~~	~~44,955~~	~~45,851~~	~~45,851~~	~~45,851~~
~~21~~	~~38,885~~	~~41,802~~	~~42,635~~	~~43,485~~	~~44,352~~	~~45,236~~	~~46,138~~	~~47,058~~	~~47,996~~	~~48,953~~	~~48,953~~	~~48,953~~	~~48,953~~
~~22~~	~~42,366~~	~~45,544~~	~~46,452~~	~~47,379~~	~~48,324~~	~~49,287~~	~~50,270~~	~~51,273~~	~~52,295~~	~~52,295~~	~~52,295~~	~~52,295~~	~~52,295~~
~~23~~	~~46,174~~	~~49,639~~	~~50,629~~	~~51,638~~	~~52,669~~	~~53,719~~	~~54,790~~	~~55,883~~	~~55,883~~	~~55,883~~	~~55,883~~	~~55,883~~	~~55,883~~
~~24~~	~~50,358~~	~~54,137~~	~~55,218~~	~~56,320~~	~~57,443~~	~~58,589~~	~~59,757~~	~~59,757~~	~~59,757~~	~~59,757~~	~~59,757~~	~~59,757~~	~~59,757~~
~~25~~	~~54,953~~	~~59,070~~	~~60,258~~	~~61,460~~	~~62,686~~	~~63,936~~	~~63,936~~	~~63,936~~	~~63,936~~	~~63,936~~	~~63,936~~	~~63,936~~	~~63,936~~

Pay Range: Entry Salary to Market Salary

GRADE	*ENTRY SALARY*	*MARKET SALARY*
1	*8,426*	*9,913*
2	*9,077*	*10,704*
3	*9,777*	*11,557*
4	*10,536*	*12,484*
5	*11,385*	*13,522*
6	*12,303*	*14,647*
7	*13,289*	*15,858*
8	*14,404*	*17,230*
9	*15,596*	*18,701*
10	*16,916*	*20,332*
11	*18,353*	*22,112*
12	*19,946*	*24,090*
13	*21,674*	*26,240*
14	*23,588*	*28,626*
15	*25,694*	*31,258*
16	*28,044*	*34,200*
17	*30,665*	*37,488*
18	*33,555*	*41,122*
19	*36,793*	*45,201*
20	*40,406*	*49,761*
21	*44,421*	*54,841*
22	*48,906*	*60,527*

23	*53,965*	*66,954*
24	*59,645*	*74,185*
25	*65,930*	*82,206*

(2) The statewide classification pay schedule for fiscal year ~~1991~~ *1993* is as follows:

Annual Hours — 2080

Note: ~~Includes~~ *Does Not Include* Insurance

Pay Matrix — State

Matrix Type — Annual

~~STEP~~

~~GRADE~~	~~1~~	~~2~~	~~3~~	~~4~~	~~5~~	~~6~~	~~7~~	~~8~~	~~9~~	~~10~~	~~11~~	~~12~~	~~13~~
~~1~~	~~10,032~~	~~11,630~~	~~11,841~~	~~12,047~~	~~12,257~~	~~12,471~~	~~12,690~~	~~12,913~~	~~13,140~~	~~13,372~~	~~13,609~~	~~13,850~~	~~14,343~~
~~2~~	~~11,414~~	~~12,157~~	~~12,369~~	~~12,586~~	~~12,807~~	~~13,032~~	~~13,262~~	~~13,496~~	~~13,735~~	~~13,979~~	~~14,228~~	~~14,482~~	~~15,000~~
~~3~~	~~11,938~~	~~12,721~~	~~12,946~~	~~13,173~~	~~13,406~~	~~13,643~~	~~13,885~~	~~14,132~~	~~14,384~~	~~14,641~~	~~14,903~~	~~15,170~~	~~15,716~~
~~4~~	~~12,511~~	~~13,337~~	~~13,573~~	~~13,814~~	~~14,059~~	~~14,309~~	~~14,564~~	~~14,824~~	~~15,090~~	~~15,361~~	~~15,637~~	~~15,919~~	~~16,494~~
~~5~~	~~13,143~~	~~14,016~~	~~14,266~~	~~14,521~~	~~14,781~~	~~15,046~~	~~15,316~~	~~15,592~~	~~15,873~~	~~16,160~~	~~16,452~~	~~16,750~~	~~17,358~~
~~6~~	~~13,835~~	~~14,760~~	~~15,024~~	~~15,294~~	~~15,569~~	~~15,850~~	~~16,136~~	~~16,428~~	~~16,726~~	~~17,030~~	~~17,340~~	~~17,656~~	~~18,301~~
~~7~~	~~14,602~~	~~15,585~~	~~15,866~~	~~16,153~~	~~16,445~~	~~16,743~~	~~17,047~~	~~17,357~~	~~17,673~~	~~17,996~~	~~18,325~~	~~18,661~~	~~19,346~~
~~8~~	~~15,429~~	~~16,474~~	~~16,773~~	~~17,078~~	~~17,389~~	~~17,706~~	~~18,029~~	~~18,359~~	~~18,695~~	~~19,038~~	~~19,388~~	~~19,745~~	~~20,473~~
~~9~~	~~16,347~~	~~17,462~~	~~17,780~~	~~18,105~~	~~18,436~~	~~18,774~~	~~19,119~~	~~19,471~~	~~19,830~~	~~20,196~~	~~20,569~~	~~20,950~~	~~21,726~~
~~10~~	~~17,353~~	~~18,543~~	~~18,883~~	~~19,230~~	~~19,584~~	~~19,945~~	~~20,313~~	~~20,688~~	~~21,071~~	~~21,462~~	~~21,860~~	~~22,266~~	~~23,095~~
~~11~~	~~18,452~~	~~19,725~~	~~20,089~~	~~20,460~~	~~20,838~~	~~21,224~~	~~21,618~~	~~22,020~~	~~22,430~~	~~22,848~~	~~23,274~~	~~23,709~~	~~24,596~~
~~12~~	~~19,668~~	~~21,033~~	~~21,423~~	~~21,821~~	~~22,227~~	~~22,641~~	~~23,063~~	~~23,493~~	~~23,932~~	~~24,380~~	~~24,839~~	~~25,317~~	~~26,316~~
~~13~~	~~21,004~~	~~22,460~~	~~22,888~~	~~23,316~~	~~23,751~~	~~24,195~~	~~24,648~~	~~25,110~~	~~25,600~~	~~26,114~~	~~26,629~~	~~27,153~~	~~28,226~~
~~14~~	~~22,680~~	~~24,271~~	~~24,726~~	~~25,201~~	~~25,696~~	~~26,201~~	~~26,718~~	~~27,246~~	~~27,783~~	~~28,331~~	~~28,892~~	~~29,462~~	~~30,626~~
~~15~~	~~24,425~~	~~26,204~~	~~26,721~~	~~27,249~~	~~27,786~~	~~28,334~~	~~28,895~~	~~29,465~~	~~30,047~~	~~30,640~~	~~31,247~~	~~31,864~~	~~33,125~~
~~16~~	~~26,454~~	~~28,418~~	~~28,980~~	~~29,552~~	~~30,136~~	~~30,732~~	~~31,339~~	~~31,960~~	~~32,592~~	~~33,237~~	~~33,895~~	~~34,566~~	~~35,935~~
~~17~~	~~28,683~~	~~30,815~~	~~31,425~~	~~32,047~~	~~32,680~~	~~33,326~~	~~33,989~~	~~34,658~~	~~35,344~~	~~36,044~~	~~36,758~~	~~37,486~~	~~38,972~~
~~18~~	~~31,146~~	~~33,463~~	~~34,125~~	~~34,801~~	~~35,491~~	~~36,193~~	~~36,909~~	~~37,641~~	~~38,387~~	~~39,148~~	~~39,924~~	~~40,716~~	~~42,330~~
~~19~~	~~33,853~~	~~36,374~~	~~37,095~~	~~37,829~~	~~38,578~~	~~39,343~~	~~40,123~~	~~40,918~~	~~41,729~~	~~42,557~~	~~43,401~~	~~44,262~~	~~44,262~~
~~20~~	~~36,808~~	~~39,552~~	~~40,336~~	~~41,135~~	~~41,950~~	~~42,783~~	~~43,631~~	~~44,497~~	~~45,380~~	~~46,280~~	~~47,198~~	~~47,198~~	~~47,198~~
~~21~~	~~40,058~~	~~43,048~~	~~43,902~~	~~44,773~~	~~45,662~~	~~46,568~~	~~47,492~~	~~48,435~~	~~49,397~~	~~50,378~~	~~50,378~~	~~50,378~~	~~50,378~~
~~22~~	~~43,626~~	~~46,884~~	~~47,814~~	~~48,764~~	~~49,733~~	~~50,720~~	~~51,728~~	~~52,756~~	~~53,803~~	~~53,803~~	~~53,803~~	~~53,803~~	~~53,803~~
~~23~~	~~47,529~~	~~51,081~~	~~52,096~~	~~53,130~~	~~54,187~~	~~55,263~~	~~56,361~~	~~57,481~~	~~57,481~~	~~57,481~~	~~57,481~~	~~57,481~~	~~57,481~~
~~24~~	~~51,818~~	~~55,691~~	~~56,799~~	~~57,929~~	~~59,080~~	~~60,255~~	~~61,452~~	~~61,452~~	~~61,452~~	~~61,452~~	~~61,452~~	~~61,452~~	~~61,452~~
~~25~~	~~56,528~~	~~60,757~~	~~61,965~~	~~63,198~~	~~64,454~~	~~65,735~~	~~65,735~~	~~65,735~~	~~65,735~~	~~65,735~~	~~65,735~~	~~65,735~~	~~65,735~~

Pay Range: Entry Salary to Market Salary

GRADE	*ENTRY SALARY*	*MARKET SALARY*
1	*8,679*	*10,210*
2	*9,349*	*11,025*
3	*10,070*	*11,903*
4	*10,852*	*12,858*
5	*11,727*	*13,927*
6	*12,672*	*15,086*
7	*13,688*	*16,334*
8	*14,836*	*17,747*
9	*16,064*	*19,262*
10	*17,424*	*20,942*
11	*18,904*	*22,775*
12	*20,545*	*24,812*
13	*22,325*	*27,027*
14	*24,295*	*29,485*
15	*26,465*	*32,196*
16	*28,885*	*35,226*

17	*31,585*	*38,613*
18	*34,562*	*42,355*
19	*37,897*	*46,557*
20	*41,618*	*51,254*
21	*45,754*	*56,487*
22	*50,373*	*62,343*
23	*55,584*	*68,963*
24	*61,434*	*76,410*
25	*67,907*	*84,673*"

Section 7. Section 2-18-313, MCA, is amended to read:

"**2-18-313. Teachers' pay schedules.** (1) (a) The 12-month pay schedule for teachers for fiscal year ~~1990~~ *1992* is as follows:

Annual Hours — 2080	Note: Includes Insurance
Term — Twelve Months	Matrix Type — Annual

	Education Level					
STEP	BA	BA+1	BA+2	BA+3	MA	MA+1
~~1~~	~~21,228~~	~~21,870~~	~~22,520~~	~~22,850~~	~~23,173~~	~~23,832~~
~~2~~	~~21,983~~	~~22,699~~	~~23,416~~	~~23,775~~	~~24,134~~	~~24,859~~
~~3~~	~~22,738~~	~~23,529~~	~~24,302~~	~~24,706~~	~~25,110~~	~~25,905~~
~~4~~	~~23,494~~	~~24,362~~	~~25,206~~	~~25,652~~	~~26,097~~	~~26,949~~
~~5~~	~~24,247~~	~~25,206~~	~~26,115~~	~~26,598~~	~~27,084~~	~~27,995~~
~~6~~	~~25,016~~	~~26,060~~	~~27,027~~	~~27,548~~	~~28,071~~	~~29,041~~
~~7~~	~~25,786~~	~~26,908~~	~~27,934~~	~~28,496~~	~~29,056~~	~~30,083~~
~~8~~	~~26,561~~	~~27,760~~	~~28,847~~	~~29,446~~	~~30,045~~	~~31,127~~
~~9~~	~~27,335~~	~~28,610~~	~~29,756~~	~~30,392~~	~~31,033~~	~~32,172~~
~~10~~	~~28,108~~	~~29,464~~	~~30,664~~	~~31,340~~	~~32,018~~	~~33,218~~
~~11~~	~~28,884~~	~~30,286~~	~~31,571~~	~~32,288~~	~~33,005~~	~~34,260~~
~~12~~	~~28,884~~	~~30,286~~	~~31,571~~	~~32,288~~	~~33,005~~	~~34,260~~
~~13~~	~~28,884~~	~~30,286~~	~~31,571~~	~~32,288~~	~~33,005~~	~~34,260~~
1	*23,516*	*24,175*	*24,817*	*25,138*	*25,461*	*26,120*
2	*24,271*	*24,987*	*25,704*	*26,063*	*26,426*	*27,169*
3	*25,026*	*25,817*	*26,599*	*27,013*	*27,427*	*28,242*
4	*25,782*	*26,660*	*27,525*	*27,982*	*28,438*	*29,312*
5	*26,542*	*27,525*	*28,457*	*28,952*	*29,450*	*30,384*
6	*27,330*	*28,401*	*29,392*	*29,926*	*30,462*	*31,456*
7	*28,120*	*29,270*	*30,321*	*30,897*	*31,471*	*32,524*
8	*28,914*	*30,143*	*31,257*	*31,871*	*32,485*	*33,594*
9	*29,707*	*31,014*	*32,189*	*32,841*	*33,498*	*34,665*
10	*30,500*	*31,890*	*33,120*	*33,813*	*34,507*	*35,737*
11	*31,295*	*32,732*	*34,049*	*34,784*	*35,519*	*36,806*
12	*31,295*	*32,732*	*34,049*	*34,784*	*35,519*	*36,806*
13	*31,295*	*32,732*	*34,049*	*34,784*	*35,519*	*36,806*

(b) The 9-month pay schedule for teachers for fiscal year ~~1990~~ *1992* is as follows:

Annual Hours — ~~1480~~ *1560*
Term — Nine Months

Note: Includes Insurance
Matrix Type — Annual

Education Level

STEP	BA	BA+1	BA+2	BA+3	MA	MA+1
~~1~~	~~16,451~~	~~16,933~~	~~17,427~~	~~17,668~~	~~17,910~~	~~18,404~~
~~2~~	~~17,017~~	~~17,554~~	~~18,092~~	~~18,361~~	~~18,631~~	~~19,168~~
~~3~~	~~17,583~~	~~18,176~~	~~18,757~~	~~19,056~~	~~19,352~~	~~19,933~~
~~4~~	~~18,151~~	~~18,801~~	~~19,422~~	~~19,749~~	~~20,074~~	~~20,697~~
~~5~~	~~18,715~~	~~19,422~~	~~20,087~~	~~20,441~~	~~20,796~~	~~21,463~~
~~6~~	~~19,283~~	~~20,047~~	~~20,755~~	~~21,136~~	~~21,518~~	~~22,228~~
~~7~~	~~19,846~~	~~20,667~~	~~21,418~~	~~21,829~~	~~22,239~~	~~22,990~~
~~8~~	~~20,414~~	~~21,291~~	~~22,086~~	~~22,524~~	~~22,963~~	~~23,754~~
~~9~~	~~20,980~~	~~21,913~~	~~22,751~~	~~23,217~~	~~23,685~~	~~24,519~~
~~10~~	~~21,546~~	~~22,537~~	~~23,416~~	~~23,910~~	~~24,406~~	~~25,304~~
~~11~~	~~22,113~~	~~23,139~~	~~24,079~~	~~24,606~~	~~25,144~~	~~26,085~~
~~12~~	~~22,113~~	~~23,139~~	~~24,079~~	~~24,606~~	~~25,144~~	~~26,085~~
~~13~~	~~22,113~~	~~23,139~~	~~24,079~~	~~24,606~~	~~25,144~~	~~26,085~~
1	*19,262*	*19,770*	*20,291*	*20,545*	*20,800*	*21,321*
2	*19,859*	*20,425*	*20,992*	*21,275*	*21,560*	*22,126*
3	*20,455*	*21,080*	*21,693*	*22,008*	*22,320*	*22,932*
4	*21,054*	*21,739*	*22,394*	*22,738*	*23,081*	*23,738*
5	*21,649*	*22,394*	*23,095*	*23,468*	*23,842*	*24,545*
6	*22,247*	*23,053*	*23,799*	*24,200*	*24,603*	*25,351*
7	*22,841*	*23,706*	*24,498*	*24,931*	*25,363*	*26,155*
8	*23,439*	*24,364*	*25,202*	*25,663*	*26,126*	*26,960*
9	*24,036*	*25,019*	*25,903*	*26,394*	*26,887*	*27,781*
10	*24,633*	*25,677*	*26,604*	*27,124*	*27,659*	*28,630*
11	*25,230*	*26,312*	*27,306*	*27,875*	*28,457*	*29,473*
12	*25,230*	*26,312*	*27,306*	*27,875*	*28,457*	*29,473*
13	*25,230*	*26,312*	*27,306*	*27,875*	*28,457*	*29,473*

(2) (a) The 12-month pay schedule for teachers for *the first 6 months of* fiscal year ~~1991~~ *1993* is as follows:

Annual Hours — 2080
Term — Twelve Months

Note: Includes Insurance
Matrix Type — Annual

Education Level

STEP	BA	BA+1	BA+2	BA+3	MA	MA+1
~~1~~	~~22,028~~	~~22,670~~	~~23,329~~	~~23,650~~	~~23,973~~	~~24,632~~
~~2~~	~~22,783~~	~~23,499~~	~~24,216~~	~~24,575~~	~~24,938~~	~~25,681~~
~~3~~	~~23,538~~	~~24,329~~	~~25,111~~	~~25,525~~	~~25,939~~	~~26,754~~
~~4~~	~~24,294~~	~~25,172~~	~~26,037~~	~~26,494~~	~~26,950~~	~~27,824~~
~~5~~	~~25,054~~	~~26,037~~	~~26,969~~	~~27,464~~	~~27,962~~	~~28,896~~
~~6~~	~~25,842~~	~~26,913~~	~~27,904~~	~~28,438~~	~~28,974~~	~~29,968~~
~~7~~	~~26,632~~	~~27,782~~	~~28,833~~	~~29,409~~	~~29,983~~	~~31,036~~
~~8~~	~~27,426~~	~~28,655~~	~~29,769~~	~~30,383~~	~~30,997~~	~~32,106~~
~~9~~	~~28,219~~	~~29,526~~	~~30,701~~	~~31,353~~	~~32,010~~	~~33,177~~

~~10~~	~~29,012~~	~~30,402~~	~~31,632~~	~~32,325~~	~~33,019~~	~~34,249~~
~~11~~	~~29,807~~	~~31,244~~	~~32,561~~	~~33,296~~	~~34,031~~	~~35,318~~
~~12~~	~~29,807~~	~~31,244~~	~~32,561~~	~~33,296~~	~~34,031~~	~~35,318~~
~~13~~	~~29,807~~	~~31,244~~	~~32,561~~	~~33,296~~	~~34,031~~	~~35,318~~
1	*24,276*	*24,935*	*25,577*	*25,898*	*26,221*	*26,880*
2	*25,031*	*25,747*	*26,464*	*26,823*	*27,186*	*27,929*
3	*25,786*	*26,577*	*27,359*	*27,773*	*28,187*	*29,002*
4	*26,542*	*27,420*	*28,285*	*28,742*	*29,198*	*30,072*
5	*27,302*	*28,285*	*29,217*	*29,712*	*30,210*	*31,144*
6	*28,090*	*29,161*	*30,152*	*30,686*	*31,222*	*32,216*
7	*28,880*	*30,030*	*31,081*	*31,657*	*32,231*	*33,284*
8	*29,674*	*30,903*	*32,017*	*32,631*	*33,245*	*34,354*
9	*30,467*	*31,774*	*32,949*	*33,601*	*34,258*	*35,425*
10	*31,260*	*32,650*	*33,880*	*34,573*	*35,267*	*36,497*
11	*32,055*	*33,492*	*34,809*	*35,544*	*36,279*	*37,566*
12	*32,055*	*33,492*	*34,809*	*35,544*	*36,279*	*37,566*
13	*32,055*	*33,492*	*34,809*	*35,544*	*36,279*	*37,566*

(b) The 9-month pay schedule for teachers for *the first 6 months of* fiscal year ~~1991~~ *1993* is as follows:

Annual Hours — ~~1480~~ *1560*	Note: Includes Insurance
Term — Nine Months	Matrix Type — Annual

Education Level

STEP	BA	BA+1	BA+2	BA+3	MA	MA+1
~~1~~	~~17,251~~	~~17,733~~	~~18,227~~	~~18,468~~	~~18,710~~	~~19,204~~
~~2~~	~~17,817~~	~~18,354~~	~~18,892~~	~~19,161~~	~~19,431~~	~~19,968~~
~~3~~	~~18,383~~	~~18,976~~	~~19,557~~	~~19,856~~	~~20,152~~	~~20,733~~
~~4~~	~~18,951~~	~~19,601~~	~~20,222~~	~~20,549~~	~~20,874~~	~~21,497~~
~~5~~	~~19,515~~	~~20,222~~	~~20,887~~	~~21,241~~	~~21,596~~	~~22,263~~
~~6~~	~~20,083~~	~~20,847~~	~~21,555~~	~~21,936~~	~~22,318~~	~~23,028~~
~~7~~	~~20,646~~	~~21,467~~	~~22,218~~	~~22,629~~	~~23,039~~	~~23,790~~
~~8~~	~~21,214~~	~~22,091~~	~~22,886~~	~~23,324~~	~~23,763~~	~~24,554~~
~~9~~	~~21,780~~	~~22,713~~	~~23,551~~	~~24,017~~	~~24,485~~	~~25,333~~
~~10~~	~~22,346~~	~~23,337~~	~~24,216~~	~~24,710~~	~~25,217~~	~~26,138~~
~~11~~	~~22,913~~	~~23,939~~	~~24,882~~	~~25,422~~	~~25,974~~	~~26,938~~
~~12~~	~~22,913~~	~~23,939~~	~~24,882~~	~~25,422~~	~~25,974~~	~~26,938~~
~~13~~	~~22,913~~	~~23,939~~	~~24,882~~	~~25,422~~	~~25,974~~	~~26,938~~
1	*19,892*	*20,400*	*20,921*	*21,175*	*21,430*	*21,951*
2	*20,489*	*21,055*	*21,622*	*21,905*	*22,190*	*22,756*
3	*21,085*	*21,710*	*22,323*	*22,638*	*22,950*	*23,562*
4	*21,684*	*22,369*	*23,024*	*23,368*	*23,711*	*24,368*
5	*22,279*	*23,024*	*23,725*	*24,098*	*24,472*	*25,175*
6	*22,877*	*23,683*	*24,429*	*24,830*	*25,233*	*25,981*
7	*23,471*	*24,336*	*25,128*	*25,561*	*25,993*	*26,785*
8	*24,069*	*24,994*	*25,832*	*26,293*	*26,756*	*27,590*
9	*24,666*	*25,649*	*26,533*	*27,024*	*27,517*	*28,411*
10	*25,263*	*26,307*	*27,234*	*27,754*	*28,289*	*29,260*

11	25,860	26,942	27,936	28,505	29,087	30,103
12	25,860	26,942	27,936	28,505	29,087	30,103
13	25,860	26,942	27,936	28,505	29,087	30,103

(3) (a) The 12-month pay schedule for teachers for the last 6 months of fiscal year 1993 is as follows:

Annual Hours — 2080	*Note: Includes Insurance*
Term — Twelve Months	*Matrix Type — Annual*

Education Level

STEP	BA	BA+1	BA+2	BA+3	MA	MA+1
1	24,692	25,351	25,993	26,314	26,637	27,296
2	25,447	26,163	26,880	27,239	27,602	28,345
3	26,202	26,993	27,775	28,189	28,603	29,418
4	26,958	27,836	28,701	29,158	29,614	30,488
5	27,718	28,701	29,633	30,128	30,626	31,560
6	28,506	29,577	30,568	31,102	31,638	32,632
7	29,296	30,446	31,497	32,073	32,647	33,700
8	30,090	31,319	32,433	33,047	33,661	34,770
9	30,883	32,190	33,365	34,017	34,674	35,841
10	31,676	33,066	34,296	34,989	35,683	36,913
11	32,471	33,908	35,225	35,960	36,695	37,982
12	32,471	33,908	35,225	35,960	36,695	37,982
13	32,471	33,908	35,225	35,960	36,695	37,982

(b) The 9-month pay schedule for teachers for the last 6 months of fiscal year 1993 is as follows:

Annual Hours — 1560	*Note: Includes Insurance*
Term — Nine Months	*Matrix Type — Annual*

Education Level

STEP	BA	BA+1	BA+2	BA+3	MA	MA+1
1	20,204	20,712	21,233	21,487	21,742	22,263
2	20,801	21,367	21,934	22,217	22,502	23,068
3	21,397	22,022	22,635	22,950	23,262	23,874
4	21,996	22,681	23,336	23,680	24,023	24,680
5	22,591	23,336	24,037	24,410	24,784	25,487
6	23,189	23,995	24,741	25,142	25,545	26,293
7	23,783	24,648	25,440	25,873	26,305	27,097
8	24,381	25,306	26,144	26,605	27,068	27,902
9	24,978	25,961	26,845	27,336	27,829	28,723
10	25,575	26,619	27,546	28,066	28,601	29,572
11	26,172	27,254	28,248	28,817	29,399	30,415
12	26,172	27,254	28,248	28,817	29,399	30,415
13	26,172	27,254	28,248	28,817	29,399	30,415"

Section 8. Section 2-18-314, MCA, is amended to read:

"**2-18-314. Liquor store occupations pay schedules.** (1) The pay schedule for liquor store occupations for fiscal year ~~1990~~ *1992* is as follows:

Annual Hours — 2080
Pay Matrix — Retail Clerk

Note: With Insurance
Matrix Type — Hourly

Grade	$/Hour W/Ins.
~~L1~~	~~0.000~~
~~L2~~	~~8.040~~
~~L3~~	~~8.540~~
~~L4~~	~~8.820~~
~~L5~~	~~9.110~~
~~L6~~	~~9.720~~
~~L7~~	~~10.380~~
~~L8~~	~~11.130~~
L1	*0.000*
L2	*9.140*
L3	*9.640*
L4	*9.920*
L5	*10.210*
L6	*10.820*
L7	*11.480*
L8	*12.230*

(2) *(a)* The pay schedule for liquor store occupations for *the first 6 months of* fiscal year ~~1991~~ *1993* is as follows:

Annual Hours — 2080
Pay Matrix — Retail Clerk

Note: With Insurance
Matrix Type — Hourly

Grade	$/Hour W/Ins.
~~L1~~	~~0.000~~
~~L2~~	~~8.425~~
~~L3~~	~~8.925~~
~~L4~~	~~9.205~~
~~L5~~	~~9.495~~
~~L6~~	~~10.105~~
~~L7~~	~~10.765~~
~~L8~~	~~11.515~~
L1	*0.000*
L2	*9.505*
L3	*10.005*
L4	*10.285*
L5	*10.575*

L6	*11.185*
L7	*11.845*
L8	*12.595*

(b) The pay schedule for liquor store occupations for the last 6 months of fiscal year 1993 is as follows:

Annual Hours — 2080
Pay Matrix — Retail Clerk

Note: With Insurance
Matrix Type — Hourly

Grade	$/Hour *W/Ins.*
L1	*0.000*
L2	*9.705*
L3	*10.205*
L4	*10.485*
L5	*10.775*
L6	*11.385*
L7	*12.045*
L8	*12.795*"

Section 9. Section 2-18-315, MCA, is amended to read:

"**2-18-315. Blue-collar pay schedules.** (1) The pay schedule for blue-collar workers for fiscal year ~~1990~~ *1992* is as follows:

Annual Hours — 2080
Pay Matrix — Blue-Collar

Note: With Insurance
Matrix Type — Hourly

Grade	$/Hour W/Ins.
~~B1~~	~~8.51~~
~~B2~~	~~8.91~~
~~B3~~	~~9.31~~
~~B4~~	~~9.71~~
~~B5~~	~~10.11~~
~~B6~~	~~10.51~~
~~B7~~	~~10.91~~
~~B8~~	~~11.31~~
~~B9~~	~~11.71~~
~~B10~~	~~12.11~~
~~B11~~	~~12.51~~
~~B12~~	~~12.91~~
~~B00~~	~~13.31~~
B1	*9.615*
B2	*10.015*
B3	*10.415*
B4	*10.815*
B5	*11.215*

B6	*11.615*
B7	*12.015*
B8	*12.415*
B9	*12.815*
B10	*13.215*
B11	*13.615*
B12	*14.015*
B00	*14.415*

(2) The pay schedule for blue-collar workers for *the first 6 months of* fiscal year ~~1991~~ *1993* is as follows:

Annual Hours — 2080
Pay Matrix — Blue-Collar

Note: With Insurance
Matrix Type — Hourly

Grade	$/Hour W/Ins.
~~B1~~	~~8.90~~
~~B2~~	~~9.30~~
~~B3~~	~~9.70~~
~~B4~~	~~10.10~~
~~B5~~	~~10.50~~
~~B6~~	~~10.90~~
~~B7~~	~~11.30~~
~~B8~~	~~11.70~~
~~B9~~	~~12.10~~
~~B10~~	~~12.50~~
~~B11~~	~~12.90~~
~~B12~~	~~13.30~~
~~B00~~	~~13.70~~
B1	*9.980*
B2	*10.380*
B3	*10.780*
B4	*11.180*
B5	*11.580*
B6	*11.980*
B7	*12.380*
B8	*12.780*
B9	*13.180*
B10	*13.580*
B11	*13.980*
B12	*14.380*
B00	*14.780*

(3) The pay schedule for blue-collar workers for the last 6 months of fiscal year 1993 is as follows:

Annual Hours — 2080
Pay Matrix — Blue-Collar

Note: With Insurance
Matrix Type — Hourly

Grade	*$/Hour W/Ins.*
B1	*10.180*
B2	*10.580*
B3	*10.980*
B4	*11.380*
B5	*11.780*
B6	*12.180*
B7	*12.580*
B8	*12.980*
B9	*13.380*
B10	*13.780*
B11	*14.180*
B12	*14.580*
B00	*14.980*"

Section 10. Section 2-18-703, MCA, is amended to read:

"**2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701, other than members of collective bargaining units, and for members of the legislature, the employer contribution for group benefits shall be ~~$130~~ *$170* per month for the fiscal year ending June 30, ~~1990~~ *1992*, and ~~$150~~ *$190* per month for the fiscal year ending June 30, ~~1991~~ *1993*, and for each fiscal year thereafter. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act of 1965, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 per month.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon such transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member."

Section 11. **Shift differential and hazardous duty pay negotiated.** (1) Shift differential pay for those employees who are regularly scheduled to work other than the day shift is a mandatory subject of collective bargaining.

(2) Hazardous duty pay for those employees who work under hazardous conditions is a mandatory subject of collective bargaining.

Section 12. Section 2-16-405, MCA, is amended to read:

"**2-16-405. Salaries of certain elected state officials.** The salaries paid to certain elected officials of the state of Montana for fiscal year 1990 and following years are:

	Fiscal Year ~~1990~~ *1992*	Following June 30, ~~1990~~ *1992*
Governor	~~$51,713~~ *$54,254*	~~$53,006~~ *$55,502*
Lieutenant governor	~~$37,044~~ *$39,218*	~~$37,970~~ *$40,466*
Attorney general	~~$47,166~~ *$49,593*	~~$48,345~~ *$50,841*
State auditor	~~$34,176~~ *$36,278*	~~$35,030~~*$37,526*
Superintendent of public instruction	~~$40,664~~ *$42,929*	~~$41,681~~ *$44,177*
Public service commission chairman	~~$38,297~~ *$40,502*	~~$39,254~~ *$41,750*
Public service commissioners, other than chairman	~~$37,044~~ *$39,218*	~~$37,970~~ *$40,466*
Secretary of state	~~$34,176~~ *$36,278*	~~$35,030~~ *$37,526*
Clerk of the supreme court	~~$33,211~~ *$35,289*	~~$34,041~~ *$36,537*"

Section 13. Section 5-2-301, MCA, is amended to read:

"**5-2-301. Compensation and expenses for members while in session.** (1) Except as provided in subsection (7), legislators are entitled to a salary commensurate to that of the daily rate of ~~a~~ *an entry* grade 8~~, step 2,~~ classified state employee in effect when the regular session of the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Legislators are entitled to $50 a day, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments shall stop when the legislature recesses for more than 3 days and shall resume when the legislature reconvenes.

(4) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(5) In addition to the mileage allowance provided for in subsection (4), legislators, upon submittal of an appropriate claim for such mileage reimbursement to the office of the legislative council, are entitled to:

(a) three additional round trips to their place of residence during each regular session; and

(b) such additional round trips as are authorized by the legislature during special session.

(6) Legislators are not entitled to any additional mileage allowance under subsection (4) for a special session if it is convened within 7 days of a regular session.

(7) In lieu of the salary provided for in subsection (1) and the expense allowance provided for in subsection (3), a legislator may receive remuneration for services performed during a legislative session. A legislator choosing to receive remuneration for services performed shall file a request to receive payment under this subsection with the accounting office of the legislative council. A legislator exercising the option to receive remuneration for services performed may not receive more remuneration than legislators paid pursuant to subsections (1) and (3). Remuneration for services performed must be reduced $50 a day when the legislature recesses for more than 3 days."

Section 14. Section 13-37-106, MCA, is amended to read:

"**13-37-106. Salary.** The commissioner of political practices is entitled to receive a salary of ~~$28,346~~ *$30,303* in fiscal year ~~1990~~ *1992* and ~~$29,055~~ *$31,551* in fiscal year ~~1991~~ *1993* and thereafter."

Section 15. Section 15-2-102, MCA, is amended to read:

"**15-2-102. Qualification and compensation.** (1) To be appointed a member of the state tax appeal board, a person must possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed may hold any other office under the laws of this state or any other state or any office under the government of the United States or under the government of any other state. He shall devote his entire time to the duties of the office and shall not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with his duties. The state tax appeal board is transferred to the department of administration for administrative purposes only as is specified in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(2) The member designated chairman as provided for in 15-2-103 shall receive a salary ~~of $29,032 in fiscal year 1990 and $29,809 in fiscal year 1991 and thereafter~~ *equivalent to that of an entry grade 17 salary, plus 5%.* The remaining state tax appeal board members shall be paid a salary ~~of $28,326 in fiscal year 1990 and $29,034 in fiscal year 1991 and thereafter~~ *equivalent to that of an entry grade 17 salary.* All members of the board shall receive travel expenses as provided for in 2-18-501 through 2-18-503, as amended, when away from the capital on official business."

Section 16. **Appropriation.** (1) The following money for the indicated fiscal years is appropriated to the listed agencies to implement [this act]:

	Fiscal 1992		Fiscal 1993	
	General Fund	Other Funds	General Fund	Other Funds
Legislative Auditor	$ 55,321	$ 59,836	$ 90,697	$ 98,098
Legislative Fiscal Analyst	29,486		49,742	
Legislative Council	76,834		152,898	
Environmental Quality Council	11,763		18,618	
Consumer Counsel		7,167		11,734
Judiciary	72,569	16,802	122,084	28,266
University System	4,113,000	1,160,000	6,752,000	1,904,000
Office of Budget and Program Planning for Distribution to All Other Agencies	8,603,027	11,843,195	13,727,961	18,844,902

(2) There is appropriated to the state personnel division $73,200 from the general fund for the fiscal year ending June 30, 1993, for changes in the payroll/personnel/position control system. Any unexpended portion of the appropriation is reappropriated for the biennium ending June 30, 1993.

Section 17. **Coordination instruction.** (1) If House Bill No. 866 is not passed and approved, the appropriations to the department of natural resources and environment, department of public health, and department of state lands must be allocated to the former departments and programs as reflected in current law.

(2) If Senate Bill No. 134 is not passed and approved, the appropriations to the department of transportation must be allocated to the former departments and programs composing the proposed department of transportation.

Section 18. **Codification instruction.** [Section 11] is intended to be codified as an integral part of Title 2, chapter 18, part 1, and the provisions of Title 2, chapter 18, part 1, apply to [section 11].

Section 19. **Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 15] is effective July 1, 1991.

Approved April 29, 1991.

CHAPTER NO. 721

[HB 698]

AN ACT REVISING THE TAPROOM EXCEPTION TO INCLUDE ANY BREWER LICENSED BY THE UNITED STATES WHO MANUFACTURES LESS THAN 60,000 BARRELS OF BEER A YEAR; AND AMENDING SECTION 16-3-214, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-214, MCA, is amended to read:

"**16-3-214. Beer sales by brewers — ~~tap-room~~ *taproom* exception.** (1) Subject to the limitations and restrictions contained in this code, any brewer duly licensed as such by the United States of America who manufactures *less than 60,000 barrels of* beer ~~in the state of Montana~~ *a year*, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, shall be licensed by the department, in accordance with the provisions of this code and such rules as may be prescribed by the department, to:

(a) sell and deliver beer *from its storage depot or brewery located in Montana* to:

(i) a ~~vendor~~ *wholesaler*;

(ii) any *retail* licensees who are entitled to purchase beer from a brewer under this code; or

(iii) the public; or

(b) provide, without charge, its own products for consumption on its licensed premises; or

(c) do any one or more of such acts of sale and delivery of beer.

(2) No additional license fee may be imposed on a brewery providing, without charge, its own products on its licensed premises for consumption on the premises.

(3) This section does not prohibit a brewer located outside of Montana from shipping and selling beer directly to a wholesaler in this state under the provisions of 16-3-230."

Approved April 29, 1991.

CHAPTER NO. 722

[HB 701]

AN ACT PROVIDING STATE FUNDING FOR CLEAN COAL TECHNOLOGY PROJECTS; AUTHORIZING PROPERTY TAX EXEMPTIONS FOR CLEAN COAL TECHNOLOGY PROJECTS; CREATING A CLEAN COAL TECHNOLOGY DEMONSTRATION FUND IN THE COAL SEVERANCE TAX TRUST FUND; AUTHORIZING INVESTMENT LOANS FOR CLEAN COAL TECHNOLOGY PROJECTS AUTHORIZED BY THE LEGISLATURE; AUTHORIZING THE FIRST PROJECT TO BE ELIGIBLE FOR A LOAN; AMENDING SECTION 17-5-703, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants rulemaking authority to the department of natural resources and conservation. In adopting rules to implement this bill, the department should model its rules on the water development project loans that it currently administers.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [section 2], the following definitions apply:

(1) "Clean coal technology project" means a project that uses coal as a method of generating energy, that is an effective and efficient method of coal energy generation and, that results in substantially reduced pollutant emissions compared to the commercial methods of coal energy generation in use at the time.

(2) "Department" means the department of natural resources and conservation established in 2-15-3301.

(3) "Local government" means a county, consolidated government, incorporated city or town, and school district.

Section 2. **Clean coal technology tax exemption — procedure — termination.** (1) The buildings, facilities, or equipment installed under a clean coal technology project is eligible for an exemption from property taxes as provided in this section. A project must be designated as a clean coal technology project by the department under criteria contained in [section 8].

(2) In order to qualify for the tax exemption described in this section, the legislature must have approved the project and the governing body of each affected local government must have approved the tax exemption by resolution, after notice and hearing. The governing body of each affected local government must be notified in writing of the buildings, facilities, and equipment proposed to be exempt from taxation and the value of the buildings, facilities, and equipment. A tax exemption may not be granted

under this section unless it is approved by every local government that would be affected by the project.

(3) If the governing body of each affected local government approves a resolution granting the tax exemption for a clean coal technology project, the buildings, facilities, or equipment installed under the project is exempt from the specified percentage of state and local property taxes as approved by the governing bodies. The percentage amount may be any amount up to 100%, but it must be the same for all state and local property taxes.

(4) Funds made available to a clean coal technology project as a result of the tax exemption under this section must be used for project development, construction, or operation or for payment of debt service on instruments used to fund project development, construction, or operation.

(5) The department shall, in writing, notify the department of revenue's agent in the county or counties in which the project is located of the date the final approval for the tax exemption of the property was granted under this section and shall specifically identify each piece of real or personal property subject to the tax exemption. A tax exemption granted under this section is effective for the life of the project or 25 years, whichever occurs first. The tax exemption begins on January 1 of the year after the department of revenue receives notification of the final approval under this section. The department shall, in writing, notify the department of revenue's agent in the county or counties in which the project is located when the exemption has expired. The termination of the exemption applies on January 1 of the taxable year following the expiration of the exemption.

Section 3. Section 17-5-703, MCA, is amended to read:

"**17-5-703. Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution shall be composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax shall be deposited;

(b) a clean coal technology demonstration fund;

~~(b)~~*(c)* a coal severance tax permanent fund; and

~~(c)~~*(d)* a coal severance tax income fund.

(2) The state treasurer shall ~~from time to time transfer to the coal severance tax permanent fund all money in the coal severance tax bond fund except~~ *determine* the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund on the next two ensuing semiannual payment dates *and retain that amount in the coal severance tax bond fund.*

(3) Beginning on July 1, 1991, and ending on June 30, 1997, the state treasurer shall from time to time transfer from the excess amount in the coal severance tax bond fund $5 million a year to the clean coal technology

demonstration fund and any remaining amount to the coal severance tax permanent fund."

Section 4. **Clean coal technology demonstration fund.** (1) There is a clean coal technology demonstration fund in the state treasury. The fund consists of money that would otherwise be deposited in the coal severance tax permanent fund from the coal severance tax bond fund, the principal received from the repayment of loans made from the fund, and money from any other source the legislature determines.

(2) The clean coal technology demonstration fund may be invested by the department of natural resources and conservation in loans to clean coal technology projects approved by the legislature.

Section 5. **Definitions.** As used in [sections 6 through 9], the following definitions apply:

(1) "Clean coal technology project" means a project, that employs an effective and efficient method of using coal to generate energy and that results in substantially reduced pollutant emissions compared to the commercial methods of coal energy generation in use at the time.

(2) "Department" means the department of natural resources and conservation established in 2-15-3301.

(3) "Person" means an individual, association, partnership, corporation, or other entity.

Section 6. **Clean coal technology demonstration loans.** (1) The department shall make clean coal technology demonstration loans from the clean coal technology demonstration fund for clean coal technology projects authorized by the legislature. The department shall review loan applications and make recommendations to the legislature concerning loans.

(2) Loans may be secured or unsecured in nature and must contain repayment provisions using income sources that do not jeopardize the financial viability of the projects. Repayment may be made from operating income, net project income, revenue from the licensing or sale of technology, sale or lease of the project, or other sources determined by the department.

(3) The department may determine the payment dates for the loan, a rate of interest for the loan, and other provisions as part of the loan agreement. The rate of interest, security provisions, and other terms that increase the likelihood of repayment may not be less than those related to any federal funds dedicated to a project. Payments of principal on loans must be deposited in the clean coal technology demonstration fund created in [section 4].

Section 7. **Applications for clean coal technology demonstration loans.** A person may apply for a clean coal technology demonstration loan for a clean coal technology project to be conducted in Montana. An application for a loan must be in a form prescribed by the department and contain or be accompanied by any information necessary to adequately describe the proposed project and necessary to evaluate the proposed project.

Section 8. **Eligibility for loan — clean coal technology project designation.** (1) In order for a project to be eligible for a clean coal technology demonstration loan, the department shall designate the project as a clean coal technology project. The department shall ensure, based on the application and the department's investigation and evaluation of the proposal, that the project loan will be:

(a) used for a clean coal technology project in a commercial testing, pilot plant, or initial commercialization phase; and

(b) matched on at least a 4:1 basis from federal or private sources.

(2) Loans may not be recommended for early stage planning or basic research activities.

Section 9. **Rulemaking.** The department may adopt rules to implement [sections 5 through 9].

Section 10. **Project approval.** The legislature authorizes the installation of MHD technology at the J.E. Corette power plant in Billings, Montana, as the first clean coal technology project. The project is eligible to apply to local governments for a property tax exemption under [section 2]. The project is designated as a clean coal technology project eligible to receive a clean coal technology demonstration loan in an amount up to $25 million.

Section 11. **Transfer of funds.** There is transferred from the coal severance tax permanent fund $25 million to the clean coal technology demonstration fund.

Section 12. **Codification instruction.** (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [sections 1 and 2].

(2) [Sections 4 through 9] are intended to be codified as an integral part of Title 90, chapter 4, and the provisions of Title 90, chapter 4, apply to [sections 4 through 9].

Section 13. **Coordination instruction.** If House Bill No. 795 is passed and approved, then the clean coal technology demonstration fund created in 17-5-703(1)(b) of [this act] becomes 17-5-703(1)(c) and the code commissioner shall change references to the coal severance tax bond fund in [section 3(3) of this act] and [section 4(1) of this act] to the coal severance tax infrastructure fund.

Section 14. **Effective date.** [This act] is effective July 1, 1991.

Approved April 29, 1991.

CHAPTER NO. 723

[SB 77]

AN ACT EXTENDING THE TERMINATION OF THE TAX INCENTIVE FOR PRODUCTION OF ALCOHOL FOR BLENDING WITH GASOLINE UNTIL 2001; REVISING THE DEFINITION OF ALCOHOL DISTRIBUTOR; INCREASING THE MAXIMUM TOTAL INCENTIVE PAYMENTS IN ANY CONSECUTIVE 12-MONTH PERIOD TO $6 MILLION; INCREASING THE MAXIMUM INCENTIVE PAYMENT TO AN ALCOHOL DISTRIBUTOR IN ANY CONSECUTIVE 12-MONTH PERIOD TO $1.5 MILLION; PROVIDING FOR THE RESERVATION OF TAX INCENTIVES; AMENDING SECTIONS 15-70-503 AND 15-70-522, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT RETROACTIVE APPLICABIITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 2(10)] grants rulemaking authority to the department of revenue to allow the reservation of alcohol tax incentives for alcohol distributors who begin production after July 1, 1991, and to reduce or cancel those incentives if a new alcohol distributor does not comply with the written plan. The legislature intends that the department adopt rules that specify the information that must be contained in the written plan. The department shall also develop procedures to verify that the alcohol distributor has obtained financing for the acquisition of the plant, land, and equipment and has secured an adequate supply of agricultural products for the production of alcohol. The rules may include procedures for the review of a new alcohol distributor's business plan or prospectus, architectural plans, and process flows. The department shall also develop procedures for reducing or canceling the reservation of alcohol tax incentives if the department determines that the new alcohol distributor does not comply with the written plan.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-503, MCA, is amended to read:

"**15-70-503. Definitions.** As used in this part, the definitions in 15-70-201 and the following definitions apply:

(1) "Alcohol distributor" means any person who, for the purpose of making gasohol~~:~~

~~(a)~~ engages in the business of producing alcohol for sale, use, or distribution~~; or~~

~~(b) imports alcohol for sale, use, or distribution~~.

(2) "Department" means the department of revenue.

(3) "Export" means to transport out of Montana from any point of origin within Montana by any means other than in the fuel supply tank of a motor vehicle.

(4) "Gasohol dealer" means any person who blends alcohol with gasoline to produce gasohol for sale, use, or distribution in this state."

Section 2. Section 15-70-522, MCA, is amended to read:

"**15-70-522. Tax incentive for production of alcohol — *written plan required — reservation of incentives — rules.*** (1) (a) ~~Provided~~ *If* the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products, *or if the alcohol was produced from non-Montana agricultural products when Montana products are not available,* there is a tax incentive payable to alcohol distributors for distilling alcohol that:

(i) was blended with gasoline for sale as gasohol in Montana; ~~or~~

(ii) was exported from Montana and has been blended with gasoline for sale as gasohol*; or*

(iii) was used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment ~~shall~~ *must* be made by the department of revenue out of the amount collected under 15-70-204.

(2) Except as provided in subsections ~~(3) through~~ *(4) and* (5), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is:

(a) beginning July 1, 1983, 70 cents per gallon;

(b) beginning April 1, 1985, 50 cents per gallon;

(c) beginning April 1, 1987, 30 cents per gallon; and

(d) beginning July 1, ~~1993~~ *2001*, and thereafter, there is no tax incentive.

~~(3) The incentive schedule provided for in subsection (2) shall be modified in response to market conditions as follows:~~

~~(a) If for any 2 consecutive calendar quarters ending on or before September 30, 1984, the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprise 8% or more but less than 11% of the total gallons of nonaviation gasoline and gasohol sold in Montana, the tax incentive for alcohol shall be 50 cents per gallon, effective beginning the second calendar quarter after the 2 consecutive calendar quarters during which the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprised 8% or more but less than 11% of the total gallons of nonaviation gasoline and gasohol sold in Montana.~~

~~(b) If for any 2 consecutive calendar quarters ending on or before September 30, 1986, the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprise 11% or more but less than 18% of the total gallons of nonaviation gasoline and gasohol sold in Montana, the tax incentive for alcohol shall be 30 cents per gallon effective beginning the second calendar quarter after the 2 consecutive calendar quarters during which the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprised 11% or more but less than 18% of the total gallons of nonaviation gasoline and gasohol sold in Montana.~~

~~(c) If for any 2 consecutive calendar quarters ending on or before September 30, 1988, the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprise 18% or more of the total gallons of nonaviation gasoline and gasohol sold in Montana, the tax incentive for alcohol shall be eliminated effective beginning the second calendar quarter after the 2 consecutive quarters during which the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprised 18% or more of the total gallons of nonaviation gasoline and gasohol sold in Montana.~~

~~(d) Each quarter, the department shall compute the share of the total nonaviation gasoline and gasohol market that is represented by gasohol, according to the information contained in gasoline distributors' returns and the applications for payment of the alcohol production tax incentive. Alcohol that is exported from Montana and eligible for the tax incentive must be included in the computations.~~

~~(4)~~*(3)* Regardless of the alcohol tax incentive provided in subsection (2) ~~or (3)~~, the total payments made for the incentive under this part may not exceed ~~$1,250,000~~ *$6 million* in any consecutive 12-month period beginning April 1, 1985.

~~(5)~~*(4)* ~~No~~ *An* alcohol distributor may *not* receive tax incentive payments under subsection (2) that exceed ~~$1,000,000~~ *$1.5 million* in any consecutive 12-month period beginning April 1, 1985~~, except as follows. If total tax incentive payments to all eligible alcohol distributors in any consecutive 12-month period beginning April 1, 1985, do not reach the percentage of production maximums in subsection (3) or the maximum dollar amount in subsection (4), an alcohol distributor who has received the maximum payment of $1,000,000 as herein provided may receive additional tax incentive payments subject to the percentage of production maximums in subsection (3) or the maximum dollar amount in subsection (4)~~.

(5) An alcohol distributor who begins production after July 1, 1991, may not receive tax incentive payments under subsection (2) unless he has provided a written plan to the department of revenue at least 18 months before his anticipated collection of the tax incentives. The plan must contain the following information:

(a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the production of gasohol;

(b) the anticipated source of agricultural products used in the production of gasohol; and

(c) the anticipated time, quantity, and duration of production of gasohol.

(6) The department shall provide to the department of highways the information received from the alcohol distributor under subsection (5).

(7) An alcohol distributor in production before July 1, 1991, is entitled to apply for the maximum tax incentive payment allowed under subsection (4) without providing a written plan as required in subsection (5).

(8) (a) Except as provided in subsection (8)(b), the department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of production. Payment of the alcohol tax incentives must be based on actual production.

(b) No later than 1 year after the written plan is received under subsection (5), the department shall determine whether an alcohol distributor is complying with the written plan. The department may reduce or cancel the reservation of the tax incentive provided in this subsection if the department determines that the alcohol distributor has not materially complied with the written plan.

(9) A new tax incentive payment may not be made if the total tax incentive established in subsection (3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which the tax incentive has been reduced or canceled is available for reservation as provided in subsection (8)(a).

(10) The department shall prescribe rules necessary to carry out the provisions of this section."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Section 4. **Contingent retroactive applicability.** If [this act] is passed and approved after April 1, 1991, the provisions of [this act] apply retroactively, within the meaning of 1-2-109, to April 1, 1991.

Approved April 29, 1991.

CHAPTER NO. 724

[SB 191]

AN ACT TO GENERALLY REVISE MOTOR VEHICLE REGISTRATION AND TITLING LAWS; PROVIDING FOR THE ISSUANCE OF SPECIAL-PURPOSE LICENSE PLATES, INCLUDING LICENSE PLATES

ISSUED TO SURVIVORS OF THE PEARL HARBOR ATTACK, BY CREATING A GENERIC PLATE WITH A DESIGN OR DECAL INDICATING THE SPECIAL PURPOSE; PROVIDING THAT A DISABLED VETERAN HAS THE OPTION OF RECEIVING A HANDICAPPED LICENSE PLATE OR, IF QUALIFIED, AN EX-PRISONER OF WAR LICENSE PLATE; CREATING A NEW CLASS OF DEALER PLATE FOR RECREATIONAL VEHICLE DEALERS; ALLOWING FOR REPLACEMENT PLATES INSTEAD OF ISSUING DUPLICATE LICENSE PLATES; REMOVING THE EXCEPTION FOR ELECTRICALLY DRIVEN VEHICLES IN THE VEHICLE IDENTIFICATION NUMBER STATUTE; TRANSFERRING THE DUTY OF INSPECTING DEALERS FROM THE HIGHWAY PATROL TO THE MOTOR VEHICLE DIVISION; PROVIDING THAT EXEMPT PLATES BE REISSUED ONLY WHEN DAMAGED OR DESTROYED; INCREASING THE PENALTY FOR VIOLATING VEHICLE TITLING, REGISTRATION, OR TAXATION LAWS; VOIDING HOUSE BILL NO. 98; AMENDING SECTIONS 61-1-130, 61-3-101, 61-3-201, 61-3-205, 61-3-206, 61-3-303, 61-3-305, 61-3-332, 61-3-333, 61-3-465, 61-3-510, 61-3-601, 61-3-604, AND 61-4-101, MCA; AND REPEALING SECTIONS 10-1-110, 61-3-304, 61-3-444, 61-3-445, 61-3-447, 61-3-451, AND 61-3-505, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-130, MCA, is amended to read:

"**61-1-130. Motor home.** "Motor home" as used in 61-3-521 and 61-3-522 means a ~~self-propelled~~ motor vehicle ~~originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use~~*:*

(1) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(2) containing permanently installed independent life support systems that meet the ANSI/A119.2 standard; and

(3) providing at least four of the following types of facilities:

(a) cooking, refrigeration, or icebox;

(b) self-contained toilet;

(c) heating or air-conditioning, or both;

(d) potable water supply, including a faucet and sink; or

(e) separate 110-volt or 125-volt electrical power supply or a liquified petroleum gas supply, or both."

Section 2. Section 61-3-101, MCA, is amended to read:

"**61-3-101. Duties of department — records.** (1) The department shall keep a record as ~~hereinafter~~ specified *in this section* of all motor vehicles, trailers, and semitrailers of every kind, and of certificates of registration and ownership ~~thereof~~ *of those vehicles*, and of all *manufacturers and* dealers in motor vehicles.

(2) In the case of motor vehicles, trailers, and semitrailers, the record ~~shall~~ *must* show the following:

(a) name of owner, residence by town and county, and business address;

(b) name and address of conditional sales vendor, mortgagee, or other lienholder and amount due under contract or lien;

(c) manufacturer of ~~car~~ *vehicle*;

(d) manufacturer's designation of style of ~~car or~~ vehicle;

(e) identifying number;

(f) year of manufacture;

(g) character of motive power and shipping weight of ~~car~~ *vehicle* as shown by the manufacturer;

(h) the distinctive license number assigned to the vehicle *if any*;

(i) if a truck or trailer, the number of tons' capacity or GVW if imprinted on manufacturer's identification plate;

(j) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in a vehicle; and

~~(j)~~*(k)* ~~such~~ other information ~~as~~ *that* may from time to time be found desirable.

(3) The department shall file applications for registration received by it from the county treasurers of the state and register the vehicles ~~therein~~ described *in the applications* and the owners ~~thereof~~ *of the vehicles* in suitable books or on index cards, as follows:

(a) under the distinctive license number assigned to the vehicle by the county treasurer;

(b) alphabetically under the name of the owner;

(c) numerically under make and identifying number of the vehicle; *and*

(d) ~~such~~ other index of registration as the department considers expedient.

(4) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(5) In the case of dealers, the records ~~shall~~ *must* show the information contained in the application for dealer's license as required by 61-4-101 through 61-4-105, as well as the distinctive license number assigned to the dealer.

(6) In order to prevent an accumulation of unneeded records and files, the department ~~shall have the authority and it shall be its~~ *has the authority and the* duty to destroy all records and files ~~which~~ *that* have ceased to ~~be of any~~ *have* value.

(7) The department may establish and maintain a short-wave radio station in order to report motor vehicle registration information to the highway patrol, to sheriffs, and to the chiefs of police of each incorporated city of the state who are able to communicate with ~~such~~ *the* short-wave radio station.

(8) All records ~~shall~~ *must* be open to inspection during all reasonable business hours, and the department shall furnish any information from the records upon payment by the applicant of the cost of transcribing the information requested."

Section 3. Section 61-3-201, MCA, is amended to read:

"**61-3-201. Transfer of interest — cancellation of erroneous certificate of ownership.** (1) Upon a transfer of any interest in a motor vehicle registered under the provisions of this chapter, the person whose interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for the vehicle in the appropriate space provided ~~upon the reverse side of the certificate~~, and the signature must be acknowledged before the county treasurer, a deputy county treasurer, or a notary public.

(2) Within 20 calendar days after endorsement, the transferee shall forward both the endorsed certificate of ownership with the odometer mileage statement required under 61-3-206 and the certificate of registration, together with the information required under 61-3-202, to the county treasurer, who shall forward them to the department. The department may not issue a certificate of ownership or certificate of registration until the outstanding certificates are surrendered to that office or their loss is established to its reasonable satisfaction. Failure to make application within the 20-day grace period subjects the transferee to a penalty of $10. The county treasurer shall collect the penalty at the time of registration. The penalty is in addition to the fees otherwise provided by law. If the transferee does not make application within 25 days, a creditor or secured party may pay the fees for the transfer of title and filing of security interest or lien in order to have title transferred to the transferee and have the security interest or lien filed. The creditor or secured party is not liable for the penalty, registration fees, or taxes. The department shall return the certificate of title to the county treasurer as provided in 61-3-103(1). When the certificate of ownership is returned by the department to the county treasurer, the treasurer shall hold the certificate of ownership until the vehicle is properly registered.

(3) In the event of a transfer by operation of law of any interest in a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by

voluntary act of the person whose title or interest is transferred, the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the person whose interest is transferred shall forward to the department an application for a certificate of ownership in the form required *by the department* ~~for an original application for a certificate of ownership~~, together with a verified or certified statement of the transfer of interest. The statement must set forth the reason for the involuntary transfer, the interest transferred, the name of the person to whom the interest is to be transferred, the process of procedure effecting the transfer, and other information requested by the department. Evidence and instruments otherwise required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases must be furnished with the statement. If the department is satisfied that the transfer is regular and that all formalities required by law have been complied with, it shall send to the owner, conditional sales vendor, lessor, mortgagee, and other lienor, as shown by its records, notice of the intended transfer and, not less than 5 days after sending notice, shall issue a new certificate of ownership and certificate of registration to the transferee. The notice required by this section is complied with by deposit in the post office in Deer Lodge, Montana, of the notice, postage prepaid, addressed to the person at the respective address shown on its records.

(4) When the vehicle certificate of ownership that is involuntarily transferred is not registered in this state, the procedure in subsection (3) must be followed in applying for a new certificate of ownership and certificate of registration ~~but~~*; however, in lieu of the statement required in subsection (3), the department may accept an affidavit of repossession on the form provided by the state in which a lien has been perfected and* the department need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled to ~~them~~ *the certificates.*

(5) (a) If the owner of one or more motor vehicles, trailers, semitrailers, or housetrailers registered under this chapter and not exceeding a combined value of $15,000 dies without leaving other property necessitating the procuring of letters of administration or letters testamentary, the surviving spouse or other heir unless the property is by will otherwise bequeathed may secure transfer of the decedent's certificate of ownership and the certificate of registration for the vehicle.

(b) The person seeking transfer of the certificate of ownership shall file an affidavit with the department setting forth the fact of survivorship and the name and address of any other heirs and other facts as are necessary under subsection (5)(a) to entitle the affiant to a transfer.

(c) The department is authorized to transfer the certificate of ownership and certificate of registration, subject to all security interests shown by its records, upon receipt of an affidavit showing that the affiant is entitled to a transfer under the provisions of subsection (5)(a) of this section.

(6) Nothing in subsection (5) prevents ~~any~~ *a* secured party from assigning his interest in a motor vehicle registered under the provisions of this

chapter to any other person without the consent of and without affecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any assignment by a secured party of his security interest in any motor vehicle registered under this chapter, a copy of the assignment must be filed with the department and a record of the assignment made upon its records.

(7) The certificate of ownership is valid until canceled by the department upon a transfer of any interest shown in the certificate, and annual renewal is not needed.

(8) (a) Upon its determination that a certificate of ownership contains an error caused by the department, the department may cancel the certificate of ownership and issue a replacement for the erroneous certificate if the owner has returned the certificate to be canceled.

(b) Any person who fails to return a certificate of ownership issued with an error caused by the department after receiving actual notice of the department's demand for the return of the certificate as required by subsection (8)(a) is guilty of a misdemeanor and upon conviction may be fined an amount not to exceed $500."

Section 4. Section 61-3-205, MCA, is amended to read:

"**61-3-205. Transfer of ownership of vehicles by insurance company.** (1) When an insurance company or its adjuster has taken possession of a motor vehicle as a result of settling an insurance claim and transfers ownership of the motor vehicle, it shall deliver to the transferee at the time of transfer a certificate of ownership signed and acknowledged *by the registered owner or owners* before the county treasurer, a deputy county treasurer, or a notary public.

(2) If the certificate of ownership names one or more holders of a perfected security interest in the motor vehicle, the insurance company or its adjuster shall also secure and deliver to the transferee a release from the secured party of the security interest."

Section 5. Section 61-3-206, MCA, is amended to read:

"**61-3-206. Odometer disclosure requirements on transfer of vehicle — dealer to preserve record.** (1) Except as provided in subsection (3), before executing any transfer of ownership document relating to a motor vehicle, each seller of a motor vehicle shall record on the certificate of ownership the odometer reading at the time of transfer or, if the certificate of ownership does not provide for the recording of the odometer reading, furnish to the purchaser a written statement signed by ~~each~~ *the* seller, *who shall also print his name on the written statement,* containing the following information:

(a) the odometer reading at the time of transfer;

(b) the date of transfer;

(c) the seller's name and current address;

(d) the purchaser's name and current address;

(e) the vehicle year, make, model, body style, and identification number;

(f) one of the following statements or certification:

(i) a certification by the seller that, to the best of his knowledge, the odometer reading reflects the actual miles or kilometers the vehicle has been driven;

(ii) if the seller knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit of 99,999 miles or kilometers, he shall include a statement to that effect; or

(iii) if the seller knows that the odometer reading differs from the number of miles or kilometers the vehicle has actually traveled and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(2) The purchaser shall acknowledge receipt of the disclosure statement by signing it *and printing his name on the disclosure statement.*

(3) The seller of the following types of motor vehicles need not disclose the odometer reading of the vehicle as required in subsection (1):

(a) a motor vehicle that is 10 years old or older;

(b) a vehicle that is not self-propelled;

(c) a new motor vehicle transferred between dealers prior to its first retail sale, unless such vehicle has been used as a demonstrator;

(d) a vehicle having a gross weight rating of more than 16,000 pounds; or

(e) a vehicle sold directly by the manufacturer to an agency of the United States.

(4) A dealer licensed under 61-4-101 shall create a record of the information required in subsection (1) and shall maintain and preserve that record for at least 5 years after the date of sale of the motor vehicle to which the information pertains."

Section 6. Section 61-3-303, MCA, is amended to read:

"**61-3-303. Application for registration.** (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as herein otherwise expressly provided, file or cause to be filed in the office of the county treasurer where the owner makes his permanent residence at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned, an application for registration or reregistration upon a blank form to be prepared and furnished by the department. The application shall contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) name and address of the holder of any security interest in the motor vehicle;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body, and if truck, the rated capacity; *and*

~~(d) in case of reregistration, the license number for the preceding year; and~~

~~(e)~~*(d)* ~~such~~ other information ~~as~~ *that* the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321; and

(b) unless it has been previously paid:

(i) the personal property taxes assessed against the vehicle for the current year of registration and the immediately previous year; or

(ii) the new motor vehicle sales tax against the vehicle for the current year of registration.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. The department or its agent may not assess and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year, if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The department or its agent may make full and complete investigation of the tax status of the vehicle. Any applicant for registration or reregistration must submit proof from the tax or other appropriate records of the proper county at the request of the department or its agent."

Section 7. Section 61-3-305, MCA, is amended to read:

"**61-3-305. Blanks to be provided.** It ~~shall be~~ *is* the duty of the department to provide blank application forms ~~outlining and providing for~~

~~the information needed in each class of registration required,~~ and to furnish these upon request to applicant for registration."

Section 8. Section 61-3-332, MCA, is amended to read:

"**61-3-332.** *(Temporary)* **Number plates.** (1) ~~Every~~ *A* motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned the vehicle. The number plates are in ~~eight~~ *10* series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", ~~and~~ one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", *one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates.* All markings for the ~~aforementioned~~ *various* kinds of dealers' plates must be placed on the number plates assigned thereto in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after January 1, 1991, to replace, at renewal as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on such license plates, and the word "Montana" and the year must be placed across the plates. Such registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of such numer-

als and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings ~~herein~~ provided *in this section*, number plates must ~~have thereon~~ *bear* the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and no year number may be indicated thereon because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and that are used and operated by officials and employees thereof in line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty, there must be placed on the number plates assigned thereto, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of the counties and those of the irrigation districts that obtain plates within each county must begin with number one and be numbered consecutively. *Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.*

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. No registration or license fee may be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37;

Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, handicapped persons, reservists, disabled veterans, and survivors of the Pearl Harbor attack who comply with the following provisions:

(a) An active member of the Montana national guard may be issued a special license plate with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the division to issue one set of national guard plates, and the member shall surrender the plates to the division upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued a special license plate with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of one set of plates. The member shall surrender the plates to the division upon becoming ineligible to use them.

(c) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the veterans' administration to be service-connected may, upon presentation to the division of proof of the 100% disability, be issued a special license plate under this section with a design or decal displaying the letters "DV" or the handicapped license plate provided for in 61-3-445.

(i) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter. A disabled veteran who meets the requirements for issuance of a "DV" license plate and who also qualifies for the issuance of an ex-prisoner of war license plate may obtain the ex-prisoner of war license plate upon payment of the same $5 fee.

(ii) Special license plates issued to a disabled veteran are not transferrable to another person.

(iii) A disabled veteran is not entitled to a special license plate for more than one vehicle.

(iv) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by his service record, may upon application and presentation of proof be issued a special license plate with a design or decal displaying the words "ex-prisoner of war" or an abbreviation as the department considers appropriate.

(e) Upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, for one motor vehicle only, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of the handicapped person. *(Terminates July 1, 1996—sec. 4, Ch. 654, L. 1989.)*

61-3-332. *(Effective July 1, 1996)* **Number plates.** (1) ~~Every~~ *A* motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned the vehicle. The number plates are in ~~eight~~ *10* series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", ~~and~~ one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", *one for dealers in recreational vehicles that bear the* *distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates.* All markings for the ~~aforementioned~~ *various* kinds of dealers' plates must be placed on the number plates assigned thereto in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after January 1, 1991, to replace, at renewal as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(4) In the case of motorcars and trucks, number plates must be of metal 6 inches wide and 12 inches in length. For number plates issued after 1976, the outline of the state of Montana must be used as a distinctive border on such license plates, and the word "Montana" and the year must be placed across the bottom of the plates. Such registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of such numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates must have thereon the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and no year number may be indicated thereon because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and that are used and operated by officials and employees thereof in line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty, there must be placed on the number plates assigned thereto, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of the counties and those of the irrigation districts that obtain plates within each county must begin with number one and be numbered consecutively. *Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.*

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. No registration or license fee may be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, handicapped persons, reservists, disabled veterans, and

survivors of the Pearl Harbor attack who comply with the following provisions:

(a) An active member of the Montana national guard may be issued a special license plate with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the division to issue one set of national guard plates, and the member shall surrender the plates to the division upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued a special license plate with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of one set of plates. The member shall surrender the plates to the division upon becoming ineligible to use them.

(c) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the veterans' administration to be service-connected may, upon presentation to the division of proof of the 100% disability, be issued a special license plate under this section with a design or decal displaying the letters "DV".

(i) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(ii) Special license plates issued to a disabled veteran are not transferrable to another person.

(iii) A disabled veteran is not entitled to a special license plate for more than one vehicle.

(iv) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by his service record, may upon application and presentation of proof be issued a special license plate with a design or decal displaying the words "ex-prisoner of war" or an abbreviation as the department considers appropriate.

(e) Upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (e), the department shall issue to a Montana resident who is a veteran of the armed services of the

United States special license plates, for one motor vehicle only, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of the handicapped person."

Section 9. Section 61-3-333, MCA, is amended to read:

"**61-3-333. Replacing number plates.** In the event of loss, mutilation, or destruction of number plates, and/or validation devices, the owner of the registered motor vehicle may obtain from the department duplicates ~~thereof~~ *or replacements of the number plates* upon filing sworn declaration showing ~~such~~ *that* fact and payment of a fee of $2. In the event of loss, mutilation, or destruction of pioneer plates, duplicates may be obtained in the same manner upon payment of a fee of $5."

Section 10. Section 61-3-465, MCA, is amended to read:

"**61-3-465. Issuance — application — additional fee — disposition.** (1) The department shall issue or renew collegiate license plates upon receipt of an application that shows:

(a) compliance with 61-3-303~~, 61-3-304~~, 61-3-311, and 61-3-312; and

(b) payment to the county treasurer of:

(i) an initial application and manufacturing fee of $2.50, when required; and

(ii) an annual scholarship donation of $20 for the benefit of the institution named in the application.

(2) Once each month the county treasurer shall transfer to the state treasurer the total of the amounts collected for:

(a) the initial application and manufacturing fee for deposit in the Montana state prison industries account in the proprietary fund for appropriation by the legislature to pay the cost of manufacturing collegiate license plates; and

(b) scholarship donations provided for in subsection (1)(b)(ii), along with a schedule showing the number of collegiate license plates issued and the total donations received for the benefit of each institution.

(3) Once each month the state treasurer shall distribute to the student academic scholarship fund or foundation of each institution an amount equal to the total donations credited to that institution and transferred to the state treasurer by the county treasurers during the preceding month."

Section 11. Section 61-3-510, MCA, is amended to read:

"**61-3-510. Weed control fee.** (1) A special weed control fee of $1.50 must be assessed on the annual registration or reregistration of each motor vehicle subject to registration. The fee must be collected by the county treasurer.

(2) For purposes of this section, motor vehicle includes:

(a) motor vehicle as defined in 61-1-102;

(b) motorcycle as defined in 61-1-105;

(c) motor-driven cycle as defined in 61-1-106; and

(d) quadricycle as defined in 61-1-133.

(3) The following vehicles are exempt from the fee:

(a) vehicles owned or controlled by the United States or a state, county, or city;

(b) vehicles exempt from payment of registration fees by 61-3-321~~(7)~~*(8)*; and

(c) vehicles or equipment which is not self-propelled or which requires towing when moved upon a highway of this state."

Section 12. Section 61-3-601, MCA, is amended to read:

"**61-3-601. Penalty for violations.** Except as otherwise provided, a violation of any of the provisions of this chapter is a misdemeanor and is punishable by a fine not exceeding ~~$25~~ *$500*. Nothing ~~contained herein~~ *in this section* prevents the prosecution of a person for an offense committed under any other law."

Section 13. Section 61-3-604, MCA, is amended to read:

"**61-3-604. Penalty for altering identification number.** (1) A person who willfully removes or falsifies an identification number of a motor vehicle or motor vehicle engine is guilty of a misdemeanor.

(2) Any person or persons, firm, or corporation ~~which~~ *that* sells or offers for sale in this state a vehicle the original vehicle identification number of which has been destroyed, removed, altered, covered, or defaced~~, with the exception of electrically propelled vehicles,~~ is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $200 or more than $500 and by imprisonment in the county jail for a term of not less than 30 days or more than 180 days. Upon a second or subsequent conviction under this subsection, the punishment shall be imprisonment in

the state prison for a term of not less than 1 year or more than 5 years or a fine in an amount not to exceed $50,000, or both such fine and imprisonment."

Section 14. Section 61-4-101, MCA, is amended to read:

"**61-4-101. Application for dealer's license.** (1) Every person, firm, corporation, or association which, for commission or profit, engages in the business of buying, selling, exchanging, offering, taking for consignment, soliciting, advertising the sale of, or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, or special mobile equipment as defined in 61-1-104 shall file, by mail or otherwise, in the office of the department a verified application for licensure as a dealer, on a blank to be furnished by the department for that purpose and containing the information required. The application and all of the information contained in it must be verified by the ~~Montana highway patrol~~ *department*. Each application must be accompanied by the license fee specified in 61-4-102. A dealer's license must be renewed and paid for annually, and an application for relicensure must be filed not later than January 1 of each year. If an application for renewal of a license has been received by the department prior to the expiration of the license, the dealer may operate his business and display dealer plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant must:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name and address of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(iv) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

(v) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that he is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates ~~or~~, as a recreational vehicle *dealer and for the use of "RV" plates, as a* trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates, or as a motorcycle or quadricycle dealer and for the use of "MCD" plates, the applicant ~~must~~ *shall*, in addition to the matters set forth in subsections (i) and (ii) of subsection (2)(a) above, provide:

(i) a statement that the applicant has a building or lot and a sign readable at a minimum distance of 150 feet indicating the firm name as the principal place of business and that vehicles are offered for sale; and

(ii) a certificate to the effect that the applicant is a bona fide dealer in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, or quadricycles. An applicant for a recreational vehicle dealer license ~~must~~ *shall* also indicate on the same certificate that he is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

(c) To qualify for a used motor vehicle dealer's license, a person ~~must~~ *shall* submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b).

(d) The provisions of subsection (2)(c) do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) (a) The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of $5,000, and the bond must be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage due to the unlawful conduct of a dealer licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting the judgment from the department. The department is responsible for payment under this section, in an amount not to exceed the maximum bond amount, only if the judgment on which the payment is based determines a specific loss or damage amount and concludes that the dealer's unlawful operation caused the loss or damage."

Section 15. **Coordination instruction.** On passage and approval of this bill, House Bill No. 98 is void.

Section 16. **Repealer.** Sections 10-1-110, 61-3-304, 61-3-444, 61-3-445, 61-3-447, 61-3-451, and 61-3-505, MCA, are repealed.

Section 17. **Instructions to code commissioner.** To conform with the provisions of [this act], the code commissioner shall make the following revisions:

(1) in 49-4-302(2) and (3), change 61-3-451 to 61-3-332(10)(c);

(2) in 49-4-304(1), change 61-3-445 to 61-3-332(10)(f);

(3) in 61-3-313(3), change 61-3-451 to 61-3-332(10)(c);

(4) in 61-3-446:

(a) change:

(i) 61-3-444 to 61-3-332(10)(d);

(ii) 61-3-445 to 61-3-332(10)(f);

(iii) 61-3-447 to 61-3-332(10)(b); and

(iv) 61-3-451 to 61-3-332(10)(c); and

(b) insert 61-3-332(10)(e);

(5) in 61-3-452, 61-3-453, 61-3-454, 61-3-455, and 61-3-504(2), change 63-3-451 to 61-3-332(10)(c);

(6) in 61-3-507, delete "and 61-3-505" at the end of subsection (1) in the temporary version and at the end of the permanent version.

Approved April 29, 1991.

CHAPTER NO. 725

[SB 232]

AN ACT TO REQUIRE SURRENDER TO THE DEPARTMENT OF JUSTICE THE CERTIFICATE OF OWNERSHIP OF A VEHICLE THAT IS LESS THAN 5 YEARS OF AGE DETERMINED TO BE A SALVAGE VEHICLE; TO ALLOW THE DEPARTMENT TO ISSUE A SALVAGE CERTIFICATE FOR A SALVAGE VEHICLE CAPABLE OF BEING REBUILT; TO PROVIDE FOR THE RETITLING OF A SALVAGE VEHICLE; TO CREATE A VEHICLE IDENTIFICATION NUMBER INSPECTION PROGRAM; TO IMPOSE A VEHICLE IDENTIFICATION NUMBER INSPECTION FEE; TO AUTHORIZE THE DEPARTMENT TO INSPECT THE RECORDS OF LICENSED MOTOR VEHICLE WRECKING FACILITIES; TO ALLOW THE DEPARTMENT TO SUE TO COLLECT CIVIL PENALTIES FOR CERTAIN VIOLATIONS; TO PROVIDE AN APPROPRIATION; AND AMENDING SECTIONS 61-3-202, 75-10-512, AND 75-10-541, MCA.

STATEMENT OF INTENT

A statement of intent is necessary for this bill because it grants the department of justice additional rulemaking authority with respect to the implementation and administration of a vehicle identification and inspection program and additional rulemaking authority with respect to salvage vehicles.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in this part, the following definitions apply:

(1) "Cab" means the passenger compartment of a common truck or pickup truck. It is a unit of construction that includes the top or roof and the cowl and may or may not include glass, instrumentation, the steering column and a seat or seats.

(2) "Center structure" includes the section of either a unibody or frame-type passenger vehicle that consists of a unit of sheet metal that extends from the firewall to the back of the rear seat or the centerline of the rear wheels. The structure may comprise the roof, side and rear window posts, cowl panel, dash panel, floor pans, doors, and rocker panels if two or more of these parts are assembled together as one unit.

(3) "Component part" means the front-end assembly, center structure, or tail section of an automobile, the cab of a truck, the bed of a 1-ton or lighter truck, the frame of a vehicle, or any part of a vehicle that contains a vehicle identification number or a derivative of a vehicle identification number.

(4) "Frame" means the structure that supports the automobile body and other external component parts.

(5) "Front-end assembly" includes the hood, right front and left front fenders, grill, bumper, and radiator supports if two or more of these parts are assembled together as one unit forward of the firewall.

(6) "Salvage certificate" means a certificate of ownership issued by the department for a salvage vehicle that may be used to retitle the vehicle.

(7) "Salvage vehicle" means a vehicle damaged by collision, fire, flood, accident, trespass, or other occurrence to the extent that the owner, an insurer, or other person acting on behalf of the owner determines that the cost of parts and labor makes it uneconomical to repair the vehicle.

(8) "Salvage-vehicle purchaser" means a person, other than an insurer, who purchases or otherwise obtains possession of a salvage vehicle.

(9) "Tail section" includes the floor pan, right rear and left rear quarter panels, deck lid, upper rear and lower rear panels, and rear bumper if two or more of these parts are assembled together as one unit.

(10) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the vehicle or a component part of the vehicle.

Section 2. Section 61-3-202, MCA, is amended to read:

"**61-3-202. Certificate of ownership — issuance — contents — joint ownership — *inspection — fees*.** (1) Upon completion of the application for certificate of ownership, on forms furnished by the department, the county treasurer shall forward one copy of the application to the department, which shall enter the information contained in the application upon the corresponding records of its office and, except as provided in 61-3-103(1) and 61-3-201(2) concerning applications by creditors or secured parties, shall furnish the applicant a certificate of ownership subject to the provisions of 61-3-103.

(2) The certificate of ownership shall contain upon the face thereof:

(a) the date issued;

(b) the name and complete address of the owner or the names and addresses of joint owners;

(c) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the registered vehicle;

(d) a description of the registered vehicle, including the year built and ~~serial~~ *vehicle identification* number;

(e) except as provided in 61-3-103, the filing date of any lien against such motor vehicle; and

(f) such other statement of facts as may be determined by the department.

(3) When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

(4) Upon receipt of the application, the department shall recheck the application. If there is any error in the application it may be returned to the county treasurer to effectively secure the correction of such error, who shall return the same to the department.

(5) The certificate of ownership shall contain a notice to the department of a transfer of interest of the owner and such other statements as may be determined by the department.

(6) A salvage vehicle for which a certificate of ownership is sought must be inspected for the vehicle identification number to authenticate the identity of the vehicle before a certificate of ownership can be issued. The inspection may not attest to the roadworthiness or safety condition of the vehicle and

must be performed by department employees or peace officers designated by the department.

(7) The department may contract with a person or entity for use of a facility as a regional inspection site for salvage vehicles.

(8) To defray the cost of the vehicle inspection program, the department shall collect a fee of $18.50 for the inspection of each salvage vehicle for which a certificate of ownership is sought. The fee must be distributed as follows:

(a) A portion of the inspection fee for each salvage vehicle must be remitted by the department to the state treasurer for deposit in the general fund.

(b) A portion of the inspection fee for each salvage vehicle must be remitted by the department to the inspection site that has contractually permitted the use of its facility for the inspection.

(9) (a) An authorized inspector may seize and hold a vehicle:

(i) the inspector has probable cause to believe is stolen;

(ii) on which a motor number or vehicle identification number has been defaced, altered, removed, covered, destroyed, or obliterated; or

(iii) that does not conform with the vehicle identification number on the certificate of ownership.

(b) A seized vehicle may be held until the identity of the vehicle is established and arrangements are made for its lawful disposition. An authorized inspector may use any means necessary to identify a vehicle by its vehicle identification number or numbers.

(10) The department may not issue a certificate of ownership for a vehicle until the identity of the vehicle is established.

(11) The department may adopt rules for the implementation and administration of the vehicle inspection program."

Section 3. **Surrender of certificate of ownership — issuance of salvage certificate — salvage retitling requirements.** (1) An insurer acquiring ownership of a vehicle that is less than 5 years of age that he determines to be a salvage vehicle shall surrender the certificate of ownership to the department within 15 days after acquiring the certificate. If the insurer has not sold the salvage vehicle prior to the time of surrendering the certificate of ownership, the insurer shall apply for a salvage certificate on a form prescribed by the department. If the certificate of ownership names one or more holders of a perfected security interest in the vehicle, the insurer shall secure and deliver to the department a release from each secured party of the secured interest.

(2) Upon receipt of a properly executed certificate of ownership and a salvage certificate application from an insurer, the department shall issue a salvage certificate to the insurer within 5 working days of the date of

receipt of the application. Upon receipt of a salvage certificate issued by the department, an insurer may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. The salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(3) If the insurer sells a salvage vehicle within the 15-day period established in subsection (1) prior to surrendering the certificate of ownership, the insurer shall complete a salvage receipt on a form prescribed by the department. The insurer shall deliver the original salvage receipt to the salvage vehicle purchaser only after obtaining a clear title and lien release. Prior to disposing of the salvage vehicle, the salvage vehicle purchaser shall apply for a salvage certificate by completing the salvage receipt and submitting it to the department. The insurer shall deliver a copy of the salvage receipt with the surrendered certificate of ownership to the department. Upon receipt of the certificate of ownership from the insurer and the application from the salvage vehicle purchaser, the department shall issue a salvage certificate to the salvage vehicle purchaser that is prima facie evidence of ownership.

(4) If an insurer determines that a salvage vehicle will remain with the owner after an agreed settlement, the insurer shall notify the department of the settlement on a form prescribed by the department. Upon receipt of the notice, the department may require the owner to surrender the certificate of ownership in compliance with this part, regardless of whether ownership of the salvage vehicle was obtained in a jurisdiction not requiring the surrender of the certificate of ownership or a comparable ownership document.

(5) At the time of surrender of a certificate of ownership for a salvage vehicle not acquired by an insurer, the department shall issue a salvage certificate to the owner. Upon receipt of a salvage certificate issued by the department to a noninsurer, the owner may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. A salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(6) A fee of $5 must be paid to the department for the issuance of a salvage certificate.

(7) A salvage vehicle owned by or in the inventory of a motor vehicle wrecking facility on October 1, 1991, is exempt from the provisions of this section if the owner of the facility has complied with the provisions of 75-10-513(2).

Section 4. **Retitling salvage vehicles and reconstructed vehicles — penalty.** (1) Prior to operating a salvage vehicle on the roads and highways of this state, the owner shall present the vehicle and the salvage certificate, if one has been issued, or the certificate of ownership, the appropriate receipts or bills of sale establishing ownership, and the source of component parts used to rebuild the vehicle to a department employee or designated peace officer for inspection at a regional inspection site authorized under 61-3-202(7). An owner may obtain a 72-hour temporary registration permit from the department or its designee for the purpose of moving a salvage vehicle to and from the designated inspection site.

(2) (a) The inspector shall inspect the vehicle to verify the identity of the vehicle.

(b) The inspector shall verify that the component parts used to rebuild the vehicle are evidenced by traceable receipts or bills of sale and that there are no indications the vehicle or any of its parts are stolen. Documentation provided by the owner or employee of a wrecking facility licensed under the provisions of Title 75, chapter 10, part 5, is prima facie evidence of the facts stated in the documentation.

(3) Following inspection and prior to operating the vehicle on the roads and highways of this state, the owner shall apply for a new certificate of ownership by submitting the application, the salvage certificate, receipts or bills of sale, and a copy of the inspection report to the department.

(4) Upon receipt of the application, required documentation, and payment of the fee for a salvage vehicle required in 61-3-202(8), the department shall issue a new certificate of ownership.

(5) A person failing to comply with the provisions of this part is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed $500. The salvage-vehicle purchaser shall produce the salvage certificate upon request of a public official legally entitled to request the certificate. A person may not operate or use a salvage vehicle on the roads or highways of this state except when a permit has been issued.

Section 5. Section 75-10-512, MCA, is amended to read:

"**75-10-512. Records required of facilities.** (1) Every motor vehicle wrecking facility shall maintain books or files in which are kept a record and description of every junk vehicle obtained by it, together with the name and address of the person from whom the vehicle was purchased.

(2) This record shall also contain:

(a) the certificate of ownership, sheriff's certificate of sale, notarized bill of sale from the former owner *or person selling the vehicle, release of ownership or interest in the motor vehicle,* or sheriff's release;

(b) the name of the state where the vehicle was last registered;

(c) the make of the vehicle;

(d) the motor or identification number or serial number;

(e) the date purchased;

(f) the disposition of the vehicle.

(3) An authorized representative of the department of justice who presents his credentials may also inspect, have access to, and copy records required under this section."

Section 6. Section 75-10-541, MCA, is amended to read:

"**75-10-541. Injunction — action to collect civil penalty — *authority of department of justice*.** (1) The department, through the attorney general or the county attorney of the county in which a facility is located, may sue to enjoin the operation or maintenance of a motor vehicle wrecking facility or graveyard either permanently or until compliance with this part, the rules of the department, or an order issued pursuant to this part has been demonstrated.

(2) The department, through the attorney general or the county attorney of the county in which a motor vehicle wrecking facility or graveyard is located, may sue in district court to collect a civil penalty as provided in 75-10-542.

(3) The department of justice, through the attorney general or the county attorney of the county in which a facility is located, may sue in district court to collect a civil penalty as provided in 75-10-542 for violations of 75-10-512 or 75-10-513(2) discovered during department of justice inspections."

Section 7. **Appropriation.** There is appropriated to the motor vehicle division in the department of justice from the general fund $42,750 in fiscal year 1992 and $57,000 in fiscal year 1993 to fund the creation and operation of the statewide vehicle identification number inspection program.

Section 8. **Codification instruction.** [Sections 1, 3, and 4] are intended to be codified as an integral part of Title 61, chapter 3, part 2, and the provisions of Title 61, chapter 3, part 2, apply to [sections 1, 3, and 4].

Approved April 29, 1991.

CHAPTER NO. 726

[HB 568]

AN ACT INCREASING THE FEES FOR REGULAR DRIVER'S LICENSES AND COMMERCIAL VEHICLE OPERATOR'S ENDORSEMENTS; REVISING THE DISPOSITION OF FEES; AMENDING SECTIONS 61-5-111 AND 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-111, MCA, is amended to read:

"**61-5-111. Renewals, expirations, and fees for licenses, permits, and endorsements.** (1) The department has authority to appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing sales.

In those areas where the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may not appoint an agent. The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to every qualifying applicant. The license shall contain a full-face photograph of the licensee in the size and form prescribed by the department, except as provided in subsection (4); a distinguishing number issued to the licensee; the full name, date of birth, residence address, and a brief description of the licensee; and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink immediately upon receipt of the license. A license is not valid until it is signed by the licensee.

(2) (a) The department shall, when any person applies for renewal of a driver's license, test the applicant's eyesight and may also in the department's discretion have the applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle.

(b) In the case of commercial vehicle operator's endorsements, the department may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 3 months of the expiration of his license.

(3) A license expires on the anniversary of the date of birth of the licensee 4 years or less after the date of issue.

(4) A license issued to a person under the age of 21 years must contain a photograph of the licensee's profile.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license shall be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months, when its records disclose that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal the department may, for any reasonable cause as shown by its records, designate the renewal of the license as provisional; otherwise, a license in usual form must be issued subject to other provisions of the laws of Montana.

(6) It is unlawful for any person to have in his possession or under his control more than one Montana driver's license at any one time. A license is not valid for the operation of a motorcycle or quadricycle until the holder thereof has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". A license is not valid for the operation of a commercial vehicle until the holder thereof has completed the requirements of 61-5-110 and the license has been clearly marked with the words "commercial vehicle operator's endorsement".

(7) Fees for driver's licenses are:

(a) driver's license — ~~$3~~ *$4* per year or fraction thereof;

(b) motorcycle endorsement — 50 cents per year or fraction thereof;

(c) commercial vehicle operator's endorsement:

(i) interstate — ~~$3~~ *$5* per year or fraction thereof;

(ii) intrastate — ~~$1.50~~ *$3.50* per year or fraction thereof.

(8) A license designated as a chauffeur's license as of January 1, 1988, is valid as a commercial vehicle operator's endorsement until the expiration of the license.

(9) The holder of a chauffeur's license may convert his chauffeur's license to a commercial vehicle operator's endorsement by paying the appropriate fee covering the remainder of the life of his license and complying with the requirements established by the department.

(10) The holder of a valid chauffeur's license who is renewing and wishes to obtain a commercial vehicle operator's endorsement may do so upon paying the appropriate fees and complying with the requirements established by the department."

Section 2. Section 61-5-121, MCA, is amended to read:

"**61-5-121. Disposition of fees.** (1) The disposition of the fees from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), commercial vehicle operator's endorsements provided for in 61-5-111(7)(c), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of ~~33-1/3%~~ *25%* of each driver's license fee and of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. Funds transferred from the account are statutorily appropriated, as provided in 17-7-502, to the pension trust fund.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of ~~5%~~ *3.75%* of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing licenses or duplicate licenses.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing motorcycle endorsements.

(d) The amount of ~~23-1/3%~~ *17.5%* of each driver's license fee and of each duplicate driver's license fee and the amount of 35% of each motorcycle endorsement fee must be deposited into the state traffic education account.

(e) The amount of ~~38-1/3%~~ *53.75%* of each driver's license fee and of each duplicate driver's license fee and the amount of 60% of each motorcycle endorsement fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of ~~5%~~ *3.75%* of each commercial vehicle operator's endorsement fee must be deposited into the county general fund, otherwise all of the fee must be deposited in the state general fund.

(2) (a) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, he shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. He shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(d), (1)(e), and (1)(f).

(b) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), (1)(d), (1)(e), and (1)(f)."

Section 3. **Coordination instruction.** If House Bill No. 2 or some other act of the 52nd legislature is passed and approved and does not contain provisions appropriating to the department of justice the money realized from the increases in fees contained in [section 1 of this act] for the purpose of increasing the number of field personnel engaged in driver's license examinations, [this act] is void.

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved April 29, 1991.

CHAPTER NO. 727

[HB 719]

AN ACT RESTRICTING PERSONS WHO MAY CONDUCT A PHYSICAL EXAMINATION OR REVIEW OF CHIROPRACTIC RECORDS ON BEHALF OF AN INSURER; AMENDING SECTION 33-1-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the quality of chiropractic care provided to and received by Montana residents has been negatively affected in certain cases by the activities of independent chiropractic medical examiners; and

WHEREAS, health care insurers often employ persons who are not qualified to evaluate Montana claims, conduct a physical examination, or review chiropractic records to aid the insurer in making a determination regarding the propriety of chiropractic treatment and the costs of the treatment; and

WHEREAS, the ability of Montana chiropractors to meet uniform standards of treatment and patient care is impaired because the criteria applied by persons conducting the examinations or record reviews are subjective and differ widely among the persons, resulting in a wide variance in the procedures employed; and

WHEREAS, the ability of Montana chiropractors to provide timely and effective chiropractic care to Montana residents is impaired because the persons conducting the examinations or record reviews, especially those providing the services from outside Montana, are often inaccessible to Montana chiropractors.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Independent chiropractic physical examination or review of records.** (1) If a patient's attending health care professional is a licensed chiropractor, the following provisions govern the conduct of a utilization review of the health care services rendered to the patient by the chiropractor:

(a) If an independent physical examination is required by the insurer, it must be conducted by a chiropractor engaged in the practice of chiropractic in Montana.

(b) If a review of the patient's or the chiropractor's records is required by the insurer in the course of an appeal or a redetermination of an adverse determination of medical necessity or appropriateness made pursuant to an insurer's review, the review must be conducted by a person trained in the field of chiropractic. During an appeal or redetermination, the patient may, at his expense, request an independent review of the patient's or the chiropractor's records by a chiropractor engaged in the practice of chiropractic in Montana and may require that review to be considered by the insurer in reaching its decision. If the initial adverse determination of medical necessity or appropriateness is reversed, the insurer shall bear the expense of the independent review.

(2) Nothing in this section prevents a health care insurer from requesting additional medical review of a patient's condition or treatment by another chiropractor or medical provider.

(3) The provisions of this section do not apply to routine claim administration or determination by an insurer.

(4) As used in this section, "health care insurer" means:

(a) an insurer who provides disability insurance as defined in 33-1-207;

(b) a health service corporation as defined in 33-30-101;

(c) a health maintenance organization as defined in 33-31-102;

(d) a fraternal benefit society as defined in 33-7-102;

(e) an administrator as defined in 33-17-102; and

(f) any other entity regulated by the commissioner that provides health care coverage.

Section 2. Section 33-1-102, MCA, is amended to read:

"**33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs.** (1) ~~No~~ *A* person ~~shall~~ *may not* transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) ~~No provision~~ *The provisions* of this code ~~shall~~ *do not* apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of ~~such~~ *the* corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of ~~such~~ *those* organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state ~~whereby~~ *in which* the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state ~~whereby~~ *in which* the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 1].

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved April 29, 1991.

CHAPTER NO. 728

[HB 833]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO WATERCRAFT; REVISING THE LAWS ON MARINE NOISE, SAFETY, AND SEWAGE REQUIREMENTS; INCREASING THE FEE FOR A CERTIFICATE OF NUMBER; PROVIDING AN APPROPRIATION; LIMITING WHO MAY OPERATE A WATERCRAFT; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES ON VESSEL PUMPOUT STATIONS; AUTHORIZING THE FISH AND GAME COMMISSION TO ADOPT RULES ON THE PROPER OBSERVATION AND SAFE TOWING OF PERSONS ON WATER SKIS OR SIMILAR DEVICES; AMENDING SECTIONS 23-2-502, 23-2-512, 23-2-521, 23-2-523, 23-2-526, 23-2-529, AND 23-2-530, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

STATEMENT OF INTENT

(1) A statement of intent is required for this bill because in [section 9] the department of health and environmental sciences is authorized to adopt rules to provide for the installation, location, and operation of vessel

pumpout stations. The legislature intends that those rules regulate facilities to transfer and dispose of sewage from marine sanitation devices, floating restrooms, and onshore toilets, all of which must be operated in a manner to prevent the discharge of sewage into the waters of the state and maintained in good working order and regularly cleaned. The rules may require a vessel pumpout facility to be equipped with a meter to measure use of the facility.

(2) A statement of intent is further required because 23-2-529 requires the fish and game commission to adopt rules regarding the proper observation and safe towing of persons on water skis or similar devices. It is intended that the commission's determination of the necessity for rules be based on the density of use of a body of water. Where applicable, the rules should address:

(a) the proper and continuous observation of the person being towed; and

(b) display of a flag when the person being towed falls into the water, including the size, color, condition, and mounting of the flag and the length of time the flag should be displayed.

(3) It is the intent of the legislature that the department of fish, wildlife, and parks evaluate and report to the 53rd legislature on the effect of 23-2-523(9).

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-502, MCA, is amended to read:

"**23-2-502. Definitions.** As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Certificate of number" means the certificate issued annually by the county treasurer to the owner of a motorboat or by the department of justice to dealers or manufacturers, assigning such motorboat an identifying number and containing such information as required.

(2) "Certificate of ownership" means a certificate issued by the department of justice identifying the owner of a motorboat or sailboat 12 feet in length or longer.

(3) "Dealer" means any person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "Documented vessel" means a vessel which has and is required to have a valid marine document as a vessel of the United States.

(6) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.

(7) "License decals" means the serially numbered license stickers issued annually by the county treasurer and displayed as required by law.

(8) "Lienholder" means a person holding a security interest.

(9) "Manufacturer" means any person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

(10) "Motorboat" means any vessel, including a canoe, kayak, *personal watercraft,* rubber raft, or pontoon, propelled by any machinery, motor, or engine of any description, whether or not such machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines but does not include a vessel which has a valid marine document issued by the U.S. coast guard of the United States government or any federal agency successor thereto.

(11) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(12) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(13) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(14) "Passenger" means every person carried on board a vessel other than:

(a) the owner or his representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(d) any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(15) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(16) "Personal watercraft" means ~~any~~ *a* vessel ~~12 feet in length or less~~ that uses an ~~internal combustion engine~~ *outboard motor or an inboard engine* powering a water jet pump as its primary source of propulsion and

that is designed to be operated by a person ~~in a~~ sitting, standing, or kneeling ~~position~~ *on the vessel rather than by the conventional method of sitting or standing in the vessel.*

(17) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

(18) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

(19) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(20) "Waters of this state" means any waters within the territorial limits of this state."

Section 2. Section 23-2-521, MCA, is amended to read:

"**23-2-521. Equipment.** (1) Every motorboat or vessel ~~shall~~ *must* have aboard:

(a) one United States coast guard approved personal flotation device in good and serviceable condition for each person on board, provided that ~~any~~ *a* person who has not reached his 12th birthday ~~shall~~ *must* have a United States coast guard approved life preserver properly fastened to his person when occupying a motorboat or vessel under 26 feet in length while ~~such~~ *the* motorboat or vessel is in motion;

(b) if carrying or using ~~any~~ *an* inflammable or toxic fluid in ~~any~~ *an* enclosure for any purpose and if the motorboat or vessel is not an entirely open one, an efficient natural or mechanical ventilation system prescribed by the department ~~which shall~~ *that must* be used and be capable of removing resulting gases prior to and during the time the motorboat or vessel is occupied by a person;

(c) hand portable fire extinguishers approved by the United States coast guard, the number of which is to be determined by the department, or a United States coast guard approved fixed fire extinguishing system, except that motorboats less than 26 feet in length of entirely open construction, propelled by outboard motors, and not carrying passengers for hire need not carry ~~such~~ *the* portable fire extinguishers or fire extinguishing systems.

(2) Every motorboat or vessel ~~shall~~ *must* have the carburetor or carburetors of ~~every engine therein~~ *each of its engines* (except outboard motors)

using gasoline as fuel equipped with an efficient flame arrester, backfire trap, or other similar device.

(3) (a) Except as provided in subsection (3)(b), the exhaust of ~~every~~ *an* internal combustion engine used on a motorboat or vessel must be muffled either by discharge underwater or by a functioning muffler capable of muffling exhaust noise ~~at full throttle~~ to ~~86~~ *90* dbA or less when measured at a distance of ~~50 feet~~ *1 meter from the muffler at idle speed in accordance with the stationary sound level measurement procedure for pleasure motorboats (SAE J2005).* The muffler may not be modified or altered, such as by a cutout. The department may require a test at dockside to determine exhaust noise level.

(b) The provisions of subsection (3)(a) do not apply to a motorboat:

(i) competing in a state-sanctioned regatta or boat race while on trial runs between 9 a.m. and 5 p.m. and during a period not more than 48 hours immediately preceding the regatta or boat race; ~~or~~

(ii) operating under a separate permit issued by the department for the purpose of tuning engines, making test or trial runs, or competing in official trials for speed records other than in connection with regattas or boat races*; or*

(iii) operated by an authorized agent of federal, state, or local government to carry out his duty of enforcement, search and rescue, firefighting, or research.

(4) (a) Except as provided in subsection (4)(b), ~~no~~ *a* vessel may *not* be equipped with a siren, and ~~no~~ *a* person may *not* use or install a siren on a vessel.

(b) An authorized emergency vessel may be equipped with a siren capable of sound audible under normal conditions from a distance of not less than 500 feet, but the siren may be used only when the vessel is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, and the operator of the vessel ~~shall~~ *must* sound the siren when necessary to warn persons of the vessel's approach.

(5) When in operation or at anchor or moored away from a docking facility between sunset and sunrise, all vessels ~~shall~~ *must* display lights as prescribed by the department.

(6) The department may designate waters where and the time of year on these waters when all persons aboard a motorboat or vessel ~~must~~ *shall* wear approved life preservers at all times.

(7) Vessels, including houseboats and floating cabins, equipped with a galley or toilet ~~shall~~ *must* have a wastewater holding system sealed to prevent the discharge of water-carried waste products, whether treated or untreated, into the surrounding waters.

(8) The department may adopt rules modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation and safety laws or with the navigation and safety rules promulgated by the United States coast guard.

(9) A person may not operate or give permission for the operation of a vessel ~~which~~ *that* is not equipped as required by this section."

Section 3. Section 23-2-523, MCA, is amended to read:

"**23-2-523. Prohibited operation and mooring — enforcement.** (1) ~~No~~ *A* person may *not* operate or knowingly permit ~~any~~ *a* person to operate ~~any~~ *a* motorboat or vessel or manipulate any water skis, surfboard, or similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of any person *by:*

(a) engaging in maneuvers that unreasonably or unnecessarily endanger life, limb, or property, including but not limited to weaving through congested vessel traffic or jumping the wake of another vessel unreasonably or unnecessarily close to the other vessel or when visibility around the other vessel is obstructed and including swerving at the last possible moment to avoid collision, following directly behind a waterskier, speeding in confined or restricted areas, and buzzing or wetting down others, which constitutes reckless operation of a vessel;

(b) crossing or jumping the wake of another vessel when within 100 yards of the vessel or within 100 yards of a waterskier being towed by the vessel, except when directly entering or leaving a public or private marina, waterski facility, or other watercraft docking or loading area.

(2) ~~No~~ *A* person may *not* operate any motorboat, including a sailboat propelled by a motor of any kind, or manipulate any water skis, surfboard, or similar device attached to a motorboat while under the influence of alcohol or drugs.

(3) It is unlawful for the owner of ~~any~~ *a* motorboat or vessel or ~~any~~ *a* person having ~~such~~ *the motorboat or vessel* in charge or in control to authorize or knowingly permit the same to be operated by ~~any~~ *a* person who by reason of physical or mental disability is incapable of operating ~~such~~ *the* watercraft under the prevailing circumstances.

(4) ~~No~~ *A* person may *not* operate or knowingly permit ~~any~~ *a* person to operate ~~any~~ *a* motorboat or vessel at a rate of speed greater than will permit ~~such~~ *the* person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. However, nothing in this part is intended to prevent the operator of a vessel actually competing in a regatta ~~which~~ *that* is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) ~~No~~ *A* person may *not* make a reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by motorboats must have on their person a ~~life preserver, buoyant vest, or ski belt~~ *United States coast guard approved personal flotation device in good and serviceable condition.*

(7) ~~No~~ *A* person may *not* moor a vessel to ~~any of the~~ buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the department or in any manner hang on with a vessel to such buoy or beacon, except in the act of maintenance work on ~~such~~ *the* buoy or beacon, nor may any person deface, remove, or destroy ~~any such~~ *a* buoy, beacon, or other authorized navigational marker maintained in the waters of this state.

(8) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in his judgment such use creates an especially hazardous condition, he may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to *a* mooring or launching site and to remain there until the situation creating the hazard is corrected or ended.

(9) The population density and heavy recreational use of certain lakes require a noise standard more restrictive than the standard set in 23-2-526, in order to protect the public health and safety. Unless operated on a river or stream in compliance with a commission rule adopted under 23-2-521(9), a person may not operate a motorboat or personal watercraft on Flathead Lake, situated in Lake and Flathead Counties, Echo Lake, situated in Flathead County, or Swan Lake, situated in Lake County, in proximity to the shoreline if the noise emitted is greater than 75 dbA measured at the shoreline in accordance with the shoreline sound level measurement procedure (SAE J1970).

(10) Unless accompanied by a person 18 years of age or older, a person 12 years of age or younger may not operate a motorboat or a personal watercraft that is powered by a motor rated at more than 10 horsepower. After December 31, 1993, a person under 15 years of age may not operate a vessel or personal watercraft powered by a motor rated at more than 10 horsepower without possessing a valid Montana motorboat operator's safety certificate or evidence of completion of a Montana-approved water safety course.

(11) A person who owns or has charge or control of a motorboat or personal watercraft powered by a motor rated at more than 10 horsepower may not authorize or knowingly permit the motorboat or personal watercraft to be operated:

(a) by a person 12 years of age or younger unless accompanied by a person 18 years of age or older; or

(b) after December 31, 1993, by a person under 15 years of age unless the person possesses a valid Montana motorboat operator's safety certificate or evidence of completion of a Montana-approved water safety course or is accompanied by a person 18 years of age or older.

(12) A person may not rent a motorboat or a personal watercraft powered by a motor rated at more than 10 horsepower to a person under 18 years of age."

Section 4. Section 23-2-526, MCA, is amended to read:

"**23-2-526. Overloading — overpowering — noise limitations.** (1) No vessel shall be loaded with passengers or cargo beyond its safe carrying capacity, taking into consideration weather and other normal operating conditions.

(2) No vessel shall be equipped with any motor or other propulsion machinery beyond its safe power capacity, taking into consideration the type and construction of such watercraft and other existing operating conditions.

(3) ~~For~~ *Except as provided in 23-2-523(9), for* the purposes of 45-8-101 and 45-8-111, the operation of a motorboat *or personal watercraft* that emits noise in excess of 86 dbA when measured at a distance of 50 feet *or emits exhaust noise in excess of 90 dbA measured 1 meter from the muffler at idle speed in accordance with the stationary sound level measurement procedure for pleasure motorboats (SAE J2005)* is presumed to be a public nuisance and constitute disorderly conduct, except when otherwise lawfully operated under a motorboat racing permit issued by a political subdivision of the state."

Section 5. Section 23-2-529, MCA, is amended to read:

"**23-2-529. Water skis and surfboards.** (1) ~~No~~ *A* person may *not* operate a motorboat or vessel on any waters of this state for the purpose of towing a person or persons on water skis, a surfboard, or similar device unless the operator is ~~at least 12 years of age and there is~~ *accompanied by an observer. If the operator is 12 years of age or younger, there must be* a second person, at least ~~12~~ *18* years of age, in the vessel to observe the person being towed. *The fish and game commission shall adopt rules regarding the proper observation and safe towing of persons on water skis or similar devices, based on density of use of a body of water.*

(2) ~~No~~ *A* person may *not operate a motorboat or vessel towing a person* ~~engage~~ *engaged* in waterskiing, surfboarding, or similar activity or towing some other contrivances *nor may a person engage in those activities* at any time between the hours from ~~1 hour after~~ sunset to ~~1 hour before~~ sunrise, except that this subsection does not apply to a performer engaged in a professional exhibition or a person engaged in a regatta or race authorized under this part.

(3) All right-of-way rules applying to a towing vessel apply to a person being towed."

Section 6. Section 23-2-530, MCA, is amended to read:

"**23-2-530. Education program.** The department shall coordinate a statewide boat safety education program, *including a home study testing program for motorboat operators.*"

Section 7. **Personal watercraft operation.** In addition to all other applicable provisions in this part, a person may not operate a personal watercraft:

(1) unless each person operating or riding on the vessel is wearing a United States coast guard approved type I, II, III, or V personal flotation device;

(2) if the vessel is equipped by the manufacturer with a lanyard type engine cutoff switch unless the lanyard is attached to the operator's person, clothing, or personal flotation device as is appropriate for the specific vessel; or

(3) in a reckless or negligent manner. Actions prohibited in 23-2-523 are considered reckless operation.

Section 8. **Restrictions on manufacture and sale.** A motorboat or vessel that fails to comply with the provisions of 23-2-521(3) may not be manufactured in Montana after [the effective date of this act] and may not be sold or offered for sale in Montana after January 1, 1994.

Section 9. **Department of health and environmental sciences to adopt rules on vessel pumpout facilities.** (1) The department of health and environmental sciences shall adopt rules to protect water quality and aquatic ecosystems by establishing guidelines for the installation of vessel pumpout facilities.

(2) In adopting the rules, the department shall use these definitions:

(a) "Vessel terminal" means a private or public shoreside installation on any waters of Montana that provides mooring, docking, berthing, and other facilities for the use of vessels.

(b) "Marine sanitation device" means any equipment on board a vessel that is designed to receive, retain, treat, or discharge sewage, and any process to treat the sewage.

(3) The rules must include standards for the construction, operation, and maintenance of vessel pumpout facilities.

(4) Nothing in this section may be construed to require the department to install pumpout facilities without prior legislative approval and an appropriation.

Section 10. Section 23-2-512, MCA, is amended to read:

"**23-2-512. Identification number.** (1) The owner of each motorboat, sailboat, or personal watercraft requiring numbering by this state shall file an application for number in the office of the county treasurer where the motorboat, sailboat, or personal watercraft is owned, on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat, sailboat, or personal watercraft and be accompanied by a fee of ~~$2~~ *$2.50*. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner.

(2) The applicant, upon the filing of the application, shall pay to the county treasurer the fee in lieu of tax required for a motorboat 10 feet in length or longer, a sailboat 12 feet in length or longer, or a personal watercraft for the current year of certification before the application for certification or recertification may be accepted by the county treasurer.

(3) Should the ownership of a motorboat, sailboat, or personal watercraft change, a new application form with the certification fee must be filed within a reasonable time with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

(4) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the department of justice must be in conformity.

(5) Every certificate of number and the license decals assigned under this part continues in effect for a period not to exceed 1 year unless terminated or discontinued in accordance with the provisions of this part. Certificates of number and license decals must show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(6) Certificates of number expire on December 31 of each year and may not be in effect unless renewed under this part.

(7) In event of transfer of ownership, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of his interest, other than the creation of a security interest, in a motorboat, sailboat, or personal watercraft numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat, sailboat, or personal watercraft. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat, sailboat, or personal watercraft. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat, sailboat, or personal watercraft does not terminate the certificate of number.

(8) A holder of a certificate of number shall notify the county treasurer within reasonable time if his address no longer conforms to the address appearing on the certificate and furnish the county treasurer with his new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a

certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(9) (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat, sailboat, or personal watercraft or, if there are no such sides, at a corresponding location on both outboard sides of the foredeck of the motorboat, sailboat, or personal watercraft. The number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. No numerals, letters, or devices other than those used in connection with the identifying number issued may be placed in the proximity of the identifying number. No numerals, letters, or devices that might interfere with the ready identification of the motorboat, sailboat, or personal watercraft by its identifying number may be carried as to interfere with the motorboat's, sailboat's, or personal watercraft's identification. No number other than the number and license decal assigned to a motorboat, sailboat, or personal watercraft or granted reciprocity under this part may be painted, attached, or otherwise displayed on either side of the forward half of the motorboat, sailboat, or personal watercraft.

(b) The certificate of number shall be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, sailboat, or personal watercraft whenever the motorboat, sailboat, or personal watercraft is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, sailboat, or personal watercraft, but a rental agreement must be carried on board livery motorboats, sailboats, or personal watercraft in place of the certificate of number.

(10) *(a)* ~~Fees~~ *Except as provided in subsection (10)(b), fees,* other than the fee in lieu of tax, collected under this section shall be transmitted to the state treasurer, who shall deposit the fees in the motorboat or sailboat certificate identification account of the state special revenue fund. These fees shall be used only for the administration and enforcement of this part, as amended.

(b) Of the fee collected under the provisions of subsection (1), 20% must be deposited by the state treasurer in an account in the state special revenue fund to the credit of the department to be used to provide necessary education for boat owners and acquire decibel meters, as required to implement the provisions of 23-2-523(9) and 23-2-526(3), and to acquire marine sewage pumpout equipment.

(11) An owner of a motorboat, sailboat, or personal watercraft must within a reasonable time notify the department of justice, giving the motorboat's, sailboat's, or personal watercraft's identifying number and the owner's name when the motorboat, sailboat, or personal watercraft is

transferred, lost, destroyed, abandoned, or frauded or within 60 days after change of state of principal use or if a motorboat becomes documented as a vessel of the United States."

Section 11. **Appropriation.** All the money in the account established in 23-2-512(10)(b) is appropriated to the department of fish, wildlife, and parks for use during the biennium ending June 30, 1993, to provide necessary education for boat owners and acquire decibel meters, as required to implement the provisions of 23-2-523(9) and 23-2-526(3), and to acquire marine sewage pumpout equipment.

Section 12. **Codification instruction.** [Sections 7, 8, and 9] are intended to be codified as an integral part of Title 23, chapter 2, part 5, and the provisions of Title 23, chapter 2, part 5, apply to [sections 7, 8, and 9].

Section 13. **Termination date.** The amendments to section 23-2-512 provided in [section 10] terminate July 1, 1993.

Section 14. **Effective dates.** (1) [Sections 1 through 10, 12, 13, and this section] are effective on passage and approval.

(2) [Section 11] is effective July 1, 1991.

Approved April 29, 1991.

CHAPTER NO. 729

[HB 913]

AN ACT TO ALLOW THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO SPEND FUNDS APPROPRIATED TO THE STATE EQUALIZATION AID ACCOUNT FOR CERTAIN COSTS FOR THE SCHOOL DISTRICTS OF THE STATE; AMENDING SECTIONS 20-9-343 AND 20-9-361, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-343, MCA, is amended to read:

"20-9-343. **Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for*:*

(a) distribution to the public schools for the ~~purposes of~~ payment of guaranteed tax base aid and *for* equalization of the foundation program*; and*

(b) payment of costs associated with the general supervision of the school districts of the state as provided in 20-3-106.

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid as required for guaranteed tax base aid and foundation program purposes *and for costs associated with the general supervision of the school districts of the state* throughout the biennium.

(3) The following must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;

(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) money allocated to state equalization from the collection of the severance tax on coal;

(d) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) money received from the state equalization aid levy under 20-9-360;

(g) income from the lottery, as provided in 23-5-1027;

(h) the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333;

(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; and

(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704(2).

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium."

Section 2. Section 20-9-361, MCA, is amended to read:

"**20-9-361. State and county equalization revenue — statutory appropriation.** Revenue received in support of state and county equalization under the provisions of 20-9-331, 20-9-333, and 20-9-343 is statutorily appropriated, as provided in 17-7-502, to:

(1) the superintendent of public instruction to be used for county equalization and state equalization aid for the public schools~~, as provided~~

~~by law,~~ *for the purposes of 20-9-343(1)(a)* and must be accounted for in accordance with generally accepted accounting principles; and

(2) counties as provided in 20-9-360(2)."

Section 3. **Coordination instruction.** If House Bill No. 328 is passed and approved and if it includes a section that amends 2-7-514(2) requiring the filing fees for school district audits to be paid by the superintendent of public instruction from funds appropriated for state equalization aid as defined in 20-9-343, then 20-9-343(1)(b) and (2), as amended by [section 1 of this act], are void and are replaced with:

"(b) filing fees for school district audits as required by 2-7-514(2).

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid, as required by subsection (1)(a), throughout the biennium."

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Section 5. **Termination.** [This act] terminates June 30, 1993.

Approved April 29, 1991.

CHAPTER NO. 730

[HB 987]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO REGULATION OF HOTELS, MOTELS, ROOMINGHOUSES, BOARDINGHOUSES, RETIREMENT HOMES, AND TOURIST HOMES; INCREASING THE FEE FOR LICENSING OF HOTELS, MOTELS, ROOMINGHOUSES, RETIREMENT HOMES, AND TOURIST HOMES; REQUIRING PAYMENT OF THE FEE FOR LICENSING OF BOARDINGHOUSES; CREATING A SPECIAL REVENUE ACCOUNT FOR THE DEPOSIT OF A PORTION OF LICENSE FEES; ALLOCATING MONEY IN THE ACCOUNT TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; CLARIFYING WHO MAY CONDUCT INVESTIGATIONS AND INSPECTIONS; REQUIRING MINIMUM PERFORMANCE STANDARDS THAT MUST BE MET IN ORDER FOR THE LOCAL BOARD OF HEALTH TO RECEIVE PAYMENTS FROM THE LOCAL BOARD INSPECTION FUND ACCOUNT; REQUIRING PAYMENTS FROM THE ACCOUNT TO BE USED ONLY FOR THE PURPOSE OF INSPECTION AND ENFORCEMENT; PROHIBITING FUNDS FROM THE LOCAL BOARD INSPECTION FUND ACCOUNT FROM BEING USED TO SUPPLANT OTHER FUNDS RECEIVED BY THE LOCAL BOARD OF HEALTH; PROVIDING CIVIL PENALTIES FOR VIOLATION OF THE LAWS REGULATING HOTELS, MOTELS, ROOMINGHOUSES, BOARDINGHOUSES, RETIREMENT HOMES, AND TOURIST HOMES; AUTHORIZING INJUNCTIONS TO ENJOIN

VIOLATIONS OF THE LAWS; ALLOWING THE DEPARTMENT AND COUNTIES TO RECOVER THE COSTS OF INVESTIGATIONS AND OTHER EXPENSES IN ENFORCING THE LAWS REGULATING HOTELS, MOTELS, ROOMINGHOUSES, BOARDINGHOUSES, RETIREMENT HOMES, AND TOURIST HOMES; AND AMENDING SECTIONS 50-51-102, 50-51-201, 50-51-204, 50-51-301, 50-51-302, AND 50-51-303, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because it amends 50-51-301 and 50-51-303 to grant the department of health and environmental sciences authority to adopt rules.

It is intended that the department adopt rules to:

(1) require health officers and sanitarians to make reports to the department concerning investigations and inspections of establishments licensed under Title 50, chapter 51; and

(2) establish minimum program performance standards that must be met in order for the local board of health to receive payments from the local board inspection fund account.

It is intended that minimum performance standards include but not be limited to measures necessary to ensure the accuracy of inspection reports and to allow statewide standardization of inspections and documentation of work performed.

Also, it is recognized that the exact nature of necessary reporting requirements and performance standards is still in the developmental stages. Therefore, it is intended that these requirements be adopted only after close coordination with local health departments and boards and extensive solicitation of comments prior to adoption of final requirements.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-51-102, MCA, is amended to read:

"**50-51-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means *the* board of health and environmental sciences.

(2) "Commercial establishment" means an establishment operated primarily for profit.

~~(2)~~*(3)* "Department" means the department of health and environmental sciences.

(4) "Establishment" means a hotel, motel, roominghouse, boardinghouse, retirement home, or tourist home.

~~(3)~~*(5)* "Hotel" or "motel" includes a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodginghouse, or place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

~~(4)~~*(6)* "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, *boardinghouse,* tourist home, retirement home, or roominghouse.

~~(5)~~*(7)* "Roominghouse", "boardinghouse", or "retirement home" means buildings in which separate sleeping rooms are rented providing sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

~~(6)~~*(8)* "Tourist home" means an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling public.

~~(7)~~*(9)* "Transient guest" means a guest for only a brief stay, such as the traveling public."

Section 2. Section 50-51-201, MCA, is amended to read:

"**50-51-201. License required.** (1) Each year, every person engaged in the business of conducting or operating a hotel, motel, tourist home, *boardinghouse,* retirement home, or roominghouse shall procure a license issued by the department.

(2) A separate license is required for each establishment; however, where more than one of each type of establishment is operated on the same premises and under the same management, only one license is required which shall enumerate on the certificate thereof the types of establishments licensed.

(3) Before a license may be issued by the department it must be validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located."

Section 3. Section 50-51-204, MCA, is amended to read:

"**50-51-204. License fee — late fee.** (1) There shall be paid to the department with each application for such license or for renewal of such license an annual license fee of ~~$30~~ *$40.* The department shall deposit 85% of the fees collected ~~in the state special revenue fund to the credit of~~ *under this section into* the local board inspection fund account created ~~by~~ *in* 50-2-108~~(2)~~ ~~and the~~ ~~balance~~*, 11.25% of the fees into the general fund, and 3.75%* of the fees ~~in~~ *into* the ~~general fund~~ *account provided for in [section 4].*

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of his current license and who operates an establishment governed by this part in the next licensing year. The late fee is $25 and must be deposited in the ~~state general fund~~ *account provided for in [section 4].*"

Section 4. **Special revenue account.** There is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of this chapter and the rules adopted under it.

Section 5. Section 50-51-301, MCA, is amended to read:

"**50-51-301. Health officers to ~~investigate and~~ make *investigations and* inspections.** ~~(1) The department, through its employees and through local, county, and district~~ *State and local* health officers~~,~~*[, sanitarians-in-training,] and registered* sanitarians~~, or other authorized representatives,~~ shall make ~~all necessary~~ investigations and inspections ~~for enforcement of this chapter~~ *of establishments and make reports to the department as required under rules adopted by the department.*

~~(2) Each local, county, or district health officer, sanitarian, or other authorized representative shall make regular inspections as the rules of the department may direct and such special inspections as the department may from time to time direct, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the department may direct.~~"

Section 6. Section 50-51-302, MCA, is amended to read:

"**50-51-302. Health officers to have free access.** ~~All persons authorized by this chapter or by regulations adopted under this chapter shall have~~ *State and local health officers[, sanitarians-in-training,] and registered sanitarians must be provided* free access *to establishments* at all reasonable hours ~~to any of the establishments listed and defined in 50-51-102~~ for the purpose of ~~making~~ *conducting investigations and* inspections *as required under this chapter.*"

Section 7. Section 50-51-303, MCA, is amended to read:

"**50-51-303. Department to pay local board for inspections *and enforcement.*** (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from the local board inspection fund ~~[account]~~ *account* created ~~by~~ *in* 50-2-108~~(2)~~ ~~which is~~ *that must be used only* for the purpose of inspecting establishments licensed under this chapter *and enforcing the provisions of this chapter*; provided, however, that*:*

(a) there is a functioning local board of health*;* and

(b) the local board of health, local health officers, *[sanitarians-in-training,]* and *registered* sanitarians*:*

(i) assist in ~~the~~ *inspections and* enforcement of the provisions of this chapter and the rules adopted under it*; and*

(ii) meet minimum program performance standards as established under rules adopted by the department.

(2) The funds received by the local board of health ~~shall~~ *pursuant to subsection (1) must* be deposited with the appropriate local fiscal authority and ~~shall be in addition to the funds appropriated under 50-2-108 through 50-2-114~~ *must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be available for the same purpose.*

(3) Funds in the local board inspection fund account not paid to the local board of health as provided in subsection (1) may be used by the department, within any jurisdiction that does not qualify to receive payments from the local board inspection fund account, to enforce the provisions of this chapter and the rules adopted under it."

Section 8. **Civil penalties — injunctions not barred.** (1) An establishment that violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty not to exceed $500.

(2) Civil action to impose penalties, as provided under this section, does not bar injunctions to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department pursuant to this chapter.

Section 9. **Injunctions.** The department or a local board of health may petition the district court to enjoin any action in violation of this chapter or of a rule adopted by the department pursuant to this chapter.

Section 10. **Costs and expenses — recovery by department or county.** In a civil action initiated by the department or county under this chapter, the court may, by petition of the department or county, order an establishment that is found in violation of this chapter or rules adopted under this chapter to pay the costs of investigations and any other expenses incurred in enforcing the provisions of this chapter.

Section 11. **Codification instruction.** [Sections 4 and 8 through 10] are intended to be codified as an integral part of Title 50, chapter 51, and the provisions of Title 50, chapter 51, apply to [sections 4 and 8 through 10].

Section 12. **Coordination instruction.** If House Bill No. 943 is passed and approved and if it includes a section defining a sanitarian-in-training, then the bracketed language in [sections 5 through 7 of this act] is effective.

Approved April 29, 1991.

CHAPTER NO. 731

[HB 988]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO REGULATION OF CAMPGROUNDS, TRAILER COURTS, WORK CAMPS, AND YOUTH CAMPS; INCREASING THE FEE FOR LICENSING OF CAMPGROUNDS, TRAILER COURTS, WORK CAMPS, AND YOUTH CAMPS; CREATING A SPECIAL REVENUE ACCOUNT FOR THE DEPOSIT OF A PORTION OF LICENSE FEES; ALLOCATING MONEY IN THE ACCOUNT TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; CLARIFYING WHO MAY CONDUCT INVESTIGATIONS AND INSPECTIONS; CLARIFYING THAT HEALTH OFFICERS AND SANITARIANS HAVE FREE ACCESS TO CAMPGROUNDS, TRAILER COURTS, WORK CAMPS, AND YOUTH CAMPS FOR THE PURPOSE OF CONDUCTING INVESTIGATIONS AND INSPECTIONS; REQUIRING MINIMUM PERFORMANCE STANDARDS THAT MUST BE MET IN ORDER FOR THE LOCAL BOARD OF HEALTH TO RECEIVE PAYMENTS FROM THE LOCAL BOARD INSPECTION FUND ACCOUNT; REQUIRING PAYMENTS RECEIVED FROM THE ACCOUNT TO BE USED ONLY FOR THE PURPOSE OF INSPECTION AND ENFORCEMENT; PROHIBITING FUNDS FROM THE LOCAL BOARD INSPECTION FUND ACCOUNT FROM BEING USED TO SUPPLANT OTHER FUNDS RECEIVED BY THE LOCAL BOARD OF HEALTH; PROVIDING CIVIL PENALTIES FOR THE VIOLATION OF LAWS REGULATING CAMPGROUNDS, TRAILER COURTS, WORK CAMPS, AND YOUTH CAMPS; ALLOWING THE DEPARTMENT AND COUNTIES TO RECOVER THE COSTS OF INVESTIGATIONS AND OTHER EXPENSES IN ENFORCING THE LAWS; AND AMENDING SECTIONS 50-52-202, 50-52-301, AND 50-52-302, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because it amends 50-52-301 and 50-52-302 to grant the department of health and environmental sciences authority to adopt rules.

It is intended that the department adopt rules to:

(1) require health officers and sanitarians to make investigations and inspections of campgrounds, trailer courts, work camps, and youth camps and make reports to the department; and

(2) establish minimum program performance standards that must be met in order for the local board of health to receive payments from the local board inspection fund account.

It is intended that minimum performance standards include but not be limited to measures necessary to ensure the accuracy of inspection reports and to allow statewide standardization of inspections and the documentation of work performed.

Also, it is recognized that the exact nature of necessary reporting requirements and performance standards is still in the developmental stages. Therefore, it is intended that these requirements be adopted only after close coordination with local health departments and boards and extensive solicitation of comments prior to adoption of final requirements.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-52-202, MCA, is amended to read:

"**50-52-202. License fee — late fee.** (1) Each application shall be accompanied by a fee of ~~$30~~ *$40.*

(2) The department shall deposit 85% of the fees collected ~~in the state special revenue fund to the credit of~~ *under subsection (1) into* the local board inspection fund account created ~~by~~ *in* 50-2-108~~(2)~~ ~~and the~~ ~~balance~~, *11.25% of the fees into the general fund, and 3.75%* of the fees *collected under subsection (1)* ~~in~~ *into* the ~~state general fund~~ *account provided for in [section 2].*

(3) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of his current license and who operates an establishment governed by this part in the next licensing year. The late fee is $25 and must be deposited in the ~~state general fund~~ *account provided for in [section 2]*."

Section 2. **Special revenue account.** There is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of this chapter and the rules adopted under it.

Section 3. Section 50-52-301, MCA, is amended to read:

"**50-52-301. Health officers *and sanitarians* to make *investigations and* inspections.** ~~The department or~~ *State and* local health ~~officer or sanitarian~~ *officers[, sanitarians-in-training,] and registered sanitarians* shall ~~inspect~~ *make investigations and inspections of* establishments ~~during reasonable hours~~ *and make reports to the department* as ~~necessary~~ *required under rules adopted by the department.*"

Section 4. Section 50-52-302, MCA, is amended to read:

"**50-52-302. Department to pay local board for inspection *and enforcement.*** (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from the local board inspection fund ~~[account]~~ *account* created ~~by~~ *in* 50-2-108~~(2)~~ ~~which is~~ *that must be used only* for the purpose of inspecting establishments licensed under this chapter *and enforcing the provisions of this chapter*; provided, however, that:

(a) there is a functioning local board of health; and ~~that~~

(b) the local board of health, local health officers, *[sanitarians-in-training,]* and *registered* sanitarians*:*

(i) assist in ~~the~~ *inspections and* enforcement of the provisions of this chapter and the rules adopted under it*; and*

(ii) meet minimum program performance standards as established under rules adopted by the department.

(2) The funds received by the local board of health ~~shall~~ *pursuant to subsection (1) must* be deposited with the appropriate local fiscal authority and ~~shall be in addition to the funds appropriated under 50-2-108 through 50-2-114~~ *must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be made available for the same purpose.*

(3) Funds in the local board inspection fund account not paid to the local board of health as provided in subsection (1) may be used by the department, within any jurisdiction that does not qualify to receive payments from the local board inspection fund, to enforce the provisions of this chapter and the rules adopted under it."

Section 5. **Civil penalties — injunctions not barred.** (1) An establishment that violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty not to exceed $500.

(2) Civil action to impose penalties, as provided under this section, does not bar injunctions to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department pursuant to this chapter.

Section 6. **Costs and expenses — recovery by department or county.** In a civil action initiated by the department or county under this chapter, the court may, by petition of the department or county, order an establishment that is found in violation of this chapter or rules adopted under this chapter to pay the costs of investigations and any other expenses incurred in enforcing the provisions of this chapter.

Section 7. **Health officers and sanitarians to have access to establishments.** State and local health officers[, sanitarians-in-training,] and registered sanitarians must be provided free access to establishments at all reasonable hours for the purpose of conducting investigations and inspections as required under this chapter.

Section 8. **Codification instruction.** [Sections 2 and 5 through 7] are intended to be codified as an integral part of Title 50, chapter 52, and the provisions of Title 50, chapter 52, apply to [sections 2 and 5 through 7].

Section 9. **Coordination instruction.** If House Bill No. 943 is passed and approved and if it includes a section defining a sanitarian-in-training, then the bracketed language in [sections 3, 4, and 7 of this act] is effective.

Approved April 29, 1991.

CHAPTER NO. 732

[HB 989]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO REGULATION OF FOOD ESTABLISHMENTS; INCREASING THE FEE FOR LICENSING OF FOOD ESTABLISHMENTS; CREATING A SPECIAL REVENUE ACCOUNT FOR THE DEPOSIT OF A PORTION OF LICENSE FEES; ALLOCATING MONEY IN THE ACCOUNT TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; CLARIFYING WHO MAY CONDUCT INVESTIGATIONS AND INSPECTIONS OF FOOD ESTABLISHMENTS; REQUIRING MINIMUM PERFORMANCE STANDARDS THAT MUST BE MET IN ORDER FOR THE LOCAL BOARD OF HEALTH TO RECEIVE PAYMENTS FROM THE LOCAL BOARD INSPECTION FUND ACCOUNT; REQUIRING PAYMENTS RECEIVED FROM THE ACCOUNT TO BE USED ONLY FOR THE PURPOSE OF INSPECTION AND ENFORCEMENT; PROHIBITING FUNDS FROM THE LOCAL BOARD INSPECTION FUND ACCOUNT FROM BEING USED TO SUPPLANT OTHER FUNDS RECEIVED BY THE LOCAL BOARD OF HEALTH; PROHIBITING A COUNTY OR OTHER LOCAL GOVERNMENT FROM IMPOSING AN ADDITIONAL INSPECTION FEE OR CHARGE UNLESS MORE THAN TWO REMEDIAL INSPECTIONS ARE NECESSARY; PROVIDING CIVIL PENALTIES FOR VIOLATION OF THE LAWS REGULATING FOOD ESTABLISHMENTS; ALLOWING THE DEPARTMENT AND COUNTIES TO RECOVER THE COSTS OF INVESTIGATIONS AND OTHER EXPENSES IN ENFORCING THE LAWS RELATING TO FOOD ESTABLISHMENTS; AND AMENDING SECTIONS 50-50-102, 50-50-205, 50-50-301, 50-50-302, AND 50-50-305, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because it amends 50-50-305 to grant the department of health and environmental sciences authority to adopt rules to establish minimum program performance standards that must be met in order for the local board of health to receive payments from the local board inspection fund account.

It is intended that minimum performance standards include but not be limited to measures necessary to ensure the accuracy of inspection reports and to allow statewide standardization of inspections and the documentation of work performed.

Also, it is recognized that the exact nature of performance standards is still in the developmental stage. Therefore, it is intended that these performance standards be adopted only after close coordination with local health departments and boards and extensive solicitation of comments prior to adoption of final standards.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-50-102, MCA, is amended to read:

"50-50-102. **Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(2) "Commercial establishment" means an establishment operated primarily for profit.

~~(2)~~*(3)* "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

~~(3)~~*(4)* "Establishment" means a food manufacturing establishment, meat market, food service establishment, *food warehouse,* frozen food plant, commercial food processor, or perishable food dealer.

~~(4)~~*(5)* "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

~~(5)~~*(6)* "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

~~(6)~~*(7)* "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge. The term does not include establishments, vendors, or vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers or a private organization serving food only to its members.

(8) "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets, but does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

~~(7)~~*(9)* "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

~~(8)~~*(10)* "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

~~(9)~~*(11)* "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

~~(10)~~*(12)* "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public.

~~(11)~~*(13)* "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment."

Section 2. Section 50-50-205, MCA, is amended to read:

"50-50-205. **License fee — late fee — *preemption of local authority — exception.*** (1) For each license issued, the department shall collect a fee of ~~$30~~ *$60*. It shall deposit 85% of the fees collected ~~in the state special revenue fund to the credit of~~ *under this section into* the local board inspection fund account created ~~by~~ *in* 50-2-108~~(2) and the balance~~, *7.5% of the fees into the general fund, and 7.5%* of the fees ~~in~~ *into* the ~~state general fund~~ *account provided for in [section 3]*.

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of his current license and who operates an establishment governed by this part in the next licensing year. The late fee is $25 and must be deposited in the ~~state general fund~~ *account provided for in [section 3]*.

(3) A county or other local government may not impose an inspection fee or charge in addition to the fee provided for in subsection (1) unless a violation of this chapter or rule persists and is not corrected after two visits to the establishment."

Section 3. **Special revenue account.** There is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of this chapter and the rules adopted under it.

Section 4. Section 50-50-301, MCA, is amended to read:

"50-50-301. **Health officers *and sanitarians* to ~~investigate and~~ make *investigations and* inspections.** State and local health officers~~,~~*[, sanitarians-in-training,] and registered* sanitarians~~, or other authorized persons~~ shall make investigations and inspections of establishments and make reports to the department as required ~~by~~ *under* rules adopted by the department."

Section 5. Section 50-50-302, MCA, is amended to read:

"50-50-302. **Health officers *and sanitarians* to have free access.** State and local health officers~~,~~*[, sanitarians-in-training,] and* sanitarians~~, and other authorized persons shall have~~ *must be provided* free access to establishments at all reasonable hours *for the purpose of conducting investigations and inspections as required under this chapter.*"

Section 6. Section 50-50-305, MCA, is amended to read:

"**50-50-305. Department to pay local board for inspections** ***and enforcement.*** (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from the local board inspection fund account created ~~by~~ *in* 50-2-108~~(2) which is~~ *that must be used only* for the purpose of inspecting establishments licensed under this chapter *and enforcing the provisions of this chapter*; provided, however, that*:*

(a) there is a functioning local board of health*;* and ~~that~~

(b) the local board of health, local health officers, *[sanitarians-in-training,]* and *registered* sanitarians*:*

(i) assist in ~~the~~ *inspections and* enforcement of the provisions of this chapter and the rules adopted under it*; and*

(ii) meet minimum program performance standards as established under rules adopted by the department.

(2) The funds received by the local board of health ~~shall~~ *pursuant to subsection (1) must* be deposited with the appropriate local fiscal authority and ~~shall be in addition to the funds appropriated under 50-2-108 through 50-2-114~~ *must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be made available for the same purpose.*

(3) Funds in the local board inspection fund account not paid to the local board of health as provided in subsection (1) may be used by the department, within any jurisdiction that does not qualify to receive payments from the local board inspection fund account, to enforce the provisions of this chapter and the rules adopted under it."

Section 7. **Civil penalties — injunctions not barred.** (1) An establishment that violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty not to exceed $500.

(2) Civil action to impose penalties, as provided under this section, does not bar injunctions to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department pursuant to this chapter.

Section 8. **Costs and expenses — recovery by department or county.** In a civil action initiated by the department or county under this chapter, the court may, by petition of the department or county, order an establishment that is found in violation of this chapter or rules adopted under this chapter to pay the costs of investigations and any other expenses incurred in enforcing the provisions of this chapter in the case of a willful violation. These costs are limited to the direct costs of investigations and other expenses.

Section 9. **Codification instruction.** [Sections 3, 7, and 8] are intended to be codified as an integral part of Title 50, chapter 50, and the provisions of Title 50, chapter 50, apply to [sections 3, 7, and 8].

Section 10. **Coordination instruction.** If House Bill No. 943 is passed and approved and if it includes a section defining a sanitarian-in-training, then the bracketed language in [sections 4 through 6] is effective.

Approved April 29, 1991.

CHAPTER NO. 733

[HB 354]

AN ACT ALLOWING COUNTY COMMISSIONERS TO LEVY UP TO 2 MILLS FOR FIRE CONTROL ACTIVITIES; AMENDING SECTION 7-33-2209, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2209, MCA, is amended to read:

"**7-33-2209. Finance of fire control activities.** (1) The county governing body is authorized to appropriate funds for the purchase, care, and maintenance of firefighting equipment or for the payment of wages in prevention, detection, and suppression of fires.

(2) If the general fund is budgeted to the full limit, the county governing body may, at any time fixed by law for levy and assessment of taxes, levy a tax ~~at such rate as in their judgment will be necessary to raise such needed sum, not to exceed~~ *of up to 2 mills or at a rate that will raise* $15,000, *whichever is higher.*"

Section 2. **Levy against certain properties prohibited.** The levy authorized by this part may not be assessed against properties located within the incorporated boundaries of a city or town.

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved May 1, 1991.

CHAPTER NO. 734

[SB 18]

AN ACT TO GENERALLY REVISE OIL AND GAS LAWS; AUTHORIZING CERTAIN POOLING AND UNIT AGREEMENTS; CLARIFYING RESPONSIBILITY FOR MITIGATION OF DAMAGES; AND AMENDING SECTIONS 82-11-101, 82-11-103, 82-11-104, 82-11-161, AND 82-11-164, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-101, MCA, is amended to read:

"**82-11-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the administrator of the division of oil and gas conservation.

(2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(3) "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:

(a) that have been brought to the surface in connection with oil or natural gas production;

(b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

(c) for purposes of storing liquid hydrocarbons.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

(6) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(7) "Field" means the general area underlaid by one or more pools.

(8) "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

(9) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil in subsection (10) of this section.

(10) "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form by ordinary production methods and which are not the result of condensation of gas before or after it leaves the reservoir.

(11) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces ~~therefrom~~ *from a pool* either for himself or others or for himself and others, and the term includes all persons holding ~~such~~ *that* authority by or through him.

(12) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision ~~thereof~~ *of the state.*

(13) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

(14) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

(15) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(16) "Responsible person" means a person who is determined by the board under 82-10-402 to have abandoned an oil or gas well, injection well, *disposal well, water source well, drill site,* sump, ~~or~~ seismographic shot hole, *or other area where oil and gas drilling and production operations were conducted* ~~and who is:~~

~~(a) a corporation, association, partnership, or other business organization with assets in excess of $250,000; or~~

~~(b) if the business organization does not have assets in excess of $250,000, a natural person with primary ownership in the business organization~~.

(17) "State waters" means any body of water, either surface or underground.

(18) "Waste" means:

(a) physical waste, as that term is generally understood in the oil and gas industry;

(b) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(c) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(d) the inefficient storing of oil or gas. (The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.)"

Section 2. Section 82-11-103, MCA, is amended to read:

"**82-11-103. Lands subject to law.** This chapter applies to all lands in the state lawfully subject to its ~~taxation and~~ police powers, *including all state-owned lands*. It applies to lands of the United States or to lands subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas by the United States on its lands fails to effect the intent and purposes of this chapter and otherwise applies to those lands to ~~such~~ *the* extent ~~as~~ *that* any officer of the United States having jurisdiction or his duly authorized representative approves any of the provisions of this chapter or an order of the board ~~which~~ *that* affects those lands. This chapter also applies to any lands committed to a unit agreement approved by the secretary of the interior or his duly authorized representative, except that the board may, with respect to those unit agreements, suspend the application of this chapter or any part of this chapter so long as the conservation of oil and gas and the prevention of waste as provided in this chapter is accomplished under the unit agreements. The suspension does not relieve an operator or owner from making ~~such~~ reports ~~as~~ *that* may be required by the board with respect to operations and production under the unit agreement, and the suspension does not relieve an operator or owner from the payment of taxes on his oil and gas production or payment for permit fees as required by this chapter."

Section 3. Section 82-11-104, MCA, is amended to read:

"**82-11-104. Construction — no conflict with board of land commissioners' authority.** ~~Nothing herein contained shall~~ *No provision of this chapter may* be construed to conflict with 77-3-430, granting the board of land commissioners the authority to enter into pooling and unitization agreements for the production of oil or gas with others, *provided that state lands are subject to the provisions of this chapter concerning spacing and statutory pooling and unitization in the absence of voluntary pooling and unitization agreements.*"

Section 4. Section 82-11-161, MCA, is amended to read:

"**82-11-161. Oil and gas production damage mitigation account — statutory appropriation.** (1) There is an oil and gas production damage mitigation account within the state special revenue fund established in 17-2-102. The oil and gas production damage mitigation account is controlled by the board.

(2) On July 1, 1991, and at the beginning of each succeeding biennium, there must be allocated to the oil and gas production damage mitigation account $50,000 from the interest income of the resource indemnity trust fund, except if at the beginning of a biennium the unobligated cash balance in the oil and gas production damage mitigation account:

(a) equals or exceeds $200,000, no allocation will be made; or

(b) is less than $200,000, then an amount less than or equal to the difference between the unobligated cash balance and $200,000, but not more than $50,000, must be allocated to the oil and gas production damage mitigation account from the interest income of the resource indemnity trust fund.

(3) In addition to the allocation provided in subsection (2), there must be deposited in the oil and gas production damage mitigation account:

(a) all funds received by the board pursuant to 82-11-136; and

(b) all fees received by the board from owners of producing wells pursuant to 82-11-162.

(4) If a sufficient balance exists in the account, funds are statutorily appropriated, as provided in 17-7-502, from the oil and gas production damage mitigation account, upon the authorization of the board, to pay the reasonable costs of properly plugging a well *and either reclaiming or restoring, or both, a drill site or other drilling or producing area damaged by oil and gas operations* if the board determines that the well, sump, ~~or~~ hole, *drill site, or drilling or producing area* has been abandoned and the responsible person cannot be identified or located or *if* the responsible person ~~does not have sufficient funds to pay the costs~~ *fails or refuses to properly plug, reclaim, or restore the well, drill site, or drilling or producing area within a reasonable time after demand by the board.* The responsible person shall, however, pay costs to the extent of his available resources and is subsequently liable to fully reimburse the account or is subject to a lien on property as provided in 82-11-164 for costs expended from the account to properly plug, *reclaim, or restore* the well, *drill site, or drilling or producing area* and to mitigate any damage ~~caused by the well~~ *for which he is responsible.*

(5) Interest from funds in the oil and gas production damage mitigation account accrues to that account.

(6) The board shall submit to the legislature at the beginning of each regular session a complete financial report on the oil and gas production damage mitigation account, including a description of all expenditures made since the preceding report."

Section 5. Section 82-11-164, MCA, is amended to read:

"**82-11-164. Lien created.** (1) The oil and gas production damage mitigation account has a lien in the amount of the expenditure from the account under 82-11-161(4), plus interest accrued at the rate of 10% a year, against all real and personal property in this state owned by~~:~~

~~(a)~~ the responsible person~~, if that person is subsequently identified or located;~~ or

~~(b)~~ *in which* the responsible person~~, if that person is known but cannot or will not fully reimburse the oil and gas production damage mitigation account~~ *has an interest.*

(2) The lien created under subsection (1) must be filed in the office of the secretary of state and must attach to all real or personal property of the responsible person.

(3) A lien created by this section is valid until paid in full or otherwise discharged. The lien must be foreclosed in accordance with applicable laws governing foreclosure of ~~mortgages and~~ liens."

Section 6. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved May 1, 1991.

CHAPTER NO. 735

[SB 192]

AN ACT ENDING FUTURE ELIGIBILITY FOR THE SUPPLEMENTAL RETIREMENT ALLOWANCE PROVIDED IN THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM; PROVIDING THAT MONEY NOT USED TO MAINTAIN EXISTING SUPPLEMENTAL BENEFITS BE TRANSFERRED TO THE GENERAL FUND; ELIMINATING VEHICLE REGISTRATION FEES AS A SOURCE OF REVENUE FOR THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-6-506 AND 61-3-321, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-6-506, MCA, is amended to read:

"**19-6-506. Supplemental retirement allowance for certain retirees.** (1) Retired Montana highway patrol officers or their surviving spouses who are 65 years of age or older or disabled and who are not entitled, through their own or their spouses' contributions to social security or medicare, to prepaid medicare hospital insurance coverage are eligible for a supplemental retirement benefit *provided application to the board is made prior to July 31, 1991.*

(2) Subject to the restrictions in subsection (1) and beginning on the first day of the month after receipt of written application of an eligible retiree, the retirement system shall pay a supplemental benefit equal to the premium for coverage under medicare hospital insurance, excluding coverage for a spouse and dependents, from revenue deposited in the state special revenue fund, as *was* provided *prior to [the effective date of this act]* in 61-3-321(5). The written application must be accompanied by proof that the retiree is paying for medicare hospital insurance coverage.

(3) The supplemental benefit payment made under subsection (2) may not exceed the medicare hospital insurance premium in effect on July 1, 1989, for similar coverage.

(4) Amounts deposited in the highway patrol officers' retirement fund under the provisions of 61-3-321(5) and not required to provide benefits under this section must be allocated to the highway patrol officers' retirement system prior to December 1, 1991."

Section 2. Section 61-3-321, MCA, is amended to read:

"61-3-321. **Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees.** (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors and/or trucks, $10;

(f) buses are classed as motortrucks and licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds maximum gross loaded weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds maximum gross loaded weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds maximum gross loaded weight, $10;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, $15 annually, regardless of size or capacity.

(2) All rates are 25% higher for motor vehicles, trailers, and semitrailers not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle, except passenger cars, used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee.

(5) An additional fee of ~~$5.25~~ *$5* per year for each registration of a vehicle must be collected as a registration fee. Revenue from this fee must be forwarded by the respective county treasurers to the state treasurer for deposit in the general fund. ~~The department of justice shall distribute 25 cents from each fee collected to the highway patrol retirement fund.~~

(6) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(3) are issued. Revenue from this fee must be deposited as provided in subsection (5).

(7) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers or semitrailers, or tractors owned or controlled by the United States of America or any state, county, or city.

(8) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335."

Section 3. **Coordination instruction.** If both House Bill No. 711 and [this act] are passed and approved, then the following amendments apply:

(1) Section 19-6-506(4) in [section 1 of this act] is amended to read:

"(4) Amounts deposited in the highway patrol officers' retirement fund under the provisions of 61-3-321(5) and not required to provide benefits under this section must be allocated as follows:

(a) 50% must be allocated for the supplemental benefits provided under [section 1 of House Bill No. 711]; and

(b) 50% must be allocated to the highway patrol officers' retirement system."

(2) The reference to "1992" in [section 1(1) of House Bill No. 711] is changed to "1991".

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved May 1, 1991.

CHAPTER NO. 736

[SB 196]

AN ACT TO PROVIDE FOR THE CONFINEMENT OF PERSONS COMMITTED TO THE DEPARTMENT OF INSTITUTIONS WHEN A DEPARTMENT CORRECTIONAL INSTITUTION OR SYSTEM EXCEEDS ITS EMERGENCY CAPACITY; AND AMENDING SECTION 53-30-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-30-106, MCA, is amended to read:

"**53-30-106. ~~Contracts for~~ *Excessive inmate population* — confinement of inmates in other institutions.** *(1) If the inmate population of a correctional institution or system exceeds the emergency capacity for 30 consecutive days, the director of the department of institutions may declare that the emergency capacity has been exceeded and temporarily stop admissions to the institution or system. The director shall notify each sheriff and district court that new inmates will not be accepted by the department for admission into the institution or system until the inmate population is reduced to 95% or less of the emergency capacity. Persons committed to the department and persons sought to be admitted remain in the department's legal custody but must be kept in a detention center in the jurisdiction holding them. In the event the jurisdiction holding the inmate is at maximum capacity, the inmate may be placed in an available detention center in another jurisdiction. The department shall reimburse that jurisdiction for the cost of detention for the period beyond the normal time of delivery to a correctional institution administered by the department. Reimbursement must be at a rate mutually agreeable to the department and the jurisdiction holding the person. The rate must cover the reasonable costs of the holding jurisdiction. Expenses for medication, medical services, or hospitalization for persons confined in a detention center under this section must be borne by the department.*

~~(1)~~*(2)* ~~When the state prison is inadequate to contain an inmate sentenced to confinement there, the~~ *The* department of institutions may enter into contracts with the federal government, other states, or the commissioners of counties that have suitable ~~jails~~ *detention centers* for confining inmates ~~sentenced~~ *committed* to ~~the state prison~~ *a correctional institution or system administered by the department of institutions, either because a correctional institution or system has exceeded its emergency capacity or because the department has no institution that is adequate for certain inmates.*

~~(2)~~*(3)* Within budgetary limits, the department *of institutions* may also enter into contracts with public or private corporations for the confinement of selected inmates ~~where~~ *if* suitable programs have been established."

Approved May 1, 1991.

CHAPTER NO. 737

[SB 272]

AN ACT CLARIFYING THE MEANING OF THE TERMS "INDUSTRIAL INFRASTRUCTURE" AND "INFRASTRUCTURE" AS USED IN THE TAX INCREMENT FINANCING INDUSTRIAL DEVELOPMENT ACT; PROVIDING THAT DIRECT ASSISTANCE TO SECONDARY VALUE-ADDED INDUSTRIES BE THROUGH AN INDUSTRIAL INFRASTRUCTURE DEVELOPMENT PROJECT; AND AMENDING SECTION 7-15-4288, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4288, MCA, is amended to read:

"**7-15-4288. Costs which may be paid by tax increment financing.** The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project or industrial infrastructure development project:

(1) land acquisition;

(2) demolition and removal of structures;

(3) relocation of occupants;

(4) the acquisition, construction, and improvement of *infrastructure or industrial infrastructure, which includes* streets, *roads,* curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, sewer lines, sewage treatment facilities, *storm sewers,* waterlines, waterways, water treatment facilities, *natural gas lines, electrical lines, telecommunication lines, rail lines, rail spurs, bridges,* ~~public~~ *publicly owned* buildings, and ~~other~~ *any* public improvements authorized by parts 41 through 45 of chapter 12, parts 42 and 43 of chapter 13, and part 47 of chapter 14 and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;

(5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233;

(6) acquisition of infrastructure-deficient areas or portions thereof;

(7) administrative costs associated with the management of the industrial district;

(8) assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself at its fair value;

(9) the compilation and analysis of pertinent information required to adequately determine the infrastructure needs of secondary, value-adding industries in the industrial district;

(10) the connection of the industrial district to existing infrastructure outside the industrial district; and

(11) the provision of direct assistance, *through industrial infrastructure development projects,* to secondary, value-adding industries to assist in meeting their infrastructure and land needs within the industrial district."

Approved May 1, 1991.

CHAPTER NO. 738

[SB 301]

AN ACT ALLOWING FORMER LEGISLATORS TO CONTINUE MEMBERSHIP IN THE STATE GROUP HEALTH INSURANCE PLAN; AMENDING SECTION 2-18-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-704, MCA, is amended to read:

"**2-18-704. Mandatory provisions.** (1) An insurance contract or plan issued after June 30, 1977, under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions provided by law to remain a member of the group until he becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless he is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless he is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued after June 30, 1983, under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan issued after August 31, 1991, must contain provisions that permit a legislator to remain a member of the state's group plan until he becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of his legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3) if he:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3) and subsequently terminates membership may not rejoin the group unless he again serves as a legislator.

~~(3)~~*(4)* A person electing to remain a member of the group under ~~subsections~~ *subsection* (1) ~~and~~, (2), *or (3)* ~~must~~ *shall* pay the full premium for his coverage and for that of his covered dependents."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to a legislator who was a member of the state's group health insurance plan in effect on December 1, 1990, who is otherwise eligible under the provisions of 2-18-704 and who files written notice to the department of administration within 30 days of [the effective date of this act].

Approved May 1, 1991.

CHAPTER NO. 739

[SB 327]

AN ACT TO GENERALLY REVISE THE LAWS PERTAINING TO SHOPLIFTING; INCREASING THE CIVIL PENALTY FOR SHOPLIFTING; INCREASING THE CRIMINAL PENALTY FOR SECOND AND SUBSEQUENT THEFT CONVICTIONS; ALLOWING PHOTOGRAPHS OF STOLEN MERCHANDISE TO BE SUBMITTED INTO EVIDENCE; AND AMENDING SECTIONS 27-1-718 AND 45-6-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-718, MCA, is amended to read:

"**27-1-718. Civil penalty for shoplifting.** (1) An adult or emancipated minor, as defined in 20-25-501, who takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to his own use without having paid the purchase price thereof is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, in the amount of *the greater of $100 or* the retail value of the goods, not to exceed $500. This amount is in addition to actual damages.

(2) When an unemancipated minor takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to his own use without having paid the purchase price thereof, the minor's parent or legal guardian having custody of the minor is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, equal to *the greater of $100 or* the retail value of the goods, not to exceed $500. For the purposes of this subsection (2), liability may not be imposed upon any governmental or private agency that has been assigned responsibility for the minor child pursuant to court order or action of the department of family services.

(3) Judgments, but not claims, arising under this section may be assigned.

(4) A conviction for violation of 45-6-301 is not a condition precedent to maintenance of a civil action under this section."

Section 2. Section 45-6-301, MCA, is amended to read:

"**45-6-301. Theft.** (1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) *(a)* A person convicted of the offense of theft of property not exceeding $300 in value shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. *A person convicted of a second offense shall be fined $500 or be imprisoned in the county jail for*

a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) A person convicted of the offense of theft of property exceeding $300 in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(7) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 3. **Photographs of items allegedly taken or converted — admissibility procedure.** (1) In a prosecution for a violation of 45-6-301, photographs of the items alleged to have been taken or converted are competent evidence of the items and are admissible in a proceeding, hearing, or trial as if the items themselves were introduced as evidence so long as responding law enforcement personnel have designated a person to be responsible for properly photographing the items and preserving the photographic evidence.

(2) The photographs must bear a written description of the items alleged to have been taken or converted, the name of the owner from whom the items were allegedly taken, or the store or establishment, as appropriate, where the alleged offense occurred, the name of the accused, the name of the arresting officer, the date the photographs were taken, and a statement by the photographer that the photographs accurately represent the items in question.

(3) The writing required under subsection (2) must be made under oath by the arresting officer, and the photographs must be identified by the signature of the photographer. Upon the filing of the photograph and the writing with the law enforcement agency or court holding the items as evidence, the items must be returned to their owner or the proprietor or manager of the store or establishment.

Section 4. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 26, chapter 1, part 6, and the provisions of Title 26, chapter 1, part 6, apply to [section 3].

Section 5. **Coordination instruction.** If House Bill No. 501 is passed and approved and if it contains an amendment to 27-1-718, then [section 1 of this act] is void.

Approved May 1, 1991.

CHAPTER NO. 740

[SB 425]

AN ACT EXTENDING THE PERIOD OF INITIAL WATER LEASES; MODIFYING THE INITIAL AND FINAL WATER LEASING STUDY REPORT PROCESS; INCREASING THE NUMBER OF DESIGNATED STREAM REACHES; EXTENDING THE TERM OF THE WATER LEASING STUDY; EXTENDING THE AUTHORITY FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ACCEPT CONTRIBUTIONS TO LEASE WATER; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 85-2-436 AND 85-2-437, MCA, AND SECTION 11, CHAPTER 658, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-436, MCA, is amended to read:

"**85-2-436.** *(Temporary)* **Water leasing study.** (1) The department of fish, wildlife, and parks and the department, in consultation with the water policy committee, shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;

(iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection. For purposes of this study, this section is the exclusive means by which the department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

(a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the board pursuant to 85-2-437.

(b) Upon receipt of an application for a lease from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe they may be adversely affected by the proposed lease may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a complete application and meets the requirements of 85-2-402.

(c) The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be maintained or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be leased is the amount historically diverted by the lessor. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

(e) The lease may not be issued for a term of more than ~~4~~ *10* years, *but it may be renewed once for up to 10 years, except that a lease of water made available from the development of a water conservation or storage project is restricted to a term of not more than 20 years.* ~~but may be renewed for up to 10 years per renewal, if allowed by law and upon notification to the department. If this section terminates without reauthorization by the legislature, all leases and lease authorizations expire on the date of termination.~~ Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(i) submits evidence of adverse effects to his rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

(f) During the term of the ~~original~~ lease, the department may modify or revoke the lease authorization if an appropriator other than an appropriator described in subsection (2)(i) proves by substantial credible evidence that his water right is adversely affected.

(g) The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right that is leased.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms~~, the renewal of the lease,~~ or the reversion of the appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing ~~measuring~~ devices or providing personnel to measure streamflows according to the measuring plan submitted under this section.

(3) *(a) The department of fish, wildlife, and parks shall complete and submit to the board, commission, and water policy committee an annual study progress report by December 1 of each year. This report must include the applicable information listed in subsection (1) for each lease. If the department of fish, wildlife, and parks has not leased water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report.*

(b) A *final* study report must be adopted by the board and commission and submitted to the water policy committee, which shall complete ~~a~~ *the* final report by December 1, ~~1990~~ *1998.*

(4) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired. (Terminates June 30, ~~1993~~ 1999—sec. 11, Ch. 658, L. 1989.) "

Section 2. Section 85-2-437, MCA, is amended to read:

"**85-2-437.** *(Temporary)* **Board designation of eligible stream reaches.** (1) The department of fish, wildlife, and parks, with the consent of the commission, may apply to the board for designation of stream reaches for which water leasing to maintain or enhance streamflows pursuant to 85-2-436 may occur.

(2) The board may declare a stream reach eligible for leasing pursuant to 85-2-436 only if it finds that water leasing is necessary to maintain or enhance streamflows for fisheries.

(3) The board may designate no more than ~~five~~ *10* stream reaches in the state where water leasing pursuant to 85-2-436 may occur. *If the department of fish, wildlife, and parks determines that a water lease cannot be reasonably obtained on a designated stream reach, the board may remove the designation from that stream reach and designate another stream reach pursuant to this section. (Terminates June 30, ~~1993~~ 1999—sec. 11, Ch. 658, L. 1989.)* "

Section 3. **Lease validity.** All leases entered into prior to June 30, 1999, remain valid until the expiration date of the lease.

Section 4. Section 11, Chapter 658, Laws of 1989, is amended to read:

"Section 11. **Termination.** [This act] terminates June 30, ~~1993~~ *1999.*"

Section 5. **Appropriation.** There is appropriated for the biennium ending June 30, 1993, to the department of fish, wildlife, and parks $22,500 from the federal special revenue fund and $7,500 from the state special revenue fund provided for in 87-1-601(1) to lease existing water rights as provided in 85-2-436(2)(a).

Section 6. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [section 3].

Section 7. **Termination.** [This act] terminates June 30, 1999.

Section 8. **Effective date.** [This act] is effective on passage and approval.

Approved May 1, 1991.

CHAPTER NO. 741

[SB 434]

AN ACT TEMPORARILY CLOSING A DESIGNATED PORTION OF THE UPPER CLARK FORK RIVER BASIN TO FURTHER APPROPRIATIONS, EXCEPT APPROPRIATIONS FOR GROUND WATER; SUSPENDING ACTION ON APPLICATIONS FOR RESERVATIONS IN THE UPPER CLARK FORK RIVER BASIN; MODIFYING PRIORITY DATES FOR PENDING WATER RESERVATIONS IN THE UPPER CLARK FORK RIVER BASIN; REQUIRING AN APPLICANT FOR A GROUND WATER PERMIT TO SUBMIT A REPORT REGARDING THE SOURCE OF THE GROUND WATER AND DEPARTMENT FINDINGS REGARDING THE SOURCE; CREATING AND ESTABLISHING DUTIES FOR AN UPPER CLARK FORK RIVER BASIN STEERING COMMITTEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** Unless the context requires otherwise, in [sections 1 through 4], the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302.

(2) "Domestic use" means use of water common to family homes, including use for culinary purposes, washing, drinking water for humans and domestic pets, and irrigation of a lawn or garden of less than 1 acre, not to exceed a total of 3.5 acre-feet per year. The term includes municipal uses for expanded domestic use but does not include commercial or industrial use.

(3) "Ground water" means any water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not a part of that surface water.

(4) "Upper Clark Fork River basin" means the drainage area of the Clark Fork River and its tributaries above Milltown dam but does not include the Blackfoot River, designated as subbasin 76F, or Rock Creek, designated as subbasin 76E.

Section 2. **Basin closure — exception.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water within the Upper Clark Fork River basin during the period from [the effective date of this act] until June 30, 1995.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water or water for domestic use; and

(b) an application for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7. A permit issued to conduct response actions or remedial actions must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action.

(3) Applications for water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316 and pending as of [the effective date of this act] have a priority date of [the effective date of this act]. Reservation applicants have no standing to object under 85-2-402 during the period of the basin closure provided in subsection (1).

(4) The board may not process or approve applications for reservations of water, except ground water, in the Upper Clark Fork River basin filed pursuant to 85-2-316 during the period of the basin closure provided in subsection (1).

Section 3. **Ground water permit applications — report required.** (1) During the period of basin closure provided in [section 2(1)], an applicant for a ground water permit in the Upper Clark Fork River basin shall submit a report prepared by a professional engineer or hydrologist verifying that the source of the ground water is not a part of or substantially or directly connected to surface water. If the applicant fails to submit the report required in this section, the application is considered defective and must be processed pursuant to 85-2-302.

(2) In addition to the criteria of 85-2-311, the department shall find, based on substantial credible evidence, that the source of the ground water is not a part of or substantially or directly connected to surface water.

Section 4. **Upper Clark Fork River basin steering committee — membership and duties — comprehensive management plan.** (1) There is an Upper Clark Fork River basin steering committee. The department director shall appoint the members of the committee, selecting them on the basis of their knowledge of water use, water management, fish, wildlife, recreation, water quality, and water conservation. Representation on the committee must include but is not limited to representatives from affected:

(a) agricultural organizations;

(b) conservation districts;

(c) departments of state government;

(d) environmental organizations;

(e) industries;

(f) local governments;

(g) reservation applicants;

(h) utilities; and

(i) water user organizations.

(2) The steering committee shall complete an Upper Clark Fork River basin comprehensive management plan pursuant to 85-1-203. The plan must:

(a) consider and balance all beneficial uses of the water in the Upper Clark Fork River basin;

(b) include a description of the standards applied, the data relied upon, and the methodology used in preparing the plan;

(c) contain recommendations regarding the Upper Clark Fork River basin closure as provided in [section 2];

(d) identify and make recommendations regarding the resolution of water-related issues in the Upper Clark Fork River basin; and

(e) include the Blackfoot River, designated as subbasin 76F, and Rock Creek, designated as subbasin 76E, in any considerations made under subsections (2)(a) through (2)(d).

(3) The steering committee shall complete and submit a management plan to the governor and the legislature by December 31, 1994.

Section 5. **Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [sections 1 through 4].

Section 6. **Effective date.** [This act] is effective on passage and approval.

Section 7. **Applicability.** [This act] applies to all applications received by the department of natural resources and conservation after [the effective date of this act].

Approved May 1, 1991.

CHAPTER NO. 742

[SB 462]

AN ACT CLARIFYING THE TELEPHONE COMPANY LICENSE TAX; EXCLUDING CARRIER ACCESS SERVICE REVENUE FROM THE TAX; REVISING THE TAX RATE; DEFINING "CARRIER ACCESS SERVICE" AND "TELEPHONE BUSINESS"; AMENDING SECTIONS 15-53-101, 15-53-102, 15-53-105, AND 15-53-111, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-53-101, MCA, is amended to read:

"**15-53-101. ~~Rate~~ *Definitions — rate* of license tax on telephone companies ~~— itemized pass-through prohibited~~.** (1) ~~There is hereby levied and shall be collected an annual tax of 1.725% of the gross income in excess of $250 quarterly derived from any telephone business within this state, including the transmission of telephone messages in this state over telephone lines or by microwave electronic equipment in this state owned by any person, provided, however, that no bill, statement, or account rendered or given any customer shall set out or contain as a separate item any amount on account or by reason of the license tax imposed by this chapter.~~

~~(2) Such annual license tax shall be paid~~ *As used in this section:*

(a) "carrier access service" means the service a local exchange company, as defined in 53-19-302, provides to an interexchange carrier for the origination or termination of telecommunications; and

(b) "telephone business" means the access and transport, for hire, of two-way communications from point of access to point of termination, both of which are within Montana.

(2) A license tax of 1.8% is imposed upon the gross revenue in excess of $250 each quarter received by a person in Montana from telephone business in Montana. As used in this section, "gross revenue" does not include:

(a) carrier access service revenue;

(b) revenue from the sale of telephone services to another telephone service provider who uses the services to provide telephone service to the ultimate retail consumer who originates or terminates the transmission;

(c) revenue from the sale, lease, repair, installation, or maintenance of equipment or from the provision of nontransmission-related services or activities; or

(d) customer access line charges assessed under federal communications commission orders or rules.

(3) A bill or statement may itemize the tax imposed by subsection (2).

(4) The tax imposed by subsection (2) is due in quarterly installments for the quarters ending, respectively, March 31, June 30, September 30, and December 31 in each year."

Section 2. Section 15-53-102, MCA, is amended to read:

"**15-53-102. Statement required of telephone companies.** (1) ~~Each and every~~ *A* person~~,~~ *who is* liable to tax under this chapter ~~engaged in carrying on such telephone business in this state~~ shall, within 60 days after the end of each quarter~~, make and~~*:*

(a) file with the department of revenue a statement, in ~~such~~ *a* form ~~as~~ *that* the department may require and prescribe, showing the ~~total gross income of such person derived from the telephone business within this state, including the transmission of telephone messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telephone messages passing through this state but both originating and terminating outside of this state and from those originating outside of but terminating within this state and from those originating within but terminating outside of this state,~~ *taxable revenue of the person* during the preceding quarter and containing ~~such~~ other information ~~as~~ *that* the department may require~~,~~*;* and ~~shall accompany such~~

(b) ~~statement with~~ *pay* the ~~payment to the department of a license tax in the amount equal to 1.725%~~ *tax owed for the preceding quarter.*

(2) The department may grant a reasonable extension of time for filing the statement upon good cause shown."

Section 3. Section 15-53-105, MCA, is amended to read:

"**15-53-105. Deficiency assessment — hearing — interest.** (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) *(a)* When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of ~~such~~ *the* notice and demand. Interest on any deficiency assessment ~~shall bear~~ *bears* interest until paid at the rate of 1% a month or fraction ~~thereof~~ *of a month,* computed from the original due date of the return.

(b) If payment is not made within 10 days, the tax is delinquent and a penalty of 10% must be added to the amount of the deficiency."

Section 4. Section 15-53-111, MCA, is amended to read:

"**15-53-111. Penalty and interest for delinquency — waiver.** (1) License taxes due under this chapter become delinquent if not paid within 60 days after the end of each calendar quarter. The department of revenue shall add to the amount of all delinquent telephone company license taxes a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction ~~thereof~~ *of a month,* computed on the total amount of license taxes ~~and penalty~~. Interest is computed from the date the license taxes were due to the date of payment.

(2) The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to file the statement required by 15-53-102 or pay the tax due is provided to the department."

Section 5. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. **Effective date — applicability.** [This act] is effective July 1, 1991, and applies to taxable quarters beginning after June 30, 1991.

Approved May 1, 1991.

CHAPTER NO. 743

[HB 33]

AN ACT CREATING THE OFFENSE OF ILLEGAL POSTING OF STATE AND FEDERAL LAND; PROVIDING THAT A PERSON WHO KNOWINGLY POSTS STATE OR FEDERAL LAND AS PRIVATE PROPERTY OR AS BEING CLOSED TO HUNTING OR TRESPASSING IS GUILTY OF A CRIME; AND PROVIDING A PENALTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Illegal posting of state and federal land.** (1) A person commits the offense of illegal posting of state or federal land if, without authorization, he knowingly posts land that is under the ownership or control of the state or federal government to restrict access or use of state or federal land.

(2) A person convicted of illegal posting of state or federal land shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, part 1, and the provisions of Title 45, chapter 8, part 1, apply to [section 1].

Approved May 16, 1991.

CHAPTER NO. 744

[HB 46]

AN ACT REVISING THE MONTANA SMALL BUSINESS LICENSING COORDINATION ACT; AMENDING SECTIONS 30-16-102, 30-16-103, AND 30-16-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-16-102, MCA, is amended to read:

"**30-16-102. Purpose.** The purposes of this chapter are to:

(1) eliminate ~~retail, wholesale, consumer service, manufacturer, and distributor~~ licensing requirements, administrative procedures, and forms that are unnecessary for the protection of the public interest;

(2) streamline and minimize the total government and business costs of necessary licensing and inspection procedures; ~~and~~

(3) distribute equitably the costs of licensing~~.~~*; and*

(4) provide a convenient, accessible, and timely system for the business community to acquire and maintain the necessary state registrations and licenses to conduct business."

Section 2. Section 30-16-103, MCA, is amended to read:

"**30-16-103. Definitions.** As used in this chapter, ~~"license" means~~ *the following definitions apply:*

(1) "Department" means the department of commerce established in 2-15-1801.

(2) "License" means the whole or part of any agency permit, license, certificate, approval, registration, or charter or any form or permission required by law or administrative rule to engage in any retail, wholesale, consumer service, manufacturing, or distributing activity. "License" does not include licenses, permits, or registrations issued under Title 30, chapter 10, parts 1 through 3, Title 33, Title 37, Title 75, and Title 80, ~~. Such licenses~~ *which* are excluded from the coverage of this chapter.

(3) "Person" means an individual, sole proprietorship, partnership, association, cooperative, corporation, nonprofit organization, state or local government agency, or any other organization required to register with the state to do business in Montana and to obtain one or more licenses from the state or any of its agencies."

Section 3. Section 30-16-201, MCA, is amended to read:

"**30-16-201. Designation of small business licensing coordination center — duties of center.** The ~~governor shall designate an agency to~~ *department of commerce shall* administer a small business licensing coordination center. The small business licensing coordination center shall:

(1) document and analyze current licensing requirements, fees, and procedures;

(2) recommend elimination of unnecessary licensing requirements, administrative procedures, or forms or parts of forms that can be eliminated in the public interest;

(3) recommend efficient and effective improvements in the administration and enforcement of licensing laws, including gathering of information that facilitates the development of a permanent master license certificate;

(4) recommend revisions in the license fee structure to distribute the cost of licenses equitably and to provide financing for continuing improvements in licensing administration and enforcement;

(5) develop and upon request distribute information concerning state requirements for starting and operating a business in Montana;

(6) provide assistance to business enterprises to facilitate their compliance with state licensing requirements;

(7) maintain a supply of license and permit forms or applications for all licenses and actively assist the ~~businessman~~ *business community* in answering application questions;

(8) maintain a master list of the business types existing in the state and a corresponding list of the licenses or permits needed to operate or start that type of business;

(9) maintain a copy of the Administrative Rules of Montana in order to provide an applicant with the basic rules of any agency with regard to licensing;

(10) encourage agencies to provide informational brochures through the center, especially in the case of complex licensing procedures;

(11) maintain contact with licensing agencies in order to enable the center to assist an applicant with setting up appointments or otherwise facilitate the application process;

(12) perform other administrative tasks delegated to the center to improve state business license administration*; and*

(13) on January 4, 1993, present a report to the legislature containing its analysis and recommendations as required in subsections (1) through (4)."

Section 4. **Authority to issue licenses.** Regardless of any authority delegated to the department to implement the provisions of this chapter, the authority to issue a license remains with the agency authorized by law to issue the license.

Section 5. **Saving clause.** [Sections 1 through 4] do not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [passage and approval of this act].

Section 6. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 30, chapter 16, and the provisions of Title 30, chapter 16, apply to [section 4].

Section 8. **Effective date.** [This act] is effective on passage and approval.

Approved May 16, 1991.

CHAPTER NO. 745

[HB 74]

AN ACT TO AUTHORIZE A LEVY FOR JUVENILE DETENTION PROGRAMS; TO EXCLUDE THE LEVY FROM THE PROPERTY TAX LIMITATIONS OF INITIATIVE MEASURE NO. 105; AMENDING SECTIONS 15-10-402 AND 15-10-412, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 and 2], unless the context requires otherwise, the following definitions apply:

(1) "Detention" means the holding or temporary placement of a youth in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of his case.

(2) "Juvenile detention program" means services to provide for the lawful detention or shelter care of youth. The term includes:

(a) youth evaluations ordered by the court under 41-5-523; and

(b) programs for the transportation of youth to appropriate detention facilities or shelter care facilities.

(3) "Local government" has the same meaning as provided in 7-12-1103.

(4) "Shelter care" has the same meaning as provided in 41-5-103.

(5) "Youth" means an individual who is less than 18 years of age who is alleged to be a delinquent youth or youth in need of supervision as those terms are defined in 41-5-103.

Section 2. **Levy for juvenile detention programs.** (1) If approved by a majority of the qualified electors voting on the question, a local government may impose a levy on the taxable value of all property within its jurisdiction in an amount determined by the governing body for the purpose of financing the establishment and operation of juvenile detention programs.

(2) Local governments may use the funds derived from a levy authorized in subsection (1) to contract with other units of local government to purchase services from available juvenile detention programs consistent with the purposes of the levy as stated in subsection (1).

Section 3. Section 15-10-402, MCA, is amended to read:

"**15-10-402. Property tax limited to 1986 levels.** (1) Except as provided in subsections (2) and (3), the amount of taxes levied on property described in 15-6-133, 15-6-134, 15-6-136, 15-6-142, and 15-6-144 may not, for any taxing jurisdiction, exceed the amount levied for taxable year 1986.

(2) The limitation contained in subsection (1) does not apply to levies for rural improvement districts, Title 7, chapter 12, part 21; special improvement districts, Title 7, chapter 12, part 41; elementary and high school districts, Title 20; *juvenile detention programs authorized under [section 2];* or bonded indebtedness.

(3) New construction or improvements to or deletions from property described in subsection (1) are subject to taxation at 1986 levels.

(4) As used in this section, the "amount of taxes levied" and the "amount levied" mean the actual dollar amount of taxes imposed on an individual piece of property, notwithstanding an increase or decrease in value due to inflation, reappraisal, adjustments in the percentage multiplier used to convert appraised value to taxable value, changes in the number of mills levied, or increase or decrease in the value of a mill."

Section 4. Section 15-10-412, MCA, is amended to read:

"**15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status;

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements; or

(i) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit;

(f) conversion of the individual property from tax-exempt to taxable status; or

(g) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(5) Property in classes four, twelve, and fourteen is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four, class twelve, or class fourteen property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

(h) revolving funds to support any categories specified in this subsection (8);

(i) levies for economic development authorized pursuant to 90-5-112(4); ~~and~~

(j) levies authorized under [section 2] for juvenile detention programs; and

~~(j)~~*(k)* elementary and high school districts.

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(12) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402."

Section 5. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections 1 and 2].

Section 6. **Effective date.** [This act] is effective July 1, 1991.

Approved May 15, 1991.

CHAPTER NO. 746

[HB 93]

AN ACT TO IMPOSE A UTILIZATION FEE ON NURSING FACILITIES FOR BED DAYS REIMBURSED BY THIRD-PARTY PAYORS BEGINNING IN FISCAL YEAR 1992; TO AUTHORIZE THE DEPARTMENT OF REVENUE TO COLLECT THE FEE; TO PROVIDE FOR THE ASSESSMENT, COLLECTION, AND REFUND OF THE FEE; TO REQUIRE PROCEEDS FROM THE FEE TO BE DEPOSITED IN THE GENERAL FUND; TO PROVIDE AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

WHEREAS, the Legislature recognizes that the failure to fully fund the cost of nursing home care for Medicaid beneficiaries creates a burden on individuals who pay privately for nursing home care by shifting cost from Medicaid to non-Medicaid residents in our state's nursing homes; and

WHEREAS, the state has the potential of facing a lawsuit from nursing homes if the Legislature fails to fully fund the cost of nursing home care; and

WHEREAS, the Legislature desires to alleviate the cost-shifting from Medicaid to other patients, while bearing in mind the financial circumstances facing the state; and

WHEREAS, it is the intent of the Legislature to find creative financing solutions and to maximize federal participation in the cost of programs wherever possible; and

WHEREAS, it is the intent of the Legislature to use the utilization fee established in this bill as a means of providing additional Medicaid reimbursements to nursing homes; and

WHEREAS, it is the intent of the Legislature that nursing homes carefully consider the increased Medicaid revenues made available by this legislation when determining reasonable rates to be charged to non-Medicaid patients in their facilities; and

WHEREAS, the Legislature enacts the following legislation as a means of relieving privately paying individuals in nursing homes from the burden of costs shifted from the Medicaid program and of maximizing federal funding of this program.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 15] grants the department of revenue authority to adopt rules necessary to implement and administer [sections 1 through 15].

It is the intent of the legislature that, in adopting rules, the department:

(1) provide procedures and forms for reporting bed days that are subject to payment of the utilization fee imposed in [section 2];

(2) establish requirements for the maintenance of records and other documents required to ensure proper payment of the utilization fee;

(3) develop a process for the estimation and collection of delinquent or unpaid fees;

(4) provide a process for the reconciliation of disputes relating to the payment of utilization fees; and

(5) establish other procedures for the efficient administration of the utilization fee.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For purposes of [sections 1 through 15], unless the context requires otherwise, the following definitions apply:

(1) "Bed day" means each whole 24-hour period that a resident of a nursing facility is present in the facility and receiving skilled nursing care or intermediate nursing care or in which a bed is held for a resident while he is on temporary leave from the facility. The term includes all periods for which the nursing facility is reimbursed by a third-party payor, including but not limited to a private or governmental insurer or public assistance program, but it does not include any period for which the nursing facility may be reimbursed only by the resident, a friend of the resident, or a member of the resident's family. The term also includes the day of a resident's admission to a nursing facility and the day of the resident's death, even though the resident is present less than a whole 24-hour period on these days.

(2) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

(3) "Department" means the department of revenue.

(4) "Nursing facility" or "facility" means a health care facility licensed by the department of health and environmental sciences as a nursing facility to provide skilled nursing care or intermediate nursing care. The term includes nursing facilities, whether they are:

(a) operated as nonprofit or for-profit facilities;

(b) freestanding or part of another health care facility; or

(c) publicly or privately operated.

(5) "Skilled nursing care" and "intermediate nursing care" have the same meaning as those terms are defined in 50-5-101.

(6) "Report" means the report of bed days required in [section 3].

(7) "Utilization fee" or "fee" means the fee required to be paid for each bed day in a nursing facility, as provided in [section 2].

Section 2. **Utilization fee for bed days in nursing facilities.** A nursing facility in the state shall pay to the department of revenue a utilization fee in the amount of $1 for each bed day in the facility during fiscal year 1992 and $2 for each bed day in the facility during fiscal year 1993 and each year thereafter.

Section 3. **Reporting and collection of fee.** (1) A nursing facility shall report to the department of revenue, following the end of each calendar quarter, the number of bed days in the facility during the quarter. The report must be in the form prescribed by the department and is due on or before the last day of the month following the close of each calendar quarter. The report must be accompanied by a payment in an amount equal to the fee required to be paid under [section 2].

(2) The department of health and environmental sciences shall provide the department at the end of each calendar quarter with a list of facilities as defined in [section 1(4)].

Section 4. **Audit — records.** (1) The department of revenue may audit the records and other documents of any nursing facility to ensure that the proper utilization fee has been collected.

(2) The department may require the facility to provide records and other documentation, including books, ledgers, and registers, necessary for the department to verify the proper amount of the utilization fee paid.

(3) A facility shall maintain and make available for inspection by the department sufficient records and other documentation to demonstrate the number of bed days in the facility subject to the utilization fee. The facility shall maintain these records for a period of at least 5 years from the date the report is due.

Section 5. **Periods of limitation.** (1) Except as otherwise provided in this section, a deficiency may not be assessed or collected with respect to the quarter for which a report is filed unless the notice of additional fees proposed to be assessed is mailed within 5 years from the date the report was filed. For the purposes of this section, a report filed before the last day prescribed for filing is considered filed on the last day. If, before the expiration of the period prescribed for assessment of the fee, the facility consents in writing to an assessment after the 5-year period, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be paid or allowed with respect to the year for which a report is filed after 5 years from the last day prescribed for filing the report or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period, the facility files a claim or the department has determined the existence of the overpayment and has approved the refund or credit. If the facility has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit is filed or a credit or refund allowed in the event no claim is filed is automatically extended.

Section 6. **Penalty and interest for delinquent fees — waiver.** (1) If the fee for any facility is not paid on or before the due date of the report as provided in [section 3(1)], a penalty of 10% of the amount of the fee due must be assessed unless it is shown that the failure was due to reasonable cause and not neglect.

(2) If any fee due under [section 2] is not paid when due, interest is added to the tax due at the rate of 12% a year from the due date until paid.

Section 7. **Estimated fee on failure to file.** (1) If a facility fails to file the report as required, the department is authorized to make an estimate of the fees due from the facility from any information in its possession.

(2) For the purpose of ascertaining the correctness of any report or for the purpose of making an estimate of bed day use of any facility where information has been obtained, the department may:

(a) examine or cause to have examined by any designated agent or representative any books, papers, records, or memoranda bearing upon the matters required to be included in the report;

(b) require the attendance of any officer or employee of the facility rendering the report or the attendance of any other person in the premises having relevant knowledge; and

(c) take testimony and require production of any other material for its information.

Section 8. **Deficiency assessment — hearing.** (1) If the department determines that the amount of fees due are greater than the amount disclosed by the report, it shall mail to the facility a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the notice, the facility may file with the department a written protest against the proposed additional fees, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its fees liability. If no protest is filed, the amount of the additional fees proposed to be assessed becomes final upon the expiration of the 30-day period. If such protest is filed, the department shall reconsider the proposed assessment and, if the facility has so requested, shall grant the facility an oral hearing. After consideration of the protest and the evidence presented in the event of an oral hearing, the department's action upon the protest is final when it mails notice of its action to the facility.

(2) When a deficiency is determined and the fees become final, the department shall mail notice and demand to the facility for payment, and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Interest on any deficiency assessment bears interest from the date specified in [section 5] for payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notices.

Section 9. **Closing agreements.** (1) The director of the department or any person authorized in writing by him is authorized to enter into an agreement with any facility relating to the liability of the facility in respect to the fees imposed by [sections 1 through 15] for any period.

(2) An agreement under this section is final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded.

Section 10. **Credit for overpayment — interest on overpayment.** (1) If the department determines that the amount of fees, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any fees, penalty, or interest then due from the facility and the balance must be refunded to the facility or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsections (2)(a) and (2)(b), interest is allowed on overpayments at the same rate as is charged on delinquent fees due from the due date of the report or from the date of overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. Interest does not accrue during any period during which the processing of a claim for refund is delayed more than 30 days by reason of failure of the facility to furnish information requested by the department for the purpose of verifying the amount of the overpayment. No interest is allowed:

(a) if the overpayment is refunded within 6 months from the date the report is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than $1.

(3) A payment not made incident to a discharge of actual utilization fee liability or a payment reasonably assumed to be imposed by [sections 1 through 15] is not considered an overpayment with respect to which interest is allowable.

Section 11. **Application for refund — appeal from denial.** If the department disallows a claim for refund, it shall notify the facility. At the expiration of 30 days from the mailing of the notice, the department's action becomes final unless within the 30-day period the facility appeals in writing from the action of the department to the state tax appeal board. If an appeal is made, the board shall grant the taxpayer an oral hearing. After consideration of the appeal and evidence presented, the board shall mail notice to the taxpayer of its determination. The board's determination is final when it mails notice of its action to the taxpayer.

Section 12. **Warrant for distraint.** If the utilization fee is not paid when due, the department of revenue may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

Section 13. **Disposition of fee.** All proceeds from the collection of utilization fees, including penalties and interest, must be deposited in the state general fund.

Section 14. **Relation to other taxes and fees.** The utilization fee imposed under [section 2] is in addition to any other taxes and fees required by law to be paid by nursing facilities.

Section 15. **Rulemaking authority.** The department of revenue may adopt rules necessary to implement and administer [sections 1 through 15].

Section 16. **Appropriation.** The following money is appropriated to the department of social and rehabilitation services to fund increases in medicaid rates to nursing facilities:

Fiscal Year 1992	
State General Fund	$1,239,048
Federal Funds	3,140,761
Total Funds	$4,379,809
Fiscal Year 1993	
State General Fund	$1,253,979
Federal Funds	3,208,580
Total Funds	$4,462,559

Section 17. **Codification instruction.** [Sections 1 through 15] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 15].

Section 18. **Contingent voidness.** (1) If federal law or policy is amended to allow a nursing facility to bill a person receiving nursing care for which the facility is being reimbursed by medicare or medicaid for the utilization fee provided in [section 2], [this act] is void as of the effective date of the change in federal law or policy.

(2) If federal law or policy is amended so that the utilization fees collected pursuant to [this act] may not be considered as the state's share in claiming federal financial participation under the medicaid program, [this act] is void as of the effective date of the change in federal law or policy.

(3) If the federal government refuses to participate in or denies approval of any plan for medicaid payments to nursing facilities on grounds that it considers the payments to be reimbursement to facilities for payment of the utilization fees, [this act] is void as of the date of receipt by the department of social and rehabilitation services of notice of an official determination of such refusal or denial.

(4) If [this act] becomes void under the provisions of this section, all fees received or collected by the department prior to the date upon which the act becomes void must be deposited in accordance with [section 13] and a person or party may not receive a refund of any fees received or collected by the department prior to the date upon which [this act] becomes void.

Section 19. **Coordination instruction.** If Senate Bill No. 445 is passed and approved and if it includes a section adopting a uniform tax appeal procedure, then the language contained in [sections 7(1) and 11 of this act] is void and the provisions of Senate Bill No. 445 govern the appeal procedures.

Section 20. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. **Nonapplicability.** [Sections 1 through 15] and the fee established under [section 2] do not apply to facilities licensed to provide intermediate developmental disability care and facilities reimbursed as institutions for mental disease under the medicaid program.

Section 22. **Effective dates — applicability.** (1) [Sections 15, 17 through 21, and this section] are effective on passage and approval.

(2) [Sections 1 through 14 and 16] are effective July 1, 1991, and apply to all bed days on or after July 1, 1991.

Approved May 15, 1991.

CHAPTER NO. 747

[HB 125]

AN ACT APPROPRIATING MONEY TO THE COMMISSIONER OF HIGHER EDUCATION FOR AMERICAN INDIAN/MINORITY ACHIEVEMENT PURPOSES; AND PROVIDING A TERMINATION DATE.

WHEREAS, American Indians account for approximately 6% of Montana's population; and

WHEREAS, less than 3% of the enrollment in the Montana University System is American Indian; and

WHEREAS, by the year 2000, a high school diploma will provide an opening to only 49% of available jobs; and

WHEREAS, between the present and the year 2000, one-third of the new jobs created will be filled by college graduates; and

WHEREAS, Montana's economic future depends upon a well-educated work force.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated to the commissioner of higher education from the general fund $175,648 for the biennium ending June 30, 1993, to support the staff and operation of the director of American Indian/minority achievement.

Section 2. **Purpose of appropriation.** (1) The director of American Indian/minority achievement shall use the money appropriated in [section 1] to improve the recruitment and retention of American Indians in higher education by:

(a) continuing the data collection and analysis begun by the Montana tracks project;

(b) serving as a consultant to the Montana university system campuses and vocational-technical centers on the development of plans for recruitment and retention; and

(c) serving as a liaison between the university system, tribal governments, and tribal colleges.

(2) The director shall provide a report to the 53rd legislature on the accomplishments of and data gathered by the program during the 1993 biennium.

Section 3. **Termination date.** [This act] terminates June 30, 1993.

Approved May 16, 1991.

CHAPTER NO. 748

[HB 131]

AN ACT CREATING THE HUMAN SKELETAL REMAINS AND BURIAL SITE PROTECTION ACT; CREATING A BURIAL PRESERVATION BOARD; ESTABLISHING REPORTING AND NOTIFICATION PROCEDURES REGARDING DISTURBANCE OF A BURIAL SITE; PROVIDING FOR FIELD REVIEW AND SCIENTIFIC ANALYSIS; PROVIDING DISINTERMENT AND REINTERMENT PROCEDURES; PROVIDING FOR FEES AND CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR DISPOSITION OF FEES, GRANTS, AND DONATIONS; EXEMPTING PARTS OF MEETINGS FROM THE OPEN MEETING LAWS UNDER CERTAIN CONDITIONS; PROVIDING FOR CONFIDENTIALITY OF RECORDS; GRANTING THE BOARD RULEMAKING AUTHORITY; PROVIDING FOR A 2-YEAR STATUTORY APPROPRIATION; APPROPRIATING MONEY FROM THE GENERAL FUND; AMENDING SECTIONS 2-6-101, 2-6-102, AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] grants to the burial preservation board rulemaking authority to implement the provisions of this bill. At a minimum, it is the intent of the legislature that the board adopt rules:

(1) governing the conduct of board business;

(2) establishing and maintaining a registry of burial sites located in the state;

(3) establishing criteria for conducting field reviews upon notification of a discovery of human skeletal remains, burial sites, or burial materials; and

(4) establishing guidelines and forms for the issuance of a permit for scientific analysis of human remains or burial materials.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 10 and 13] may be cited as the "Human Skeletal Remains and Burial Site Protection Act".

Section 2. **Legislative findings and intent.** (1) The legislature of the state of Montana finds that:

(a) the state and its citizens have an obligation to protect from disturbance or destruction all human skeletal remains, burial sites, and burial material, including those in marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds located on state or private lands that are not protected as cemeteries or graveyards under existing state law;

(b) marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds not protected as cemeteries or graveyards under existing state law are increasingly subject to pilferage, disturbance, and destruction for commercial purposes, including land development, agriculture, mining, and the sale of artifacts;

(c) private collection of artifacts may result in the destruction of burial sites. Existing law reflects the value society places on preserving human burial sites, but the law does not clearly provide equal and adequate protection or incentives to ensure preservation and protection of all burial sites in the state regardless of ethnic origin, burial context, or age.

(d) while some human skeletal remains and burial sites may be of interest to science, the needs of the scientific community to gather information and material from burial sites must be balanced with the legal, moral, and religious rights and obligations of tribal groups, next of kin, or descendants;

(e) preservation in place is the preferred policy for all human skeletal remains, burial sites, and burial material; and

(f) notwithstanding any other provision of law, [sections 1 through 10 and 13] are the exclusive laws governing the treatment of human skeletal remains, burial sites, and burial materials.

(2) It is the intent of the legislature to:

(a) ensure that all burials be accorded equal treatment and respect for human dignity without reference to ethnic origin, cultural background, or religious affiliation;

(b) provide adequate protection for all interests related to any burial site encountered during archaeological excavation or agricultural, mining, construction, or other ground-disturbing activity on state and private lands without causing avoidable or undue delay or hardship for any person who has an interest in using the land on which the burial site is located;

(c) recognize the interests, concerns, and obligations of those having a kinship, tribal, cultural, or religious affiliation with the burial site and balance those interests against the interests of scientists, landowners, and developers;

(d) provide to the board an exemption from the open meeting and public records laws when public disclosure of the location of a burial site could result in pilferage, disturbance, or destruction of the site; and

(e) recognize the need for forensic examination of human skeletal remains, burial sites, and burial material if the county coroner, county attorney, or state medical examiner determines an examination is necessary under state law.

Section 3. **Definitions.** As used in [sections 1 through 10 and 13], the following definitions apply:

(1) "Board" means the burial preservation board established in [section 4].

(2) "Burial material" means any item found at the burial site or with the human skeletal remains and directly associated with the burial or burial site.

(3) "Burial site" means, except for cemeteries and graveyards protected under existing state law, any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally deposited as a part of the death rites or ceremonies of a culture.

(4) "Human skeletal remains" means any part of the human body in any state of decomposition taken from a burial site.

(5) "Marked, unmarked, unrecorded, registered, or unregistered grave or burial ground" means any place, except a cemetery or graveyard protected under existing state law, where human skeletal remains are or have been interred.

(6) "Scientifically justifiable" means that the human skeletal remains or burial material has a potential to address specific research questions in the science of anthropology, history, or biology.

(7) "Tribal group" means an Indian tribe recognized by the United States secretary of the interior or recognized as a tribe by other Indian nations.

Section 4. **Board — composition — rights — responsibilities.** (1) There is a burial preservation board. The board is composed of:

(a) one representative of each of the seven reservations, appointed by the governor from a list of up to three nominees provided by each of the respective tribal governments;

(b) one person appointed by the governor from a list of up to three nominees submitted by the Little Shell band of Chippewa Indians;

(c) one person appointed by the governor from a list of up to three nominees submitted by the Montana state historic preservation officer;

(d) one representative of the Montana archaeological association appointed by the governor from a list of up to three nominees submitted by the Montana archaeological association;

(e) one physical anthropologist appointed by the governor;

(f) one representative of the Montana coroners' association appointed by the governor from a list of up to three nominees submitted by the Montana coroners' association; and

(g) one representative of the public, appointed by the governor, who is not associated with tribal governments; state government; the fields of historic preservation, archaeology, or anthropology; or the Montana coroners' association.

(2) Members of the board shall serve staggered 2-year terms. A vacancy on the board must be filled in the same manner as the original appointment and only for the unexpired portion of the term.

(3) The board shall:

(a) provide for the establishment and maintenance of a registry of burial sites located in the state;

(b) designate the appropriate member or members of the board or a representative or representatives of the board to conduct a field review upon notification of the discovery of human skeletal remains, a burial site, or burial materials;

(c) assist interested landowners in the development of agreements with the board for the treatment and disposition, with appropriate dignity, of human skeletal remains and burial material;

(d) mediate, upon application of either party, disputes that may arise between a landowner and known descendants that relate to the treatment and disposition of human skeletal remains and burial material;

(e) assume responsibility for final treatment and disposition of human skeletal remains and burial material if the field review recommendation is not accepted by the board's representatives and the landowner;

(f) establish a nonrefundable application fee, not to exceed $50, for a permit for scientific analysis of human skeletal remains or burial material from burial sites as provided by [section 6];

(g) issue permits authorizing scientific analysis;

(h) accept grants or real or in-kind donations to carry out the purposes of [sections 1 through 10 and 13];

(i) adopt rules necessary to administer and enforce the provisions of [sections 1 through 10 and 13]; and

(j) perform any other duties necessary to implement the provisions of [sections 1 through 10 and 13].

(4) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(5) Members of the board shall serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503.

Section 5. **Discovery — reporting requirements — field review.** (1) A person who by archaeological excavation or by agricultural, mining, construction, or other ground-disturbing activity discovers human skeletal remains, a burial site, or burial material shall immediately notify the county coroner. Failure to notify the county coroner subjects a person to the penalty provided in [section 8].

(2) Upon discovery of human skeletal remains, a burial site, or burial material, excavation or further disturbance must cease until the coroner has determined whether the remains are subject to the provisions of Title 46, chapter 4, or any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death or whether a forensic examination of the human skeletal remains, burial site, or burial material is necessary. The coroner shall make his determination within 2 working days from the time the person responsible for the excavation notifies him of the discovery or recognition of the remains. If the coroner cannot make the determination within 2 working days, he shall notify a member of the board of the reason for and the approximate length of the delay. The coroner shall take all reasonable steps to make his determination without removing or causing further disturbance of the remains.

(3) If a forensic examination, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death is necessary and yields evidence of criminal activity, the evidence may be seized by the coroner or law enforcement agency with jurisdiction for use in a criminal proceeding as provided by law.

(4) If the coroner determines that the remains are not subject to the provisions of Title 46, chapter 4, or any other provisions of law concerning the investigation of the circumstances, manner, and cause of death and that a forensic examination is not necessary, he shall telephone the state historic preservation officer within 24 hours. Within 24 hours of notification, the state historic preservation officer shall contact either the landowner and the board or the landowner and the board member representing the nearest reservation and notify them of the discovery of human skeletal remains, a burial site, or burial material.

(5) If the state historic preservation officer cannot be contacted, the coroner shall notify a member of the board or the law enforcement agency of the nearest reservation within 24 hours. The board or the agency shall immediately notify the landowner and the board member representing that reservation.

(6) Within 36 hours after the board receives notification of a discovery of human skeletal remains, a burial site, or burial material, the board shall designate representatives to conduct, with the permission of the landowner, an initial field review. If the field review cannot be completed within the next 36 hours, the board's representatives shall negotiate with the landowner or his representative for a reasonable time extension to complete the review. The field review must include:

(a) a determination of whether the site can be preserved;

(b) negotiation with the landowner concerning onsite reburial or disinterment and reburial; and

(c) a recommendation, including a timeframe, concerning final treatment or disposition of the human skeletal remains or burial material.

(7) If the board's representatives fail to make a recommendation or if the landowner and the board cannot agree and mediation fails to provide, within 40 days after notification to the board, a resolution acceptable to the landowner and the board, the human skeletal remains and burial materials must be removed and control is vested in the board. The board shall give control of the remains or materials in the following priority to:

(a) the descendants, if identifiable;

(b) the tribe or other cultural group that has the closest cultural affiliation with the human skeletal remains or burial materials;

(c) the tribe or other cultural group recognized as having aboriginally or historically occupied the area where the remains or materials were discovered if, upon notification by the board, the tribe or cultural group states a claim for the remains or materials; or

(d) if unclaimed by any tribe or cultural group, the board, which shall determine the appropriate disposition and oversee the reinterment of the remains and materials.

(8) For purposes of this section, "cultural group" means a present-day group or organization that has a relationship of shared group identity which can be reasonably traced historically or prehistorically to an identifiable earlier group or organization.

Section 6. **Scientific analysis — permit required.** (1) Although onsite reburial is preferred, the board may, upon petition by a person seeking permission to perform scientific analysis, grant a permit for the scientific removal and analysis of human skeletal remains and burial material upon proof and determination by the board that the analysis is scientifically justifiable. A petition for a permit must include:

(a) payment of the nonrefundable application fee provided for in [section 4]; and

(b) a brief narrative describing the methodology to be used, the timeframe needed to complete the scientific study, and any other information specifically requested by the board relating to the proposed study.

(2) The methodology proposed must be reviewed by the state historic preservation officer or his designated representative and the physical anthropologist on the board, and a recommendation must be made to the full board. Once approved by the board, any change in methodology or in the timeframe must be approved by the board before the original timeframe expires. The timeframe for scientific study may not exceed 12 months from the date of issuance of the permit.

(3) A permit for scientific analysis issued by the board is subject to terms, conditions, and procedures prescribed by the board and must include

the condition that a permittee shall pay all costs of excavation, study, and disposition.

(4) The board shall either issue or deny a permit within 30 working days from the date of the permit petition. If the board denies a permit upon a finding that scientific analysis is not justifiable, the board shall provide the applicant with a written statement outlining the grounds for its finding. The applicant may appeal the decision of the board under the provisions of Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(5) The board may suspend or revoke a permit pursuant to the Montana Administrative Procedure Act upon a finding that the permittee has violated any provision of [sections 1 through 10 and 13] or any term, condition, or procedure of a permit issued by the board.

(6) The provisions of this section do not apply to a forensic examination by the county coroner, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death.

Section 7. **Nondisclosure of records.** (1) The state historic preservation officer, in consultation with the board, shall maintain burial site records that are separate and distinct from those in the cultural resource registry and that are necessary to administer [sections 1 through 10 and 13].

(2) Burial site records are confidential and available only to criminal justice agencies or to federal, state, and tribal personnel or their appointed representatives legally charged with administering laws protecting cultural resources.

(3) Statistical information compiled from burial site records must be made available to the general public. Any information concerning burial site records that is released to a criminal justice agency is confidential criminal justice information, as defined in 44-5-103, and is subject to dissemination pursuant to 44-5-303.

Section 8. **Prohibited acts — penalties.** (1) After July 1, 1991, unless authorized under [sections 1 through 10 and 13] or by the descendants, tribe, cultural group, or other person, group, or entity to which the board gives control of the human skeletal remains or burial materials under [section 5], a person may not:

(a) purposely or knowingly pilfer, disturb, destroy, or permit pilferage, disturbance, or destruction of a marked, unmarked, unrecorded, registered, or unregistered grave or burial ground or of burial material;

(b) for commercial use, knowingly possess, buy, sell, transport, barter, or display human skeletal remains or burial material acquired in violation of [sections 1 through 10 and 13]; or

(c) purposely or knowingly disclose information knowing that it is highly probable that the disclosure will lead to pilferage, disturbance, or destruction of a burial site.

(2) A person convicted under the provisions of subsection (1)(a) may be fined an amount not to exceed $1,000, be imprisoned in the county jail for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(a) may be fined an amount not to exceed $20,000, be imprisoned for not more than 5 years, or both.

(3) A person convicted under the provisions of subsection (1)(b) may be fined an amount not to exceed $50,000, be imprisoned for not more than 20 years, or both.

(4) A person convicted under the provisions of subsection (1)(c) may be fined an amount not to exceed $500, be imprisoned for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(c) may be fined an amount not to exceed $10,000, be imprisoned for not more than 5 years, or both.

(5) A person who knowingly fails to give notice as required by [section 5(1)] may be fined an amount not less than $100 or more than $500.

(6) A person who violates a provision of this section or any term or condition of a permit issued under [section 6] is subject to a civil penalty not to exceed $2,000 for the first violation and not to exceed $10,000 for a subsequent violation.

Section 9. **Civil penalty and damages actions.** (1) [Sections 1 through 10 and 13] do not preclude civil actions for damages.

(2) The board may bring an action under [section 8] for a civil penalty.

Section 10. **Closure of board meetings.** The board may close part of a meeting of the board to the public if the board finds that information that may be acquired at that part of the meeting may allow a person to identify a burial site, human skeletal remains, or burial material and pilfer, disturb, or destroy the human skeletal remains, burial site, or burial material.

Section 11. Section 2-6-101, MCA, is amended to read:

"2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

(b) public records, kept in this state, of private writings, except as provided in 22-1-1103 *and [section 7]*.

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings.

(4) All other writings are private."

Section 12. Section 2-6-102, MCA, is amended to read:

"**2-6-102. Citizens entitled to inspect and copy public writings.** (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103 *or [section 7]* and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing."

Section 13. **Disposition of fees, grants, and donations.** (1) There is an account in the state special revenue fund. The board shall deposit any fee, grant, or donation received under [section 4] into the account to be used to pay expenses for board meetings or expenses incurred in conducting field reviews.

(2) The money in the account is statutorily appropriated to the board as provided in 17-7-502.

Section 14. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301;

13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; *[section 13];* and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 15. **Appropriation.** There is appropriated $10,000 from the general fund to the board for the 2 fiscal years beginning July 1, 1991, to be used to pay expenses for board meetings or expenses incurred in conducting field reviews.

Section 16. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. **Effective dates.** (1) [Sections 4, 13, 14, 16, and this section] are effective on passage and approval.

(2) [Sections 1 through 3, 5 through 12, 15, and 18] are effective July 1, 1991.

Section 18. **Termination.** [Sections 13(2) and 14] terminate on June 30, 1993.

Approved May 15, 1991.

CHAPTER NO. 749

[HB 312]

AN ACT TO PROVIDE STATE REIMBURSEMENT PAYMENTS FOR DISTRICT COURT EXPENSES TO COUNTIES THAT HAVE EX-

PENDED THE REVENUE FROM THE MAXIMUM PERMISSIBLE MILL LEVY FOR DISTRICT COURT FUNDING; TO AUTHORIZE THE COUNTY COMMISSIONERS TO USE A PORTION OF THE LOCAL OPTION VEHICLE TAX FOR COUNTY PURPOSES; TO PROVIDE FOR THE DISTRIBUTION OF A PORTION OF THE TAX TO THE COUNTY AND MUNICIPALITIES; AMENDING SECTIONS 7-6-2427 AND 61-3-537, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2427, MCA, is amended to read:

"**7-6-2427. Special provisions for certain charges related to criminal prosecutions.** (1) Notwithstanding 7-6-2426, all costs of a criminal prosecution, including ~~attorneys'~~ *attorney* fees, of an offense committed in the state prison are not charges against the county in which the state prison is located. ~~Such~~ *The* costs ~~shall~~ *must* be paid by the department of institutions.

(2) If a criminal action is removed before trial, the costs accruing upon ~~such~~ removal and trial must be a charge against the county in which the indictment was found or information filed, subject to ~~partial or total~~ reimbursement as provided in 3-5-901."

Section 2. Section 61-3-537, MCA, is amended to read:

"**61-3-537. Local option vehicle tax.** (1) A county may impose a local vehicle tax on vehicles subject to a property tax under 61-3-504(2) at a rate of up to 0.5% of the value determined under 61-3-503, in addition to the tax imposed under 61-3-504(2).

(2) A local vehicle tax is payable at the same time and in the same manner as the tax imposed under 61-3-504(2). ~~and~~ *The local vehicle tax* is distributed ~~in the same manner, based on the registration address of the owner of the motor vehicle~~ *as follows:*

(a) 50% to the county; and

(b) the remaining 50% to the county and the incorporated cities and towns within the county, apportioned on the basis of population. The distribution to a city or town is determined by multiplying the amount of money available by the ratio of the population of the city or town to the total county population. The distribution to the county is determined by multiplying the amount of money available by the ratio of the population of unincorporated areas within the county to the total county population.

(3) The governing body of a county may impose a local vehicle tax for a fiscal year by adopting a resolution before July 1 of the fiscal year, after conducting a public hearing on the proposed resolution. *The resolution may provide for the distribution of the local vehicle tax.*"

Section 3. **Effective date — applicability.** [This act] is effective July 1, 1991, and applies to district court expenditures made after June 30, 1991.

Section 4. **Termination.** [This act] terminates June 30, 1993.

Approved May 15, 1991.

CHAPTER NO. 750

[HB 365]

AN ACT TO APPROPRIATE MONEY TO MONTANA STATE UNIVERSITY TO PROVIDE SUPPORT FOR APPLIED GENETIC ENGINEERING TECHNOLOGY RESEARCH AND DEVELOPMENT TO ENHANCE MONTANA AGRICULTURAL PRODUCTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** (1) There is appropriated to Montana state university from the general fund $60,000 for the biennium ending June 30, 1993, for providing additional support for applied genetic engineering technology research and development to enhance Montana agricultural products.

(2) The appropriation made by this section may be used only for research and development. Administrative or other indirect costs of the program may not be funded by this appropriation.

Approved May 15, 1991.

CHAPTER NO. 751

[HB 494]

AN ACT INCREASING THE DRIVER'S LICENSE REINSTATEMENT FEE; PROVIDING THAT A PORTION OF THE FEES BE ALLOCATED TO INCORPORATED CITIES OR TOWNS FOR PROGRAMS AND FACILITIES FOR MINORS, ADULT CHEMICAL DEPENDENCY TREATMENT PROGRAMS, LAW ENFORCEMENT TRAINING PROGRAMS, AND LAW ENFORCEMENT EQUIPMENT; ELIMINATING THE REQUIREMENT THAT THE ANNUAL REPORT CONTAIN INFORMATION REQUESTED BY THE DEPARTMENT; AND AMENDING SECTIONS 61-2-106, 61-2-107, AND 61-2-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-2-107, MCA, is amended to read:

"**61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.** (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of ~~$50~~ *$100* in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) *(a)* The department shall deposit *one-half of* the fees collected under subsection (1) in the general fund *to be used for funding county drinking and driving prevention programs as provided in 61-2-108.*

(b) The remaining fees collected under subsection (1) that are not allocated under subsection (2)(a) must be deposited in an account in the state special revenue fund to be distributed to county treasurers. The department shall distribute to each county treasurer money in the account collected as license reinstatement fees in that county. The county treasurer shall distribute the money to each incorporated city or town in the county in the ratio that the population of the incorporated city or town bears to the total population of incorporated cities or towns in the county, based on figures provided by the most recent official census. An incorporated city or town shall distribute the money to state and local government entities, and private entities working with state and local government entities, that operate programs within the county that address the problems and concerns of minors, including but not limited to substance abuse and delinquency and chemical-free youth facilities and programs. Up to one-half of the money distributed under this subsection (b) may be used for adult chemical dependency programs and law enforcement training programs and for equipment for local government law enforcement agencies within the respective jurisdiction."

Section 2. Section 61-2-106, MCA, is amended to read:

"**61-2-106. County drinking and driving prevention program.** (1) The governing body of a county may appoint a task force to study the problem of alcohol-related traffic accidents and recommend a program designed to:

(a) prevent driving while under the influence of alcohol;

(b) reduce alcohol-related traffic accidents; and

(c) educate the public on the dangers of driving after consuming alcoholic beverages or other chemical substances that impair judgment or motor functions.

(2) A task force appointed under subsection (1) shall conduct its study and submit its recommendations within 6 months from the date it was appointed.

(3) The county governing body may by resolution adopt the recommendations of the task force appointed under subsection (1). The proposed program must be approved by the governor as provided in 61-2-105.

(4) The chairman of the task force shall submit to the county governing body:

(a) a budget and a financial report for each fiscal year; and

(b) an annual report containing but not limited to:

(i) an evaluation of the effectiveness of the program;

(ii) the number of arrests and convictions in the county for driving under the influence of alcohol and the sentences imposed for these convictions;

(iii) the number of alcohol-related traffic accidents in the county; and

(iv) any other information requested by the county governing body ~~or the department~~ or considered appropriate by the task force.

(5) A copy of the annual report ~~must~~ *may* be submitted to the department."

Section 3. Section 61-2-108, MCA, is amended to read:

"61-2-108. **Funding allocation for programs to prevent or reduce drinking and driving.** If the county in which the violation or violations occurred has initiated and maintained a drinking and driving prevention program as provided in 61-2-106, the department shall transmit the *county portion of the* proceeds of the license reinstatement fees collected in that county to the county treasurer, *as provided in 61-2-107(2)(a),* at the end of each quarter."

Approved May 15, 1991.

CHAPTER NO. 752

[HB 539]

AN ACT TO GENERALLY REVISE THE STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY TAKE REMEDIAL ACTION AT A SITE THAT IS SUBJECT TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980; PROVIDING FOR FINANCIAL ASSURANCE TO ENSURE COMPLIANCE WITH AGREEMENTS AND TO PROVIDE FOR LONG-TERM MAINTENANCE OF REMEDIAL ACTION SITES; REQUIRING A RESPONSE TO WRITTEN COMMENTS OR COMMENTS RECEIVED AT A PUBLIC MEETING ON A PROPOSED ORDER OR DECREE; AMENDING SECTIONS 75-10-704, 75-10-711, 75-10-713, 75-10-719, AND 75-10-721, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill to provide guidance to the department of health and environmental sciences concerning rulemaking to establish the specific terms and conditions of financial assurance that a liable person is required to provide pursuant to 75-10-719 and 75-10-721. The department shall consult and to the greatest extent practicable rely upon financial assurance concepts and requirements contained in federal regulations that implement the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-704, MCA, is amended to read:

"**75-10-704. Environmental quality protection fund.** (1) There is created in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) establish and implement a system for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify responsible parties, to obtain the participation and financial contribution of responsible parties for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, *forfeited financial assurance,* natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature; and

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund

through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) The department shall submit to the legislature at the beginning of each regular session a complete financial report on the fund, including a description of all expenditures made since the preceding report."

Section 2. Section 75-10-711, MCA, is amended to read:

"**75-10-711. Remedial action — orders — penalties — judicial proceedings.** (1) The department may take remedial action whenever:

(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, welfare, or safety or the environment; and

(b) the appropriate remedial action will not be done properly and expeditiously by any person liable under 75-10-715(1).

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information-gathering as authorized by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to the public health, safety, or welfare or the environment.

(3) Any person liable under 75-10-715(1) must take immediate action to contain, remove, and abate the release. Except as provided in 75-10-712, the department is authorized to draw upon the fund to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the person or persons liable for the release or threatened release and:

(a) is unable to determine the identity of the liable person or persons in a manner consistent with the need to take timely remedial action; or

(b) the person or persons determined by the department to be liable under 75-10-715(1) have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; and

(c) the written notice to each person informs him that if he is subsequently found liable pursuant to 75-10-715(1), he may be required to reimburse the fund for the state's remedial action costs and may be subject to penalties pursuant to 75-10-715(3).

(4) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release that may pose an imminent and substantial threat to public health, safety, or welfare or the environment has occurred or is about to occur, it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect public health, safety, or welfare or the environment.

(5) A person who violates or fails or refuses to comply with an order issued under 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than $10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any penalty assessed, the court may take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1), his ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require. Civil penalties collected under this subsection must be deposited into the environmental quality protection fund established in 75-10-704.

(6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the following actions:

(a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

(b) an action to enforce an order issued under 75-10-707 or this section;

(c) an action to recover a civil penalty for violation of or failure to comply with an order issued under 75-10-707 or this section; or

(d) an action by a person to whom an order has been issued to determine the validity of the order, only if the person has been in compliance and continues in compliance with the order pending decision of the court.

(7) In considering objections raised in a judicial action regarding orders issued under this part, the court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary and capricious or otherwise not in accordance with law.

(8) Instead of issuing a notification or an order under this section, the department may bring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred or in the first judicial district as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or the environment resulting from the release or threatened release.

(9) The department may take remedial action pursuant to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, if

the department determines that remedial action is necessary to carry out the purposes of this part."

Section 3. Section 75-10-713, MCA, is amended to read:

"**75-10-713. Public notice of *remedial action,* administrative order, or consent decree — *comments — meeting — response.*** (1) *(a)* Except as provided in 75-10-712, before final approval by the director of the department of any administrative order on consent, issued pursuant to 75-10-711, or before judicial approval of a consent decree issued pursuant to this part, the department shall:

~~(a)~~*(i)* publish a notice and brief description of the proposed order or decree in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public;

~~(b)~~*(ii)* provide at least 30 days (or whatever additional time the department may in its discretion grant upon written request) for submission of written comments regarding the proposed order or decree and~~,~~ upon written request by 10 or more persons or by a group having 10 or more members (but not including a liable person), conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding the proposed order or decree; and

~~(c)~~*(iii)* consider *and respond to relevant* written or verbal comments properly submitted during the comment period or at the public meeting.

(b) The administrative record supporting the department's approved order or decree must contain the department's response summary prepared pursuant to subsection (1)(a)(iii).

(2) ~~Upon~~ *Except as provided in 75-10-712, upon* making a final decision regarding the proposed *remedial action,* order, or decree, the department shall publish notice, as provided under subsection (1), and make copies of the *final decision on the* approved order or decree available to the public.

(3) Except as provided in 75-10-712, the department shall:

(a) notify the county commissioners and governing bodies of cities, towns, and consolidated local governments impacted by a proposed remedial action; and

(b) at the request of the county commissioners or the governing body of a city or town or of a consolidated local government impacted by a remedial action, conduct a public meeting."

Section 4. Section 75-10-719, MCA, is amended to read:

"**75-10-719. Settlement — bar to contribution liability.** (1) A person who has resolved his liability to the state arising under 75-10-715 or section 107(a)(1) through (a)(4) of CERCLA 42 U.S.C. 9607(a)(1) through (a)(4), in an administrative or judicially approved settlement is not liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially liable persons unless its terms provide a discharge. The terms of the settlement may reduce the potential liability of the other potentially liable persons by the amount of the settlement.

(2) If the state has obtained less than complete relief from a person who has resolved his liability to the state in an administrative or judicially approved settlement, the state may bring an action against any other person who has not resolved his liability.

(3) A person who has resolved, in whole or in part, his liability to the state for the release or for remedial action costs in an administrative or judicially approved settlement may seek contribution from a person who is not party to a settlement referred to in subsection (1).

(4) Whenever practicable and in the public interest, as determined by the director of the department, the department may, as promptly as possible, reach a final settlement with a person liable under 75-10-715 in an administrative or civil action under 75-10-711 if ~~such~~ *the* settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the department, the conditions in either of the following subsection (4)(a) or (4)(b) are met:

(a) Both of the following are minimal in comparison to other hazardous or deleterious substances at the facility:

(i) the amount of the hazardous or deleterious substances contributed by that person to the facility;

(ii) the toxic or other hazardous effects of the substances contributed by that person to the facility.

(b) (i) The person:

(A) is the owner of the real property on or in which the facility is located;

(B) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance at the facility; and

(C) did not contribute to the release or threat of release of a hazardous or deleterious substance at the facility through any action or omission.

(ii) This subsection (4)(b) does not apply if the person purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance.

(5) As part of an administrative or judicially approved settlement agreement, the department may require the liable person to provide financial assurance, in an amount determined by the department, to ensure the long-term operation and maintenance of the remedial action site. The liable person shall provide the financial assurance by any one method or combination of methods satisfactory to the department, including but not limited to insurance, guarantee, performance or other surety bond, letter of credit,

qualification as a self-insurer, or other demonstration of financial capability."

Section 5. Section 75-10-721, MCA, is amended to read:

"75-10-721. Degree of cleanup required — permit exemption — ***financial assurance.*** (1) A remedial action performed under this part must attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of that substance that assures present and future protection of public health, safety, and welfare and of the environment.

(2) In approving or carrying out remedial actions performed under this part, the department:

(a) shall require cleanup consistent with applicable state or federal environmental requirements, criteria, or limitations;

(b) shall consider and may require cleanup consistent with substantive state or federal environmental requirements, criteria, or limitations that are well-suited to the site conditions; and

(c) shall select remedial actions that, at a minimum, protect public health, safety, and welfare and the environment and that:

(i) use permanent solutions;

(ii) use alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and

(iii) are cost-effective, taking into account the total short- and long-term costs of the actions, including the cost of operation and maintenance activities for the entire period during which the activities will be required.

(3) The department may exempt any portion of a remedial action that is conducted entirely on site from a state or local permit that would, in the absence of the remedial action, be required if the remedial action is carried out in accordance with the standards established under subsection (1) and this part.

(4) The department may require financial assurance from a liable person in an amount that the department determines will ensure the long-term operation and maintenance of the remedial action site. The liable person shall provide the financial assurance by any one method or combination of methods satisfactory to the department, including but not limited to insurance, guarantee, performance or other surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability."

Section 6. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to occurrences after June 30, 1985.

Approved May 15, 1991.

CHAPTER NO. 753

[HB 569]

AN ACT APPROPRIATING GENERAL FUND AND FEDERAL MONEY TO THE DEPARTMENT OF FAMILY SERVICES FOR THE PURCHASE AND DEVELOPMENT OF A MANAGEMENT INFORMATION SYSTEM.

STATEMENT OF INTENT

It is the intent of the legislature that the department of family services, in conjunction with the department of administration, information services division, plan, design, develop, and implement a management information system for the department of family services. This includes the importation of compatible automated systems successfully installed and operating in other state or public jurisdictions, when possible, if such importation is determined by the information services division and department of family services to be feasible and cost-effective.

Additionally, it is the intent of the legislature that the appropriation in this bill be utilized only for the purpose of planning, designing, developing, and implementing the management information system, including software and hardware acquisition. It is understood that the department of family services will access and maximize use of any current and forthcoming federal funds available for this project. The department of family services will provide ongoing progress reports to the legislative finance committee regarding the management information system.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** Upon final determination of all general fund money in the department of social and rehabilitation services' unreconciled special revenue fund balance and the deposit of these funds in the general fund, the lesser of $547,339 or the amount available from the balance after funding $438,795 in fiscal 1992 and $485,182 in fiscal 1993 appropriated to the department of social and rehabilitation services from the TEAMS project is appropriated from the general fund to the department of family services for the purchase and development of a management information system and may not be used for other purposes. In addition, there is appropriated the following for this purpose:

Fiscal year 1992	$138,312 from federal special funds
Fiscal year 1993	138,312 from federal special funds

Approved May 16, 1991.

CHAPTER NO. 754

[HB 589]

AN ACT TO CHANGE THE SCHOOL DISTRICT ACCUMULATED SICK LEAVE RESERVE FUND TO THE COMPENSATED ABSENCE LIABILITY FUND; TO INCLUDE IN THE FUND THE ACCUMULATED AMOUNTS OF SICK LEAVE AND VACATION LEAVE FOR NONTEACHING AND ADMINISTRATIVE SCHOOL DISTRICT EMPLOYEES; AMENDING SECTION 20-9-512, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-512, MCA, is amended to read:

"**20-9-512.** ~~**Reserve fund for payment of accumulated sick leave**~~ ***Compensated absence liability fund.*** (1) The trustees of ~~any~~ *a* school district may establish a ~~reserve~~ *compensated absence liability* fund for the purpose of paying*:*

(a) any accumulated amount of sick leave that a nonteaching *or administrative* school district employee is entitled to upon termination of employment with the district in accordance with the provisions of 2-18-618*; and*

(b) any accumulated amount of vacation leave that a nonteaching or administrative school district employee is entitled to upon termination of employment with the district.

(2) ~~Such a reserve~~ *The compensated absence liability* fund may be used only for the stated purpose of this section.

~~(2)~~*(3)* At the end of each school fiscal year, the trustees may appropriate a portion of the general fund end-of-the-year ~~cash~~ *fund* balance to establish ~~such a reserve~~ *and maintain the compensated absence liability* fund.

~~(3)~~*(4)* The maximum amount in a reserve fund established under the provisions of subsections (1) and ~~(2)~~*(3)* may not exceed 30% of*:*

(a) the total school district liability for accumulated sick leave of nonteaching *and administrative* school district employees on ~~January 15~~ *June 30* of the preceding school fiscal year*; and*

(b) the total school district liability for accumulated vacation leave of nonteaching and administrative school district employees on June 30 of the preceding school fiscal year.

(5) For the purposes of this section, "administrative school district employee" means a school district employee who is employed in an administrative position and who accrues vacation leave as part of the employee's contract with the school district."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Section 3. **Termination.** [This act] terminates July 1, 1995.

Approved May 15, 1991.

CHAPTER NO. 755

[HB 746]

AN ACT REQUIRING THE STATE TO ERECT A MONUMENT AND FLAG CIRCLE AT THE CAPITOL COMPLEX TO HONOR AMERICAN INDIANS; ESTABLISHING AN ADVISORY COMMITTEE TO COORDINATE THE PROJECT; APPROPRIATING FUNDS FOR THE ADVISORY COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **American Indian monument and tribal flag circle — competition for design.** (1) The state of Montana shall erect on the grounds of the capitol complex a monument to American Indians and a Montana tribal flag circle in recognition of American Indians' contributions to this state and nation.

(2) The Montana arts council shall advertise and conduct a competition among all Montanans for a design for the monument and flag circle.

Section 2. **Advisory committee — composition — duties.** (1) To coordinate the project provided for in [section 1], the governor shall appoint an advisory committee composed of the following 11 members:

(a) a representative from the Montana arts council;

(b) a representative from each of the state's seven Indian reservations;

(c) a representative from the architecture and engineering division of the department of administration;

(d) the governor's state coordinator of Indian affairs or the coordinator's designee; and

(e) a representative of the Montana historical society.

(2) The advisory committee shall review the proposals submitted in the design competition for the monument and flag circle and select an appropriate design.

(3) The advisory committee shall make recommendations to the department of administration for an appropriate site for the monument and the flag circle on the grounds of the capitol complex. The monument and flag circle may be located separately on the grounds.

(4) The advisory committee shall solicit and accept private contributions to finance the monument and the placement of the monument and the flag circle on the grounds of the capitol complex.

Section 3. **Funding — appropriation.** (1) There is appropriated $6,000 from the general fund for the biennium ending June 30, 1993, to the office of state coordinator of Indian affairs for the purpose stated in [section 1] and for the administrative expenses of the advisory committee.

(2) The department of administration is authorized to accept and expend private contributions, and these contributions are appropriated for the purposes of financing and placing the monument and flag circle.

Section 4. **Effective date.** [This act] is effective July 1, 1991.

Approved May 16, 1991.

CHAPTER NO. 756

[HB 758]

AN ACT DIRECTING THE DEPARTMENT OF ADMINISTRATION TO PERMIT PARENTAL LEAVE FOR STATE EMPLOYEES WHO ARE BIRTH FATHERS OR ARE ADOPTING CHILDREN; AND AMENDING SECTION 2-18-601, MCA.

WHEREAS, maternity leave regulations now provide that maternity leave is based solely on a state employee's disability due to pregnancy but do not require proof of medical disability for the first 6 weeks after birth; and

WHEREAS, this rule is arbitrary in that it excludes employees from parental leave when employees seek to establish families through means other than childbirth; and

WHEREAS, this rule is against public policy in that it fails to recognize the equal contributions to societal well-being of both families created through adoption and families created through childbirth.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Parental leave for state employees.** (1) The department of administration shall develop a parental leave policy for permanent state employees. The policy must permit an employee to take a reasonable leave of absence and permit the employee to use sick leave, immediately following the birth or placement of a child, for a period not to exceed 15 working days if:

(a) the employee is adopting a child; or

(b) the employee is a birth father.

(2) As used in this section, "placement" means placement for adoption as defined in 40-8-103.

Section 2. Section 2-18-601, MCA, is amended to read:

"**2-18-601. Definitions.** For the purpose of this part, except 2-18-620, the following definitions apply:

(1) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision thereof.

(2) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts.

(3) "Permanent employee" means an employee who is assigned to a position designated as permanent on the appropriate list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget.

(4) "Part-time employee" means an employee who normally works less than 40 hours a week.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Temporary employee" means an employee assigned to a position designated as temporary on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months.

(7) "Seasonal employee" means an employee assigned to a position designated as seasonal on the appropriate agency list of authorized positions referenced in 2-18-206 and for which the agency has a permanent need but which is interrupted by the seasonal nature of the assignment.

(8) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer.

(9) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or his immediate family *or for a permanent state employee who is eligible for parental leave under the provisions of [section 1]*.

(10) "Sick-pay plan" means a plan that:

(a) provides for an agency to make payments in lieu of wages to employees on account of sickness or accident disability; and

(b) meets the requirements of 42 U.S.C. 409(b) or (d).

(11) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

(12) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(13) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment."

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 18, part 6, and the provisions of Title 2, chapter 18, part 6, apply to [section 1].

Approved May 15, 1991.

CHAPTER NO. 757

[HB 803]

AN ACT PROTECTING EMPLOYEES AND COMMUNITIES FROM THE EFFECTS OF CLOSURES OR LAYOFFS AT A GOVERNMENTAL FACILITY; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] grants the department of labor and industry the authority to develop rules for assisting employers in meeting their obligations under [section 3]. It is intended that the rules address, at a minimum:

(1) notification procedures when a closure or retrenchment decision is made by an employer; and

(2) guidelines for developing the written impact statement.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of [sections 1 through 4] is to require the state of Montana to provide adequate notification when it plans the closure or retrenchment of a facility in a local area.

Section 2. **Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) "Closure" means the permanent shutting down of operations at a workplace.

(2) "Department" means the department of labor and industry.

(3) "Employer" means the state of Montana.

(4) "Governmental facility" means any institution, department, agency, bureau, or office operated by the state of Montana and employing more than 25 persons.

(5) "Retrenchment" means reducing the number of employees at the governmental facility by at least 250 employees over any 2-year period, provided that a reduction in the number of employees by attrition is not retrenchment.

Section 3. **Requirements for closure or retrenchment.** Upon making a decision to close or retrench, an employer shall:

(1) immediately notify the employees, the affected employee organizations, the affected local governments, and a newspaper of general circulation in the county where the governmental facility subject to closure or retrenchment is located; and

(2) within 90 days, provide the employees, the affected employee organizations, and the affected local governments with a written impact statement that includes information concerning:

(a) the number of employees affected;

(b) the amount of the affected employees' payroll;

(c) the potential tax losses to local governments and school districts;

(d) the effect on other businesses; and

(e) the reasons for the closure or retrenchment.

Section 4. **Adoption of rules.** The department shall adopt rules to provide procedures for an employer to meet the obligations under [section 3].

Section 5. **Effective date.** [This act] is effective July 1, 1991.

Approved May 15, 1991.

CHAPTER NO. 758

[HB 804]

AN ACT TO ALLOW THE STATE TO PROVIDE SEVERANCE PAY AND A RETRAINING ALLOWANCE FOR A STATE EMPLOYEE TERMINATED TO ACHIEVE A REDUCTION IN FORCE; TO PROVIDE THAT CONTRIBUTIONS PAYABLE TO A STATE EMPLOYEE TERMINATED TO ACHIEVE A REDUCTION IN FORCE ARE SUBJECT TO NEGOTIATION; AMENDING SECTIONS 2-18-618 AND 2-18-703, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reduction in force — severance pay and retraining allowance required.** If a reduction in force is necessary, the state may provide severance pay and a retraining allowance. Within a collective bargaining unit, severance pay and the retraining allowance are negotiable subjects under 39-31-305.

Section 2. Section 2-18-618, MCA, is amended to read:

"**2-18-618. Sick leave.** (1) ~~Each~~ *A* permanent full-time employee ~~shall earn~~ *earns* sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) ~~shall equal~~ *equals* 1 year. Sick leave credits ~~shall~~ *must* be credited at the end of each pay period. Sick leave credits ~~shall be~~ *are* earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) An employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave ~~shall~~ *must* be computed on the basis of the employee's salary or wage at the time he terminates his employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment ~~therefor shall be~~ *is* the responsibility of the agency ~~wherein~~ *in which* the sick leave accrues. However, ~~no~~ *an* employee ~~forfeits~~ *does not forfeit* any sick leave rights or benefits he had accrued prior to July 1, 1971. However, ~~where~~ *when* an employee transfers between agencies within the same jurisdiction, he is not entitled to a lump-sum payment. In a transfer between agencies, the

receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(6) An employee who receives a lump-sum payment pursuant to this section and who is again employed by any agency may not be credited with any sick leave for which the employee has previously been compensated.

(7) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(8) An employee may contribute any portion of his accumulated sick leave to a nonrefundable sick leave fund for state employees and ~~thereby become~~ *becomes* eligible to draw upon the fund if an extensive illness or accident exhausts his accumulated sick leave. The department of administration shall, in consultation with the sick leave advisory council provided for in 2-15-216, administer the sick leave fund and adopt rules to implement this subsection.

(9) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave."

Section 3. Section 2-18-703, MCA, is amended to read:

"**2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701, other than members of collective bargaining units, and for members of the legislature, the employer contribution for group benefits shall be $130 per month for the fiscal year ending June 30, 1990, and $150 per month for the fiscal year ending June 30, 1991, and for each fiscal year thereafter. *When a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305.* Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act of 1965, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 per month.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon ~~such~~ transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member."

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 18, part 6, and the provisions of Title 2, chapter 18, part 6, apply to [section 1].

Section 5. **Applicability.** [This act] applies to a reduction in force occurring on or after July 1, 1991.

Section 6. **Effective date.** [This act] is effective July 1, 1991.

Approved May 15, 1991.

CHAPTER NO. 759

[HB 825]

AN ACT REVISING THE LAW RELATING TO THE CARRYING OF CONCEALED WEAPONS; AMENDING SECTIONS 45-8-315, 45-8-317, AND 45-8-351, MCA; AND REPEALING SECTION 45-8-319, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Permit to carry concealed weapon.** (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen 18 years of age or older who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) has been convicted in any state or federal court in any state of a crime punishable by more than 1 year of incarceration or, regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under [section 7 or 8], unless he has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for his arrest;

(f) has been adjudicated in a criminal or civil proceeding in a court of any state or in a federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in a court of any state or in a federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency; or

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c).

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

Section 2. **Application, renewal, permit, and fees.** (1) The application form must be readily available at the sheriff's office and must read as follows:

CONCEALED WEAPON PERMIT APPLICATION

To be completed by each person making application:

RESIDENT OF MONTANA AT LEAST 6 MONTHS ( ) Yes ( ) No
CITIZEN OF THE UNITED STATES ( ) Yes ( ) No
18 YEARS OF AGE OR OLDER ( ) Yes ( ) No

PLEASE TYPE OR PRINT

Full name: ....
Last First Middle

Alias/Maiden/Nickname: ....

Address: Home: .... Zip ....

Employer:.. Zip ....

Phone: ..../........................../..........................
Home Employer Message

Place of birth:.. Date of birth: ....

Driver's license #: .... Issuing state: ....

Social Security #: .... Sex ....

Ht. .... Wt. .... Eyes .... Hair ....

LIST EACH FORMER EMPLOYER OR BUSINESS ENGAGED IN FOR THE LAST 5 YEARS:

	Employer or business name	Address	Dates of employment
1.	....	....	....
2.	....	....	....
3.	....	....	....
4.	....	....	....
5.	....	....	....
6.	....	....	....

LIST EACH PLACE IN WHICH YOU HAVE LIVED FOR THE LAST 5 YEARS:

	City	State	Dates of residence
1.	....	....	....
2.	....	....	....
3.	....	....	....

4.	....	....	....
5.	....	....	....
6.	....	....	....

MILITARY SERVICE, BRANCH .... FROM .... TO ....

TYPE OF DISCHARGE .... RANK UPON DISCHARGE ....

HAVE YOU EVER BEEN ARRESTED FOR OR CONVICTED OF A CRIME OR FOUND GUILTY IN A COURT-MARTIAL PROCEEDING?
( ) YES ( ) NO

IF YES, COMPLETE THE FOLLOWING (Exceptions: minor traffic violations)
(Attach additional sheet if necessary):

	City	State	Charge	Date
1.	....	....	....	....
2.	....	....	....	....
3.	....	....	....	....
4.	....	....	....	....
5.	....	....	....	....

LIST THREE PERSONS WHOM YOU HAVE KNOWN FOR AT LEAST 5 YEARS THAT WILL BE CREDIBLE WITNESSES TO YOUR GOOD MORAL CHARACTER AND PEACEABLE DISPOSITION (DO NOT include relatives or present/past employers):

	Name	Address	Phone
1.	....	....	....
2.	....	....	....
3.	....	....	....

IN COMPLETE DETAIL, PLEASE EXPLAIN YOUR REASONS FOR REQUESTING THIS PERMIT (Attach additional sheet if necessary):

....

....

....

....

....

....

I, the undersigned applicant, swear that the foregoing information is true and correct to the best of my knowledge and belief and is given with the full knowledge that any misstatement contained herein may be sufficient cause for denial or revocation of a permit to carry a concealed weapon. I hereby authorize any person having information concerning me that relates to the information requested by this application and the requirements for a concealed weapon permit, either public record or otherwise, to furnish it to the sheriff to whom this application is made.

....
Signature

....
Date of application

This application must be signed
in the presence of the sheriff or
his designee.

(2) The application must be in triplicate. The applicant must be given the original at the time the completed application is filed with the sheriff, the sheriff shall keep a copy for at least 4 years, and a copy must, within 7 days of the sheriff's receipt of the application, be mailed to the chief of police if the applicant resides in a city or town with a police force.

(3) The fee for issuance of a permit is $50. The permit must be renewed for additional 4-year periods upon payment of a $25 fee per renewal and upon request for renewal made within 90 days before expiration of the permit. The permit and each renewal must be in triplicate, in a form prescribed by the department of justice, and must at a minimum include the name, address, physical description, signature, driver's license or state identification card number, and a picture of the permittee. The permit must state that federal and state laws on possession of firearms and other weapons differ and that a person who violates the federal law may be prosecuted in federal court and the Montana permit will not be a defense. The permittee must be given the original, and the sheriff shall keep a copy and send a copy to the department of justice, which shall keep a central repository record of all permits. Replacement of a lost permit must be treated as a renewal under this subsection.

(4) The sheriff shall conduct a criminal record and background check of an applicant, may require an applicant to submit his fingerprints, and may charge the applicant $5 for fingerprinting.

(5) Permit, background, and fingerprinting fees may be retained by the sheriff and used to implement [sections 1 through 5].

(6) A state or local government law enforcement agency or other agency or any of its officers or employees may not request a permittee to voluntarily submit information in addition to that required on an application and permit.

Section 3. **Denial of renewal — revocation of permit.** A permit to carry a concealed weapon may be revoked or its renewal denied by the sheriff of the county in which the permittee resides if circumstances arise that would require the sheriff to refuse to grant the permittee an original license.

Section 4. **Appeal.** The denial or revocation of a permit to carry a concealed weapon or refusal of a renewal is subject to appeal to the district court and from that court to the Montana supreme court.

Section 5. **Permittee change of county of residence — notification to sheriffs and chief of police.** A person with a permit to carry a concealed weapon who changes his county of residence shall within 10 days of the change inform the sheriffs of both the old and new counties of residence of his change of residence and that he holds the permit. If his residence changes either from or to a city or town with a police force, he shall also inform the chief of police in each of those cities or towns that has a police force.

Section 6. **Immunity from liability.** A sheriff, employee of a sheriff's office, or county is not liable for damages in a civil action by a person or entity claiming death, personal injury, or property damage arising from alleged wrongful or improper grant, renewal, or failure to revoke a permit to carry a concealed weapon, except for actions that constitute willful misconduct or gross negligence.

Section 7. **Carrying a concealed weapon while under the influence.** A person commits the offense of carrying a concealed weapon while under the influence if he purposely or knowingly carries a concealed weapon while under the influence of an intoxicating substance. It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both.

Section 8. **Carrying a concealed weapon in a prohibited place.** (1) A person commits the offense of carrying a concealed weapon in a prohibited place if he purposely or knowingly carries a concealed weapon in:

(a) a building owned or leased by the federal, state, or local government;

(b) a bank, credit union, savings and loan institution, or similar institution; or

(c) a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued under Title 16 for the sale of alcoholic beverages for consumption on the premises.

(2) It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both.

Section 9. Section 45-8-315, MCA, is amended to read:

"**45-8-315. Definition.** "Concealed weapon" ~~shall mean~~ *means* any weapon mentioned in 45-8-316 through ~~45-8-319 which shall be~~ *45-8-318* *and [sections 1 through 8] that is* wholly or partially covered by the clothing or wearing apparel of the person ~~so~~ carrying or bearing the weapon, *except that for purposes of [sections 1 through 8] concealed weapon means a handgun or a knife with a blade 4 or more inches in length that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon."*

Section 10. Section 45-8-317, MCA, is amended to read:

"**45-8-317. Exceptions.** Section 45-8-316 ~~does~~ *and, except for a person referred to in subsection (7), [section 8] do* not apply to:

(1) any peace officer of the state of Montana;

(2) any officer of the United States government authorized to carry a concealed weapon;

(3) a person in actual service as a national guardsman;

(4) a person summoned to the aid of any of the persons named in subsections (1) through (3);

(5) a civil officer or his deputy engaged in the discharge of official business;

(6) a probation and parole officer authorized to carry a firearm under 46-23-1002;

(7) a person ~~authorized by a judge of a district court of this state to carry a weapon~~ *issued a permit under [section 1]*; ~~or~~

(8) an agent of the department of justice or a criminal investigator in a county attorney's office;

(9) a person who is outside the official boundaries of a city or town or the confines of a logging, lumbering, mining, or railroad camp or who is lawfully engaged in hunting, fishing, trapping, camping, hiking, backpacking, farming, ranching, or other outdoor activity in which weapons are often carried for recreation or protection; or

~~(8)~~*(10)* the carrying of arms on one's own premises or at one's home or place of business."

Section 11. Section 45-8-351, MCA, is amended to read:

"**45-8-351. Restriction on local government regulation of firearms.** (1) Except as provided in subsection (2), no county, city, town, consolidated local government, or other local government unit may prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any *weapon, including a* rifle, shotgun, ~~or~~ handgun, *or concealed handgun.*

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consoli-

dated local government, or other local government unit has power to prevent and suppress the carrying of concealed ~~weapons, the carrying of~~ *or unconcealed* weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained herein shall allow any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others, nor shall anything contained herein prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise."

Section 12. **Existing permits.** A permit to carry a concealed weapon issued before October 1, 1991, is valid until the expiration date of the permit.

Section 13. **Requirements for granting governmental entity immunity from suit.** Because [section 6] grants a sheriff, his employees, and the county immunity from suit for injury to person or property, a two-thirds vote of each house of the legislature is required for enactment of [section 6]. If [section 6] is not approved by the required vote, [section 6] is void. The remaining sections of [this act] are valid and remain in effect in all valid applications upon enactment.

Section 14. **Repealer.** Section 45-8-319, MCA, is repealed.

Section 15. **Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45, chapter 8, part 3, apply to [sections 1 through 8].

Approved May 16, 1991.

CHAPTER NO. 760

[HB 832]

AN ACT ALLOCATING 20 PERCENT OF AN INCREASE IN GROSS PROCEEDS TAX TO THE LOCAL GOVERNMENT UNIT IN WHICH THE ORE WAS LOCATED IF CERTAIN CRITERIA ARE MET; ALLOCATING THE APPLICABLE METAL MINES LICENSE TAX TO THOSE COUNTIES IDENTIFIED AS EXPERIENCING IMPACTS IF AN IMPACT PLAN HAS BEEN PREPARED; AMENDING SECTIONS 15-37-117 AND 90-6-404, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-404, MCA, is amended to read:

"**90-6-404. Allocation of taxable valuation for local taxation purposes.** When property of a large-scale mineral development is subject to the provisions of 90-6-403, the increase in taxable valuation must be allocated by the department of revenue as follows:

(1) If the board determines that the local government unit in which the ore body or the mineral deposit being mined is located is not affected by the development and if this determination is shown on the impact plan, 20% of the total increase in taxable valuation of the gross proceeds must be allocated to that local government unit. This provision is intended to establish a minimum allocation for the units and does not prohibit proof by a unit that actual direct impacts would exceed 20% of the total impacts of the development.

~~(1)~~*(2)* The ~~total~~ *remaining* increase in taxable valuation of the mineral development must be allocated between affected counties and affected municipalities according to the following formula based on the place of residence of mineral development employees:

(a) A portion, not to exceed 20%, to affected municipalities, based on that percentage of the total number of mineral development employees that reside within municipal boundaries. The taxable valuation allocated to affected municipalities must be distributed to each municipality according to its percentage of the total number of mineral development employees who reside within municipal boundaries. That portion of the taxable valuation distributed to a municipality pursuant to this section is subject to the same county mill levy as other taxable properties located in the municipality.

(b) The remaining portion of the taxable valuation must be distributed to each affected county according to its percentage of the total number of mineral development employees that reside within the county.

~~(2)~~*(3)* The ~~total~~ increase in taxable valuation *equal to that subject to subsection (2)* must be distributed pro rata among each affected high school district according to the percentage of the total number of mineral development high school students that reside within each district.

~~(3)~~*(4)* The ~~total~~ increase in taxable valuation *equal to that subject to subsection (2)* must be distributed pro rata among each affected elementary school district according to the percentage of the total number of mineral development elementary school students that reside within each district.

(5) The distribution formula specified in subsections (2) through (4) may be modified by an impact plan approved as provided in 90-6-307 or amended as provided in 90-6-311, if the modification is needed in order to ensure a reasonable correspondence between the occurrence of increased costs resulting from the mineral development and the allocation of taxable valuation resulting from the mineral development."

Section 2. Section 15-37-117, MCA, is amended to read:

"**15-37-117. Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part are allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) to the state resource indemnity trust fund, 15.5% of total collections each year;

(d) *to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan, or, if no impact plan has been prepared,* to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(d)(i) to be further allocated as follows~~, except that more than one entity may share an allocation if a jurisdictional revenue disparity is identified pursuant to subsection (2)~~:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(d) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(d). The allocation to the county described by subsection (1)(d) is a statutory appropriation pursuant to 17-7-502."

Section 3. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to all large-scale mineral developments required to comply with 90-6-307 that did not have an impact plan approved pursuant to 90-6-307, as of December 31, 1990.

Approved May 16, 1991.

CHAPTER NO. 761

[HB 846]

AN ACT TO ALLOW PUBLIC INSPECTION OF COMPETITIVE SEALED BIDS AND PROPOSALS FOR THE PRIVATIZATION OF STATE SERVICES WHEN THE BIDS OR PROPOSALS ARE OPENED; AMENDING SECTIONS 18-4-301 AND 18-4-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-4-301, MCA, is amended to read:

"**18-4-301. Definitions.** As used in this part, the following definitions apply:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(2) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee. The term does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

~~(2)~~*(3)* "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

~~(3)~~*(4)* "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

~~(4)~~*(5)* "Office supply" means an item included under the office supply commodity class codes maintained by the department.

~~(5)~~*(6)* "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

~~(6)~~*(7)* "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

~~(7)~~*(8)* "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

~~(8)~~*(9)* "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

~~(9)~~*(10)* "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 2. Section 18-4-303, MCA, is amended to read:

"**18-4-303. Competitive sealed bidding.** (1) An invitation for bids must be issued and must include a purchase description and conditions applicable to the procurement.

(2) Adequate public notice of the invitation for bids must be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with rules adopted by the department. Notice may include publication in a newspaper of general circulation at a reasonable time prior to bid opening.

(3) Bids must be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. Each bidder has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids. The amount of each bid and such other relevant information as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection. After the time of award, all bids and bid documents must be open to public inspection in accordance with the provisions of 2-6-102 *and are subject to the requirements of subsection (4).*

(4) Bids must be available for public inspection when the bids are opened if:

(a) the invitation for bids is issued by a state agency to contract with the private sector to provide services currently conducted by state employees; and

(b) acceptance of bids would result in the displacement of five or more state employees.

~~(4)~~*(5)* Bids must be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used in bid evaluation.

~~(5)~~*(6)* Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on such bid mistakes may be permitted in accordance with rules adopted by the department. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the department.

~~(6)~~*(7)* The contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed available funds as certified by the appropriate fiscal officer and the low responsive and responsible bid does not exceed such funds by more than 5%, the director or the head of a purchasing agency is authorized, in situations where time or economic considerations preclude resolicitation of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

~~(7)~~*(8)* When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved May 15, 1991.

CHAPTER NO. 762

[HB 857]

AN ACT TO PROVIDE A REVIEW PROCEDURE FOR PROPOSALS TO PRIVATIZE STATE PROGRAMS; TO PROVIDE FOR REVIEW OF CURRENTLY PRIVATIZED STATE PROGRAMS; TO REQUIRE PREPARATION OF A PRIVATIZATION PLAN; TO PROVIDE FOR A PRIVATIZATION REVIEW BY THE LEGISLATIVE AUDIT COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive, legislative, or judicial branch of state government.

(2) "Private sector" means any entity or individual not principally a part of or associated with a governmental unit that is associated with or involved in commercial activity.

(3) "Privatize" means an agency contracting with the private sector to provide services normally conducted directly by the employees of the agency if the contract displaces five or more current state employees. For the purposes of this subsection, an employee is displaced if the privatization proposal will result in his layoff, demotion, or involuntary transfer to a new location requiring a change in residence of the employee.

(4) "Program" means a legislatively or administratively created function, project, or duty of an agency.

Section 2. **Privatization plan — hearing.** Before an agency may privatize a program it shall prepare a privatization plan as provided in [section 3]. The privatization plan must be released to the public and any affected employee organizations and must be submitted to the legislative audit committee at least 90 days prior to the proposed implementation date. At least 60 days prior to the proposed implementation date, the legislative audit committee shall conduct a public hearing on the proposed privatization plan at which public comments and testimony must be received. At least 15 days prior to the proposed implementation date, the legislative audit committee shall release to the public a summary of the results of the hearing, including any recommendations of the committee relating to the proposed privatization plan.

Section 3. **Privatization plan — contents.** (1) An agency proposing to privatize a program shall prepare a privatization plan that includes the following:

(a) a description of the program to be privatized, including references to the legal authority under which the program was created;

(b) detailed budget information that includes a list of expenditures for the 2 most recent fiscal years and the sources of revenue for the program;

(c) a list of all personnel currently employed in the program and the estimated effect of the proposed privatization on their employment status;

(d) a listing of the assets of the program and their proposed disposition if the plan is implemented;

(e) an estimate of the cost savings or any additional costs resulting from privatizing the program, compared to the costs of the existing, non-privatized program. Additional costs must include the estimated cost to the state of inspection, supervision, and monitoring of the proposed privatization and the costs incurred in the discontinuation of such a contract.

(f) the estimated current and future economic impacts of the implementation of the plan on other state programs, including public assistance programs, unemployment insurance programs, retirement programs, and agency personal services budgets used to pay out accrued vacation and sick leave benefits;

(g) the estimated increases or decreases in costs and quality of goods or services to the public if the plan is implemented;

(h) the estimated changes in individual wages and benefits resulting from the proposed privatization;

(i) a narrative explanation and justification for the proposed privatization.

(2) To implement the privatization plan, an agency may transfer funds between budget categories.

Section 4. **Review of privatized programs.** (1) If during audits of state agencies, the legislative auditor identifies programs being conducted by an agency under contract that may be administered more cost effectively directly by the agency or identifies services performed by an agency that may be performed more cost effectively by the private sector, he shall submit this information to the legislative audit committee.

(2) Members of the public, elected bargaining agents or employee representatives, elected officials, legislators, and agency directors may submit to the legislative audit committee a request to review programs being conducted under contract by an agency that may be administered more cost effectively directly by the agency.

(3) The legislative audit committee shall review the information and requests provided under subsections (1) and (2) and may direct the legislative auditor to conduct a review of any contracted program or program administered directly by the agency, or both. The review must include a report to the legislative audit committee that includes the information required in a privatization plan under [section 3].

(4) The report required by subsection (3) must be provided to the legislative audit committee and released to the public. Not less than 30 days after the release of the report, the legislative audit committee shall conduct a public hearing on the report at which public comments and testimony must be received. Upon completion of the hearing on the report the legislative audit committee may make recommendations it believes appropriate concerning the program.

Section 5. **Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 2, chapter 8, and the provisions of Title 2, chapter 8, apply to [sections 1 through 4].

Section 6. **Effective date.** [This act] is effective July 1, 1991.

Approved May 15, 1991.

CHAPTER NO. 763

[HB 973]

AN ACT TO PROVIDE EXPENSE REIMBURSEMENT TO CERTAIN TANK OWNERS AND OPERATORS; AMENDING SECTIONS 75-11-301, 75-11-302, 75-11-307, 75-11-308, AND 75-11-318, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the petroleum tank release compensation board, the department of health and environmental sciences, and the department of revenue for the adoption of rules authorized by the bill. The petroleum tank release compensation board shall adopt rules that:

(1) govern submission of claims from owners and operators to the board and to the department of health and environmental sciences for reimbursement from the petroleum tank release cleanup fund;

(2) establish procedures for determining eligibility of tank owners and operators for reimbursement from the petroleum tank release cleanup fund and the validity of claims; and

(3) are necessary for administration of the petroleum tank release cleanup fund and other provisions of this bill, provided that the rules may not conflict with the eligibility requirements and procedures provided for in this bill and Title 75, chapter 11, part 3; rules previously adopted under that part; and laws, rules, and procedures of the federal government or the department of health and environmental sciences pertaining to petroleum storage tank releases eligible for reimbursement from the petroleum tank release cleanup fund.

The department of health and environmental sciences may adopt rules or revise existing rules as necessary to implement and incorporate the provisions of this bill into the department's existing procedures and its requirements pertaining to releases from underground storage tanks.

The department of revenue shall adopt rules governing the collection of the petroleum storage tank cleanup fee, including reporting and recordkeeping requirements, the method and timing of payments from distributors, examination of records, and other provisions necessary to ensure that the petroleum storage tank cleanup fee is properly and efficiently collected.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-301, MCA, is amended to read:

"**75-11-301. Findings and purposes.** (1) The legislature finds that the use of petroleum products stored in tanks contributes significantly to the economic well-being and quality of life of Montana citizens.

(2) The legislature finds that leaks, spills, and other releases of petroleum products from storage tanks endanger public health and safety, ground water quality, and other state resources.

(3) The legislature finds that current administrative and financial resources of the public and private sectors are inadequate to address problems caused by releases from petroleum storage tanks and need to be supplemented by a major program of release detection and corrective action.

(4) The legislature finds that proper funding for the program is through a petroleum storage tank cleanup fee paid by persons who use and receive the benefits of petroleum products. The legislature further finds that this general use fee, provided for in 75-11-314, is intended solely to support a program to pay for corrective action and damages caused by releases from petroleum storage tanks. The general use fee is collected from distributors for administrative convenience and is not intended as a method for collecting highway revenue pursuant to the provisions of Article VIII, section 6, of the Montana constitution. The fee is intended to implement the legislature's duty to provide for the administration and enforcement of maintaining and improving a clean and healthful environment for present and future generations, as required by Article IX, section 1, of the Montana constitution.

(5) The purposes of this part are to:

(a) protect public health and safety and the environment by providing prompt detection and cleanup of petroleum tank releases;

(b) provide adequate financial resources and effective procedures through which tank owners and operators may undertake and be reimbursed for corrective action and payment to third parties for damages caused by releases from petroleum storage tanks; and

(c) assist *certain* tank owners and operators in meeting financial assurance requirements under state and federal law governing releases from petroleum storage tanks."

Section 2. Section 75-11-302, MCA, is amended to read:

"**75-11-302. Definitions.** The following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third party bodily injury or property damage.

(2) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(3) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(4) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(5) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(6) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(7) "Distributor" means a distributor as defined in 15-70-201.

(8) "Eligible costs" means expenses reimbursable under 75-11-307.

(9) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(10) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(11) "Gasoline" means gasoline as defined in 15-70-201. *For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to the federal defense fuel supply center.*

(12) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(13) "Owner" means a person who holds title to, controls, or possesses an interest in a petroleum storage tank. The term does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(14) "Person" means an individual, firm, trust, estate, partnership, company, association, joint stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(15) "Petroleum" or "petroleum products" means crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(16) "Petroleum storage tank" means a tank that contains petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-10-403;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, draft, shaft, or tunnel;

(c) an above ground storage tank with a capacity less than 30,000 gallons; or

(d) above ground or underground pipes associated with tanks under subsections (16)(b) and (16)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (16)(d)(i) and (16)(d)(ii), if the facility is intrastate.

(17) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(18) "Release" means a release, as defined in 75-10-701, of petroleum or petroleum products from a petroleum storage tank."

Section 3. Section 75-11-307, MCA, is amended to read:

"**75-11-307. Reimbursement for expenses caused by a release.** (1) Subject to the availability of ~~funds~~ *money from the fund* under subsection (5), an owner or operator who is eligible under 75-11-308 and complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs; and

(b) compensation paid to third parties for bodily injury or property damage.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, *for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before [the effective date of this section] for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes*;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4).

(3) An owner or operator may designate a person as his agent to receive the reimbursement.

(4) Subject to the availability of funds under subsection (5)~~,~~*:*

(a) for releases *eligible for reimbursement from the petroleum tank release cleanup fund* that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500, *except for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes; and*

(b) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000, for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes.

(5) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

Section 4. Section 75-11-308, MCA, is amended to read:

"**75-11-308. Eligibility.** (1) An owner or operator is eligible for reimbursement for eligible costs caused by a release from a petroleum storage tank only if:

(a) the release was discovered on or after April 13, 1989;

(b) the department is notified of the release in the manner and within the time provided by law or rule;

(c) the department has been notified of the existence of the tank in the manner required by department rule;

(d) the release was an accidental release; and

(e) with the exception of the release, the operation and management of the tank complied with applicable state and federal laws and rules when the release occurred and remained in compliance following detection of the release.

(2) An owner or operator is not eligible for reimbursement *from the petroleum tank release cleanup fund* for expenses caused by releases from the following petroleum storage tanks:

(a) a tank located at a refinery or a terminal of a refiner;

(b) a tank located at an oil and gas production facility;

(c) a tank that is or was previously under the ownership or control of a railroad;

(d) a tank belonging to the federal government;

~~(e) a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes or a tank used for storing heating oil for consumptive use on the premises where stored;~~

~~(f)~~*(e)* a tank owned or operated by a person who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or

~~(g)~~*(f)* a mobile storage tank used to transport petroleum or petroleum products from one location to another."

Section 5. Section 75-11-318, MCA, is amended to read:

"**75-11-318. Powers and duties of board.** (1) The board shall administer the petroleum tank release cleanup fund in accordance with the provisions of this part, including the payment of reimbursement to owners and operators.

(2) The board shall determine whether to approve reimbursement of eligible costs under the provisions of 75-11-309(2), shall obligate money from the fund for approved costs, and shall act on requests for the guarantee of payments through the procedures and criteria provided in 75-11-309.

(3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business as may be necessary to administer its responsibilities under this part. The board shall meet at least quarterly for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other business as necessary.

(4) The board may hire staff, and the department shall provide staff support to the board as the department determines it is able. The board shall use the fund to pay its staff expenses ~~and~~, to pay for department staff utilized for the review or preparation of corrective action plans and for the oversight of corrective action undertaken by owners and operators for the purposes of this part, *and to pay for department of transportation staff utilized for the collection of the petroleum storage tank cleanup fee.*

(5) The board shall adopt rules to administer this part, including:

(a) rules governing submission of claims by owners or operators to the department and board;

(b) procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;

(c) procedures for the review and approval of corrective action plans;

(d) procedures for conducting board meetings, hearings, and other business necessary for the implementation of this part; and

(e) other rules necessary for the administration of this part."

Section 6. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved May 15, 1991.

CHAPTER NO. 764

[HB 977]

AN ACT REVISING THE LAWS RELATING TO RESIDENTIAL TREATMENT FACILITIES; ALLOWING MEDICAID REIMBURSEMENT FOR INPATIENT PSYCHIATRIC SERVICES FOR PERSONS UNDER 21 YEARS OF AGE IN A RESIDENTIAL TREATMENT FACILITY; REQUIRING LICENSURE OF A RESIDENTIAL TREATMENT FACILITY IN ORDER TO QUALIFY FOR MEDICAID REIMBURSEMENT; AMENDING SECTIONS 50-5-101, 50-5-301, AND 53-6-101, MCA; RE-

PEALING SECTION 50-5-317, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"**50-5-101.** *(Temporary)* **Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected person" means an applicant for certificate of need, a member of the public who will be served by the proposal, a health care facility located in the geographic area affected by the application, an agency which establishes rates for health care facilities, a third-party payer who reimburses health care facilities in the area affected by the proposal, or an agency which plans or assists in planning for such facilities.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Batch" means those letters of intent to seek approval for new beds or major medical equipment that are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent to seek approval for new beds or major medical equipment are accumulated pending further processing of all letters of intent within the batch.

(7) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Challenge period" means a period, not exceeding 1 month, established by department rule during which any person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.

(11) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, which creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(12) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(13) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications which are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

(16) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(17) "Federal acts" means federal statutes for the construction of health care facilities.

(18) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(19) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpa-

tient facilities, public health centers, rehabilitation facilities, residential treatment facilities, and adult day-care centers.

(20) "Health maintenance organization" means a public or private organization which provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(21) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and his family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(25) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(26) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(27) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or

administrator by blood or marriage. The term does not include adult foster care licensed under 53-5-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for persons with severe disabilities licensed under 53-19-203, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(28) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services and costs a substantial sum of money.

(29) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient medical care to persons needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

(30) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(31) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(32) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(33) "Offer" means the holding out by a health care facility that it can provide specific health services.

(34) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(35) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(36) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(37) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(38) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(39) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(40) "Residential treatment facility" means a facility of not less than 30 beds that is operated by a nonprofit corporation or association for the primary purpose of providing long-term treatment services for mental illness in a nonhospital-based residential setting to persons under 21 years of age.

(41) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor.

50-5-101. *(Effective July 1, 1991)* **Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(4) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(5) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, which creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(6) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(7) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(8) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(9) "Federal acts" means federal statutes for the construction of health care facilities.

(10) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(11) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatment facilities, and adult day-care centers.

(12) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(13) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(14) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and his family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component.

(15) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(16) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(17) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(18) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(19) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage. The term does not include adult foster care licensed under 53-5-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for persons with severe disabilities licensed under 53-19-203, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(20) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient medical care to persons needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

(21) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(22) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(23) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(24) "Offer" means the holding out by a health care facility that it can provide specific health services.

(25) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(26) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(27) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(28) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(29) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological

and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(30) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(31) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(31)~~*(32)* "Residential treatment facility" means a facility ~~of not less than 30 beds that is~~ operated ~~by a nonprofit corporation or association~~ for the primary purpose of providing ~~long-term treatment services for mental illness in a nonhospital-based~~ residential ~~setting~~ *psychiatric care* to persons under 21 years of age.

~~(32)~~*(33)* "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

Section 2. Section 50-5-301, MCA, is amended to read:

"**50-5-301.** *(Temporary)* **When certificate of need is required — definitions.** (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, he may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure, other than to acquire an existing health care facility or to replace major medical equipment with equipment performing substantially the same function and in the same manner, that exceeds the expenditure thresholds established in subsection (4). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made must be included in determining if the expenditure exceeds the expenditure thresholds.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds (if fractional, rounded down to the nearest whole number), whichever figure is smaller, in any 2-year period;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility which was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and which will result in additional annual operating and amortization expenses of $150,000 or more;

(d) the acquisition by any person of major medical equipment, provided such acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) if it had been made by or on behalf of a health care facility;

(e) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(f) the construction, development, or other establishment of a health care facility which is being replaced or which did not previously exist, by any person, including another type of health care facility;

(g) the expansion of the geographical service area of a home health agency;

(h) the use of hospital beds to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; or

(i) the provision by a hospital of services for ambulatory surgical care, home health care, long-term care, inpatient mental health care, inpatient chemical dependency treatment, inpatient rehabilitation, or personal care.

(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.

(3) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, long-term care facility, medical assistance facility, mental health center with inpatient services, inpatient chemical dependency facility, rehabilitation facility with inpatient services, *residential treatment facility*, or personal care facility. The term does not include a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(i).

(b) (i) "Long-term care facility" means an entity which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more persons.

(ii) The term does not include adult foster care, licensed under 53-5-303; community homes for the developmentally disabled, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 53-19-203; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(c) "Obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

(d) "Personal care facility" means an entity which provides services and care which do not require nursing skills to more than four persons who are not related to the owner or administrator by blood or marriage and who need some assistance in performing the activities of everyday living. The term does not include those entities excluded from the definition of "long-term care facility" in subsection (3)(b).

(4) Expenditure thresholds for certificate of need review are established as follows:

(a) For acquisition of equipment and the construction of any building necessary to house the equipment, the expenditure threshold is $750,000.

(b) For construction of health care facilities, the expenditure threshold is $1,500,000. *(Repealed effective July 1, 1991—sec. 2, 3, Ch. 377, L. 1989.)*"

Section 3. Section 53-6-101, MCA, is amended to read:

"**53-6-101. Montana medicaid program — authorization of services.** (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of social and rehabilitation services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) services provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(i) health services provided under a physician's orders by a public health department; and

(j) hospice care as defined in 42 U.S.C. 1396d(o).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23, if funds are specifically appropriated for the inclusion of these services in the Montana medicaid program;

(m) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(n) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201;

~~(n)~~*(o)* any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(5) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(6) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost effective.

(7) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

(8) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(9) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(10) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted thereunder. *(Subsection (2)(j) terminates June 30, 1991—sec. 4, Ch. 633, L. 1989; Subsection (3)(m) terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)* "

Section 4. **Repealer.** Section 50-5-317, MCA, is repealed.

Section 5. **Effective date.** [This act] is effective July 1, 1991.

Approved May 15, 1991.

CHAPTER NO. 765

[HB 999]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO OUT-OF-DISTRICT PLACEMENT OF CHILDREN WITH DISABILITIES; TO PROVIDE STATE FUNDING FOR THE EDUCATIONAL PROGRAMS FOR ELIGIBLE CHILDREN PLACED IN IN-STATE RESIDENTIAL TREATMENT FACILITIES OR CHILDREN'S PSYCHIATRIC HOSPITALS; TO PROVIDE AN APPROPRIATION; AMENDING SECTIONS 20-5-301, 20-5-311, 20-7-403, 20-7-420, 20-7-421, 20-7-422, 20-7-431, AND 20-9-334, MCA; REPEALING SECTION 20-7-423, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-301, MCA, is amended to read:

"20-5-301. *(Temporary)* **Elementary tuition with mandatory approval.** (1) Any child may be enrolled in and attend an elementary school outside of the elementary district in which the child resides when the elementary school is located in:

(a) any other district of the county of the child's residence;

(b) a county adjoining the child's county of residence; or

(c) a district of another state that is adjacent to the county of the child's residence.

(2) When a parent or guardian of a child wishes to have the child attend a school under the provisions of this section, the parent or guardian shall apply to the county superintendent of the county of the parent or guardian's residence before July 1 of the school fiscal year for which approval is sought except in those cases when substantial changes in circumstances occurred subsequently to justify later application. The application must be made on a tuition agreement form supplied by the county superintendent and must be approved, before permission to enroll in and attend school outside of the district under the provisions of this section may be granted, by:

(a) the trustees of the elementary district in which the child resides;

(b) the trustees of the district where the child wishes to attend school; and

(c) the county superintendent of the county of the child's residence.

(3) In considering the approval of a tuition application, the tuition approval agents prescribed in this section shall approve the application for a resident child when:

(a) the child resides more than 3 miles from any school of his resident elementary district and the school the pupil wishes to attend is less distant than the nearest school of the resident elementary district;

(b) the child resides more than 3 miles from any school of his resident elementary district and the district does not provide transportation under the provisions of this title;

(c) the child resides more than 3 miles from any school of his resident elementary district, the resident district does not provide transportation under the provisions of this title, and school bus transportation is furnished by the district operating the school which he wishes to attend;

(d) the child is a member of a family who must send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided the child resides more than 3 miles from an elementary school of the resident district or the parent must move to the elementary district where the high school is located in order to enroll the other child in high school;

(e) the child has been ~~declared~~ *adjudicated* by a court of competent jurisdiction to be an abused, neglected, or dependent child, as defined in 41-3-102, or a *youth in need of supervision or a* delinquent youth, as defined in 41-5-103, and has been ~~ordered to be~~ placed in a licensed youth care facility ~~which~~ *that* is approved by the department of family services and as a result of the order the child is required to attend elementary school outside of the district of his residence (for purposes of this subsection, the prescribed geographic relationship of the receiving district to the district of residence does not apply); or

(f) the child is required to attend elementary school outside the district of residence as the result of *a placement by a state agency or parent in a group home licensed by the state or* an order of a court of competent jurisdiction. For the purposes of this subsection (f), the following do not apply:

(i) the prescribed geographic relationship of the receiving district to the district of residence in this subsection (3); or

(ii) an order issued under Title 40, chapter 4, part 2.

(4) ~~The~~ *Unless the child is a child with disabilities who resides in the district, the* trustees of the district where the school to be attended is located may disapprove a tuition agreement that satisfies any of the mandatory approval conditions specified in subsection (3) when they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child. In the event of disapproval, the trustees shall notify the parent in writing within 15 days of the first receipt of the application.

(5) When a child has been placed by a state agency in an out-of-state residential program, the amount of daily tuition may not be greater than the

average daily cost per student in the district of residence. The amount of annual tuition may not be greater than the average annual cost per student in the district of residence. For the purposes of this subsection, the following do not apply:

(a) an order issued under Title 40, chapter 4, part 2;

(b) placement of a child with disabilities pursuant to Title 20, chapter 7, part 4; or

(c) placement made in a state with a reciprocal tuition agreement pursuant to 20-5-314. (Terminates June 30, 1992—sec. 3, Ch. 492, L. 1989.)

20-5-301. *(Effective July 1, 1992)* **Elementary tuition with mandatory approval.** (1) Any child may be enrolled in and attend an elementary school outside of the elementary district in which he resides when such elementary school is located in:

(a) any other district of the county of his residence;

(b) a county adjoining his county of residence; or

(c) a district of another state that is adjacent to the county of his residence.

(2) When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. The application shall be made on a tuition agreement form supplied by the county superintendent and shall be approved, before permission to enroll in and attend school outside of the district under the provisions of this section may be granted, by:

(a) the trustees of the elementary district in which the child resides;

(b) the trustees of the district where the child wishes to attend school; and

(c) the county superintendent of the child's residence.

(3) In considering the approval of a tuition application, the tuition approval agents prescribed in this section shall approve such application for a resident child when:

(a) the child resides less than 3 miles from the school which he wishes to attend and more than 3 miles from any school of his resident elementary district;

(b) the child resides more than 3 miles from any school of his resident elementary district and such district does not provide transportation under the provisions of this title;

(c) the child resides more than 3 miles from any school of his resident elementary district, the resident district does not provide transportation under the provisions of this title, and school bus transportation is furnished by the district operating the school which he wishes to attend;

(d) the child is a member of a family who must send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided the child resides more than 3 miles from an elementary school of the resident district or the parent must move to the elementary district where the high school is located in order to enroll the other child in high school;

(e) the child has been ~~declared~~ *adjudicated* by a court of competent jurisdiction to be an abused, neglected, or dependent child, as defined in 41-3-102, or a *youth in need of supervision or a* delinquent youth, as defined in 41-5-103, and has been ~~ordered to be~~ placed in a licensed youth care facility ~~which~~ *that* is approved by the department of family services and as a result of the order the child is required to attend elementary school outside of the district of his residence; for purposes of this subsection, the prescribed geographic relationship of the receiving district to the district of residence does not apply; or

(f) the child is required to attend elementary school outside the district of residence as the result of *a placement by a state agency or parent in a group home licensed by the state or* an order of a court of competent jurisdiction. For the purposes of this subsection (f), the following do not apply:

(i) the prescribed geographic relationship of the receiving district to the district of residence in this subsection (3); or

(ii) an order issued under Title 40, chapter 4, part 2.

(4) ~~The~~ *Unless the child is a child with disabilities who resides in the district, the* trustees of the district where the school to be attended is located may disapprove a tuition agreement that satisfies any of the mandatory approval conditions specified in subsection (3) above when they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child. In the event of disapproval, the trustees shall so notify the parent in writing within 15 days of the first receipt of the application.

(5) When a child has been placed by a state agency in an out-of-state residential program, the amount of daily tuition may not be greater than the average daily cost per student in the district of residence. The amount of annual tuition may not be greater than the average annual cost per student in the district of residence. For the purposes of this subsection, the following do not apply:

(a) an order issued under Title 40, chapter 4, part 2;

(b) placement of a child with disabilities pursuant to Title 20, chapter 7, part 4; or

(c) placement made in a state with a reciprocal tuition agreement pursuant to 20-5-314."

Section 2. Section 20-5-311, MCA, is amended to read:

"**20-5-311. High school tuition.** (1) ~~Any~~ *A* child may be enrolled in and attend a high school outside of the high school district in which he resides when ~~such~~ *the* high school is located in Montana or in a county of another state that is adjacent to the state of Montana. When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. ~~Such~~ *The* application ~~shall~~ *must* be made on a tuition agreement form supplied by the county superintendent. The trustees of the district of residence, the trustees of the district in which the child wishes to attend school, and the county superintendent are the approval agents for tuition to another high school within the county. The county superintendent of the county of residence and the trustees of the district in which the child wishes to attend school are the approval agents for attendance outside the county.

(2) (a) ~~(i)~~ The approval agents shall approve a tuition application when a child lives closer to a high school of another district than any high school located within his resident district or when, due to road or geographic conditions, it is impractical to attend the high school nearest his residence.

~~(ii)~~ However, the approval agents are not required to approve a tuition application for a student seeking to attend a high school outside the state of Montana or the resident district if the resident district provides transportation. This exception does not apply when~~:~~

~~(A)~~ the child resides in a county different from the county ~~wherein~~ *in which* the school he wishes to attend is located~~; or~~

~~(B) the child has enrolled in a high school outside his resident district and has received an approved tuition agreement on or before April 30, 1985. For the purposes of this subsection (2)(a)(ii)(B), the child has the right to continue his high school education in the receiving high school outside his resident district on an approved tuition agreement, subject to the provisions of this section~~.

(b) The approval agents shall approve a tuition application when a child, as a result of a court order *or placement by a state agency or parent in a group home licensed by the state*, is required to attend high school outside the district of residence:

(i) but within the state of Montana or another state that maintains a reciprocal tuition agreement under 20-5-314; or

(ii) in a state that does not have a reciprocal tuition agreement pursuant to 20-5-314. The amount of daily tuition may not be greater than the average daily cost per student in the district of residence. The amount of annual tuition may not be greater than the average annual cost per student in the district of residence. The county superintendent shall calculate the average annual and the average daily cost per student. For purposes of this subsection (b), the following do not apply:

(A) an order issued under Title 40, chapter 4, part 2;

(B) placement of a child *with disabilities* pursuant to Title 20, chapter 7, part 4.

(c) In approving a tuition agreement under this provision, *unless the child is a child with disabilities,* the approval agents may require the child to attend the high school closest to his residence. The approval agents may approve any other tuition application that satisfies the geographic requirements of this section.

(3) The trustees of the district where the child wishes to attend school shall approve or disapprove any tuition application submitted to them under the provisions of this section within 15 days after the receipt of the application.

(4) The county superintendent shall notify the parent or guardian and the trustees of the district where the child wishes to attend school of the tuition agreement approval or disapproval. If a tuition agreement is disapproved by one or more approval agents, the parent may appeal such disapproval to the county superintendent and, subsequently, to the superintendent of public instruction under the provision for the appeal of controversies in this title.

(5) The approval of any tuition agreement by all of the applicable approval agents or upon appeal shall authorize the child named in such agreement to enroll in and attend the school named in such agreement for the ensuing school fiscal year."

Section 3. Section 20-7-403, MCA, is amended to read:

"20-7-403. **Duties of superintendent of public instruction.** The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for ~~such~~ *the* teachers as prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying ~~handicapped~~ children *with disabilities*;

(5) recommending to districts the type of special education class or program needed to serve the ~~handicapped~~ children *with disabilities* of the districts and preparing appropriate guides for developing individual education programs;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from ~~such~~ *those* programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for all ~~handicapped~~ children *with disabilities*;

(8) approving, as they are proposed and annually thereafter, those special education classes or programs ~~which~~ *that* comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;

(9) providing technical assistance to district superintendents, principals, teachers, and trustees;

(10) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(11) preparing appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;

(12) acting as the coordinating agency with federal agencies, other state agencies, political subdivisions of the state, and private bodies on matters concerning special education, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education;

(13) administering regional special education services for children in need of special education in accordance with policies of the board of public education; ~~and~~

(14) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education*; and*

(15) contracting with a public school district or a private residential facility for the provision of a free appropriate public education for a child when a state agency places a child with disabilities who is in need of special education in:

(a) an in-state residential facility or children's psychiatric hospital; or

(b) an out-of-state public school or private residential facility."

Section 4. Section 20-7-420, MCA, is amended to read:

"**20-7-420. Residency requirements ~~for~~ — financial responsibility for special education.** (1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of his parents or of his guardian unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last known district of residence is the child's district of residence.

(2) The district of residence is financially responsible for tuition as established under 20-5-305 and 20-5-312 for ~~special education students~~ *a child with disabilities, as defined in 20-7-401, including a child who has been placed by a state agency in a foster care or group home licensed by the state. The district of residence is not financially responsible for tuition for a child with disabilities who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.*

(3) If a child with disabilities who is in need of special education is placed in an in-state residential treatment facility or children's psychiatric hospital as defined in [section 9] but the educational placement is in a public school district, the district of residence is responsible for tuition for the proportion of time the child is served in the public school district unless the public school district is operated primarily for the purpose of providing education to children who attend the residential facility or hospital.

(4) Under the provisions of 20-7-422(3), the superintendent of public instruction shall provide funds for the education fees required to provide a free appropriate public education for a child with disabilities who is in need of special education and is placed by a state agency in an out-of-state private residential facility or out-of-state public school, provided that, in determining the special education services needed for the child with disabilities, the district of residence has complied with the rules promulgated under 20-7-402.

(5) A state agency that makes a placement of a child with disabilities is responsible for the room and board and the treatment of the child."

Section 5. Section 20-7-421, MCA, is amended to read:

"**20-7-421. Arranging attendance in another district in lieu of a special education program — tuition.** (1) ~~With the approval of the superintendent of public instruction~~ *In accordance with a placement decision made by persons determining an individualized education program for a child with disabilities,* the trustees may arrange for the attendance of a child in need of special education ~~in a special education program~~ in another district within the state of Montana.

(2) Tuition as required under 20-5-305 and 20-5-312 may be charged as provided in 20-7-420."

Section 6. Section 20-7-422, MCA, is amended to read:

"**20-7-422. Out-of-state ~~tuition for special education children~~ *placement of children with disabilities — payment of costs.*** (1) ~~If the trustees of any district recommend to the superintendent of public instruction the attendance of a child in need of special education~~ *In accordance with a placement made by persons determining an individualized education program for a child with disabilities, the trustees of a district may arrange for the attendance of the child* in a special education program offered outside of the state of Montana~~, the~~. *The* arrangements are not subject to the out-of-state attendance provisions ~~of the laws governing the attendance of pupils in schools outside the state of Montana~~ *in 20-5-301 and 20-5-311.*

(2) *(a)* ~~Whenever the attendance of a child at an out-of-state special education program is approved by the superintendent of public instruction, the superintendent of public instruction shall, in cooperation with the department of family services, negotiate the program for the child and the amount and manner of payment of tuition. The amount of tuition must be included as a contracted service in 20-7-431(1)(a)(iii)(A) in the foundation program amount for special education.~~ *Except as provided in subsection (3), when the persons determining the individualized education program of a child with disabilities who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.*

(b) If the placement of the child with disabilities has met the requirements of 20-7-402, the superintendent of public instruction shall approve the amount of special education instructional fees to be included as a contracted service. Only the special education instructional fees may be included as a contracted service for the purposes of 20-7-431(1)(a)(iii)(A).

(3) Whenever a child with disabilities who is in need of special education is adjudicated by a court of competent jurisdiction to be an abused, neglected, or dependent child as defined in 41-3-102 or a youth in need of supervision or delinquent youth as defined in 41-5-103 and is placed by a state agency in an out-of-state private residential facility, the superintendent of public instruction shall negotiate with:

(a) the provider for the amount and manner of payment of education fees consistent with the individualized education program determined for the child under the provisions of 20-7-402; and

(b) the state agency that makes the placement for the portion of the placement costs that represents the child's education program.

(4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the superintendent of public instruction from the state special education appropriation."

Section 7. Section 20-7-431, MCA, is amended to read:

"**20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting.** (1) For the purpose of determining the foundation program amount for special education as defined in 20-9-321, the following schedule of allowable costs must be followed by the school district in preparation of its special education budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget (for the purposes of determining the amount of the foundation program for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313):

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses including:

(i) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program;

(ii) teaching supplies and textbooks if used exclusively for special programs—the actual total cost;

(iii) other expenses:

(A) contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies—the actual total cost;

(B) transportation costs for special education personnel who travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes;

(b) supportive services, including:

(i) salaries and benefits of professional supportive personnel—the entire cost if employed full time in the special program; if the personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program. Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) salaries and benefits of clerical personnel who assist professional personnel in supportive services—the entire cost if employed full time in the special program; if the personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program;

(c) equipment:

(i) equipment—the actual total cost;

(ii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;

(iii) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;

(iv) repair and maintenance of equipment—the actual total cost~~;~~

~~(d) room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction~~.

(2) The superintendent of public instruction shall adopt rules in accordance with the policies of the board of public education for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that must be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(b) of this section; and

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(c)(i) of this section.

(3) An annual accounting of all expenditures of school district general fund money for special education must be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for the accounting.

(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the foundation program for special education.

(5) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(6) (a) Notwithstanding other provisions of the law, the superintendent of public instruction may not approve a foundation program amount for special education that exceeds legislative appropriations; however, any unexpended balance from the first year of a biennial appropriation

may be spent in the second year of the biennium in addition to the second year appropriation.

(b) If the total allowable cost of the special education budgets exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations based upon prioritized budget items as established by the superintendent of public instruction. The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the foundation program for special education and is the responsibility of the school district."

Section 8. Section 20-9-334, MCA, is amended to read:

"**20-9-334. Apportionment of county equalization moneys by county superintendent.** The county superintendent shall separately apportion the revenues deposited in the basic county tax account and the revenues deposited in the basic special tax for high schools account to the several districts of the county on a monthly basis. The apportionments shall be known as "county equalization moneys". Before the county superintendent makes the monthly apportionments, he shall:

(1) deduct from the revenues available in the basic county tax account the amount required for the month to pay the county's obligation for elementary transportation reimbursements *and out-of-state tuition obligations*; and

(2) deduct from the revenues available in the basic special tax for high schools account the amount required for the month to pay the county's obligation for high school out-of-county tuition."

Section 9. **Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children with emotional disturbances.** (1) It is the intent of the legislature that eligible children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an appropriate educational opportunity in a cost-effective manner.

(2) The superintendent of public instruction may contract with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the hospital or treatment facility.

(3) Whenever the superintendent of public instruction contracts with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the children's psychiatric hospital or residential treatment facility, the superintendent of public instruction shall:

(a) monitor the provision of an appropriate educational opportunity for the child attending the hospital or residential treatment facility;

(b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs for providing special education, including the costs of retirement benefits, federal social security system contributions, and unemployment compensation insurance; and

(c) fund 100% of any approved allowable costs under this section from funds appropriated for this purpose. An appropriation in excess of the allowable costs required under the provisions of this section must revert to the state equalization aid account.

(4) A supplemental education fee or tuition may not be charged for an eligible Montana child who receives in-patient treatment in an in-state children's psychiatric hospital or residential treatment facility.

(5) If a children's psychiatric hospital or residential treatment facility fails to provide an appropriate educational opportunity for an eligible child at the children's psychiatric hospital or residential treatment facility or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction shall negotiate with the school district in which the children's psychiatric hospital or residential treatment facility is located for the supervision and implementation of an appropriate educational program for a child attending the children's psychiatric hospital or residential treatment facility. The amount negotiated with the school district must be consistent with allowable costs that may be negotiated under the provisions of subsection (3).

(6) Funds provided to a district under this section:

(a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract;

(b) are not subject to the budget limitations in 20-9-315; and

(c) may not be included in the foundation program amount of the district.

Section 10. **Definitions.** For the purposes of [sections 8 and 9], the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the health care financing administration, or other comparable accreditation.

(b) The term does not include programs for children and youth that have the treatment of chemical dependency as the primary reason for treatment.

(2) "Eligible child" means a child or youth who is less than 19 years of age and is emotionally disturbed as defined in 53-4-101 and whose emotional problem is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for in-patient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that provides services for children with emotional disturbances and that is licensed by the state and operated for the primary purpose of providing long-term treatment services for mental illness, in a residential setting, to persons under 21 years of age.

(b) The term does not include programs for children and youth who have the treatment of chemical dependency as a primary reason for treatment.

Section 11. **Out-of-state tuition.** (1) The county superintendent of schools of the county of the district of residence shall make payments from the county basic tax for elementary schools for children who are placed in facilities outside the state of Montana pursuant to 20-5-301(3)(e) but not under the provisions of Title 20, chapter 7, part 4.

(2) The county superintendent of schools of the county of residence shall make payments from the county basic special tax for high schools as provided in 20-9-334 for children who are placed in facilities outside the state of Montana as a result of a court order or placement by a state agency. This provision does not apply to children with disabilities that are defined under the provisions of Title 20, chapter 7, part 4.

Section 12. **Appropriation.** There is appropriated from the general fund to the superintendent of public instruction $2,471,000 for the biennium ending June 30, 1993, to fund educational programs for children with disabilities who are placed in an in-state children's psychiatric hospital or residential treatment facility.

Section 13. **Repealer.** Section 20-7-423, MCA, is repealed.

Section 14. **Codification instruction.** [Sections 9 through 11] are intended to be codified as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [sections 9 through 11].

Section 15. **Effective date.** [This act] is effective July 1, 1991.

Approved May 15, 1991.

CHAPTER NO. 766

[HB 1013]

AN ACT TO PROHIBIT THE LIQUOR DIVISION OF THE DEPARTMENT OF REVENUE FROM REQUIRING LOW-VOLUME LIQUOR, AS USED IN SECTION 16-1-401, MCA, OR LOW-VOLUME TABLE WINE COMPANIES FROM MAINTAINING LIQUOR OR WINE IN THE STATE WAREHOUSE WHILE THE COMPANY MAINTAINS OWNERSHIP OF THE LIQUOR OR WINE; AMENDING SECTION 16-1-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-304, MCA, is amended to read:

"**16-1-304. Prohibited acts within division.** (1) No officer or employee of the liquor division, including those engaged in the sale of liquor at the various state liquor or table wine stores, may be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor or table wine, whether as owner, part owner, partner, member of syndicate, shareholder, agent, or employee and whether for his own benefit or in a fiduciary capacity for some other person.

(2) No member or employee of the division or any employee of the state may solicit or receive directly or indirectly any commission, remuneration, or gift whatsoever from any person or corporation having sold, selling, or offering liquor or table wine for sale to the state or division pursuant to this code.

(3) No person selling or offering for sale to or purchasing liquor or table wine from the state liquor division may either directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any member or employee of the division, to any employee of the state, or to anyone on behalf of such member or employee.

(4) The prohibition contained in subsection (3) of this section does not prohibit the division from receiving samples of liquor or table wine for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any other person, firm, or corporation proposing to sell any liquor or table wine to the Montana liquor division shall submit, without cost to the division prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding 25 fluid ounces of such merchandise to the division.

(b) When a brand of liquor or table wine has been accepted for testing by the division, the division shall forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The division shall maintain written records of all samples received. The records shall show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the division's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) No liquor, wine, or other alcoholic beverage may be withdrawn from the regular warehouse inventory or from the state liquor stores of the Montana liquor division for any purpose other than sale at the prevailing state retail prices or for destroying damaged or defective merchandise. The division shall maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse or state store merchandise.

(6) The division may not require a company that manufactured, distilled, rectified, bottled, or processed and sold less than 200,000 proof gallons of liquor nationwide in the previous calendar year to maintain minimum amounts of liquor or wine in the state warehouse while the distiller or winery retains ownership of the product.

(7) The division may not require a company that bottled and sold less than 100,000 wine gallons of table wine nationwide in the previous calendar year to maintain minimum amounts of table wine in the state warehouse while the company retains ownership of the product."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved May 16, 1991.

CHAPTER NO. 767

[SB 17]

AN ACT TO GENERALLY REVISE SCHOOL LAW IN COMPLIANCE WITH NEW SCHOOL FUNDING PROVISIONS AND GENERALLY ACCEPTED ACCOUNTING PRINCIPLES FOR SCHOOL DISTRICTS; TO ALLOW A DISTRICT TO AMEND THE ADOPTED GENERAL FUND BUDGET AND TO EXCEED ANY APPLICABLE BUDGET LIMITATION IN CERTAIN CIRCUMSTANCES; TO ALLOW SCHOOL DISTRICTS TO TRANSPORT PRESCHOOL SPECIAL EDUCATION STUDENTS; TO LIMIT STATE TRANSPORTATION REIMBURSEMENT TO 180 PUPIL-INSTRUCTION DAYS; TO ADJUST THE SCHOOL DISTRICT BONDING LIMITATION TO COMPENSATE FOR CHANGES IN DISTRICT TAXABLE VALUATION; TO EXTEND THE ALLOCATION OF PERCENTAGES OF THE INDIVIDUAL INCOME TAX AND THE CORPORATE LICENSE AND INCOME TAX TO THE STATE GENERAL FUND, THE DEBT SERVICE ACCOUNT FOR

LONG-RANGE BUILDING PROGRAM BONDS, AND THE STATE EQUALIZATION AID ACCOUNT FOR PUBLIC SCHOOLS; AMENDING SECTIONS 15-1-501, 15-24-1402, 20-3-106, 20-3-205, 20-3-324, 20-5-307, 20-5-312, 20-7-713, 20-9-104, 20-9-141, 20-9-142, 20-9-145, 20-9-161, 20-9-162, 20-9-163, 20-9-164, 20-9-165, 20-9-166, 20-9-201, 20-9-206, 20-9-208, 20-9-209, 20-9-210, 20-9-214, 20-9-221, 20-9-231, 20-9-301, 20-9-315, 20-9-321, 20-9-344, 20-9-353, 20-9-360, 20-9-366, 20-9-367, 20-9-368, 20-9-406, 20-9-435, 20-9-438, 20-9-439, 20-9-471, 20-9-501, 20-9-504, 20-9-505, 20-9-507, 20-10-101, 20-10-143, 20-10-144, 20-10-145, AND 20-15-404, MCA; REPEALING SECTIONS 15-10-103, 20-9-111, AND 20-9-167, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-106, MCA, is amended to read:

"**20-3-106. Supervision of schools — powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state, and he shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;

(5) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;

(6) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(7) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(8) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(9) establish a system of communication for calculating joint district revenues in accordance with the provisions of 20-9-151;

(10) approve or disapprove the adoption of a district's ~~emergency~~ budget *amendment* resolution under the conditions prescribed in 20-9-163 and ~~publish~~ *adopt* rules for an application for additional state aid for ~~an~~

~~emergency~~ *a* budget *amendment* in accordance with the approval and disbursement provisions of 20-9-166;

(11) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(12) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(13) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(14) distribute state equalization aid in support of the foundation program and guaranteed tax base aid, in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(15) distribute state impact aid in accordance with the provisions of 20-9-304;

(16) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(17) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;

(18) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

(19) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(20) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(21) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

(22) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(23) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(24) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(25) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(26) as the governing agent and executive officer of the state of Montana for K-12 vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(27) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(28) administer the traffic education program in accordance with the provisions of 20-7-502;

(29) administer the school food services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

(30) review school building plans and specifications in accordance with the provisions of 20-6-622;

(31) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408;

(32) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

(33) administer the distribution of guaranteed tax base aid for county retirement levy obligations in accordance with 20-9-366 through 20-9-369; and

(34) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

Section 2. Section 20-3-205, MCA, is amended to read:

"**20-3-205. Powers and duties.** The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in his county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition application submitted to him in accordance with the provisions of 20-5-301, 20-5-302, 20-5-304, and 20-5-311 and transmit the tuition information required by 20-5-312;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(7) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned to him under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenues and tax levies, file final *budgets* and ~~emergency budgets~~ *budget amendments*, and fulfill ~~such~~ other responsibilities assigned to him under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-334, 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the provisions of 20-9-348 and the other general fund revenue provisions of the general fund part of this title;

(17) compute the revenues and the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts ~~which~~ *that* do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of his official acts, preserve all reports submitted to him under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to his successor;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed."

Section 3. Section 20-3-324, MCA, is amended to read:

"**20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or ~~an emergency~~ *a* budget *amendment* of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, foundation program, *permissive,* additional levy, ~~cash~~ *operating* reserve, and state impact aid ~~amount~~ *amounts* for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous federal programs fund, building fund, lease or rental agreement fund, traffic education fund, and interlocal cooperative agreement fund in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to his child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110; and

(24) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 4. Section 20-5-307, MCA, is amended to read:

"**20-5-307. Budgeting, levy requirement, and paying elementary tuition.** (1) The tuition amount that has been established in 20-5-305 ~~shall~~ *must* be paid during the ensuing school fiscal year. The trustees of the elementary district shall include ~~such~~ *the* amount in the tuition fund of the preliminary budget. If the trustees should fail to include ~~such~~ *the* amount or any portion of it in the preliminary budget, they shall adjust the budgeted amount in adopting the final budget to provide for the total tuition amount that is due during the ensuing school fiscal year. ~~Such~~ *The* adjustment ~~shall not be~~ *is not* subject to the budget adjustment provisions of 20-9-132.

(2) The county superintendent shall report the net tuition fund levy requirement for each elementary district to the county commissioners on the second Monday of August, and a levy on the district ~~shall~~ *must* be made by the county commissioners in accordance with 20-9-142. ~~Such~~ *The* levy requirement ~~shall~~ *must* be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the ~~cash~~ *fund* balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated ~~moneys~~ *money* that may be realized in the tuition fund.

(3) The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification provided under the provisions of 20-5-306. At least one-half of the payments must be made in December, and the remaining payments must be made by June 15 of the fiscal year.

(4) Any unanticipated tuition receipts received under the provisions of chapter 7, part 4, or this part for the current school fiscal year must be deposited in a separate account of the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget."

Section 5. Section 20-5-312, MCA, is amended to read:

"20-5-312. **Reporting, budgeting, and payment for high school tuition.** (1) Except as provided in subsection (2), at the close of the school term of each school fiscal year, the trustees of each high school district shall determine the rate of tuition for the current school fiscal year by:

(a) totaling the actual expenditures from the district general fund, the debt service fund, and, if the pupil is a resident of another county, the retirement fund;

(b) dividing the amount determined in subsection (1)(a) above by the ANB of the district as determined under the provisions of 20-9-311; and

(c) subtracting from the amount determined in subsection (1)(b) the per-ANB amount allowed by the foundation program schedules and the per-ANB amount of guaranteed tax base aid as provided in 20-9-366 through 20-9-369.

(2) The tuition for a full-time high school special education pupil must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for full-time high school special education pupils as designated in 20-9-311 for funding purposes.

(3) Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:

(a) the names, addresses, and resident districts of the pupils attending the schools of the district under an approved tuition agreement;

(b) the number of days of school attended by each pupil;

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, have the authority to waive; and

(d) the rate of current school fiscal year tuition, as determined under the provisions of this section.

(4) When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the superintendent of each district in which the reported pupils reside.

(5) When the district superintendent receives a tuition report or reports for high school pupils residing in his district and attending an out-of-district high school under approved tuition agreements, he shall determine the total amount of tuition due the out-of-district high schools on the basis of the following per-pupil schedule: the rate of tuition, number of pupils attending under an approved tuition agreement, and other information provided by each high school district where resident district pupils have attended school.

(6) The total amount of the high school tuition, with consideration of any tuition waivers, for pupils attending a high school outside the county of residence must be financed by the county basic special tax for high schools as provided in 20-9-334. In December, the county superintendent shall cause the payment by county warrant of at least one-half of the high school tuition obligations established under this section out of the first money realized from the county basic special tax for high schools. The remaining obligations must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer of the county where each high school entitled to tuition is located. ~~The~~ *Except as provided in subsection (8), the* county treasurer shall credit tuition receipts to the general fund of the applicable high school district, and the tuition receipts must be used in accordance with the provisions of 20-9-141.

(7) For pupils attending a high school outside their district of residence but within the county of residence, the total amount of the tuition, with consideration of any tuition waivers, must be paid during the ensuing school fiscal year. The trustees of the sending high school district shall include the tuition amount in the tuition fund of the preliminary and final budgets. This budgeted tuition amount is not subject to the budget adjustment provisions of 20-9-132. The county superintendent shall report the net tuition fund levy requirement for each high school district to the county commissioners on the second Monday of August, and a levy on the district must be made by the county commissioners in accordance with 20-9-142. The levy requirement must be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the ~~cash~~ *fund* balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated money that may be realized in the tuition fund. The trustees shall pay by warrants drawn on the tuition fund the tuition

amounts owed to each district included in the county superintendent's notification. Payments must be made whenever there is a sufficient amount of cash available in the tuition fund but no later than the end of the school fiscal year for which the budget is adopted. However, if the trustees of either the sending or receiving high school district feel the transfer privilege provided by this subsection is being abused, they may appeal to the county superintendent of schools, who shall hold a hearing and either approve or disapprove the transfer.

(8) Any unanticipated tuition receipts received under the provisions of chapter 7, part 4, or this part for the current school fiscal year must be deposited in a separate account of the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget."

Section 6. Section 20-7-713, MCA, is amended to read:

"**20-7-713. Adult basic education fund ~~cash~~ *operating* reserve.** At the end of each school fiscal year, the trustees of ~~any~~ *a* school district that operates an adult basic education program may designate ~~what~~ *the* portion of the adult basic education fund end-of-the-year ~~cash~~ *fund* balance that is to be earmarked as ~~cash~~ *operating* reserve for the purpose of paying, whenever a cash flow shortage occurs, adult basic education fund warrants issued by the district from July 1 through June 30 of the ensuing school fiscal year. The amount of the adult basic education fund ~~cash~~ balance that is earmarked as ~~cash~~ *operating* reserve may not exceed 35% of the final adult basic education fund budget for the ensuing school fiscal year."

Section 7. Section 20-9-104, MCA, is amended to read:

"**20-9-104. General fund ~~cash~~ *operating* reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year ~~cash~~ *fund* balance that is to be earmarked as ~~cash~~ *operating* reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections ~~(3)~~*(5)* and ~~(4)~~*(6)*, the amount of the general fund ~~cash~~ balance that is earmarked as ~~cash~~ *operating* reserve may not exceed the following percentages of the final general fund budget for the ensuing school fiscal year:

(a) 35% for a district that did not receive state equalization aid during the current school fiscal year;

(b) 30% for a district that received state equalization aid equal to 25% or less of its foundation program schedule entitlement in the current school fiscal year; and

(c) 20% for a district that received state equalization aid equal to more than 25% of its foundation program schedule entitlement in the current school fiscal year.

(2) The amount held as ~~cash~~ *operating* reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Any unreserved fund balance that is equal to or less than the prior year's excess reserves as provided in subsection (5) may be used to reduce the permissive levy provided by 20-9-145 or to reduce the voted levy provided by 20-9-353.

(4) Any portion of the general fund end-of-the-year ~~cash~~ *fund* balance that is not ~~earmarked for cash reserve purposes~~ *reserved under subsection (2) or reappropriated under subsection (3)* is ~~cash~~ *fund balance* reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b)(iii).

~~(3)~~*(5)* The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than *one or more of the following*:

(a) any amount received ~~during the current school fiscal year~~ under Public Law 81-874;

(b) the unused balance of any amount received*:*

(i) in settlement of tax payments protested *in a* prior ~~to July 1, 1990~~ *school fiscal year;*

(ii) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

(iii) in delinquent taxes from a prior school fiscal year; or

(c) any amount received as a general bonus payment under 20-6-401.

~~(4)~~*(6)* The limitation of subsection (1) does not apply when the amount earmarked as ~~cash~~ *operating* reserve is $10,000 or less."

Section 8. Section 20-9-141, MCA, is amended to read:

"**20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the amount established by the schedules in 20-9-316 through 20-9-321 by totaling:

(i) the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303; and

(ii) any additional general fund budget amount adopted by the trustees of the district under the provisions of *20-9-145 and* 20-9-353, including any additional levies authorized by the electors of the district.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund ~~cash~~ *balance* reappropriated, as established under the provisions of 20-9-104;

(iv) anticipated or reappropriated state impact aid received under the provisions of 20-9-304;

(v) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(vi) anticipated net proceeds taxes for interim production and new production, as defined in 15-23-601;

(vii) anticipated revenue from local government severance taxes as provided in 15-36-112;

(viii) anticipated revenue from coal gross proceeds under 15-23-703;

(ix) anticipated interest to be earned or reappropriated interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

(x) anticipated revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

(xi) any other revenue anticipated by the trustees to be received during the ensuing school fiscal year ~~which~~ *that* may be used to finance the general fund, *excluding any guaranteed tax base aid.*

(c) ~~Subtract~~ *Notwithstanding the provisions of subsection (2), subtract* the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from ~~the total requirement determined in subsection (1)(a).~~ *any additional general fund budget amount adopted by the trustees of the district as the permissive amount under the provisions of 20-9-145 to determine the general fund permissive net levy requirement.*

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by a district levy as provided in 20-9-303 and 20-9-353 to determine the additional general fund levy requirement.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund

permissive net levy requirement by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

~~(2)~~*(3)* The net general fund levy requirement determined in ~~subsection (1)(c)~~ *subsections (1)(c) and (1)(d)* must be reported to the county commissioners on the second Monday of August by the county superintendent as the general fund *permissive net levy requirement and the additional general fund* levy requirement for the district, and a levy must be ~~made~~ *set* by the county commissioners in accordance with 20-9-142."

Section 9. Section 20-9-142, MCA, is amended to read:

"**20-9-142. Fixing and levying taxes by board of county commissioners.** On the second Monday in August, the county superintendent shall place before the board of county commissioners the final adopted budget of the district ~~and any emergency budget adopted by the district during the previous school fiscal year~~. It ~~shall be~~ *is* the duty of the board of county commissioners to fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget ~~and any emergency budget of the district~~."

Section 10. Section 20-9-145, MCA, is amended to read:

"**20-9-145. ~~Overschedule permissive~~ *Permissive* amount of general fund budget — permissive levy.** Whenever the trustees of ~~any~~ *a* district determine it necessary to adopt a general fund budget in excess of the foundation program amount for that district, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. This amount is the "permissive amount" and may not exceed ~~[the equivalent of the percent to be determined that is 112% of FY 1988 district general fund and insurance fund expenditures]~~ *35%* of the foundation program amount. It must be financed by ~~the district and established as provided in 20-9-142~~ *a levy on the taxable value of all property within the district,* by any guaranteed tax base aid for which the district may be eligible, and by other revenue available to the district for other than foundation program support."

Section 11. Section 20-9-161, MCA, is amended to read:

"**20-9-161. Definition of ~~emergency~~ *budget amendment* for budgeting purposes.** As used in this title, unless the context clearly indicates otherwise, the term ~~"emergency"~~ *"budget amendment"* for the purpose of school budgeting ~~shall be~~ *means an amendment to an adopted budget of the district for the following reasons*:

(1) an increase in the enrollment of an elementary or high school district ~~over the immediately preceding school fiscal year which~~ *that* is beyond what could reasonably have been anticipated at the time of the adoption of the budget for the ~~then-current~~ *current* school fiscal year whenever, because of ~~such~~ *the* enrollment increase, the district's budget for any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year;

(2) the destruction or impairment of any school property necessary to the maintenance of the school, by fire, flood, storm, riot, insurrection, or ~~any~~ act of God, to ~~such~~ an extent ~~as to render such~~ *rendering* school property unfit for its present school use;

(3) a judgment for damages against the district ~~rendered~~ *issued* by a court after the adoption of the budget for the current year;

(4) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district; ~~or~~

(5) receipt of:

(a) settlement of taxes protested in a prior school fiscal year;

(b) taxes from a prior school fiscal year as the result of a tax audit by the department of revenue or its agents;

(c) delinquent taxes from a prior school fiscal year; and

(d) a determination by the trustees that it is necessary to expend all or a portion of the taxes received under subsection (5)(a), (5)(b), or (5)(c) for a project or projects that were deferred from a previous budget of the district as a result of the protested taxes; or

~~(5)~~*(6)* any other ~~reason of similar consequences that has been approved by the superintendent of public instruction upon petition by the trustees of the district or by the board of regents upon petition by the trustees of a community college district~~ *unforeseen need of the district that cannot be postponed until the next school year without dire consequences affecting the safety of the students and district employees or the educational functions of the district.*"

Section 12. Section 20-9-162, MCA, is amended to read:

"**20-9-162. Authorization for ~~emergency~~ budget *amendment* adoption.** ~~Emergency budgets~~ *(1) Notwithstanding the provisions of subsections (2) and (3), a budget amendment* may be adopted at any time of the school fiscal year, except that ~~emergency budgets~~ *a budget amendment* required by an enrollment increase that could not have been anticipated at the time of the adoption of the regular budget as provided in 20-9-161(1) may not be adopted until after ~~December 31~~ *October 1.*

(2) If a budget amendment for the reasons provided in 20-9-161(1) through (4) does not cause the district general fund budget to exceed the limitations in 20-9-315, the trustees may approve the budget amendment by a resolution as provided in 20-9-163. The trustees shall send a copy of the resolution to the county superintendent and to the board of county commissioners of the county.

(3) The trustees shall submit the following to the superintendent of public instruction for approval in the manner provided in 20-9-163:

(a) a budget amendment for the reasons provided in 20-9-161(5) and (6); and

(b) a budget amendment for any reason provided in 20-9-161(1) through (4) that causes the district general fund budget to exceed the limitations in 20-9-315."

Section 13. Section 20-9-163, MCA, is amended to read:

"**20-9-163. Resolution for ~~emergency~~ budget *amendment* — petition to superintendent of public instruction ~~or to the board of regents~~.** (1) ~~Whenever~~ *Notwithstanding the provisions of subsection (3), whenever* the trustees of ~~any~~ *a* district decide that ~~an emergency exists~~ *a budget amendment is necessary*, they may adopt a resolution proclaiming ~~such emergency~~ *the budget amendment* by a ~~unanimous~~ *majority* vote of ~~all members present at any meeting for which each trustee has been given reasonable notice of the time and place of holding such meeting~~ *the trustees*. The ~~emergency~~ *budget amendment* resolution ~~shall~~ *must* also state the facts constituting the ~~emergency~~ *need for the budget amendment*, the estimated amount of money required to ~~meet the emergency~~ *fund the budget amendment*, the funds affected by ~~the emergency~~ *the budget amendment*, and the time and place ~~when~~ the board will meet for the purpose of considering and adopting ~~an emergency~~ *a* budget *amendment* for ~~such~~ funds for the current school fiscal year.

(2) If the trustees ~~decide that an emergency exists for any reason other than the conditions specified in subsections (1), (2), (3), or (4) of 20-9-161, they shall petition the superintendent of public instruction or, in the case of a community college district, the board of regents for permission to adopt a resolution of emergency. Such petition shall set forth in writing the reasons for the request, the district funds affected by the emergency, the estimated amount of money required to meet such emergency for each affected fund, the anticipated sources of financing for the emergency expenditures, and such other information as may be required by the superintendent of public instruction or the board of regents. The petition shall be signed by each trustee.~~ *of a school district determine that the proposed budget amendment will cause the district general fund to exceed the limitations of 20-9-315 or is for the reasons provided in 20-9-161(5) and 20-9-161(6), the trustees shall petition the superintendent of public instruction for permission to adopt a resolution for a budget amendment. The petition must set forth in writing the reasons for the request, the district funds affected by the budget amendment, the estimated amount of money required*

for the budget amendment for each affected fund, the anticipated sources of financing for the budget amendment expenditures, and any other information required by the superintendent of public instruction. The petition must be signed by a majority of the trustees.

(3) The superintendent of public instruction ~~or, in the case of a community college district, the board of regents~~ shall promptly approve or disapprove the petition requesting approval to adopt a resolution ~~of emergency~~ *for a budget amendment*. If the petition is approved, the trustees may ~~then~~ adopt a resolution ~~of emergency~~ *for a budget amendment* and ~~may subsequently~~ take all other steps required for the adoption of ~~an emergency~~ *a* budget *amendment*. Approval of a petition by the superintendent of public instruction ~~or the board of regents shall merely authorize~~ *authorizes* the board of trustees to initiate ~~emergency~~ *a* budget ~~proceedings~~ *amendment* by resolution and ~~shall~~ *does* not relieve the trustees of the necessity of complying with the requirements of the school ~~emergency~~ budgeting laws. Approval of the petition ~~shall~~ *may* not be construed as approval of any subsequent application for increased state aid on account of ~~such emergency~~ *the budget amendment*."

Section 14. Section 20-9-164, MCA, is amended to read:

"**20-9-164. Notice of ~~emergency~~ budget *amendment* resolution.** A copy of the ~~emergency~~ *budget amendment* resolution ~~shall~~ *must* be published one time in a newspaper that will give notice to the largest number of people of the district as determined by the trustees, and a copy of the resolution ~~shall~~ *must* be posted at each schoolhouse of the district. A copy of the ~~emergency~~ *budget amendment* resolution ~~shall~~ *must* also be delivered to the county superintendent and to the county clerk as the clerk of the board of county commissioners of the county. The publication, posting, and delivery of the resolution ~~shall~~ *must* be done not less than 1 week before the day specified in the resolution for the consideration and adoption of ~~an emergency~~ *a* budget *amendment*."

Section 15. Section 20-9-165, MCA, is amended to read:

"**20-9-165. ~~Emergency budget~~ *Budget amendment* limitation, preparation, and adoption procedures.** (1) The meeting of the trustees to consider and adopt ~~an emergency~~ *a* budget ~~shall~~ *amendment must* be open to the public, and any taxpayer in the district ~~shall have~~ *has* the right to appear and be heard. If at ~~such a~~ *the* meeting a majority of the trustees present ~~shall~~ find that ~~an emergency exists~~ *there is sufficient need for a budget amendment*, the trustees may make and adopt a preliminary ~~emergency~~ budget *amendment*, on the regular budget form, setting forth fully the facts constituting the ~~emergency~~ *need for the budget amendment*. In adopting the preliminary ~~emergency~~ budget *amendment*, the trustees may budget for any fund ~~which~~ *that* was included on the final budget of the district for the current school fiscal year. The budget ~~shall~~ *must* be itemized to show the amount appropriated for each item as required on the budget form.

(2) When the ~~emergency~~ *budget amendment* is ~~due to any increase~~ *the result* of *increased* enrollment, the maximum amount of the ~~emergency~~ budget *amendment* for all funds ~~shall~~ *must* be determined in the following manner:

(a) Determine the total amount in the final budget for the current school fiscal year of all funds affected by the ~~emergency~~ *enrollment increase,* less any amounts appropriated as capital outlay and any amount appropriated for addition to the ~~cash~~ *operating* reserve.

(b) Divide the amount determined in subsection (2)(a) by the number of pupils originally enrolled in ~~such~~ *the* district during the immediately preceding school fiscal year. The resulting cost per pupil ~~shall constitute~~ *is* the maximum permissible per-pupil expenditure in the ~~emergency~~ budget *amendment.*

(c) Determine the enrollment increase of the current school fiscal year by subtracting the number of pupils originally enrolled during the immediately preceding school fiscal year from the number of pupils enrolled for the current school year. The result ~~shall be~~ *is* the enrollment increase for the current school fiscal year.

(d) Multiply the cost per pupil determined in subsection (2)(b) by the enrollment increase determined in subsection (2)(c). The result ~~shall be~~ *is* the maximum limitation on ~~an emergency~~ *a* budget *amendment* for ~~emergencies~~ *amendments* ~~due to an increase of~~ *resulting from increased* enrollment.

~~(e) In the case of a community college district, by budget amendment.~~

(3) ~~In the event of any other type of emergency~~ *For other types of budget amendments,* the budget ~~shall be~~ *amendment is* limited ~~by those~~ *to the* expenditures ~~deemed~~ *considered* by the trustees to be reasonable and necessary to finance the ~~stated~~ conditions of the ~~emergency~~ *budget amendment* and the preliminary ~~emergency~~ budget ~~shall~~ *amendment must* ~~be accompanied with~~ *include* the details of the proposed expenditures.

(4) Whenever the trustees adopt a preliminary ~~emergency~~ budget *amendment* for the transportation fund, the trustees shall attach to ~~such~~ *the* budget *amendment* a copy of each transportation contract ~~which~~ *that* is connected with the ~~emergency~~ *budget amendment* and ~~which~~ *that* has been prepared and executed in accordance with the school transportation contract laws.

(5) After the trustees have adopted the ~~emergency~~ budget *amendment* by a majority vote of the trustees, it ~~shall~~ *must* be signed by the chairman of the trustees and the clerk of the district and copies ~~shall~~ *must* be sent to the county superintendent, the county treasurer, and the superintendent of public instruction. ~~In the case of a community college district, copies of the emergency budget shall be sent to the county superintendent, the county treasurer, and the board of regents.~~"

Section 16. Section 20-9-166, MCA, is amended to read:

"**20-9-166. State financial aid for ~~emergency budgets~~ *budget amendments*.** Whenever a final ~~emergency~~ budget *amendment* has been adopted for the general fund or the transportation fund to finance the cost of an ~~emergency~~ *amendment* ~~due to an~~ *resulting from* increased enrollment or any other reason approved by the superintendent of public instruction under the provisions of 20-9-163, the trustees may apply to the superintendent of public instruction for an increased payment from the state public school equalization aid account for the foundation program or for state transportation reimbursement, or both. The superintendent of public instruction shall ~~publish~~ *adopt* rules for ~~such~~ *the* application. The superintendent of public instruction shall approve or disapprove each application for increased state aid made in accordance with *20-9-314 and* this section. When the superintendent of public instruction approves an application, he shall determine the additional amount of state aid from the state public school equalization aid account or the state transportation reimbursement ~~which~~ *that* will be made available to the applicant district because of the ~~emergency caused by an~~ increase in enrollment. The superintendent of public instruction shall notify the applicant district of his approval or disapproval and, in the event of approval, the amount of additional state aid that will be made available for the general fund or the transportation fund. The superintendent of public instruction shall disburse ~~such emergency~~ *the* state aid to the eligible district at the time the next regular state aid payment is made."

Section 17. Section 20-9-201, MCA, is amended to read:

"**20-9-201. Definitions and application.** (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law *or by the superintendent of public instruction under the provisions of subsection (2)*. Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend money from the fund. The general fund, transportation fund, bus depreciation reserve fund, ~~elementary~~ tuition fund, retirement fund, debt service fund, ~~leased facilities fund,~~ building reserve fund, adult education fund, nonoperating fund, and any other funds ~~so~~ designated by the legislature are budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend money on deposit in the fund. The school food services fund, miscellaneous ~~federal~~ programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, *extracurricular fund, metal mines tax reserve fund, endowment fund,* and any other funds ~~so~~ designated by the legislature are nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district ~~except the extracurricular money realized from pupil activities~~. Elementary and high school districts shall record the receipt and disbursement of all money in accordance with generally accepted accounting principles. The superintendent of public instruction has general supervisory authority as prescribed by law

over the school financial administration provisions, as they relate to elementary and high school districts. ~~He~~ *The superintendent of public instruction* shall adopt rules necessary to secure compliance with the law.

(3) Except as otherwise provided by law, whenever the trustees of a district determine that a fund is inactive and will no longer be used, the trustees shall close the fund by transferring all cash and other account balances to the general fund if the fund does not have a cash or fund balance deficit."

Section 18. Section 20-9-206, MCA, is amended to read:

"**20-9-206. Entering appropriations on accounting records of county treasurer.** (1) When the county treasurer receives the final budgets of the districts from the county superintendent, he shall open a fund for each budgeted fund included on the final budget of each district by entering the amount appropriated for the fund on his accounting record.

(2) Whenever the county treasurer receives a final ~~emergency~~ budget *amendment* for a district from the county superintendent, he shall increase the amount of the regularly adopted final budget by the amount of ~~the emergency budgeted fund included on~~ the final ~~emergency~~ budget *amendment."*

Section 19. Section 20-9-208, MCA, is amended to read:

"**20-9-208. Transfer among appropriation items of a fund.** (1) Whenever it appears to the trustees of ~~any~~ *a* district that the appropriated amount of ~~any~~ *an* item of a budgeted fund of the final budget or ~~the emergency~~ *a* budget *amendment* is in excess of the amount actually required during the school fiscal year for ~~such~~ *the* appropriation item, the trustees may transfer any or all of the excess appropriation amount to any other appropriation item of the same budgeted fund.

(2) ~~Such transfers shall~~ *Transfers may* not be made between different funds of the same district or between similar funds of different districts except as specifically provided by this title. The trustees shall enter the authorized transfers upon the permanent records of the district."

Section 20. Section 20-9-209, MCA, is amended to read:

"**20-9-209. Lapse of budgeted appropriations and provision for unpaid claims.** (1) All appropriations for a budgeted fund in the regular ~~or emergency~~ budget *or for a budget amendment* for a given school fiscal year ~~shall~~ lapse on the last day of ~~such~~ *the* school fiscal year except the appropriations for:

(a) uncompleted improvements in progress of construction; and

(b) ~~any~~ *an* obligation for the purchase of personal property ordered but not paid for during the current fiscal year and recorded with the county treasurer in the manner and on forms prescribed by the superintendent of public instruction.

(2) ~~Any~~ *A* lawful claim presented to the district for payment under a lapsed appropriation ~~shall be~~ *is* an obligation of the budget for the next ensuing school fiscal year."

Section 21. Section 20-9-210, MCA, is amended to read:

"**20-9-210. Expenditure limitation ~~and cash retention~~ of nonbudgeted fund.** The expenditure limitation, at any time during the school fiscal year, for a nonbudgeted fund ~~shall be~~ *is* the amount of cash balance of ~~such~~ *the* nonbudgeted fund. ~~The cash balance of a nonbudgeted fund shall remain to the credit of such nonbudgeted fund from year to year unless a transfer is specifically authorized by this title.~~"

Section 22. Section 20-9-214, MCA, is amended to read:

"**20-9-214. Fees.** (1) The trustees of ~~any~~ *a* district may:

(a) require pupils in the commercial, industrial arts, music, domestic science, scientific, or agricultural courses to pay reasonable fees to cover the actual cost of breakage and of excessive supplies used; and

(b) charge pupils a reasonable fee for ~~any~~ *a* course or activity not reasonably related to a recognized academic and educational goal of the district or ~~any~~ *a* course or activity held outside normal school functions. The trustees may waive the fee in cases of financial hardship.

(2) The fees collected pursuant to ~~subsection (1) shall be~~ *subsection (1)(a) must be* deposited in *the general fund, and the fees collected pursuant to subsection (1)(b) must be deposited in* a nonbudgeted fund as provided in 20-9-210."

Section 23. Section 20-9-221, MCA, is amended to read:

"**20-9-221. Procedure for issuance of warrants.** (1) The trustees of each district shall issue all warrants, and the warrants ~~shall~~ *must* identify:

(a) the budgeted fund or nonbudgeted fund on which the warrant is drawn; and

(b) the warrant as ~~an emergency~~ *a budget amendment* warrant if it is drawn on ~~an emergency~~ *a* budget *amendment.*

(2) ~~Any warrant~~ *All warrants* issued by a district ~~shall~~ *must* be countersigned by the chairman of the trustees and the clerk of the district before the ~~warrant shall be~~ *warrants are* negotiable. Facsimile signatures may be used in accordance with the provisions of 2-16-114. A facsimile signature device used under authority of this section ~~must~~ *may* not be available to the other countersigner of the warrant, or the device must have a nonresettable metering control that can provide a positive reconciliation between the number of warrants issued and the number of signatures applied. Either split signature plates or a double signature plate may be used according to the requirements of the district. The signature plates and the device keys

must be kept secure by the district clerk under the supervision of the board of trustees of the district.

(3) The trustees shall issue warrants in single copy or in triplicate copy. When the warrants are issued in single copy, the trustees shall immediately provide a listing of the issued warrants on a fund-by-fund basis to the county treasurer and retain a copy of the listing in the district accounting records. When the warrants are issued in triplicate, the original copy of the warrant ~~shall~~ *must* be delivered to the payee, the duplicate ~~shall~~ *must* be sent immediately to the county treasurer, and the triplicate ~~shall~~ *must* be retained by the district for accounting record purposes. The duplicate and triplicate copies ~~shall~~ *must* be identified on the face of the warrant as "Not Negotiable—Copy of Original".

(4) However, the trustees may elect to issue warrants in payment of wages and salaries on a direct deposit basis to the employee's account in a local bank, provided the consent of the employee has been obtained and the employee is given an itemized statement of payroll deductions for each pay period."

Section 24. Section 20-9-231, MCA, is amended to read:

"**20-9-231. Metal mines tax reserve ~~account~~ *fund*.** (1) The governing body of a local school district receiving tax collections under 15-37-117(1)(d) may establish a metal mines tax reserve ~~account~~ *fund* to be used to hold the collections. The governing body may hold money in the ~~account~~ *fund* for any time period ~~deemed~~ *considered* appropriate by the governing body. Money held in the ~~account~~ *fund* may not be considered as ~~cash~~ *fund* balance for the purpose of reducing mill levies.

(2) Money may be expended from the ~~account~~ *fund* for any purpose provided by law.

(3) Money in the ~~account~~ *fund* must be invested as provided by law. Interest and income from the investment of the metal mines tax reserve ~~account~~ *fund* must be credited to the ~~account~~ *fund*.

(4) The fund must be financially administered as a nonbudgeted fund under the provisions of this title."

Section 25. Section 20-9-301, MCA, is amended to read:

"**20-9-301. Purpose of foundation program and definition of general fund budget.** (1) A uniform system of free public schools sufficient for the education of and open to all school age children of the state must be established and maintained throughout the state of Montana. The state shall aid in the support of its ~~several~~ school districts on the basis of their financial need as measured by the foundation program and in the manner established in this title.

(2) The principal budgetary vehicle for achieving the minimum financing as established by the foundation program is the general fund budget of the district. The purpose of the general fund budget is to finance those

general maintenance and operational costs of a district not financed by other funds established for special purposes in this title.

(3) The amount of the general fund budget for each school fiscal year may not exceed the financing limitations established by this title but may not be less than the amount established by law as the foundation program. The general fund budget must be financed by the foundation program revenues and may be supplemented by ~~an additional~~ *a permissive levy,* voted levy ~~and~~, *or* other revenue, as provided by *20-9-145 and* 20-9-353."

Section 26. Section 20-9-315, MCA, is amended to read:

"**20-9-315. Maximum general fund budget and exceptions.** (1) The total amount of the general fund budget of ~~any~~ *a* district may not be greater than the district's foundation program as provided in 20-9-303, except when a district has adopted ~~an emergency general fund~~ *a* budget *amendment* under the provisions of 20-9-165 or when a district satisfies the requirements of *20-9-145 and* 20-9-353.

(2) Notwithstanding the provisions of subsection (1), for school fiscal year 1991 and succeeding years, a district's maximum general fund budget may not exceed the greater of:

(a) ~~[the equivalent of the percent to be determined that is 112% of FY 1988 district general fund and insurance fund expenditures]~~ *135%* of the foundation program amount provided for in 20-9-303; or

(b) 104% of the district's general fund budget amount for the previous school fiscal year, *including any school district expenses from the previous school fiscal year approved for inclusion in this calculation by the superintendent of public instruction under [section 50].*

(3) Subsection (2) does not apply when *the source of funding for the excess amount is any of the following:*

(a) Public Law 81-874 funds ~~are the source of funding for the excess amount~~, until the state receives approval of an application to equalize the funds under 20 U.S.C. 240(d)*; or*

(b) general bonus payments under 20-6-401."

Section 27. Section 20-9-321, MCA, is amended to read:

"**20-9-321. Foundation program and contingency funds for special education.** (1) For the purpose of establishing the foundation program amount for a current year special education program for a school district, the superintendent of public instruction shall determine the total estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget must be prepared on forms provided by the superintendent of public instruction and must set out for each program:

(a) the estimated allowable costs associated with operating the program where allowable costs are as defined in 20-7-431;

(b) the number of pupils expected to be enrolled in the program; and

(c) any other data required by the superintendent of public instruction for budget justification purposes and to administer the provisions of 20-9-315 through 20-9-321.

(2) The total amount of allowable costs approved by the superintendent of public instruction is the special education foundation program amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget may not, under any condition, be less than the foundation program amount for one regular ANB for each full-time special pupil in the school district.

(3) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district foundation program for the school year as prescribed in this part, allowable costs approved under the budgeting provisions of subsections (1) and (2) for the operation of the program during the given year must be funded from any legislative appropriation for contingency financing for special education. Contingency funds granted under this subsection must be deposited in a separate account of the miscellaneous programs fund of the district as provided in 20-9-507. However, if contingency funds are not available, then subject to the approval of the program by the superintendent under the ~~emergency~~ budget *amendment* provisions of 20-9-161~~(5)~~*(6)*, allowable costs for the given year may be *funded in the miscellaneous programs fund by other revenue sources and* added to the foundation program amount for special education for the subsequent school year *under the provisions of [section 50]*. The allowable costs must be recorded as previous year special education expenses in the school district budget for the subsequent school year.

(4) The sum of the previous year special education expenses as defined in subsection (3) and the foundation program amount for current year special education as defined in subsections (1) and (2) is the special education budget for accounting purposes.

(5) The foundation program amount for special education must be added to the foundation program amount of the regular program ANB defined in 20-9-311 and 20-9-313 to obtain the total foundation program amount for the district."

Section 28. Section 20-9-344, MCA, is amended to read:

"20-9-344. **Purpose of state equalization aid and duties of the board of public education for distribution — conditions of first payment.** (1) The money available for state equalization aid must be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings and grounds, and transportation.

(2) The board of public education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law and in a manner that provides for monthly distribution to each district of its foundation program amount and to each county and district distribution of its guaranteed tax base aid;

(b) have the power to require reports from the county superintendents, budget boards, county treasurers, and trustees as it considers necessary; and

(c) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education may not increase or decrease the state equalization aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(3) The board of public education may order the superintendent of public instruction to withhold distribution of state equalization aid or order the county superintendent of schools to withhold county equalization money from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status.

(4) Prior to any proposed order by the board of public education to withhold distribution of state equalization aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(5) If a district or county receives more state equalization aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the ~~department of commerce~~ *superintendent of public instruction.*

(6) (a) The first foundation program payment and guaranteed tax base aid payment must be based on an estimate of 20% of the entitlement of each district or county and distributed by July 15 of the school fiscal year.

(b) Each subsequent monthly payment must be at least 7% of the entitlement of each district or county."

Section 29. Section 20-9-353, MCA, is amended to read:

"**20-9-353. Additional levy for general fund — election for authorization to impose.** (1) Except as limited by 20-9-315(2), the trustees of ~~any~~ *a* district may propose to adopt a general fund budget in excess of the foundation program *and the permissive amount* for the district for any of the following purposes:

(a) building, altering, repairing, or enlarging any schoolhouse of the district;

(b) furnishing additional school facilities for the district;

(c) acquisition of land for the district;

(d) proper maintenance and operation of the school programs of the district; or

(e) severance pay for district employees.

(2) When the trustees of ~~any~~ *a* district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount *and the permissive amount*, the trustees shall submit the proposition of an additional levy to raise the excess amount of general fund financing to the electors who are qualified under 20-20-301 to vote upon the proposition, except that an election is not required to permit the school trustees to use any funds available to finance the additional amount other than those funds to be raised by the additional levy. The special election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state only the amount of money to be raised by additional property taxation, the approximate number of mills required to raise the money, and the purpose for which the money will be expended. The ballot must be in the following format:

PROPOSITION

Shall a levy be made in addition to the levies authorized by law in the number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

☐ FOR the levy.

☐ AGAINST the levy.

(3) If the election on any additional levy for the general fund is approved by a majority vote of the electors voting at the election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify the additional levy amount authorized by the special election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141, to raise the amount of the additional levy.

(4) Authorization to levy an additional tax under the provisions of this section is effective for only 1 school fiscal year and must be authorized by a special election conducted before August 1 of the school fiscal year for which it is effective."

Section 30. Section 20-9-360, MCA, is amended to read:

"**20-9-360. State equalization aid levy.** (1) There is a levy of 40 mills imposed *by the county commissioners of each county* on all taxable property within the state, except property for which a tax or fee is required under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204. Except as provided in subsection (2), proceeds of the levy must be remitted to the state treasurer and must be deposited to the credit of the state special revenue fund for state equalization aid to the public schools of Montana.

(2) For the benefit of each municipality that created an urban renewal area and adopted a tax increment financing provision for the urban renewal area prior to July 1, 1990, ~~each year~~ the state treasurer shall distribute ~~to the county an amount of~~ *each fiscal year from* the state equalization ~~levy equal to the tax increment derived by the municipality~~ *aid levy to the municipality the amount, if any, equal to the product of the incremental taxable value of the urban renewal area times the reduced school levy for the area, each calculated* for the fiscal year ~~ending June 30, 1989, from the levy for property taxes for school district purposes against property within the urban renewal district, less the amount of tax increment actually received by the municipality in each year as a result of the imposition of mill levies for school district purposes~~. *The reduced school levy for a fiscal year is the difference between the aggregate amount of all property tax levies for school purposes in the urban renewal area, expressed in mills, in the fiscal year ended June 30, 1989, and the aggregate amount of all property tax levies for school purposes in the area or the district, expressed in mills, in the fiscal year, including the state equalization aid levy. The state treasurer shall distribute the amounts to municipalities in two equal installments on December 31 and June 30 of the fiscal year.*"

Section 31. Section 20-9-366, MCA, is amended to read:

"**20-9-366. Definitions.** As used in 20-9-366 through 20-9-369, the following definitions apply:

(1) "County mill value per elementary ANB" or "county mill value per high school ANB" means the sum of the current taxable valuation of all property in the county plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of nonlevy revenue for the support of ~~schools~~ *the elementary school and high school district retirement funds,* other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base

aid for ~~schools~~ *the county retirement fund* is the amount of nonlevy revenue ~~received by a district~~ *deposited in the elementary school or high school district retirement fund* in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the ~~district~~ *county* in the previous year *in support of the elementary school and high school district retirement funds,* multiplied by 1,000.

(2) "District mill value per ANB" means the current taxable valuation of all property in the district plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of nonlevy revenue for the support of ~~schools~~ *the school district's general fund,* other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year foundation program schedule amount. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of nonlevy revenue ~~received by~~ *deposited in* a ~~district~~ *district's general fund* in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year *in support of the district's general fund,* multiplied by 1,000.

(3) "~~Guaranteed overschedule general fund budget~~ *Permissive amount*" means that portion of a district's general fund budget in excess of the foundation program amount for the district, as provided in 20-9-316 through 20-9-321, but not exceeding ~~135%~~ *35%* of the district's foundation program amount, and which excess is authorized under the provisions of 20-9-145 and 20-9-353.

(4) "Statewide *district* mill value per elementary ANB" or "statewide *district* mill value per high school ANB" means the sum of the current taxable valuation of all property in the state plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of nonlevy revenue for the support of ~~schools~~ *the general funds of all school districts,* other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of nonlevy revenue ~~received by a district~~ *deposited to the general fund of a school district* in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of

mills levied by the district in the previous year *in support of the district general fund,* multiplied by 1,000.

(5) "Statewide county mill value per elementary ANB" or "statewide county mill value per high school ANB" means the sum of the current taxable valuation of all property in the state plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of nonlevy revenue for the support of the elementary school or high school district retirement fund, other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for the county retirement fund is the amount of nonlevy revenue deposited in the elementary school or high school district retirement fund the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the county in the previous year in support of the elementary school and high school retirement funds, multiplied by 1,000."

Section 32. Section 20-9-367, MCA, is amended to read:

"**20-9-367. Eligibility to receive guaranteed tax base aid.** (1) If the district mill value per ANB of any elementary or high school district is less than the corresponding statewide *district* mill value per *elementary ANB or high school* ANB, the district may receive guaranteed tax base aid based on the number of mills levied in the district in support of its ~~guaranteed overschedule~~ permissive amount of the general fund budget.

(2) If the county mill value per elementary ANB or high school ANB is less than the corresponding statewide *county* mill value per *elementary ANB or high school* ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county."

Section 33. Section 20-9-368, MCA, is amended to read:

"**20-9-368. Amount of guaranteed tax base aid — reversion.** (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide *county* mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets of the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide *county* mill value per high school ANB, multiplied

by the number of mills levied in support of the retirement fund budgets of the high school districts in the county.

(3) The amount of guaranteed tax base aid per ANB that a district may receive in support of its ~~guaranteed overschedule~~ permissive amount of the general fund budget is the difference between the district mill value per ANB and the corresponding statewide *district* mill value per ANB, multiplied by the number of mills levied in support of the district's ~~guaranteed overschedule~~ permissive amount of the general fund budget.

(4) Guaranteed tax base aid provided to any county or district under this section is earmarked to finance the fund or portion of the fund for which it is provided. If the actual expenditures from the fund or portion of the fund for which guaranteed tax base aid is earmarked are less than the amount budgeted, the guaranteed tax base aid reverts in proportion to the amount budgeted but not expended. If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344."

Section 34. Section 20-9-406, MCA, is amended to read:

"**20-9-406. Limitations on amount of bond issue.** (1) The maximum amount for which each school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the taxable value of the property subject to taxation as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of ~~such~~ *the* indebtedness, *including:*

(a) the taxable value of coal gross proceeds as determined for county bonding purposes in 15-23-703(2);

(b) the taxable value of oil and gas net proceeds as determined for county bonding purposes in 15-23-607(3); and

(c) the amount of the value of any other oil and gas production occurring after December 31, 1988, multiplied by 60%.

(2) The 45% maximum, however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to bonds issued for the repayment of tax protests lost by the district. All bonds issued in excess of ~~such~~ *the* amount ~~shall be null and~~ *are* void, except as provided in this section.

~~(2)~~*(3)* When the total indebtedness of a school district has reached the 45% limitation prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

~~(3)~~*(4)* Whenever bonds are issued for the purpose of refunding bonds, any ~~moneys~~ *money* to the credit of the debt service fund for the payment of the bonds to be refunded ~~are~~ *is* applied towards the payment of ~~such~~ *the* bonds and the refunding bond issue is decreased accordingly."

Section 35. Section 20-9-435, MCA, is amended to read:

"**20-9-435. Delivery of school district bonds and disposition of sale moneys.** (1) After the school district bonds have been registered, the county treasurer shall:

(a) when the board of investments has purchased ~~such~~ *the* bonds, forward the bonds to ~~such~~ *the* state board which, in turn, shall ~~cause~~ *send* the bonds ~~to be sent~~ to the state treasurer and shall cause the bonds to be paid for in the manner provided by law; or

(b) ~~when~~ *if* the purchaser is anybody other than the board of investments, deliver the bonds to ~~such~~ *the* purchaser when full payment of the bonds has been made by the purchaser.

(2) If any of the trustees fails or refuses to pay into the proper county treasury the money arising from the sale of ~~any bonds~~ *a bond*, he is guilty of a felony and shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years~~,~~ *or* by a fine of not more than $50,000, or ~~by~~ both ~~such fine and imprisonment~~.

(3) All money realized from the sale of school district bonds ~~shall~~ *must* be paid to the county treasurer, and he shall credit ~~such~~ *the* money to the building fund of the school district issuing the bonds, except money realized for *accrued interest or* the purposes defined in 20-9-403(1)(c) and (1)(d) ~~shall~~ *must* be deposited in the debt service fund ~~for the purchase of such bonds~~. The money realized from the sale of school district bonds ~~shall~~ *must* be immediately available to ~~such~~ *the* school district, and the trustees may expend ~~such~~ *the* money without budgeted authorization only for the purposes for which the bonds were authorized by the school district bond election. Under the provisions of 7-6-2802, the trustees may invest the money for which there is no immediate demand and the interest earned by ~~such~~ investment ~~shall~~ *must* be used in the manner provided ~~therein~~ *in 7-6-2802*. After the full accomplishment of the purpose or purposes of a bond issue, the excess money realized from ~~such~~ *the* bond issue ~~shall~~ *must* be transferred to the debt service fund of the school district to be used for the redemption or purchase of bonds of ~~such~~ *the* issue."

Section 36. Section 20-9-438, MCA, is amended to read:

"**20-9-438. Preparation of debt service fund budget — ~~cash~~ *operating* reserve.** (1) The trustees of each school district having outstanding bonds shall include in the debt service fund of the preliminary budget adopted in accordance with 20-9-113 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of ~~such~~ *the* bonds and the redemption plans of the trustees.

(2) The trustees shall also include in the debt service fund of the preliminary budget:

(a) the amount of money necessary to pay the special improvement district assessments levied against the school district ~~which~~ *that* become due during the ensuing school fiscal year; and

(b) a limited ~~cash~~ *operating* reserve for the school fiscal year following the ensuing school fiscal year as provided in subsection (3).

(3) At the end of each school fiscal year, the trustees of a school district may designate a portion of the end-of-the-year ~~cash~~ *fund* balance of the debt service fund to be earmarked as a limited ~~cash~~ *operating* reserve for the purpose of paying, whenever a cash flow shortage occurs, debt service fund warrants and bond obligations ~~which~~ *that* must be paid from July 1 through November 30 of the school fiscal year following the ensuing school fiscal year. Any portion of the debt service fund end-of-the-year ~~cash~~ *fund* balance not earmarked for limited ~~cash~~ *operating* reserve purposes must be reappropriated to be used for property tax reduction as provided in 20-9-439.

(4) The county superintendent shall compare the preliminary budgeted amount for the debt service fund with the bond retirement and interest requirement and the special improvement district assessments for the school fiscal year just beginning as reported by the county treasurer in his statement supplied under the provisions of 20-9-121. If the county superintendent finds that the requirement stated by the county treasurer is more than the preliminary budget amount, the county superintendent shall increase the budgeted amount for interest or principal in the debt service fund of the preliminary budget. The amount confirmed or revised by the county superintendent ~~shall be~~ *is* the final budget expenditure amount for the debt service fund of ~~such~~ *the* school district."

Section 37. Section 20-9-439, MCA, is amended to read:

"**20-9-439. Computation of net levy requirement — procedure when levy inadequate.** (1) The county superintendent shall compute the levy requirement for each school district's debt service fund on the basis of the following procedure:

(a) determine the total ~~moneys~~ *money* available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year ~~cash~~ *fund* balance~~, less any outstanding warrants~~ in the debt service fund ~~and~~, less any limited ~~cash~~ *operating* reserve as provided in 20-9-438;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435; and

(iii) any other ~~moneys~~ *money* anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from such sources as legally authorized money transfers into the debt service fund or from rental income;

(b) the total amount available to reduce the property tax, determined in subsection (1)(a), ~~shall~~ *must* be subtracted from the final budget expenditure amount for the debt service fund as established in 20-9-438;

(c) the net debt service fund levy requirement determined in subsection (1)(b) ~~shall~~ *must* be reported to the county commissioners on the second Monday of August by the county superintendent as the net debt service fund levy requirement for the district, and a levy ~~shall~~ *must* be made by the county commissioners in accordance with 20-9-142.

(2) If the board of county commissioners ~~shall fail~~ *fails* in any school fiscal year to make a levy for any issue or series of bonds of ~~any~~ *a* school district sufficient to raise the ~~moneys~~ *money* necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in ~~such~~ *any* amounts ~~as are~~ established under the provisions of this section, the holder of any bond of ~~such~~ *the* issue or series or any taxpayer of the district may apply to the district court of the county in which ~~such~~ *the* school district is located for a writ of mandate to compel the board of county commissioners of ~~such~~ *the* county to make a sufficient levy for such purposes. If, upon the hearing of ~~such~~ *the* application, it ~~shall appear~~ *appears* to the satisfaction of the court that the board of county commissioners of ~~such~~ *the* county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of ~~such~~ *the* deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in ~~such~~ *the* school district that is sufficient to raise the amount of ~~such~~ *the* deficiency. ~~Such~~ *The* levy ~~shall be~~ *is* in addition to any levy required to be made at that time for the ~~then-ensuing~~ *ensuing* school fiscal year. Any costs ~~which~~ *that* may be allowed or awarded the petitioner in ~~any such~~ *the* proceeding ~~shall~~ *must* be paid by the members of the board of county commissioners and ~~shall~~ *may* not be a charge against the school district or the county."

Section 38. Section 20-9-471, MCA, is amended to read:

"**20-9-471. Issuance of ~~short-term~~ obligations — authorization — conditions.** (1) The trustees of a school district may, without a vote of the electors of the district, issue and sell to the board of investments ~~short-term~~ obligations for the purpose of financing all or a portion of:

(a) the costs of vehicles and equipment;

(b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, and electrical systems;

(c) any other capital expenditure the district is otherwise authorized to make, subject to subsection (4); and

(d) the costs associated with the issuance and sale of the ~~short-term~~ obligations.

(2) The term of the ~~short-term~~ obligation may not exceed 5 full fiscal years.

(3) At the time of issuing the obligation, there must exist an amount in the budget for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of ~~such~~ *that* principal and interest.

(4) The proceeds of the ~~short-term~~ obligation may not be used to acquire real property or construct a facility.

(5) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

(6) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments at par, at a discount, or with a premium~~;~~ and upon any other terms and conditions that the trustees determine to be in the best interests of the district.

(7) The principal amount of the ~~short-term~~ obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation established in 20-9-406."

Section 39. Section 20-9-501, MCA, is amended to read:

"**20-9-501. Retirement fund.** (1) The trustees of ~~any~~ *a* district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to ~~such~~ *the* systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 4, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-801. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of ~~any~~ *a* district required to make a contribution to ~~any~~ *a* system referred to in subsection (1) shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to ~~such~~ *the* systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(ii) ~~anticipated guaranteed tax base aid in support of retirement;~~

~~(iii)~~ net proceeds taxes and local government severance taxes on any other oil and gas production occurring after December 31, 1988;

~~(iv)~~*(iii)* coal gross proceeds taxes under 15-23-703; ~~and~~

~~(v)~~*(iv)* any ~~cash~~ *fund balance* available for reappropriation as determined by subtracting the amount of the end-of-the-year ~~cash~~ *fund* balance earmarked as the retirement fund ~~cash~~ *operating* reserve for the ensuing school fiscal year by the trustees from the end-of-the-year ~~cash~~ *fund* balance in the retirement fund. The retirement fund ~~cash~~ *operating* reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget; *and*

(v) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) *notwithstanding the provisions of subsection (8),* subtracting the money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set the county levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine

the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the ~~budget for the special education cooperative agreement of the district bears to the total budget of the cooperative~~ *special education cooperative budget is prorated to the member school districts.* The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and *the county commissioners shall* fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(8) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (4)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000."

Section 40. Section 20-9-504, MCA, is amended to read:

"**20-9-504. Extracurricular fund for pupil functions.** (1) The government of the pupils of the school within a district or the administration of a school on behalf of the pupils may establish an extracurricular fund for the purposes of the receipts and expenditures of money collected for pupil extracurricular functions with the approval of the trustees of the district. All extracurricular moneys of ~~any~~ *a* pupil organization of the school ~~shall~~ *must* be deposited and expended by check from a bank account maintained for the extracurricular fund.

(2) An accounting system for the extracurricular fund recommended by the ~~department of commerce shall~~ *superintendent of public instruction must* be implemented by the trustees. ~~Such~~ *The* accounting system ~~shall~~ *must* provide for:

(a) the internal control of the cash receipts and expenditures of the money; and

(b) a general account that can be reconciled with the bank account for the extracurricular fund and reconciled with the detailed accounts within the extracurricular fund maintained for each student function."

Section 41. Section 20-9-505, MCA, is amended to read:

"**20-9-505. Purpose and establishment of nonoperating fund.** (1) The trustees of ~~any~~ *a* district that will not operate ~~any~~ *a* school during the ensuing school fiscal year shall establish a nonoperating fund on the first day of ~~such~~ *the* school fiscal year. In establishing the nonoperating fund, the trustees shall cause the transfer of the end-of-the-year ~~cash~~ *fund* balance of each fund maintained by the district during the immediately preceding school fiscal year to the nonoperating fund. However, ~~cash~~ *fund* balances of the debt service fund and the miscellaneous ~~federal~~ programs fund, if any, ~~shall~~ *must* be maintained in their individual funds.

(2) The trustees of a district establishing a nonoperating fund for the first year of nonoperation may earmark a portion of the nonoperating fund ~~cash~~ balance as a nonoperating fund ~~cash~~ *operating* reserve when they anticipate the reopening of a school in the following school fiscal year. ~~Such cash~~ *The operating* reserve ~~shall~~ *may* not be more than the general fund ~~cash~~ *operating* reserve designated for the immediately preceding school fiscal year. If a school is not operated in the following school fiscal year, the authority of the trustees to earmark a nonoperating fund ~~cash~~ *operating* reserve ~~shall terminate~~ *terminates* and the ~~moneys~~ *money* earmarked as ~~a cash~~ *an operating* reserve ~~shall~~ *must* be used to reduce the levy requirement of the nonoperating fund. If the trustees acquire approval to reopen a school in the following school fiscal year under the provisions of 20-6-502 or 20-6-503 and operate ~~such~~ *the* school, the nonoperating fund ~~cash~~ *operating* reserve ~~shall~~ *must* be restored as the general fund ~~cash~~ *operating* reserve.

(3) The purpose of the nonoperating fund ~~shall be~~ *is* to centralize the financing and budgeting for the limited functions of a district not operating a school. ~~Such~~ *The* functions ~~shall~~ include:

(a) elementary tuition obligations to other districts;

(b) transportation of the resident pupils;

(c) maintenance of district-owned property; and

(d) any other nonoperating school function of the district ~~deemed~~ *considered* necessary by the trustees or required by law.

(4) Any expenditure of nonoperating fund ~~moneys shall~~ *money must* be made in accordance with the financial administration provisions of this title for a budgeted fund."

Section 42. Section 20-9-507, MCA, is amended to read:

"**20-9-507. Miscellaneous programs fund.** (1) The trustees of ~~any~~ *a* district receiving ~~grants of~~ *money from local,* state, ~~or~~ federal ~~moneys~~, *or other sources provided in 20-5-307(4), 20-5-312(8), and 20-9-321(3)* other than ~~moneys~~ *money* under the provisions of Title I of Public Law 81-874 or federal ~~moneys~~ *money* designated for deposit in a specific fund of the district shall establish a miscellaneous programs fund for the deposit of ~~such moneys~~ *the money.* ~~Such moneys~~ *The money* may be a reimbursement of *miscellaneous program fund* expenditures already realized by the district or may be a grant of ~~moneys~~ *money* for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the ~~moneys are~~ *money is* a reimbursement, the ~~moneys shall~~ *money may* be expended at the discretion of the trustees for school purposes. When the ~~moneys are~~ *money is* a grant, the ~~moneys shall~~ *money* *must* be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall cause a separate accounting to be maintained for each federal grant program and for the aggregate of all reimbursement ~~moneys~~ *money*.

(2) The financial administration of the miscellaneous programs fund ~~shall~~ *must* be in accordance with the financial administration provisions of this title for a nonbudgeted fund ~~which shall be applied by individual grant programs or for the aggregate amount of the reimbursement moneys rather than on the basis of the total fund~~."

Section 43. Section 20-10-101, MCA, is amended to read:

"**20-10-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Transportation" ~~shall mean~~ *means*:

(a) a district's conveyance of a pupil by a school bus between his legal residence and the school designated by the trustees for his attendance; *or*

(b) ~~a district's conveyance of a pupil by a school bus between his regular school of attendance and the vocational-technical secondary schools designated by the trustees for his attendance if the secondary school is located in some other school district; or~~

~~(c)~~ "individual transportation" whereby a district is relieved of actually conveying a pupil. ~~Such individual~~ *Individual* transportation may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.

(2) An "eligible transportee" ~~shall mean~~ *means* a public school pupil who:

(a) is ~~not less than~~ 5 years of age ~~nor~~ *or older and* has *not* attained his 21st birthday *or who is a handicapped preschool child between the ages of 3 and 6*;

(b) is a resident of the state of Montana;

(c) regardless of district and county boundaries, resides at least 3 miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; and

(d) is ~~deemed by law~~ *considered* to reside with his parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school.

(3) (a) A "school bus" means, except as provided in subsection (3)(b), any motor vehicle that:

(i) complies with the bus standards established by the board of public education as verified by the Montana department of justice's semiannual inspection of school buses and the superintendent of public instruction; and

(ii) is owned by a district or other public agency and operated for the transportation of pupils to or from school or owned by a carrier under contract with a district or public agency to provide transportation of pupils to or from school.

(b) A school bus does not include a vehicle that is:

(i) privately owned and not operated for compensation under this title;

(ii) privately owned and operated for reimbursement under 20-10-142;

(iii) either district-owned or privately owned, designed to carry not more than nine passengers, and used to transport pupils to or from activity events or to transport pupils to their homes in case of illness or other emergency situations; or

(iv) an over-the-road passenger coach used only to transport pupils to activity events."

Section 44. Section 20-10-143, MCA, is amended to read:

"**20-10-143. Budgeting for transportation and transmittal of transportation contracts.** (1) The trustees of ~~any~~ *a* district furnishing transportation to pupils who are residents of ~~such~~ *the* district ~~shall~~ have the authority and it ~~shall be~~ *is* their duty to provide a transportation fund budget that is adequate to finance ~~such~~ *the* district's transportation contractual obligations and any other transportation expenditures necessary for the conduct of its transportation program. The transportation fund budget ~~shall~~ *must* include:

(a) an adequate amount to finance the maintenance and operation of district owned and operated school buses;

(b) the annual contracted amount for the maintenance and operation of school buses by a private party;

(c) the annual contracted amount for individual transportation, including any increased amount ~~due to~~ *because of* isolation, which ~~shall~~ *may* not exceed the schedule amounts prescribed in 20-10-142;

(d) any amount necessary for the purchase, rental, or insurance of school buses; and

(e) any other amount necessary to finance the administration, operation, or maintenance of the transportation program of the district, as determined by the trustees.

(2) The trustees may include a contingency amount in the transportation fund budget for the purpose of enabling the district to fulfill any obligation to provide transportation in accordance with the transportation

law for any pupils not residing in the district at the time of the adoption of the preliminary budget and who subsequently became residents of ~~such~~ *the* district during the school fiscal year or pupils who have become eligible transportees since the adoption of the preliminary budget because their legal residence has been changed. The budgeted contingency amount ~~shall~~ *may* not exceed 10% of the transportation schedule amount as calculated under the provisions of 20-10-141 and 20-10-142 for all transportation services authorized by ~~such~~ *the* schedule and provided by the district unless 10% of ~~such~~ *the* transportation schedule amount ~~shall be~~ *is* less than $100, in which case $100 ~~shall be~~ *is* the maximum limitation for ~~such~~ *the* budgeted contingency amount.

(3) As provided in 20-9-162, an ~~emergency~~ *amendment to the* transportation fund budget may be adopted subject to the provisions of the ~~emergency budgeting~~ *budget amendment* law.

(4) The transportation fund budgeted expenditures appropriated by the trustees ~~shall~~ *must* be reported on the regular budget form prescribed by the superintendent of public instruction in accordance with 20-9-103, and the adoption of the transportation fund budget ~~shall~~ *must* be completed in accordance with the school budgeting laws. When the adopted preliminary budget is sent to the county superintendent, the trustees shall also send copies of all completed transportation contracts for school bus transportation and individual transportation to the county superintendent. ~~Such~~ *The* contracts ~~shall~~ *must* substantiate all contracted transportation services incorporated in the preliminary budget, and after the county superintendent has utilized the contracts for ~~such~~ *that* purpose but before the fourth Monday of July, he shall send all ~~the~~ transportation contracts received by him to the superintendent of public instruction. When the county superintendent determines a deviation between the preliminary transportation fund budget amount for contracted transportation services and the contracted amount for ~~such~~ *the* services, he shall immediately call the deviation to the attention of the appropriate trustees and shall allow the trustees to change the preliminary budgeted amount to compensate for ~~such~~ *the* deviation."

Section 45. Section 20-10-144, MCA, is amended to read:

"**20-10-144. Computation of revenues and net tax levy requirements for the transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget must be reduced to the limitation amount and used in this determination of the schedule amount.

(2) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, is divided by 3 and the resulting one-third amount is used to determine the available state and county revenue to be budgeted on the following basis:

(a) the resulting one-third amount is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be two-thirds of the schedule amount attributed to the transportation of special education pupils;

(b) the resulting one-third amount, except as provided for joint elementary districts in subsection (2)(e), is the budgeted county transportation reimbursement for elementary districts and must be financed by the basic county tax under the provisions of 20-9-334;

(c) the resulting one-third amount multiplied by 2 is the budgeted county transportation reimbursement amount for high school districts financed under the provisions of subsection (5), except as provided for joint high school districts in subsection (2)(e), and except that the county transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be one-third of the schedule amount attributed to the transportation of special education pupils;

(d) when the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and cash reappropriated must be used to reduce the county financing obligation in subsection (2)(b) or (2)(c) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a); and

(e) the county revenue requirement for a joint district, after the application of any district money under subsection (2)(d), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act; plus

(b) anticipated payments from other districts for providing school bus transportation services for the district; plus

(c) anticipated payments from a parent or guardian for providing school bus transportation services for his child; plus

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4); plus

(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204; plus

(f) gross proceeds taxes from coal under 15-23-703; plus

(g) net proceeds taxes for interim production and new production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; plus

(h) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year ~~which~~ *that* may be used to finance the transportation fund; plus

(i) any ~~cash~~ *fund balance* available for reappropriation as determined by subtracting the amount of the end-of-the-year ~~cash~~ *fund* balance earmarked as the transportation fund ~~cash~~ *operating* reserve for the ensuing school fiscal year by the trustees from the end-of-the-year ~~cash~~ *fund* balance in the transportation fund. The ~~cash~~ *operating* reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount and, for an elementary district, adding the difference to the district obligation to finance one-third of the schedule amount as determined in subsection (2); and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The county levy requirement for the financing of the county transportation reimbursement to high school districts is computed by adding all requirements for all the high school districts of the county, including the county's obligation for reimbursements in joint high school districts.

(6) The transportation fund levy requirements determined in subsection (4) for each district and in subsection (5) for the county must be reported to the county commissioners on the second Monday of August by the county superintendent as the transportation fund levy requirements for the district and for the county, and the levies must be made by the county commissioners in accordance with 20-9-142."

Section 46. Section 20-10-145, MCA, is amended to read:

"**20-10-145. State transportation reimbursement.** (1) ~~Any~~ *A* district providing school bus transportation or individual transportation in accordance with the transportation law, board of public education transportation policy, and superintendent of public instruction transportation rules ~~shall~~ *must* receive a state reimbursement of its transportation expenditures under the transportation reimbursement rate provisions of 20-10-141 and 20-10-142. The state transportation reimbursement ~~shall~~ *may* not exceed one-third of the reimbursement amounts established in ~~such sections~~ *20-10-141 and 20-10-142* or one-third of the district's transportation fund budget, whichever is smaller, and ~~shall~~ *must* be computed on the basis of the number of days the transportation services were actually rendered, *not to exceed 180 pupil-instruction days*. In determining the amount of the state transportation reimbursement, ~~no~~ *an* amount claimed by a district ~~shall~~ *may not* be considered for reimbursement unless ~~such~~ *the* amount has been paid in the regular manner provided for the payment of other financial obligations of the district.

(2) Requests for the state transportation reimbursement ~~shall~~ *must* be made by each district semiannually during the school fiscal year on the claim forms and procedure promulgated by the superintendent of public instruction. The claims for state transportation reimbursements ~~shall~~ *must* be routed by the district to the county superintendent, who after reviewing ~~such~~ *the* claims shall send them to the superintendent of public instruction. The superintendent of public instruction shall establish the validity and accuracy of the claims for the state transportation reimbursements by determining their compliance with the transportation law, board of public education transportation policy, and the transportation rules of the superintendent of public instruction. After making any necessary adjustments to ~~such~~ *the* claims, ~~he shall cause their payment by ordering~~ *the superintendent of public instruction shall order* a disbursement from the state ~~moneys~~ *money* appropriated by the legislature of the state of Montana for the state transportation reimbursement. ~~Such~~ *The* payment of all the district's claims within one county ~~shall~~ *must* be made to the county treasurer of ~~such~~ *the* county, and the county superintendent shall apportion ~~such~~ *the* payment in accordance with the apportionment order supplied by the superintendent of public instruction."

Section 47. Section 15-1-501, MCA, is amended to read:

"**15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund all money received by him from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone company license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must be deposited as follows:

(a) ~~57% in fiscal year 1990 and 50% in fiscal year 1991,~~ *59.5%* to the credit of the state general fund;

(b) ~~9.8% in fiscal year 1990 and~~ 8.7% ~~in fiscal year 1991,~~ to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) ~~33.2% in fiscal year 1990 and 41.3% in fiscal year 1991,~~ *31.8%* to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must be deposited as follows:

(a) ~~64% in fiscal year 1990 and~~ 61% ~~in fiscal year 1991,~~ to the credit of the state general fund;

(b) ~~11% in fiscal year 1990 and~~ 10.5% ~~in fiscal year 1991,~~ to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) ~~25% in fiscal year 1990 and~~ 28.5% ~~in fiscal year 1991,~~ to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343.

(4) The state treasurer shall also deposit to the credit of the state general fund all money received by him from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections must be deposited in the general fund."

Section 48. Section 15-24-1402, MCA, is amended to read:

"**15-24-1402. New or expanding industry — assessment.** (1) In the first 5 years after a construction permit is issued, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, ~~shall~~ *must* be taxed at 50% of their taxable value. Each year thereafter, the percentage ~~shall~~ *must* be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property ~~shall~~ *must* be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as defined in 76-15-103 and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) The governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) ~~shall~~ *must* include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination thereof is eligible for the tax benefits described in subsection (1).

(3) The taxpayer ~~must~~ *shall* apply to the county assessor on a form provided by the department of revenue for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body ~~must~~ *shall* indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the assessor shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. In no case may the benefit described in subsection (1) apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, *20-9-360,* or otherwise required under state law."

Section 49. Section 20-15-404, MCA, is amended to read:

"**20-15-404. Trustees to adhere to certain other laws.** Unless the context clearly indicates otherwise, the trustees of a community college district shall *adhere to*:

(1) ~~adhere to~~ the teachers' retirement provisions of Title 19, chapter 4~~, as amended~~;

(2) ~~adhere to~~ the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212~~, as amended~~;

(3) ~~adhere to~~ the school property provisions of 20-6-604, 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636~~, as amended~~;

(4) ~~adhere to~~ the adult education provisions of 20-7-701 through 20-7-713~~, as amended~~;

(5) ~~adhere to~~ the administration of finances provisions of 20-9-115, 20-9-134, ~~subsections (2), (3), (4), and (5) of 20-9-161, 20-9-163, 20-9-165,~~ 20-9-207, 20-9-208, 20-9-210, 20-9-215, 20-9-221 through 20-9-224, and 20-9-512~~, as amended~~;

(6) ~~adhere to~~ the school bond provisions of 20-9-401 through 20-9-412, 20-9-421 through 20-9-446, 20-9-451 through 20-9-456, and 20-9-461 through 20-9-465~~, as amended~~;

(7) ~~adhere to~~ the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511~~, as amended~~;

(8) ~~adhere to~~ the educational cooperative agreements provisions of 20-9-701 through 20-9-704~~, as amended~~;

(9) ~~adhere to~~ the school elections provisions of Title 20, chapter 20~~, as amended~~;

(10) ~~adhere to~~ the students' rights provisions of 20-25-511 through 20-25-516~~, as amended~~; and

(11) ~~adhere to~~ the health provisions of 50-1-206."

Section 50. **Approval to amend general fund budget for ensuing school fiscal year.** (1) The trustees of a district may determine that expenses from the following sources will need to be funded by the general fund budget in the ensuing school fiscal year:

(a) a budget amendment authorized under the provisions of 20-9-161 through 20-9-163;

(b) metal mines tax reserve fund authorized in 20-9-231;

(c) special education expenditures approved under the provisions of 20-9-321(3);

(d) transfer of services from or dissolution of a special education cooperative; and

(e) tuition receipts deposited in the miscellaneous programs fund.

(2) Whenever the trustees determine that expenses from the sources in subsection (1) will need to be funded by the general fund in the ensuing year, the trustees shall petition the superintendent of public instruction for approval to add the expenditures from any of the sources to the current year's general fund budget for the purposes of calculating the ensuing year's general fund budget limitation. The petition must set forth in writing the specific reasons for the request and a report of the actual expenditures.

(3) The superintendent of public instruction shall promptly approve or disapprove the petition for approval to add the expenditures from the sources in subsection (1) to the current year's general fund budget for the purposes of calculating the ensuing year's general fund budget.

Section 51. **Definition of emergency for budgeting purposes.** As used in this chapter, unless the context clearly indicates otherwise, the term "emergency" for the purpose of community college budgeting means:

(1) the destruction or impairment of any community college district property necessary to the maintenance of the district, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering the property unfit for its present use;

(2) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;

(3) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district; or

(4) any other reason of similar consequence that has been approved by the board of regents upon petition by the trustees of the district.

Section 52. **Resolution for emergency budget — petition to the board of regents.** (1) Whenever the trustees of a community college district decide that an emergency exists, they may adopt a resolution proclaiming the emergency by a unanimous vote of all members present at any meeting for which each trustee has been given reasonable notice of the time and place of holding the meeting. The emergency resolution must also state the facts constituting the emergency, the estimated amount of money required to meet the emergency, the funds affected by the emergency, and the time and place the board will meet for the purpose of considering and adopting an emergency budget for the funds for the current school fiscal year.

(2) If the trustees decide that an emergency exists for any reason other than the conditions specified in 20-9-161 (1) through (3), they shall petition the board of regents for permission to adopt a resolution of emergency. The petition must set forth in writing the reasons for the request, the district funds affected by the emergency, the estimated amount of money required to meet the emergency for each affected fund, the anticipated sources of financing for the emergency expenditures, and any other information required by the board of regents. The petition must be signed by each trustee.

(3) The board of regents shall promptly approve or disapprove the petition requesting approval to adopt a resolution of emergency. If the petition is approved, the trustees may adopt a resolution of emergency and take all other steps required for the adoption of an emergency budget. Approval of a petition by the board of regents authorizes the board of trustees to initiate emergency budget proceedings by resolution and does not relieve the trustees of the necessity of complying with the requirements of the emergency budgeting laws.

Section 53. **Emergency budget limitation, preparation, and adoption procedures.** (1) The meeting of the trustees of a community college district to consider and adopt an emergency budget must be open to the public, and any taxpayer in the district has the right to appear and be heard. If at the meeting a majority of the trustees present find that an emergency exists, the trustees may make and adopt a preliminary emergency budget, on the regular budget form, setting forth fully the facts constituting the emergency. In adopting the preliminary emergency budget, the trustees may budget for any fund that was included on the final budget of the district for the current fiscal year. The budget must be itemized to show the amount appropriated for each item as required on the budget form.

(2) When the emergency is the result of increased enrollment, the maximum amount of the emergency budget for all funds must be determined by budget amendment.

(3) If another type of emergency occurs, the budget must be limited to the expenditures considered by the trustees to be reasonable and necessary to finance the conditions of the emergency and the preliminary emergency budget must include the details of the proposed expenditures.

(4) After a majority of the trustees have voted to adopt the emergency budget, it must be signed by the chairman of the trustees and the clerk of the district and copies must be sent to the county superintendent, the county treasurer, and the board of regents.

Section 54. **Determination of available financing — fixing and levying property taxation for an emergency budget.** (1) After the last day of the fiscal year for which an emergency budget has been adopted, the county treasurer shall determine the amount of the cash balance that is available to finance the emergency budget's outstanding warrants or registered warrants for each fund included on the emergency budget. The available amount of the cash balance of each fund must be determined by deducting from the county treasurer's year-end cash balance for the fund the outstanding warrants or registered warrants issued under the regularly adopted final budget for the fund and the cash reserve for the fund that the trustees have established, within the limitations of law, for the following fiscal year.

(2) The county treasurer shall prepare and deliver a statement on the financial status of each fund included on an emergency budget for a district that had an emergency budget during the preceding year to the board of

county commissioners by the first Monday in August. The statement for each district emergency budget must include:

(a) the total amount of emergency warrants that are outstanding or registered against each fund of the district;

(b) the amount of the cash balance in each fund included on the emergency budget that is available to finance the outstanding warrants or registered warrants; and

(c) after consideration of the available money in subsection (2)(b), the additional amount of money that is required to finance the outstanding warrants or registered warrants and interest on the warrants and that must be raised by a tax levy.

(3) For each fund of the emergency budget of each district requiring a tax levy as established by subsection (2)(c), the board of county commissioners shall, at the time all other district and county taxes are fixed and levied, levy a tax on the taxable property of each applicable district that will raise sufficient financing to pay the amount established by the county treasurer.

Section 55. Section 15-1-501, MCA, is amended to read:

"**15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund all money received by him from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone company license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must be deposited as follows:

(a) ~~57% in fiscal year 1990 and 50% in fiscal year 1991,~~ *62.8%* to the credit of the state general fund;

(b) ~~9.8% in fiscal year 1990 and~~ 8.7% ~~in fiscal year 1991,~~ to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) ~~33.2% in fiscal year 1990 and 41.3% in fiscal year 1991,~~ *28.5%* to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must be deposited as follows:

(a) ~~64% in fiscal year 1990 and~~ 61% ~~in fiscal year 1991,~~ to the credit of the state general fund;

(b) ~~11% in fiscal year 1990 and~~ 10.5% ~~in fiscal year 1991,~~ to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) ~~25% in fiscal year 1990 and~~ 28.5% ~~in fiscal year 1991,~~ to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343.

(4) The state treasurer shall also deposit to the credit of the state general fund all money received by him from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections must be deposited in the general fund."

Section 56. **Repealer.** Sections 15-10-103, 20-9-111, and 20-9-167, MCA, are repealed.

Section 57. **Codification instruction.** (1) [Section 50] is intended to be codified as an integral part of Title 20, and the provisions of Title 20 apply to [section 50].

(2) [Sections 51 through 54] are intended to be codified as an integral part of Title 20, chapter 15, and the provisions of Title 20, chapter 15, apply to [sections 51 through 54].

Section 58. **Coordination instruction.** If House Bill No. 580 is passed and approved and if it contains a section amending 20-9-366, then the amendments to 20-9-366 in [this act] are void.

Section 59. **Retroactive applicability.** [Sections 1 through 46 and 48 through 50] apply retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Section 60. **Effective date.** (1) [Sections 1 through 46, 48 through 54, 56 through 59, and this section] are effective on passage and approval.

(2) [Section 47] is effective July 1, 1993.

(3) [Section 55] is effective July 1, 1991.

Approved May 15, 1991.

CHAPTER NO. 768

[SB 58]

AN ACT REVISING THE LAW RELATING TO PAYMENT OF MEDICAL AND CONFINEMENT COSTS OF INCARCERATED PERSONS; CLARIFYING THAT MEDICAL AND CONFINEMENT COSTS OF INCARCERATED PERSONS MUST BE BORNE BY THE ARRESTING AGENCY, WITH AN EXCEPTION FOR CITIES AND TOWNS AND AN EXCEPTION FOR THE DEPARTMENT OF INSTITUTIONS; REQUIRING OUT-OF-STATE JURISDICTIONS TO PAY THE CONFINEMENT COSTS OF INMATES HELD ON THEIR BEHALF; AND AMENDING SECTIONS 7-32-2222 AND 7-32-2242, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2222, MCA, is amended to read:

"**7-32-2222. Health and safety of prisoners.** (1) Each detention center must comply with state and local fire codes for correctional occupancy and with sanitation, safety, and health codes.

(2) Designated exits must permit prompt evacuation of inmates and detention center staff in an emergency.

(3) When there is good reason to believe that the inmates may be injured or endangered, the detention center administrator must remove them to a safe and convenient place and confine them there as long as necessary to avoid the danger.

(4) *(a)* If in the opinion of the detention center administrator an inmate under his jurisdiction requires medication, medical services, or hospitalization, the expense must be borne by the *arresting* agency ~~or authority at whose instance the inmate was arrested~~ when the arresting agency ~~or authority~~ is not the county in which the inmate is confined, except ~~that if~~ *as provided in subsection (4)(b).*

(b) If a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the expense must be paid by the county. *If the department of institutions is the arresting agency and the inmate is a probation violator, the expense must be paid by the county in which the district court that retains jurisdiction over the inmate is located.*

(c) The county attorney shall initiate proceedings to collect from the inmate any charges arising from the medical services or hospitalization for the inmate involved if he determines the inmate is financially able to pay."

Section 2. Section 7-32-2242, MCA, is amended to read:

"**7-32-2242. Use of detention center — payment of costs.** (1) Local government, state, and federal law enforcement and correctional agencies may use any detention center for the confinement of arrested persons and the punishment of offenders, under conditions imposed by law and with the consent of the governing body responsible for the detention center.

(2) *(a)* If a person is ~~committed to~~ *confined in* a detention center by ~~a government unit~~ *an arresting agency* not responsible for the operation of the detention center, the ~~committing government unit shall pay the~~ costs of holding the person in confinement ~~as agreed upon by the government unit and the detention center,~~ *must be paid by the arresting agency at a rate that is agreed upon by the arresting agency and the detention center and that covers the reasonable costs of confinement, excluding capital construction costs,* except ~~that if~~ *as provided in subsection (2)(b).*

(b) If a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the costs must be paid by the county. *If the department of institutions is the arresting agency and the inmate is a probation violator, the costs must be paid by the county in which the district court that retains jurisdiction over the inmate is located.*

(c) Payments must be made to the government unit responsible for the detention center or to the administrator operating a private detention center under an agreement provided for in 7-32-2201, upon presentation of a claim to the ~~committing government unit~~ *arresting agency.*

(3) If a person is a fugitive from justice from an out-of-state jurisdiction, the costs, including medical expenses, of holding the person in a detention center pending extradition must be paid by the out-of-state jurisdiction."

Approved May 15, 1991.

CHAPTER NO. 769

[SB 94]

AN ACT CREATING A GROUND WATER MONITORING PROGRAM AND A GROUND WATER CHARACTERIZATION PROGRAM; ESTABLISHING A GROUND WATER ASSESSMENT ACCOUNT; INCREASING THE FILING FEE FOR NOTICE OF COMPLETION OF GROUND WATER DEVELOPMENT; INCREASING THE FILING FEE FOR PERMITS TO BENEFICIALLY USE GROUND WATER; DIRECTING THE BOARD OF WATER WELL CONTRACTORS TO AMEND RULE 36.21.415, ADMINISTRATIVE RULES OF MONTANA, TO INCREASE LICENSE FEES; ESTABLISHING A GROUND WATER ASSESSMENT STEERING COMMITTEE; DIRECTING THE MONTANA BUREAU OF MINES AND GEOLOGY TO ADMINISTER THE PROGRAMS; CHANGING THE NAME OF THE MONTANA RESOURCE INDEMNITY

TRUST ACT; REALLOCATING A PORTION OF THE TAX PROCEEDS TO THE GROUND WATER ASSESSMENT ACCOUNT; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-38-101, 15-38-102, 15-38-106, 37-43-303, 37-43-307, 85-2-302, AND 85-2-306, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 7] may be cited as the "Montana Ground Water Assessment Act".

Section 2. **Findings and purpose.** (1) The legislature finds that:

(a) Montana's citizens depend on ground water for a variety of uses, including domestic, agricultural, industrial, irrigation, mining, municipal, power, and recreation, and for maintenance of ecosystems and surface water supplies;

(b) ground water supplies and quality are threatened by a variety of contaminant sources;

(c) there is insufficient information characterizing the volume, quality, and flow patterns of the state's ground water;

(d) ground water information deficiencies are hampering the efforts of citizens and units of government to properly manage, protect, and develop ground water;

(e) government policies and programs should focus on preventing ground water contamination and supply depletion, but in order for preventive policies and programs to be effective, better ground water information is required; and

(f) there is a need for better coordination among those numerous units of state, federal, and local government with responsibility for ground water management, protection, and development.

(2) The purposes of [sections 1 through 7] are:

(a) to improve the quality of ground water management, protection, and development decisions within the public and private sectors by establishing a program to systematically assess and monitor the state's ground water and to disseminate the information to interested persons; and

(b) to improve coordination of ground water management, protection, development, and research functions among units of state, federal, and local government by establishing a ground water assessment steering committee.

Section 3. **Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of water to a well for a beneficial use.

(2) "Ground water assessment steering committee" means the committee established by [section 8].

(3) "Ground water characterization program" means a program to systematically assess and document the hydrogeology and quality of the state's major aquifers.

(4) "Ground water characterization study" means the assessment of individual aquifers in specific areas within the state.

(5) "Ground water monitoring program" means a program to produce and maintain a long-term record of ground water chemistry and water level changes, based on information collected from a statewide network of observation wells.

Section 4. **Ground water assessment account.** (1) There is a ground water assessment account within the state special revenue fund established in 17-2-102. The Montana bureau of mines and geology is authorized to expend amounts from the account necessary to carry out the purposes of [sections 1 through 7].

(2) The account may be used by the Montana bureau of mines and geology only to carry out the provisions of [sections 1 through 7].

(3) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall investigate opportunities for the participation and financial contribution of agencies of federal and local governments to accomplish the purposes of [sections 1 through 7].

(4) There must be deposited in the account:

(a) the portion of the application filing fee for a permit to beneficially use ground water, allocated pursuant to 85-2-302(2);

(b) the portion of the filing fee for processing notices of completion of ground water development, allocated pursuant to 85-2-306(5);

(c) the portion of the water well contractor, driller, and monitoring well constructor license fee, allocated pursuant to 37-43-303(2), and the portion of the license renewal fee, allocated pursuant to 37-43-307(1);

(d) the portion of public water supply system fees, allocated pursuant to [section 4 of Senate Bill No. 407];

(e) funds provided by federal or state government agencies and by local governments to carry out the purposes of [sections 1 through 7]; and

(f) funds provided by any other public or private sector organization or person in the form of gifts, grants, or contracts specifically designated to carry out the purposes of [sections 1 through 7].

Section 5. **Ground water assessment account.** (1) There is a ground water assessment account within the state special revenue fund established in 17-2-102. The Montana bureau of mines and geology is authorized to expend amounts from the account necessary to carry out the purposes of [sections 1 through 7].

(2) The account may be used by the Montana bureau of mines and geology only to carry out the provisions of [sections 1 through 7].

(3) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall investigate opportunities for the participation and financial contribution of agencies of federal and local governments to accomplish the purposes of [sections 1 through 7].

(4) There must be deposited in the account:

(a) on July 1, 1993, and at the beginning of each succeeding fiscal year, 14.1% of the proceeds from the resource indemnity and ground water assessment tax as authorized by 15-38-106, unless at the beginning of the fiscal year the unobligated cash balance in the ground water assessment account:

(i) equals or exceeds $666,000, in which case no allocation will be made and the funds must be deposited in the resource indemnity trust fund established by 15-38-201; or

(ii) is less than $666,000, in which case an amount equal to the difference between the unobligated cash balance and $666,000 must be allocated to the ground water assessment account and any remaining amount must be deposited in the resource indemnity trust fund established by 15-38-201;

(b) funds provided by federal or state government agencies and by local governments to carry out the purposes of [sections 1 through 7]; and

(c) funds provided by any other public or private sector organization or person in the form of gifts, grants, or contracts specifically designated to carry out the purposes of [sections 1 through 7].

Section 6. **Ground water characterization program — ground water monitoring program.** (1) There is a ground water characterization program and a ground water monitoring program.

(2) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall establish and administer the ground water characterization program and the ground water monitoring program.

(3) The Montana bureau of mines and geology shall work with units of local government, ground water users, and other affected organizations and individuals in areas of the state that are included in a ground water characterization study and, if warranted by the level of local interest in a ground water characterization study, shall establish a local ground water assessment advisory committee.

(4) The ground water assessment steering committee created by [section 8] shall:

(a) oversee expenditures from the ground water assessment account and organization plans and work plans proposed by the Montana bureau of mines and geology to implement the ground water characterization and ground water monitoring programs, including plans for local involvement and participation in ground water characterization studies;

(b) approve ground water monitoring sites;

(c) prioritize and select ground water characterization study areas;

(d) develop plans for ground water information management and dissemination;

(e) develop plans for integrating existing ground water information with information collected under the programs created by subsection (1);

(f) coordinate ground water information collection projects sponsored by individual units of state, federal, or local government with the programs created by subsection (1); and

(g) evaluate reports and other information produced by the Montana bureau of mines and geology from ground water characterization studies.

(5) The ground water assessment steering committee shall invite representatives of local governments and Indian tribes with jurisdiction over areas of the state that are included in an active ground water characterization study or in a study scheduled to begin in the ensuing biennium, as well as affected citizens in these areas, to participate in steering committee meetings.

Section 7. **Ground water information collection by local governments.** Units of local government may conduct ground water information collection projects in advance of ground water characterization studies conducted under the program created by [section 6(1)]. Local governments shall consult with the Montana bureau of mines and geology in designing local ground water information collection projects and studies and, subject to local funding availability, shall conduct the local projects and studies to produce information that is compatible with the type of information produced by the ground water characterization program.

Section 8. **Ground water assessment steering committee.** (1) There is a ground water assessment steering committee consisting of an employee of each of the following state agencies having responsibility for ground water protection, management, or information who must be appointed by the head of the respective state agency:

(a) the department of natural resources and conservation;

(b) the department of health and environmental sciences;

(c) the department of agriculture;

(d) the department of state lands; and

(e) the Montana state library, natural resource information system.

(2) The ground water assessment steering committee may include representatives of the following agencies and units of government with expertise or management responsibility related to ground water and representatives of the organizations and groups specified in subsection (2)(h), who shall serve as ex officio members:

(a) the environmental quality council;

(b) the board of oil and gas conservation;

(c) the Montana bureau of mines and geology;

(d) a representative from a unit of the university system, other than the Montana bureau of mines and geology, appointed by the board of regents of higher education for the Montana university system;

(e) a county government, appointed by an organization of Montana counties;

(f) a city, town, or city-county government, appointed by an organization of Montana cities and towns;

(g) each principal federal agency having responsibility for ground water protection, management, or research, appointed by the Montana head of the respective federal agency; and

(h) one representative of each of the following, appointed by the governor:

(i) agricultural water users;

(ii) industrial water users; and

(iii) a conservation or ecological protection organization.

(3) The ground water assessment steering committee shall elect a chairman from its voting members.

(4) The Montana bureau of mines and geology shall provide staff support to the committee.

Section 9. Section 37-43-303, MCA, is amended to read:

"**37-43-303. Application — fee.** (1) Except as provided in 37-43-302(2), a person desiring to engage in the drilling, making, construction, alteration, or rehabilitation of one or more water or monitoring wells for underground water in this state shall first file an application with the department for a license. The application must set forth the applicant's qualifications, the equipment proposed to be used in the contracting, and other matters required by the board on forms adopted by the board.

(2) The department shall charge a fee prescribed by the board for filing an application. The application shall not be acted on until the fee has been paid. Fees collected under this section ~~shall~~ *must* be deposited in the state special revenue fund for the use of the board, *except that $25 of the fee collected from each applicant for a water well contractor license and $15 of the fee collected from each applicant for a water well driller license or a monitoring well constructor license must be deposited in the ground water assessment account established in [section 4].*

(3) An appropriate license shall be issued to an applicant if, in the opinion of the board, the applicant is qualified to conduct water well or monitoring well construction operations. In the granting of licenses, the board shall have due regard for the interest of this state in the protection of its underground waters."

Section 10. Section 37-43-307, MCA, is amended to read:

"37-43-307. **Annual renewal — fee — revocation for nonrenewal.** (1) The term for licenses issued under this chapter is from July 1 of each year through the following June 30. After the payment of the initial fee under 37-43-303, a licensee shall pay, before the first day of each license year, a renewal fee as prescribed by the board. *Renewal fees collected under this section must be deposited in the state special revenue fund for the use of the board, except that $25 of the fee collected from each renewal of a water well contractor license or a monitoring well constructor license and $15 of the fee collected from each renewal of a water well driller license must be deposited in the ground water assessment account established in [section 4].*

(2) If a licensee does not apply for renewal of his license before the first day of a license year and remit to the department the renewal fee, he shall have his license suspended by the board. If the license remains suspended for a period of more than 30 days after the first day of a license year, it shall be revoked by the board. However, the department, prior to this revocation, shall notify the licensee of the board's intention to revoke at least 10 days prior to the time set for action to be taken by the board on the license, by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license once revoked may not be reinstated unless it appears that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. If a person whose license has been revoked through his own fault desires to engage in the business of water well drilling or monitoring well construction in this state or contracting therefor, he must apply under 37-43-303. Notice of suspension shall be given a licensee when the suspension occurs."

Section 11. **Board to amend rule.** The board of water well contractors shall amend Rule 36.21.415, Administrative Rules of Montana, as follows:

"36.21.415 FEE SCHEDULE
(1) Application and examination

(a) Contractors	~~$250.00~~ *$275.00*
(b) Drillers	~~150.00~~ *165.00*

(c)	Monitoring well constructor	~~150.00~~	*165.00*
(2)	Re-examination		
(a)	Water well contractor		125.00
(b)	Water well driller		75.00
(c)	Monitoring well constructor		75.00
(3)	Renewal		
(a)	Contractor	~~115.00~~	*140.00*
(b)	Driller	~~75.00~~	*90.00*
(c)	Monitoring well constructor	~~115.00~~	*140.00*
(4)	Late renewal (in addition to renewal fee) will be charged for any license not renewed prior to July 10		55.00
(5)	Duplicate certificate and/or license		40.00
(6)	Change in contractor name and/or address		40.00
(7)	Change in responsible contractor (new driller license fee)		40.00
(8)	Copies of law and rules—per page (drillers and contractors are exempt from fee)"		.20

Section 12. Section 85-2-302, MCA, is amended to read:

"**85-2-302. Application for permit** — *fee.* *(1)* Except as otherwise provided in (1) through (3) of 85-2-306, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerk and recorders. The department shall return a defective application for correction or completion, together with the reasons for returning it. An application does not lose priority of filing because of defects if the application is corrected, completed, and refiled with the department within 30 days after its return to the applicant or within a further time as the department may allow. If an application is not corrected and completed within 30 days or within a further time as the department allows, up to 3 months, the priority date of the application shall be the date of refiling the application with the corrections with the department. An application not corrected within 3 months shall be terminated.

(2) In addition to the application filing fee prescribed by the board by rule pursuant to 85-2-113, a person applying for a permit under subsection (1) shall pay a fee of $1 per acre-foot of ground water appropriated. The fees collected by the department under this subsection must be deposited in the ground water assessment account, established in [section 4], within the state special revenue fund."

Section 13. Section 85-2-306, MCA, is amended to read:

"**85-2-306. Exceptions to permit requirements** — *fee.* (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of less than 100 gallons per minute, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders *and pay a filing fee.* Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation shall be the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate shall be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) of this section, with the department to perfect the water right. The filing of a claim of existing water right pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation shall be the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of less than 100 gallons per minute, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years.

However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113.

(5) In addition to the filing fee prescribed by the board by rule pursuant to 85-2-113, a person filing a notice under subsection (1) shall pay a $10 fee, and the department shall deposit $10 of each filing fee collected pursuant to subsection (1) in the ground water assessment account, established in [section 4], within the state special revenue fund."

Section 14. Section 15-38-101, MCA, is amended to read:

"**15-38-101. Short title.** This chapter shall be known and may be cited as "The Montana Resource Indemnity Trust *and Ground Water Assessment* Act"."

Section 15. Section 15-38-102, MCA, is amended to read:

"**15-38-102. Legislative policy.** It is the policy of the state of Montana to indemnify its citizens for the loss of long-term value resulting from the depletion of its mineral resource base and for environmental damage caused by mineral development. This policy of indemnification is achieved by establishing a permanent resource indemnity trust, *as required by Article IX, section 2, of the Montana constitution, by supporting ground water assessment programs* from the proceeds of a tax levied on mineral extraction, and by allocating spendable ~~trust~~ revenues:

(1) to protect and restore the environment from damages resulting from mineral development; ~~and~~

(2) to support a variety of development programs that benefit the economy of the state and the lives of Montana citizens*; and*

(3) to assess the state's ground water resources."

Section 16. Section 15-38-106, MCA, is amended to read:

"**15-38-106. Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter shall be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax shall be paid to the department at the time the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, *except that 14.1% of the proceeds must be deposited in the ground water assessment account established by [section 5]*. Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(3) The department shall examine the statement and compute the taxes thereon, and the amount computed by the department shall be the taxes imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess shall be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 17. **Name change.** In the provisions of the Montana Code Annotated, the code commissioner is instructed to change the term "resource indemnity trust tax", meaning the tax created by Title 15, chapter 38, to "resource indemnity and ground water assessment tax".

Section 18. **Appropriation.** There is appropriated to the Montana bureau of mines and geology for the biennium ending June 30, 1993, all funds in the ground water assessment account, established in [section 4], in the state special revenue fund, for purposes of establishing a ground water monitoring program and a ground water characterization program.

Section 19. **Codification instruction.** (1) [Sections 1 through 7] are intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to [sections 1 through 7].

(2) [Section 8] is intended to be codified as an integral part of Title 2, chapter 15, part 15, and the provisions of Title 2, chapter 15, part 15, apply to [section 8].

Section 20. **Coordination instruction.** If Senate Bill No. 407 is passed and approved and does not contain a provision that allocates a portion of public water supply system fees to the ground water assessment account, then [section 4(4)(d) of this act] is void.

Section 21. **Effective dates.** (1) [Sections 1 through 4, 6 through 13, 18 through 20, 22, and this section] are effective July 1, 1991.

(2) [Sections 5 and 14 through 17] are effective July 1, 1993.

Section 22. **Termination.** [Subsections (4)(a) through (4)(d) of section 4] and [sections 9 through 13 of this act] terminate July 1, 1993.

Approved May 15, 1991.

CHAPTER NO. 770

[SB 189]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SOLID WASTE MANAGEMENT BY LOCAL GOVERNMENTS; AUTHORIZING MULTICOUNTY SOLID WASTE DISTRICTS; AMENDING SECTIONS 7-5-2306, 7-5-4304, 7-5-4321, 7-7-2501, 7-7-4402, 7-13-202, 7-13-204, 7-13-209, 7-13-210, 7-13-212, 7-13-215, 7-13-232, 7-13-233, AND 7-13-235, MCA; REPEALING SECTIONS 7-13-241, 7-13-242, 7-13-243, 7-13-2401, 7-13-2402, 7-13-2403, 7-13-2404, 7-13-2405, AND 7-13-2406, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2306, MCA, is amended to read:

"**7-5-2306. Use of installment purchase contracts.** When the amount to be paid as the purchase price for any vehicle or road machinery of any kind, for any other machinery, apparatus, appliance, or equipment, or for any materials or supplies of any kind shall exceed $4,000, the county governing body may provide for the payment of such purchase price in installments extending over a period of not more than 5 years, *except contracts for solid waste management systems as defined by 75-10-103, which may not exceed 10 years,* provided that at the time of entering into the agreement for such purchase, there shall be an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to meet and take care of such portion of the purchase price as is payable during the then-current fiscal year and the budget for each following year in which any portion of such purchase price is to be paid shall contain an appropriation for the purpose of paying the same."

Section 2. Section 7-5-4304, MCA, is amended to read:

"**7-5-4304. Certain contracts to be submitted to voters.** No contract may be let pursuant to 7-5-4302 that extends over a period of 5 years or more~~,~~ *except contracts for solid waste management systems as defined in 75-10-103, which may not exceed 10 years,* without first submitting the question to a vote of the electors of the city or town."

Section 3. Section 7-5-4321, MCA, is amended to read:

"**7-5-4321. Grant of exclusive franchise — election required.** (1) The council may not grant an exclusive franchise or special privilege to any person except in the manner specified in subsection (2). The powers of the council are only those expressly prescribed by law and those necessarily incident thereto.

(2) No exclusive franchise for any purpose, *except contracts for solid waste management systems as defined in 75-10-103, which may not exceed 10 years,* may be granted by any city or town or by the mayor or city council

thereof to any person, association, or corporation without first submitting the application therefor to the electors of the city."

Section 4. Section 7-7-2501, MCA, is amended to read:

"**7-7-2501. Authority to issue revenue bonds — refunding revenue bonds.** (1) A county may issue county revenue bonds in the same manner and with the same effect as provided in chapter 7, part 44, of this title for issuance of municipal revenue bonds. County revenue bonds may be issued to finance any project or activity enumerated in chapter 16, part 21, or chapter 34, part 22 or 23, of this title *or in Title 75, chapter 10, part 1*. Revenues from the project for which the bonds are issued are the only revenues upon which a lien under the provisions of 7-7-4431 shall apply. No lien shall attach to other revenues or other property within the county.

(2) A county may refund revenue bonds issued under the authority provided in subsection (1) by the method provided in either part 45 or part 46 of chapter 7.

(3) In construing, for purposes of this section, the provisions of parts 44, 45, or 46 of chapter 7, "municipal" is considered to refer to the county and "governing body" is considered to refer to the board of county commissioners whenever the board of county commissioners is acting pursuant to subsection (1)."

Section 5. Section 7-7-4402, MCA, is amended to read:

"**7-7-4402. Definitions.** Whenever used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) The term "governing body" shall include bodies and boards, by whatsoever names they may be known, having charge of finances and management of a municipality.

(2) The term "municipality" shall include any city or any town, however organized.

(3) The term "undertaking" shall mean any one or a combination of the following:

(a) water and sewer systems, together with all parts thereof and appurtenances thereto including but not limited to supply and distribution systems, reservoirs, dams, and sewage treatment and disposal works;

(b) public airport construction and public airport building;

(c) convention facilities;

(d) public recreation facilities; and

(e) public parking facilities, *solid waste management systems,* or other revenue-producing facilities and services authorized in these codes for cities and towns."

Section 6. Section 7-13-202, MCA, is amended to read:

"**7-13-202. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means the board of directors as provided for in 7-13-213 ~~and 7-13-241~~.

(2) "Commissioners" means the board of county commissioners.

(3) "Family residential unit" means the residence of a single family.

(4) ~~"Refuse"~~ *"Solid waste"* means all putrescible and nonputrescible ~~solid~~ wastes ~~(except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.~~*, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, or mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.*

(5) ~~"Refuse disposal district" means an area established with definite boundaries for the purpose of collecting and disposing of all refuse created in said district.~~ *"Solid waste management district" means an area established within a county for the purpose of planning and operating a solid waste management system as defined in 75-10-103."*

Section 7. Section 7-13-204, MCA, is amended to read:

"**7-13-204. Resolution of intention to create ~~refuse disposal~~ *solid waste management* district.** (1) Before creating ~~any refuse disposal~~ *a solid waste management* district, the commissioners shall pass a resolution of intention to do so.

(2) The resolution shall designate:

(a) the proposed name of such district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands of said district, giving the boundaries thereof;

(d) the general character of the collection service;

(e) the proposed fees to be charged for the service*; and*

(f) the powers to be delegated to the board and the powers to be exercised only with the approval of the county commissioners."

Section 8. Section 7-13-209, MCA, is amended to read:

"7-13-209. **Right to protest.** (1) At any time within ~~30~~ *21* days after the date of the first publication of the notice provided for in 7-13-208, any owner of property liable to be assessed for said service may make written protest against the proposed service or against the fees proposed to be charged for the service.

(2) Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him."

Section 9. Section 7-13-212, MCA, is amended to read:

"7-13-212. **Resolution creating district — power to order improvements.** (1) Before ordering any of the proposed improvements, the commissioners shall pass a resolution creating the ~~refuse-disposal~~ *solid waste management* district in accordance with the resolution of intention theretofore introduced and passed by the commissioners.

(2) The commissioners may change the boundaries and description of the district from the resolution of intention if the changes do not add territory or increase the proposed fees.

~~(2)~~*(3)* The commissioners shall be deemed to have acquired jurisdiction to order improvements immediately upon the occurrence of one of the following:

(a) when no protests have been delivered to the county clerk within ~~30~~ *21* days after the date of the first publication of the notice provided for in 7-13-208;

(b) when ~~a protest shall have been found by said commissioners to be insufficient~~ *an insufficient number of protests have been made as provided for in 7-13-211*; or

(c) when a protest shall have been overruled."

Section 10. Section 7-13-215, MCA, is amended to read:

"7-13-215. **Powers and duties of board.** ~~The board of a refuse disposal district established and organized under this part has the following powers and duties, with the approval of the county commissioners of the counties involved:~~

~~(1) to develop and administer a program for the collection or disposal of refuse in the district;~~

~~(2) to employ personnel;~~

~~(3) to purchase, rent, or execute leasing agreements for such equipment and material necessary for carrying on an effective refuse collection or disposal program;~~

~~(4) to cooperate with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local government, in order to carry out effective programs;~~

~~(5) to receive gifts, grants, or donations for the purpose of advancing the program and to acquire by gift, deed, purchase, or condemnation land necessary for refuse disposal purposes;~~

~~(6) to enforce department of health and environmental sciences or local board of health rules pertaining to the storage, collection, and disposal of refuse;~~

~~(7) to apply for and receive from the federal government or the state government, on behalf of the refuse disposal district, money appropriated by federal or state legislative bodies for aiding these programs;~~

~~(8) to borrow from any loaning agency funds available for assistance in planning or financing a refuse disposal district and repay these with the money received from the fees levied under this part.~~ *Except for powers specifically reserved by the counties in the resolution creating the district, the board has the powers and duties provided in 75-10-112.*"

Section 11. Section 7-13-232, MCA, is amended to read:

"**7-13-232. Determination of service charge.** (1) The ~~fees shall be based upon a family residential unit, and fees for commercial and industrial accounts shall be based on the comparison with a typical residential unit as to volume and type of waste produced.~~ *board may establish, by resolution, rates for service charges, which may not be less than the actual cost of providing services. For solid waste management districts other than joint districts, the rates must be subject to the approval of the county commissioners.*

(2) Service charges may take into account:

(a) the character, kind, and quality of service; and

(b) the cost of providing the service, including but not limited to depreciation and the payment of principal and interest on money borrowed by the district for the acquisition and improvement of facilities and equipment.

(3) Service charges may be assessed per family residential unit or based on the size of a vehicle used to dispose of the waste; the volume or weight of the waste; or the cost, incentives, or penalties applicable to waste management practices.

(4) The initial rate for any solid waste district or joint solid waste management district may not exceed the rate provided in the resolution creating the district.

~~(2)~~*(5)* Fees for mobile home park accounts must be paid by the registered owner of each mobile home in the mobile home park.

~~(3) In no case shall the fee for disposal service exceed one-half the total fee for both collection and disposal services.~~

(6) A notice of intention to enact a resolution to increase rates must be published as provided in 7-1-4128, and the district shall hold a public hearing prior to the meeting at which the resolution is considered."

Section 12. Section 7-13-233, MCA, is amended to read:

"**7-13-233. Procedure to collect service charge.** ~~The month the service begins, the department of revenue or its agents shall insure that the amount of this fee is placed on the tax notices, to be collected with the tax. If a property owner fails to pay this fee, it shall become a lien upon the property.~~ *(1) The service charge may be imposed for:*

(a) any fiscal year for which the district establishes a budget or incurs costs related to planning or constructing a solid waste management facility; or

(b) services to begin within 12 months.

(2) The board shall certify to the county commissioners of the county served by the solid waste management district the service charge needed for the current fiscal year, the due but unpaid service charges, and a description of the property against which the service charges are to be levied.

(3) The department of revenue or its agent shall ensure that the amount of the service charge is placed on property tax notices and that the service charge is collected with property taxes.

(4) The board may establish a system for collecting service charges other than by tax notices to property owners issued by the department of revenue. The board may collect the service charge more often than property taxes are collected.

(5) If not paid, the service charge becomes delinquent and becomes a lien on the property, subject to the same penalties and the same rate of interest as property taxes."

Section 13. Section 7-13-235, MCA, is amended to read:

"**7-13-235. Installment payments for capital improvements.** To defray the initial cost of purchasing land and equipment, payments may be spread over a term of not to exceed ~~20~~ *10* years. ~~Payments are to be made in equal installments out of the money received from the fee levy provided for in this part.~~"

Section 14. **Revenue bonds and obligations.** (1) The commissioners may issue revenue bonds, including refunding bonds, or borrow money for the acquisition of property, construction of improvements, or purchase of equipment or to pay costs related to planning, designing, and financing a solid waste management system.

(2) Revenue bonds may be issued in a form and upon terms as provided in 7-7-2501.

(3) Bonds or loans may be payable from any revenue of the solid waste management district, including revenue from:

(a) service charges authorized in 7-13-233 that are collected other than through tax notices and a lien upon property;

(b) grants or contributions from the state or federal government; or

(c) other sources.

Section 15. **Solid waste management district bonds authorized.** (1) With the approval of the board of county commissioners, a solid waste management district may borrow money by the issuance of its bonds to:

(a) provide funds for payment of part or all of the cost of acquisition of property, construction of improvements, and purchase of equipment;

(b) provide an adequate working capital; and

(c) pay costs related to the planning, designing, and financing of a solid waste management system.

(2) The amount of bonds issued for the purposes provided for in subsection (1) and outstanding at any time may not exceed 22.5% of the taxable value of the property in the district as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(3) Each year at the time of levying county taxes, the board of county commissioners shall fix and levy a tax upon all property within the district sufficient to raise the amount necessary for the payment of bonded indebtedness.

(4) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts in Title 20, chapter 9, part 4.

Section 16. **Purpose.** To provide safe, efficient, and effective management of solid waste, two or more counties are authorized to cooperate in the creation of a joint solid waste district. A joint solid waste district is a political subdivision of the state for the purposes of the municipal finance consolidation act as provided in 17-5-1602 and for solid waste management services as provided in 75-10-112.

Section 17. **Definitions.** As used in [sections 17 through 26], the following definitions apply:

(1) "Joint district" means a joint solid waste district created through the procedures outlined in [sections 17 through 26].

(2) "Board" means the board of directors as provided in [section 20].

(3) "Counties" means the commissioners of the counties creating the joint district.

Section 18. **Creation of a joint district.** Two or more counties may create a joint solid waste district through the procedures described in 7-13-203 through 7-13-212.

Section 19. **Municipalities authorized to contract with joint districts.** Joint districts may enter into agreements to provide solid waste disposal services but not collection services to municipalities located in adjoining counties that do not participate in the district. An agreement is subject to the approval of the county commissioners in the county in which the municipality is located.

Section 20. **Board of directors.** (1) The board of a joint district must be appointed by the counties.

(2) The county commissioners shall appoint to the board one commissioner from each county, a representative of each incorporated city or town, a representative of each county or city board of health, and any other representatives agreed to by the commissioners of all the counties creating the joint district.

(3) A municipality that contracts for solid waste services with a joint district but that is not located in the counties creating the joint district may be represented on the board as provided in the agreement with the joint district.

(4) The board may provide for an executive committee that has the authority to exercise all powers of the joint district, except that the entire board shall meet at least once a year to elect officers and select the executive committee. An executive committee must include at least one representative from each of the counties.

(5) The board has all powers and duties provided in 75-10-112.

Section 21. **Administration of funds in a joint district.** Fees and other money collected by a joint district may be administered either by entering into an agreement with the county treasurer's office of one of the participating counties or through a fund established and administered by the board. Fees received by a county treasurer must be promptly deposited into funds and accounts established by the joint district.

Section 22. **Service charges.** Service charges must be established and collected in the manner provided in 7-13-231 through 7-13-233.

Section 23. **Revenue bonds and obligations.** (1) A joint district may borrow money for any purpose provided in [sections 17 through 26] and issue bonds, including refunding bonds, in a form and upon terms as it may determine, payable from any revenue of the joint district, including revenue from:

(a) service charges authorized in [section 22] that are collected other than through tax notices and a lien upon property;

(b) grants or contributions from the state or federal government; or

(c) other sources.

(2) The bonds may be issued by resolution of the joint district without an election and without any limitation of the amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any year on the bonds and on any then-outstanding bonds for which revenue from the same source or sources is pledged exceeds the amount of the revenue to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The board shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenue from the pledged source in a year at least equal to the amount of the principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided in [sections 17 through 26], bonds issued pursuant to [sections 17 through 26] by a joint district may be payable in principal and interest solely from revenues of the joint district and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.

(4) Bonds issued by a joint district under [sections 17 through 26] are issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of any bond, the joint district may by resolution make and enter into any covenant, agreement, or indenture. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenue referred to in [sections 17 through 26] prior to the payment of current costs of operation and maintenance of the solid waste management system.

Section 24. **Joint district bonds authorized.** (1) Upon approval of the board of directors of the joint district, a joint district may borrow money by the issuance of its bonds to:

(a) provide funds for payment of part or all of the cost of acquisition of property, construction of improvements, and purchase of equipment;

(b) provide an adequate working capital; and

(c) pay costs related to the planning, designing, and financing of a solid waste management system.

(2) The amount of bonds issued for the purposes provided in subsection (1) and outstanding at any time may not exceed 22.5% of the taxable value of the property in the joint district as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(3) Each year at the time of levying county taxes, the board of county commissioners of each county in the joint district shall fix and levy a tax upon all property in the county within the joint district that is sufficient to

raise the amount certified by the board of directors of the joint district for payment of bonded indebtedness of the district.

(4) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts in Title 20, chapter 9, part 4. The issuance of the bonds must be approved in each county by the joint district electorate voting on the question.

Section 25. **Debt service fund.** A joint district may create a debt service fund and accumulate in the fund a sum not to exceed an amount equal to the total amount of principal and interest due in any 2 subsequent years.

Section 26. **Tax exemption.** Any property in this state acquired by a joint district for purposes of operating a solid waste management system and any income derived by the joint district is exempt from taxation to the same extent as other property used for public purposes.

Section 27. Section 7-13-210, MCA, is amended to read:

"**7-13-210. Hearing on protest.** (1) At the next regular meeting of the commissioners after the expiration of the time within which the protest provided for in 7-13-209 may be made, the commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive.

(2) The commissioners shall evaluate and rule upon the factual accuracy of and legal basis for all protests made against the resolution of intent. Upon determining a factual or legal defect in the resolution of intent, the commission shall halt all further proceedings or modify the resolution.

~~(2)~~*(3)* In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts shall be considered the same as any other property in the district. The commissioners may include commercial and industrial establishments in said district.

~~(3)~~*(4)* The commissioners may adjourn said hearings from time to time."

Section 28. **Repealer.** Sections 7-13-241, 7-13-242, 7-13-243, 7-13-2401, 7-13-2402, 7-13-2403, 7-13-2404, 7-13-2405, and 7-13-2406, MCA, are repealed.

Section 29. **Code commissioner instruction.** In 7-13-201 through 7-13-243, MCA, the code commissioner is instructed to change the term "refuse" to "solid waste" and the term "refuse disposal" to "solid waste management".

Section 30. **Codification instruction.** (1) [Sections 14 and 15] are intended to be codified as an integral part of Title 7, chapter 13, part 2, and the provisions of Title 7, chapter 13, part 2, apply to [sections 14 and 15].

(2) [Sections 16 through 26] are intended to be codified as an integral part of Title 7, chapter 13, and the provisions of Title 7, chapter 13, apply to [sections 16 through 26].

Section 31. **Coordination instruction.** If House Bill No. 296 is passed and approved and if it includes a section that amends 7-5-2306, then [section 1 of this act], amending 7-5-2306, is void.

Section 32. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 33. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 34. **Applicability to joint solid waste disposal.** Joint refuse disposal districts organized under 7-13-241 prior to [the effective date of this act] are continued under [sections 17 through 26] and have all powers and duties of joint solid waste districts provided by [sections 17 through 26].

Section 35. **Applicability to garbage and ash collection districts.** (1) The duties and responsibilities of garbage and ash collection districts that exist within the boundary of a municipality must be assumed by the municipality on [the effective date of this act].

(2) Garbage and ash collection districts outside a municipality must become a solid waste district or part of an existing solid waste district upon passage of a resolution by the county commission.

(3) (a) The resolution must provide for compliance with the provisions of Title 7, chapter 13, part 2.

(b) If the boundaries and service charges for the new district remain the same as for the garbage and ash collection district, notice of intention or right to protest, as provided in 7-13-208 through 7-13-211, need not be provided.

Section 36. **Effective date.** [This act] is effective July 1, 1991.

Approved May 15, 1991.

CHAPTER NO. 771

[SB 359]

AN ACT CREATING A $5,000 A YEAR TAX CREDIT AGAINST INDIVIDUAL INCOME TAXES FOR CERTAIN PHYSICIANS WHO COM-

MENCE PRACTICE IN A RURAL AREA; ALLOWING THE TAX CREDIT FOR 4 SUCCESSIVE YEARS; PROVIDING FOR REPAYMENT OF THE CREDIT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for [this act] because the department of revenue is granted rulemaking authority in [section 4]. The department is to adopt rules to implement [this act].

Be it enacted by the Legislature of the State of Montana:

Section 1. **Credit for physician practicing in rural area — definitions.** For the purposes of [sections 1 through 4], the following definitions apply:

(1) "Commences practice" means the location or relocation of a physician's principal place of practice to a rural area and the start of a practice that is open to the general public, including recipients of medical assistance under Title 53. The term does not include the relocation of a physician's practice from one rural area to a different rural area.

(2) "Rural area" means a place without a hospital of at least 60 beds located within a radius of 30 miles.

Section 2. **Tax credit for physician practicing in rural area.** A licensed physician who commences practice in a rural area in Montana on a full-time basis is entitled to a credit against taxes imposed by 15-30-103 in an amount of $5,000 a year for each of 4 successive years, beginning with the year in which the practice commences. To qualify for the credit provided in this section, the physician shall maintain his practice for at least 9 months of the taxable year in which the credit is claimed.

Section 3. **Credit for physician practicing in rural area — limitations — repayment.** (1) Except as provided in subsection (2), the rural physician tax credit authorized in [section 2] is to be deducted from the taxpayer's income tax liability, beginning in the taxable year in which the physician commences practice in a rural area and for the next 3 successive years.

(2) (a) A rural physician tax credit may not be claimed as a carryback or carryforward and may not be refunded if there is no tax liability.

(b) A rural physician tax credit may not be used for any taxable year in which the physician ceases to practice or does not practice in the rural area.

(3) If a physician ceases to practice in the rural area within 4 years following the taxable year in which the credit is allowed, the physician shall repay to the state the amount of the credit claimed for that taxable year.

Section 4. **Credit for physician practicing in rural area — rulemaking authority.** The department of revenue may adopt rules as are necessary to implement and administer [sections 1 through 4].

Section 5. **Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 1 through 4].

Section 6. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved May 15, 1991.

CHAPTER NO. 772

[SB 428]

AN ACT PROVIDING FOR THE NEGOTIATION OF COOPERATIVE AGREEMENTS FOR THE ALLOCATION OF MOTOR FUELS TAXES TO TRIBAL GOVERNMENTS THAT ENACT MOTOR FUELS TAXES AT RATES THAT ARE IDENTICAL TO THE RATES IMPOSED BY THE STATE; ALLOWING THE AGREEMENTS TO PROVIDE FOR THE COLLECTION, USE, AND DISTRIBUTION OF THE TAX; PROVIDING FOR STATUS REPORTS TO THE REVENUE OVERSIGHT COMMITTEE AND PROVIDING AN OPPORTUNITY FOR THE COMMITTEE TO REVIEW AND COMMENT BEFORE APPROVAL OF AN AGREEMENT BY THE ATTORNEY GENERAL; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Cooperative agreement — allocation of motor fuels taxes to tribal governments.** (1) In order to prevent the possibility of dual taxation of motor fuels purchased by Montana citizens and businesses on Indian reservations, the department of revenue and an Indian tribe may enter into a cooperative agreement. The department may, with the concurrence of the attorney general, include as a member of the negotiating team a representative of the department of justice who has expertise in Indian matters. The department shall report the status of cooperative agreement negotiations to each meeting of the revenue oversight committee. After negotiations are complete, the agreement must be presented to the revenue oversight committee for review and comment before the final agreement is submitted to the attorney general for approval. The agreement must provide that under conditions specified in this section, the state and the tribe will cooperate to collect only one tax that is at the same level as the tax outside the boundaries of the reservation and will share the revenue as provided in this section. The agreement must provide that the state and the tribe are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically set forth in the agreement.

(2) The agreement may provide that the distributor may not be required to pay both the state tax and the tribal tax but shall pay only one tax to the state in an amount equal to the tax paid on gasoline that is not subject to a tribal tax.

(3) The agreement may provide that after deducting administrative expenses equal to 5% of the amount determined under subsection (2) and the amounts necessary for refunds, the department shall, on a quarterly basis, distribute the remaining amount to the tribal government.

(4) The agreement may provide for the collection, use, and distribution of the tax.

Section 2. **Tribal motor fuels administration account.** (1) There is a special revenue account called the tribal motor fuels administration account.

(2) The administrative expenses and refund amounts deducted by the department of revenue under [section 1(3)] must be deposited in the tribal motor fuels administration account.

(3) The tribal motor fuels administration account may be expended by the department only for the purposes of administering the motor fuels tax and providing refunds under [section 1].

Section 3. **Tribal motor fuels tax account.** (1) There is a special revenue account called the tribal motor fuels tax account.

(2) The tax collected under [section 1], except the administrative expenses and refund amounts deducted under [section 1(3)], must be deposited in the tribal motor fuels tax account.

(3) The money in the tribal motor fuels tax account must be disbursed to the tribe, as provided for in the agreement entered into pursuant to [section 1], on a quarterly basis.

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 70, part 2, and the provisions of Title 15, chapter 70, part 2, apply to [section 1].

Section 5. **Coordination instruction.** If Senate Bill No. 164 is passed and approved and if it includes a section that provides for the transfer of motor fuels tax functions to the department of transportation, then any reference to the department of revenue in [this act] is changed to the department of transportation.

Section 6. **Effective date.** [This act] is effective July 1, 1991.

Approved May 15, 1991.

CHAPTER NO. 773

[SB 436]

AN ACT RESTRUCTURING THE PROPERTY TAX CLASSIFICATION SYSTEM BY CONSOLIDATING CLASSES; ELIMINATING CLASS TWELVE PROPERTY AND INCLUDING TRAILERS AND MOBILE HOMES IN CLASS FOUR PROPERTY; CLARIFYING THE COMPUTATION OF INCOME FOR PURPOSES OF THE LOW-INCOME PROPERTY TAX CREDIT; PROVIDING THAT AN ELIGIBLE HEAD OF HOUSEHOLD MAY QUALIFY FOR THE LOW-INCOME PROPERTY TAX CREDIT; ELIMINATING CLASS EIGHTEEN (NONPRODUCTIVE MINING CLAIMS) BY COMBINING IT WITH CLASS THREE PROPERTY; ELIMINATING CLASS NINETEEN (NONPRODUCTIVE REAL ESTATE) AND CLASS TWENTY (OUT-OF-PRODUCTION AGRICULTURAL LAND AND TIMBERLAND), BOTH OF WHICH BECOME TAXABLE AS CLASS FOUR PROPERTY; CONSOLIDATING RAILROAD PROPERTY AND AIRLINE PROPERTY INTO ONE CLASS; DELETING THE FORMULA FOR COMPUTING THE VALUE OF OTHER COMMERCIAL PROPERTY NECESSARY FOR TAXATION OF RAILROAD PROPERTY AND AIRLINE PROPERTY BY DELETING NET AND GROSS PROCEEDS; DELETING IN CLASS SIX PROPERTY THE SEPARATE PROVISION FOR MALTING BARLEY FACILITIES; AMENDING SECTIONS 7-13-2527, 15-1-111, 15-6-133, 15-6-134, 15-6-136, 15-6-141, 15-6-144, 15-6-145, 15-6-155, 15-8-205, 15-10-402, 15-10-412, 15-16-611, AND 67-3-204, MCA; REPEALING SECTIONS 15-6-142, 15-6-147, 15-6-148, 15-6-149, 15-6-150, 15-6-153, 15-6-154, AND 15-6-155, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2527, MCA, is amended to read:

"**7-13-2527. List of property owners.** (1) A copy of the order creating the district shall be delivered to the county assessor of each county within the district.

(2) The assessor shall, on or before August 1 of any given year, prepare and certify a list of all persons owning class four~~, class twelve,~~ or class ~~fourteen~~ *eleven* property within such district and deliver a copy of such list to the board of trustees of said district."

Section 2. Section 15-1-111, MCA, is amended to read:

"**15-1-111. Reimbursement to local governments and schools — duties of department and county treasurer — statutory appropriation.** (1) (a) On or before May 1, 1990, the department of revenue shall remit to the county treasurer of each county 30% of the reimbursement amount specified in subsection (1)(b), as computed by the department. The department shall base the reimbursement on the reduction in personal property tax revenues due to the reduction in personal property tax rates for class eight property, as provided for in 15-6-138, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145 ~~and 15-6-147~~. The reimbursement basis must also include loss of personal property tax revenue due to the reclassification of new industrial property from class five to class eight with the reduced tax rate. The determination of the reimbursement basis must be made in the year in which the reclassification is made.

(b) The reimbursement revenue must be based on the county's taxable value and mill levies for tax year 1989.

(2) Prior to September 1, 1990, the department's agent in the county shall supply the following information to the department for each taxing jurisdiction within the county:

(a) the number of mills levied in the jurisdiction for taxable year 1989;

(b) the number of mills levied in the jurisdiction for taxable year 1990;

(c) the total taxable valuation for taxable years 1989 and 1990, reported separately for each year, of all personal property not secured by real property; and

(d) the total taxable valuation for taxable years 1989 and 1990, reported separately for each year, of all personal property secured by real property.

(3) After receipt of the information from its agent, the department shall calculate the amount of revenue lost to each taxing jurisdiction, using current year mill levies, due to the annual reduction in personal property tax rates set forth in 15-6-138, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145 ~~and 15-6-147~~. The department shall total the amounts for all taxing jurisdictions within the county.

(4) For taxable year 1990 and for each year thereafter, the department shall remit to the county treasurer the base amount of revenue reimbursable, determined pursuant to subsection (3), as follows:

(a) on or before November 30, 1990, and on or before each November 30 thereafter, the department shall remit 50% of the base amount of the revenue reimbursable to the county; and

(b) on or before May 31, 1991, and on or before each May 31 thereafter, the department shall remit 50% of the base amount of the revenue reimbursable to the county.

(5) Upon receipt of the reimbursement from the department, the county treasurer shall distribute the reimbursement to each taxing jurisdiction in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as current year mill levies on personal property taxes are distributed.

(6) For the purposes of this section, "taxing jurisdiction" means local governments and includes school districts, each municipality with tax increment financing, and the state of Montana.

(7) The amounts necessary for the administration of this section are statutorily appropriated, as provided in 17-7-502, from the general fund to reimburse school districts and local governments for reductions in tax rates on personal property."

Section 3. Section 15-6-133, MCA, is amended to read:

"**15-6-133. Class three property — description — taxable percentage.** (1) Class three property includes*:*

(a) agricultural land as defined in 15-7-202*;*

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as described in 70-16-301, or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for such other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon which such improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(2) Class three property is taxed at the taxable percentage rate "P" of its productive capacity.

(3) Until July 1, 1986, the taxable percentage rate "P" for class three property is 30%.

(4) Prior to July 1, 1986, the department of revenue shall determine the taxable percentage rate "P" applicable to class three property for the revaluation cycle beginning January 1, 1986, as follows:

(a) The director of the department of revenue shall certify to the governor before July 1, 1986, the percentage by which the appraised value of all property in the state classified under class three as of January 1, 1986, has increased due to the revaluation conducted under 15-7-111. This figure is the "certified statewide percentage increase".

(b) The taxable value of property in class three is determined as a function of the certified statewide percentage increase in accordance with the table shown below.

(c) This table limits the statewide increase in taxable valuation resulting from reappraisal to 0%. In calculating the percentage increase, the department may not consider agricultural use changes during calendar year 1985.

(d) The taxable percentage must be calculated by interpolation to coincide with the nearest whole number certified statewide percentage increase from the following table:

Certified Statewide Percentage Increase	Class Three Taxable Percentage "P"
0	30.00
10	27.27
20	25.00
30	23.08
40	21.43
50	20.00

(5) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a revaluation has been made as provided in 15-7-111."

Section 4. Section 15-6-134, MCA, is amended to read:

"**15-6-134. Class four property — description — taxable percentage.** (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements, *including trailers or mobile homes used as a residence,* except those specifically included in another class;

(c) the first $80,000 or less of the market value of any improvement on real property, *including trailers or mobile homes,* and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of any person whose total income from all sources including *net business income or loss and* otherwise tax-exempt income of all types is not more than $10,000 for a single person or $12,000 for a married couple *or a head of household,* as adjusted according to subsection (2)(b)(ii);

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least 9 holes and not less than 3,000 lineal yards~~.~~*;*

(e) all real and personal property that:

(i) is integrally related in a single working unit;

(ii) is devoted exclusively to the processing of agricultural or timber products; and

(iii) (A) has not been in production for 12 consecutive months or has been acquired in an arm's-length transaction by an unrelated person, including an acquisition in a foreclosure sale or bankruptcy proceeding; or

(B) has been acquired in a foreclosure or bankruptcy proceeding by a person, as defined in 15-1-102, having no relationship to or interest in the property prior to the transaction.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a) and (1)(b) is taxed at 3.86% of its market value.

(b) (i) Property described in subsection (1)(c) is taxed at 3.86% of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple *Head of Household*	Percentage Multiplier
$ 0 - 1,000	$ 0 - 1,200	0%
1,001 - 2,000	1,201 - 2,400	10%
2,001 - 3,000	2,401 - 3,600	20%
3,001 - 4,000	3,601 - 4,800	30%
4,001 - 5,000	4,801 - 6,000	40%
5,001 - 6,000	6,001 - 7,200	50%
6,001 - 7,000	7,201 - 8,400	60%
7,001 - 8,000	8,401 - 9,600	70%
8,001 - 9,000	9,601 - 10,800	80%
9,001 - 10,000	10,801 - 12,000	90%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department of revenue. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1986; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

(d) (i) In determining the market value of the property described in subsection (1)(e), the department shall reduce the assessed value by 25% a year for each year the plant continues to be out of production until the market value is reduced to salvage value.

(ii) Upon commencement of production or an acquisition described in subsection (1)(e)(iii)(B), property described in subsection (1)(e) must remain at the preceding year's valuation for the succeeding 12 months. Following the end of the 12-month period, the property may be considered new or expanding industry as provided in Title 15, chapter 24, part 14.

(3) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate for class four property until a revaluation has been made as provided in 15-7-111.

(4) Within the meaning of comparable property as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property, and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 5. Section 15-6-136, MCA, is amended to read:

"**15-6-136. Class six property — description — taxable percentage.** (1) Class six property includes:

(a) livestock and other species of domestic animals and wildlife raised in domestication or a captive environment, except for cats, dogs, and other household pets not raised for profit;

(b) items of personal property intended for rent or lease in the ordinary course of business, provided each item of personal property satisfies all of the following:

(i) the full and true value of the personal property is less than $5,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals wherein no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; ~~and~~

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis; *and*

~~(c) machinery and equipment used in a malting barley facility; and~~

~~(d)~~*(c)* machinery and equipment used in canola seed oil processing facilities if:

(i) the operators of such facilities employ a minimum of 15 full-time employees; and

(ii) a canola seed oil processing facility locates in the state of Montana after July 25, 1989.

~~(2) "Malting barley facility" means a facility the principal purpose of which is to malt malting barley. The term does not apply to a facility the principal purpose of which is to store, mix, blend, transport, transfer, or otherwise do anything with malting barley, except malt malting barley.~~

~~However, any machinery or equipment the principal purpose of which is to store, mix, blend, transport, transfer, or otherwise handle malting barley or other machinery or equipment that is used in or is otherwise an integral part of a facility that malts malting barley is machinery or equipment of a malting barley facility for the purposes of this section.~~

~~(3)~~*(2)* "Canola seed oil processing facility" means a facility that:

(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and

(b) employs at least 15 employees in a full-time capacity.

~~(4)~~*(3)* Class six property is taxed at 4% of its market value."

Section 6. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class ~~eleven~~ *nine* property — description — taxable percentage. (1) Class ~~eleven~~ *nine* property includes:

(a) centrally assessed electric power companies' allocations, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven;

(iv) railroad transportation property included in class ~~fifteen~~ *twelve*; and

(v) airline transportation property included in class ~~seventeen~~ *twelve*.

(2) Class ~~eleven~~ *nine* property is taxed at 12% of market value."

Section 7. Section 15-6-144, MCA, is amended to read:

"15-6-144. Class ~~fourteen~~ *eleven* property — description — taxable percentage. (1) Class ~~fourteen~~ *eleven* property includes all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(2). Class ~~fourteen~~ *eleven* property includes 1 acre of real property beneath the agricultural improvements. The 1 acre shall be valued at market value.

(2) Class ~~fourteen~~ *eleven* property is taxed at 80% of the taxable percentage applicable to class four property."

Section 8. Section 15-6-145, MCA, is amended to read:

"**15-6-145. Class ~~fifteen~~ *twelve* property — description — taxable percentage.** (1) Class ~~fifteen~~ *twelve* property includes all railroad transportation property as described in the Railroad Revitalization and Regulatory Reform Act of 1976 as it read on January 1, 1986*, and all airline transportation property as described in the Tax Equity and Fiscal Responsibility Act of 1982 as it read on January 1, 1986.*

(2) For the ~~taxable~~ *tax* year beginning January 1, ~~1986~~ *1991*, and for each ~~taxable~~ *tax* year thereafter, class ~~fifteen~~ *twelve* property is taxed at the percentage rate "R", to be determined by the department as provided in subsection (3), or 12%, whichever is less.

(3) R = A/B where:

(a) A is the total statewide taxable value of all commercial property, except class ~~fifteen~~ *twelve* property, as commercial property is described in 15-1-101(1)(d)~~, including class 1 and class 2 property~~; and

(b) B is the total statewide market value of all commercial property, except class ~~fifteen~~ *twelve* property, as commercial property is described in 15-1-101(1)(d)~~, including class 1 and class 2 property~~.

(4) (a) For the taxable year beginning January 1, 1986, and for every taxable year thereafter, the department shall conduct a sales assessment ratio study of all commercial and industrial real property and improvements. The study must be based on:

(i) assessments of such property as of January 1 of the year for which the study is being conducted; and

(ii) a statistically valid sample of sales using data from realty transfer certificates filed during the same taxable year or from the immediately preceding taxable year, but only if a sufficient number of certificates is unavailable from the current taxable year to provide a statistically valid sample.

(b) The department shall determine the value-weighted mean sales assessment ratio "M" for all such property and reduce the taxable value of property described in subsection (4) only, by multiplying the total statewide taxable value of property described in subsection (4)*(a)* by "M" prior to calculating "A" in subsection (3)*(a)*.

(c) The adjustment referred to in subsection (4)(b) will be made beginning January 1, 1986, and in each subsequent tax year to equalize the railroad taxable values.

(5) For the purpose of complying with the Railroad Revitalization and Regulatory Reform Act of 1976, as it read on January 1, 1986, the rate "R" referred to in this section is the equalized average tax rate generally applicable to commercial and industrial property, except class ~~fifteen~~ *twelve* property, as commercial property is defined in 15-1-101(1)(d)."

Section 9. Section 15-6-155, MCA, is amended to read:

"**15-6-155. Application for classification as ~~class twenty~~ *nonproductive* property — local government approval required.** (1) A person applying for classification of property as ~~class twenty~~ *nonproductive* property *under 15-6-134(1)(e)* shall make an application to the department of revenue on a form provided by the department without cost.

(2) The department may not grant an application for classification of property as ~~class twenty~~ *nonproductive* property unless the governing body of the affected county or incorporated city or town approves the application by resolution, following due notice as defined in 76-15-103 and a public hearing, for its respective jurisdiction.

(3) The resolution provided for in subsection (2) must specify the property that the taxing jurisdiction approves for classification as ~~class twenty~~ *nonproductive* property *under 15-6-134(1)(e)*.

(4) The property valuation reduction ~~granted to class twenty property under 15-6-150~~ applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by an approving governing body over which it has sole discretion. In no case may the property valuation reduction ~~for class twenty property~~ apply to levies or assessments required under Title 15, chapter 10; 20-9-331; 20-9-333; or otherwise required under state law."

Section 10. Section 15-8-205, MCA, is amended to read:

"**15-8-205. Initial assessment of class ~~twelve~~ *four trailer and mobile home* property — when.** The county assessor shall assess all class ~~twelve~~ *four trailer and mobile home* property immediately upon arrival in the county if the taxes have not been previously paid for that year in another county in Montana."

Section 11. Section 15-10-402, MCA, is amended to read:

"**15-10-402. Property tax limited to 1986 levels.** (1) Except as provided in subsections (2) and (3), the amount of taxes levied on property described in 15-6-133, 15-6-134, 15-6-136~~, 15-6-142~~, and 15-6-144 may not, for any taxing jurisdiction, exceed the amount levied for taxable year 1986.

(2) The limitation contained in subsection (1) does not apply to levies for rural improvement districts, Title 7, chapter 12, part 21; special improvement districts, Title 7, chapter 12, part 41; elementary and high school districts, Title 20; or bonded indebtedness.

(3) New construction or improvements to or deletions from property described in subsection (1) are subject to taxation at 1986 levels.

(4) As used in this section, the "amount of taxes levied" and the "amount levied" mean the actual dollar amount of taxes imposed on an individual piece of property, notwithstanding an increase or decrease in value due to inflation, reappraisal, adjustments in the percentage multiplier used to convert appraised value to taxable value, changes in the number of mills levied, or increase or decrease in the value of a mill."

Section 12. Section 15-10-412, MCA, is amended to read:

"**15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status;

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements; or

(i) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit;

(f) conversion of the individual property from tax-exempt to taxable status; or

(g) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(5) Property in classes four~~, twelve,~~ and ~~fourteen~~ *eleven* is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four~~, class twelve,~~ or class ~~fourteen~~ *eleven* property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the

deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

(h) revolving funds to support any categories specified in this subsection (8);

(i) levies for economic development authorized pursuant to 90-5-112(4); and

(j) elementary and high school districts.

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax

liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(12) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402."

Section 13. Section 15-16-611, MCA, is amended to read:

"**15-16-611. Reduction of property tax for property destroyed by natural disaster.** (1) The department of revenue shall, upon showing by a taxpayer that some or all of the improvements on his real property or a trailer or mobile home ~~as described in 15-6-142~~ have been destroyed to such an extent that such improvements have been rendered unsuitable for their previous use by natural disaster, adjust the taxable value on the property, accounting for the destruction.

(2) The county treasurer shall adjust the tax due and payable for the current year on the property under 15-16-102 as provided in subsection (3) of this section.

(3) To determine the amount of tax due for destroyed property, the county treasurer shall:

(a) multiply the amount of tax levied and assessed on the original taxable value of the property for the year by the ratio that the number of days in the year that the property existed before destruction bears to 365; and

(b) multiply the amount of tax levied and assessed on the adjusted taxable value of the property for the remainder of the year by the ratio that the number of days remaining in the year after the destruction of the property bears to 365.

(4) This section does not apply to delinquent taxes owed on the destroyed property for a year prior to the year in which the property was destroyed.

(5) For the purposes of this section, "natural disaster" includes but is not limited to fire, flood, earthquake, or wind."

Section 14. Section 67-3-204, MCA, is amended to read:

"67-3-204. **Fee in lieu of tax on registered aircraft — decal.** (1) Except as provided in subsection (3), aircraft required to be registered in Montana are subject to a fee. The registration fee is in lieu of property tax.

(2) The department shall issue a decal to the owner of the aircraft required to be registered at the time of payment of the registration fee in lieu of tax, as provided in 67-3-201. No aircraft subject to a fee in lieu of tax may be operated in this state unless there is displayed on the aircraft a decal as visual proof that the fee in lieu of tax has been paid for the aircraft and that the aircraft is registered for the current year.

(3) Aircraft that meet the description of property described in ~~15-6-147~~ *15-6-145* are exempt from the fee imposed by subsection (1). Aircraft subject to the fee in lieu of tax are exempt from all other taxation."

Section 15. **Repealer.** (1) Sections 15-6-142, 15-6-148, 15-6-149, 15-6-150, 15-6-153, and 15-6-154, MCA, are repealed.

(2) Section 15-6-155, MCA, is repealed.

(3) Section 15-6-147, MCA, is repealed.

Section 16. **Coordination instruction.** (1) If House Bill No. 340 is passed by the 52nd legislature and approved by the governor, then the code commissioner is instructed, at the time of codification of that enactment, to change references in that enactment from class thirteen property to class ten property.

(2) The code commissioner is instructed to change references to classes of property in enactments of the 52nd legislature to conform to the classifications established in [this act].

Section 17. **Termination.** Subsections (1)(e) and (2)(d) of 15-6-134 terminate January 1, 1993.

Section 18. **Effective dates — applicability.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1992.

(2) [Section 15(2)] is effective January 1, 1993.

(3) The amendments to class fifteen property contained in 15-6-145, as amended by [section 8], except those amendments that change the number of the class, and the repeal of 15-6-147 in [section 15] are effective on passage and approval and apply retroactively, within the meaning of 1-2-109, to tax years beginning on or after January 1, 1991.

Approved May 15, 1991.

CHAPTER NO. 774

[HB 5]

AN ACT TO APPROPRIATE MONEY FOR CAPITAL PROJECTS; TO AUTHORIZE THE ISSUANCE AND SALE OF GENERAL OBLIGATION LONG-RANGE BUILDING PROGRAM BONDS; TO APPROPRIATE THE PROCEEDS OF THE BONDS FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1993; TO PROVIDE FOR AN AGREEMENT BETWEEN THE BOARD OF EXAMINERS AND THE BOARD OF REGENTS; TO PROVIDE FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For the purposes of [sections 1 through 17], unless otherwise stated, the following definitions apply:

(1) "Agency" includes each state office, department, board, commission, council, or committee, the university system, or any other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

(2) "Approved budget amendment" means approval by the budget director of a request submitted through the architecture and engineering division of the department of administration to transfer excess funds appropriated to a capital project within an agency in order to increase the appropriations of another capital project within that agency or to obtain

financing to expand a project with funds that were not available for consideration by the legislature.

(3) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing, or major repair projects authorized in [sections 1 through 17].

(4) "LRBPF" means the long-range building program fund in the capital projects fund type.

(5) "Major maintenance" means building maintenance or repair projects that are not needed on an annual or biennial basis or are not the function of the permanent maintenance staff of the agency.

(6) "Major maintenance plan" means a 6-year schedule of anticipated major maintenance requirements and costs for the first 2 years of the schedule, developed for each state building, as determined by the department of administration. The plan must include a record of major maintenance performed in the previous biennium.

(7) "Other funding sources" means money other than long-range building program fund money, including special revenue fund money, that accrues to an agency under the provisions of law.

Section 2. **Expansion required to be authorized.** An existing capital project may not be expanded beyond the scope of the project as approved by the 52nd legislature unless the capital project expansion is authorized by an approved budget amendment.

Section 3. **Federal funds for administration.** All federal funds received as a reimbursement for the cost of administering the federal funds when the cost was financed from the general fund revert to the general fund.

Section 4. **Reappropriation.** Notwithstanding any other provision of law, the remaining balances on capital projects previously appropriated are reappropriated until June 30, 1993, for the purposes for which originally appropriated.

Section 5. **Major maintenance plan — requirements.** For all new construction proposals submitted to the legislature and for all existing applicable state buildings, as determined by the department of administration, each agency, in consultation with the architecture and engineering division of the department of administration, shall provide a major maintenance plan. This plan must be submitted by the agency to the department of administration by July 1 of each even-numbered year, along with the proposed long-range building program required under 17-7-202.

Section 6. **Capital projects appropriations.** (1) The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration, which is authorized to transfer the appropriated money among the necessary fund types for these projects:

Agency/Project	LRBPF	Other Funding Sources	
DEPARTMENT OF ADMINISTRATION			
Hazardous Material Abatement, Statewide	$ 617,500	$ 150,000	Auxiliary
State Building Energy Retrofit, Statewide		500,000	Nonstate State Special Revenue
		1,000,000	Federal Special Revenue
		500,000	Auxiliary or Other
Construction Litigation, Architecture and Engineering Division	345,000		
Develop Alternate Water Supply, Capitol Complex		50,000	Proprietary Funds
Property Acquisition and Development, Capitol Complex		123,014	Capitol Land Grant
DEPARTMENT OF COMMERCE			
Improve Pavement and Lighting, Yellowstone Airport		51,773	Proprietary Funds
		465,957	Federal Special Revenue
DEPARTMENT OF EDUCATION			
Replace Academic Building Roof and Miscellaneous Repairs, Montana School for the Deaf and Blind	339,000		
DEPARTMENT OF FAMILY SERVICES			
Expand Security Fence, Pine Hills School	27,000		
Replace and Repair Roofs, Family Services	127,600		
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Remove Underground Storage Tanks, Statewide		150,000	State Special Revenue
Headquarters Maintenance and Improvements, Statewide		85,000	State Special Revenue
Department Property Development, Statewide		360,000	State Special Revenue
State Park Maintenance and Development, Statewide		3,798,500	State Special Revenue
		1,124,500	Federal Special Revenue
Fish Hatchery Maintenance, Statewide		37,500	State Special Revenue
		112,500	Federal Special Revenue
Fishing Access Site Improvements, Statewide		286,000	State Special Revenue
		858,000	Federal Special Revenue
Motorboat Access Facilities, Statewide		67,000	State Special Revenue
		201,000	Federal Special Revenue
Wildlife Habitat Maintenance, Statewide		304,000	State Special Revenue
Waterfowl Habitat Enhancement, Statewide		349,500	State Special Revenue
DEPARTMENT OF HIGHWAYS			
Maintenance Projects, Statewide		450,000	Highways State Special Revenue
Construct and Expand Maintenance and Storage Buildings, Statewide		1,167,600	Highways State Special Revenue
		115,925	Federal Special Revenue

DEPARTMENT OF INSTITUTIONS			
Replace Water and Steam Lines, Montana Developmental Center	116,708		
Replace Roofs, Institutions	30,000		
Moisture Protection, Eastmont Human Services Center	98,450		
Maintain Roads and Parking Lots, Institutions	37,625		
Montana State Hospital Infrastructure Study	112,375		
Seal Buildings, Montana State Prison	25,000		
Building Improvements, Center for the Aged	105,015		
Replace Multipurpose Building Flooring, Montana State Hospital, Warm Springs	26,800		
Galen Repair Projects	181,000		
DEPARTMENT OF LABOR AND INDUSTRY			
Renovate and Expand Job Service, Great Falls		310,000	Federal Special Revenue
Various Major Maintenance Projects		209,450	Federal Special Revenue
DEPARTMENT OF STATE LANDS			
Construct Unit Office, Plains	235,000		
Construct Two Greenhouses, Missoula		191,900	State Special Revenue
DEPARTMENT OF MILITARY AFFAIRS			
Kitchen Upgrade, Statewide	45,000		
Rifle Range Rehabilitation, Statewide	10,000	555,000	Federal Special Revenue
Armory Additions and Alterations, Statewide	150,000	16,155,000	Federal Special Revenue
Acquire Land and Preplan Armory, Billings	150,000	200,000	Federal Special Revenue
Expand Military Vehicle Compounds, Statewide	5,000	275,000	Federal Special Revenue
Federal Spending Authority		300,000	Federal Special Revenue
Libby Armory		827,000	Federal Special Revenue
MONTANA UNIVERSITY SYSTEM			
Primary Electrical Vault Disconnect, Eastern Montana College	31,000	14,000	Auxiliary
Install Fire Alarm System, University of Montana	70,000		
Replace and Improve Roofs, University System	1,154,550	350,000	Plant
Improve Underground Utilities, Phase I, University System	296,000	200,000	Auxiliary
Repair and Improve Heating System, Western Montana College	57,900		
Improve Handicapped Access, University System	335,000		
Replace Carpet, Great Falls Vo-Tech	60,000		
Improve Sidewalks and Fire Access, University System	86,000		
Plan Chemistry/Pharmacy Renovations, University of Montana	50,000		
Plan Metallurgy Remodel, Montana Tech	50,000		
Window Retrofit Museum Building, Montana Tech	142,000		
Various Improvements, University of Montana		2,584,600	Federal, Higher Education Funds, and/or Donations
Centennial Mall, Montana State University		1,600,000	Plant
Remodel Student Union Building, Western Montana College		600,000	Auxiliary
Construct Engineering/Physical Sciences Complex, Montana State University		2,168,200	Higher Education

			Funds and/or Donations
Life Science Building, University of Montana		12,000,000	Federal Special Revenue
Construct Business Administration Building, University of Montana		1,858,320	Higher Education Funds and/or Donations
Multipurpose Building, Northern Agricultural Research Center	150,000		
Repair Northern Montana College Gymnasium		1,700,000	Higher Education Funds and/or Donations

(2) If House Bill No. 959 is not passed and approved, the appropriation in this section to construct the engineering/physical sciences complex at MSU is $2,668,200 from higher education funds and/or donations.

(3) For purposes of obtaining cash for the construction litigation appropriation authority in [section 6(1)], the architecture and engineering division of the department of administration is authorized to request a budget amendment for transfer of any excess long-range building project funds from any agency so long as the amendment does not move funds required to complete any authorized agency project.

(4) The following money is appropriated to the department of administration in the indicated amounts for the purpose of planning projects described in [section 12] and authorized in [section 13]:

Agency/Project	LRBPF	Other Funding Sources
Preliminary Design for Prison Expansion	$ 877,500	
Preliminary Design, University System:		
Engineering/Physical Sciences, MSU	1,165,290	
Business Administration, UM	604,705	

(5) (a) If House Bill No. 959 is passed and approved, the following money is appropriated to the department of administration for the university system:

Agency/Project	LRBPF	Other Funding Sources	
University System			
Deferred Maintenance Projects and Equipment Approved by the Board of Regents		$ 600,000	General Fund
Repair Northern Montana College Gymnasium		1,300,000	General Fund
Equipment for Eastern Montana College		600,000	General Fund
Construct Engineering/Physical Sciences Complex, Montana State University		500,000	General Fund

(b) If the bonding program in [section 13] fails to receive the necessary two-thirds vote of both houses of the legislature and if House Bill No. 959 is passed and approved, there is appropriated $1,800,000 from the general fund to the university system for deferred maintenance projects and/or equipment as approved by the board of regents. The $1,165,290 appropriation for the engineering/physical sciences complex at MSU and the $604,705 appropriation for the business administration building at UM in [section 6(4)] are void, and LRBPF funds in the amount of $1,769,995 are appropriated to replace the $1,300,000 general fund appropriation for the repairs of the northern Montana college gymnasium in subsection (5), funds in the amount of $400,000 are appropriated to replace the bonding money for the Libby armory in [section 12], and funds in the amount of $69,995 are appropriated to design the remodeling of the Great Falls vocational-technical center.

(6) Amounts not to exceed $490,000 of federal special revenue money and $163,333 of state special revenue money appropriated in the state parks maintenance and development statewide line item under subsection (1) may be added to the line item appropriations for motorboat access facilities statewide under subsection (1) or fishing access site acquisition statewide under [section 8(1)]. This subsection is void if House Bill No. 386 and Senate Bill No. 415 are passed and approved and provide sufficient additional state special revenue money required as state matching funds to fully utilize all of the federal special revenue money provided in subsection (1) in the line item appropriation for state parks.

Section 7. **Capital improvements appropriation to Montana state prison.** The following money is appropriated to Montana state prison in the indicated amounts for the purpose of making capital improvements to the Montana state prison industries facilities:

Agency/Project	LRBPF	Other Funding Sources	
Expand Industries Facilities, Montana State Prison		$321,976	Proprietary Funds
		14,000	Federal Special Revenue

Section 8. **Land acquisition appropriation.** (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land acquisition, land leasing, or easement purchase:

Agency/Project	LRBPF	Other Funding Sources	
Fishing Access Site Acquisition, Statewide		$ 881,000	State Special Revenue
Wildlife Habitat Acquisition, Statewide		4,923,356	State Special Revenue
Bighorn Sheep Habitat Acquisition, Statewide		48,500	State Special Revenue

(2) The amount of $150,000 of the appropriation for "Wildlife Habitat Acquisition, Statewide" may be used to implement the provisions of [section 2 of Senate Bill No. 252], passed by the 52nd legislature.

Section 9. **River restoration.** The following money is appropriated to the department of fish, wildlife, and parks for river restoration:

Agency/Project	LRBPF	Other Funding Sources	
River Restoration, Statewide		$219,000	State Special Revenue

Section 10. **Capital improvements.** (1) The following money is appropriated to the department of highways in the indicated amount for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBPF	Other Funding Sources	
Maintenance Projects, Statewide		$243,500	Highways State Special Revenue

(2) The following money is appropriated to the department of state lands in the indicated amounts for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBPF	Other Funding Sources	
Maintenance and Improvement Projects, Statewide	$118,280	$100,000	Federal Special Revenue

(3) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amount for the purpose of improving waterfowl habitat:

Agency/Project	LRBPF	Other Funding Sources	
Waterfowl Habitat Enhancement, Statewide		$50,000	State Special Revenue

Section 11. **Disposition of unspent bond proceeds and related investment income.** Excess investment income and excess principal of bonds issued for a specific purpose or project may be placed in the debt service fund to retire bonds issued for the purpose or project.

Section 12. **Appropriation of bond proceeds and other funds.** (1) The following money is appropriated from the bond proceeds and other funding sources to the department of administration for the capital projects described in this section contingent upon the respective authorization and sale of general obligation long-range building program bonds by the 52nd legislature and the board of examiners:

Agency/Project	LRBPF	Other Funding Sources
Major Expansion, Montana State Prison		$19,360,745
Construct Engineering/Physical Sciences Complex, Montana State University		18,401,510
Construct Business Administration Building, University of Montana		13,022,975
Construct Women's Correction Center		10,075,600
Construct Libby Armory		400,000

(2) If the bonding program in [section 13] fails to receive the necessary two-thirds vote of both houses of the legislature, the $400,000 for the Libby armory is appropriated from the LRBPF funds as stated in [section 6(5)(b)].

Section 13. **Authorization of bonds.** The board of examiners is authorized to issue and sell general obligation long-range building program bonds in an amount not exceeding $61,260,830 for the projects described in [section 12] over and above the amount of general obligation long-range building program bonds outstanding on January 1, 1991, to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation long-range building program bonds.

Section 14. **Capital projects reauthorization.** (1) The appropriations for capital projects authorized in section 5, House Bill No. 900, Laws of 1983, and in section 6, House Bill No. 5, Laws of 1987, for the Creston Springs hatchery operated by the department of fish, wildlife, and parks are appropriated through the biennium ending June 30, 1993, for a kokanee salmon facility.

(2) The appropriation for capital projects authorized in section 6, House Bill No. 777, Laws of 1989, for the construction of statewide sandhouses operated by the department of highways is appropriated through the biennium ending June 30, 1993, for the construction of an equipment storage garage near Lincoln.

(3) The appropriations for capital projects authorized in sections 6 and 8(1) of House Bill No. 777, Laws of 1989, for the Lake Elmo improvements project are reappropriated as follows: Through June 30, 1991, appropriated funds are reserved for the Lake Elmo improvements project. Any capital projects funds that have not by that date been matched with local funds on a cash basis, through a deposit of cash with the department of fish, wildlife, and parks accounts, are no longer reserved for the project. Any remaining balance of capital projects funds not designated for Lake Elmo improvements as of July 1, 1991, are available to the department of fish, wildlife, and parks to expend for state parks improvements. Funds for these projects must be matched equally by local funds. The department of administration may expend only that portion of the appropriation that is equally matched with local funds on a cash basis. In-kind services may not be considered for matching purposes.

Section 15. **Planning and design.** The department of administration may proceed with the planning and design of capital projects prior to the sale of bonds or the receipt of other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred prior to the receipt of bond proceeds or other funding sources.

Section 16. **Capital projects — contingent funds.** (1) If a capital project is financed in whole or in part with appropriations contingent upon the receipt of other funding sources, the department of administration may not let such projects for bid until the agency has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(a) the level of funding provided under the financial plan deviates substantially from the funding levels provided in [sections 1 through 17] for that project; or

(b) the scope of the project must be substantially altered or revised from the preliminary plans presented for that project in the 1992-93 long-range building program presented to the 52nd legislature.

(2) The funds appropriated in [section 6(1)] for the construction of an engineering/physical sciences complex at Montana state university and for the construction of a business administration building at the university of

Montana are from higher education funds and/or donations and must be committed to the universities before expenditure of state bond proceeds for construction.

Section 17. **Legislative consent.** The appropriations authorized in [sections 1 through 17] constitute legislative consent for the capital projects contained in [sections 1 through 17] within the meaning of 18-2-102.

Section 18. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 19. **Requirements for approval of state debt.** Because [section 13] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [sections 12 and 13]. If [section 13] is not approved by the required vote, [sections 12, except for the Libby armory project, and 13] are void. The remaining sections of [this act] are valid and remain in effect in all valid applications upon enactment.

Section 20. **Effective date.** [This act] is effective on passage and approval.

Section 21. **Priority of projects.** Any projects funded by appropriations made from the long-range building program capital projects fund in other appropriation bills have a lower priority than capital projects funded by appropriations in [this act].

Approved May 17, 1991.

CHAPTER NO. 775

[HB 7]

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE WATER DEVELOPMENT PROGRAM; TO APPROVE THE ISSUANCE OF COAL SEVERANCE TAX BONDS TO PROVIDE FUNDS FOR LOANS TO POLITICAL SUBDIVISIONS AND LOCAL GOVERNMENTS FOR CERTAIN APPROVED WATER DEVELOPMENT PROJECTS; TO REAUTHORIZE COAL SEVERANCE TAX BONDS FOR CERTAIN PROJECTS APPROVED BY THE 51ST LEGISLATURE; TO APPROPRIATE COAL SEVERANCE TAX INCOME FOR DEBT SERVICE; TO AUTHORIZE THE CREATION OF A STATE DEBT; TO AUTHORIZE THE ISSUANCE OF REVENUE BONDS; TO PLACE CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Coal severance tax bonds authorized.** (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved water resource development projects and activities as part of the state water development program. Available funds from previous sales of coal severance tax bonds may also be used for the projects approved in [sections 1 through 7]. The legislature finds that the water development projects in [sections 1 through 7] meet the provisions of 17-5-702. The board of examiners may issue coal severance tax bonds in an amount not to exceed $8,227,283 for the purpose of making loans and financing state projects, establishing a reserve for the bonds, and paying the costs of issuance. Funds are appropriated for these costs of issuance to a maximum of 4% of the amount of each bond sale.

(2) The board of examiners may issue coal severance tax bonds for loans to political subdivisions and local government entities not to exceed the loan amount listed for the project.

GROUP A Notwithstanding the provisions of [section 5], the interest rate for the projects in this group may be 2% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	Loan Amount
FORSYTH, CITY OF	
Water Treatment Plant Improvements	$1,948,916
SEELEY LAKE-MISSOULA COUNTY WATER DISTRICT	
Water Treatment Plant	922,150

The principal portion of the debt service payment of the loan for the Seeley Lake-Missoula County water project may be deferred for a period of 3 years. The interest on the loan may be adjusted for the deferral.

GROUP B Notwithstanding the provisions of [section 5], the interest rate for the project in this group may be 1% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	Loan Amount
COLUMBIA FALLS, CITY OF	
Water Improvements	$1,163,720

GROUP C Notwithstanding the provisions of [section 5], the interest rate for the project in this group must be sold at the rate at which the state bond is sold for 20 years.

	Loan Amount
HUNTLEY IRRIGATION DISTRICT	
Rehabilitation and Reconstruction of Diversion Structure and Main Canal	$ 749,797

GROUP D Notwithstanding the provisions of [section 5], the interest rate for the project in this group is 3% for 30 years.

	Loan Amount
BEAVERHEAD COUNTY, RED ROCK RIVER WATER AND/OR SEWER DISTRICT	
Lima Dam Rehabilitation	$3,040,000

GROUP E Notwithstanding the provisions of [section 5], the interest rate for the project in this group is 6% or the current bond rate, whichever is lower, for up to 30 years.

	Loan Amount
MILL CREEK WATER AND SEWER DISTRICT	
Mill Creek Gravity Sprinkler Irrigation Project	$ 151,000
LAKESIDE WATER AND SEWER DISTRICT	
Lakeside Wastewater Facility	251,700

Section 2. **Appropriation — creation of debt for coal severance tax bonds.** (1) The legislature, through the enactment of this section by a vote of three-fourths of the members of each house of the legislature as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [sections 1 through 7] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 7] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

(2) The legislature, through the enactment of this section, in accordance with Article VIII, section 8, of the Montana constitution, authorizes the creation of a state debt in an amount not to exceed $8,227,283 for loans to political subdivisions and local government entities for water development projects approved in [sections 1 through 7], all for the issuance of up to $8,227,283 in coal severance tax bonds authorized by [sections 1 through 7].

(3) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(4) Earnings on bonds proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the water development state special revenue account and may be used for the purposes allowed under 85-1-604(3)(b).

(5) Loan repayments from loans financed with coal severance tax bonds, loan principal, interest, and bond issuance fees borrowed from bond proceeds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

Section 3. **Projects not completing requirements — loans reauthorized.** (1) The legislature finds that the following water development projects for which coal severance tax bonds were authorized to be issued by the 51st legislature in House Bill No. 778, Laws of 1989, may not complete the requirements necessary for the loan transaction prior to June 30, 1991. Coal severance tax bonds for the projects described in this section are reauthorized in the amounts listed at the interest rates authorized by the 51st legislature in House Bill No. 778, Laws of 1989, and described in this section to enable financing during the 1992-93 biennium, if necessary.

GROUP A Notwithstanding the provisions of [section 5], the interest rate for the project in this group must be 4% over a 30-year term or 3% if the lower interest rate is necessary to secure the federal loan.

	Loan Amount
EAST BENCH IRRIGATION DISTRICT	
Gravity Sprinkler Irrigation No. 3	$ 431,000

GROUP B Notwithstanding the provisions of [section 5], the interest rate for projects in this group may be 3% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	Loan Amount
SOMERS COUNTY WATER AND SEWER DISTRICT	
Somers Sewer	$3,151,960
EVERGREEN WATER AND SEWER DISTRICT	
Wastewater Facilities	3,778,028
(If House Bill No. 648 is passed and approved, strike 3,778,028 in line 8 and insert 551,128.)	
LAKE COUNTY/BIG ARM SEWER DISTRICT	
Big Arm Sewer	2,283,893

GROUP C Notwithstanding the provisions of [section 5], the interest rate for projects in this group may be 2% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	Loan Amount
GLENDIVE, CITY OF	
Water Treatment Plant	$4,075,000
WHITEFISH, CITY OF	
Water Treatment and Distribution	6,035,800
WIBAUX, TOWN OF	
Water Storage Reservoir/Transmission Line	272,500

EAST GLACIER, TOWN OF	
Water System	484,270
PONDERA CONSERVATION DISTRICT	
Irrigation System Rehabilitation	750,000

GROUP D Notwithstanding the provisions of [section 5], the interest rate for projects in this group must be sold at the rate at which the state bond is sold for 20 years.

	Loan Amount
BROWNING, TOWN OF	
Sewage Treatment Facility Improvements	$ 447,014
ANACONDA-DEER LODGE COUNTY	
Wastewater Treatment Plant Effluent Disposal	500,000

GROUP E Notwithstanding the provisions of [section 5], the interest rate for the project in this group may be 4% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	Loan Amount
DUTTON, TOWN OF	
Water Supply Construction	$ 150,000

(2) The 50th legislature, in House Bill No. 7, Laws of 1987, approved the sale of $26 million of coal severance tax bonds for development of the Broadwater dam hydropower project. Any unspent portion of these funds is reauthorized for expenditure until completion of the project.

Section 4. **Conditions of loans.** (1) Disbursement of funds under [sections 1 through 7] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource and water development program project evaluations and recommendations report for the 1992-93 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved loan authority;

(d) execution of a loan agreement with the department of natural resources and conservation; and

(e) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 5. **Interest rates on loans.** Loans made from proceeds of coal severance tax bonds must be at interest rates specified in [section 1] except that when loan requests are reduced, interest rates must be recalculated based on the methodology described in the renewable resource and water development program project evaluations and recommendations report for the 1992-93 biennium. If the bonds or notes bear interest at an adjustable rate, the department of natural resources and conservation shall establish, at the time of the sale of each bond, an assured rate of interest thereon as if the bond bore interest at a fixed rate. The assured rate of interest so established must be the rate of interest on the bonds for the purpose of calculating the interest rates on the loans pursuant to [section 1].

Section 6. **Private and discount purchase of loans.** Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made and purchased by and sold to the department of natural resources and conservation at a discount and at private negotiated sale, notwithstanding the provisions of any other law applicable to such political subdivisions or local government entities.

Section 7. **Appropriations established.** For any entity of state government that receives a loan under [sections 1 through 7], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation.

Section 8. **Authorization to issue revenue bonds.** (1) In addition to the authority contained in 17-5-716, the board of examiners may issue revenue bonds of the state to refund in whole or in part bonds issued to finance water development projects approved by the legislature pursuant to Title 17, chapter 5, part 7, and Title 85, chapter 1, part 6. The principal and interest on refunding bonds issued pursuant to this section are payable solely from the project or projects for which the refunded bonds were issued.

(2) The revenue bonds may be issued in an amount sufficient to refund all or a portion of the outstanding bonds, to pay costs incident to the issuance and sale of the refunding bonds, and to fund the establishment of necessary reserves. The refunding bonds must be designated as "State of Montana Water Development Revenue Bonds". All the power and authority granted to the board of examiners and provisions with respect to the issuance of bonds under Title 17, chapter 5, part 7, except for the provision pledging the coal severance tax to the payment of the bonds, apply to the issuance of the revenue bonds. In authorizing the issuance of the revenue bonds, the board of examiners shall determine that the refunding of the outstanding bonds and the issuance of the revenue bonds are in the best interest of the state.

(3) Revenue bonds may not be issued under this section to refund bonds issued to fund a loan to a political subdivision or local government body

unless the political subdivision or local government body whose loan repayments would be pledged to the payment of the refunding bonds has consented to the refunding.

(4) Revenue bonds issued pursuant to this section without the pledge of the coal severance tax to the payment of the bonds are not coal severance tax bonds or a state debt.

Section 9. **Codification instruction.** [Section 8] is intended to be codified as an integral part of Title 17, chapter 5, part 7, and the provisions of Title 17, chapter 5, part 7, apply to [section 8].

Section 10. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. **Requirements for approval of state debt.** Because [section 2] authorizes the creation of a state debt and appropriates money that would otherwise be deposited in the coal severance tax permanent fund, a vote of three-fourths of the members of each house is required for enactment of [section 2].

Section 12. **Effective date.** [This act] is effective on passage and approval.

Approved May 17, 1991.

CHAPTER NO. 776

[HB 20]

AN ACT TO APPROPRIATE $25,000 FROM THE LONG-RANGE BUILDING PROGRAM FUND TO THE DEPARTMENT OF MILITARY AFFAIRS AS MONTANA'S CONTRIBUTION TOWARD THE CONSTRUCTION OF THE NATIONAL WOMEN IN MILITARY SERVICE FOR AMERICA MEMORIAL AT ARLINGTON NATIONAL CEMETERY.

WHEREAS, Montana's women in military service have always responded to the needs of their country and have fought for liberty throughout our nation's history; and

WHEREAS, the United States Congress has unanimously passed legislation authorizing construction of a living memorial to honor the 1.2 million women veterans and the 400,000 women in active military service, the reserves, and the National Guard; and

WHEREAS, the memorial will house a register, making it possible for all servicewomen to have a permanent, visible place in America's history, and will serve to illustrate women's partnership with men in the defense of our nation; and

WHEREAS, March 29, 1991, has already been proclaimed by Lieutenant Governor Kolstad, the Boards of County Commissioners, and the Indian tribes of the State of Montana as the date during National Women's History Month to recognize and honor Montana's women veterans and women active in military service for their contribution to Montana and America.

THEREFORE, the Legislature of the State of Montana finds it appropriate to allocate funds toward the construction of a national women veterans' and servicewomen's memorial in Arlington National Cemetery.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated to the veterans' affairs division in the department of military affairs from the long-range building program fund $25,000 for the fiscal year beginning July 1, 1992, to be used as the state of Montana's contribution toward the construction of the national memorial honoring women veterans and servicewomen at Arlington national cemetery.

Approved May 17, 1991.

CHAPTER NO. 777

[HB 29]

AN ACT RESTRICTING THE USE OF TINTING OR SUNSCREENING MATERIAL ON THE WINDSHIELD OR SIDE OR REAR WINDOWS OF A MOTOR VEHICLE; AND AMENDING SECTION 61-9-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-405, MCA, is amended to read:

"**61-9-405. Windshields to be unobstructed and equipped with wipers — *window tinting and sunscreening — restrictions — exemptions*.** (1) ~~No~~ *A* person ~~shall~~ *may not* drive ~~any~~ *a* motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows of ~~such~~ *the* vehicle ~~which~~ *that* obstructs the driver's clear view of the highway or any intersecting highway.

(2) The windshield on ~~every~~ *each* motor vehicle ~~shall~~ *must* be equipped with a device for clearing rain, snow, or other moisture from the windshield~~; which device shall be so constructed as to be controlled or operated by the driver of the vehicle~~.

(3) ~~Every~~ *Each* windshield wiper upon a motor vehicle ~~shall~~ *must* be maintained in good working order.

(4) A person may not operate a motor vehicle that is required to be registered in this state upon a highway if:

(a) the windshield has any sunscreening material that is not clear and transparent below the AS-1 line or if it has a sunscreening material that is red, yellow, or amber in color above the AS-1 line;

(b) the front side windows have any sunscreening or other transparent material that has a luminous reflectance of more than 35% or has light transmission of less than 35%;

(c) the rear window or side windows behind the front seat have sunscreening or other transparent material that has a luminous reflectance of more than 35% or has light transmission of less than 20%, except for the rear window or side windows behind the front seat on a multipurpose vehicle, van, or bus; or

(d) the windows of a camper, motor home, pickup cover, slide-in camper, or other motor vehicle do not meet the standards for safety glazing material specified by federal law in 49 CFR 571.205.

(5) As used in [sections 2 and 3] and this section, the following definitions apply:

(a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons.

(b) "Glass-plastic glazing material" means a laminate of one or more layers of glass and one or more layers of plastic in which a plastic surface of the glazing faces inward when the glazing is installed in a vehicle.

(c) "Light transmission" means the ratio of the amount of total light, expressed in percentages, that is allowed to pass through the sunscreening or transparent material to the amount of total light falling on the motor vehicle window.

(d) "Luminous reflectance" means the ratio of the amount of total light, expressed in percentages, that is reflected outward by the sunscreening or transparent material to the amount of total light falling on the motor vehicle window.

(e) "Motor home" means a multipurpose passenger vehicle that provides living accommodations.

(f) "Multipurpose vehicle" means a motor vehicle designed to carry 10 or fewer passengers that is constructed on a truck chassis or with special features for occasional off-road use.

(g) "Pickup cover" means a camper having a roof and sides but without a floor designed to be mounted on and removable from the cargo area of a pickup truck by the user.

(h) "Slide-in camper" means a camper having a roof, floor, and sides designed to be mounted on and removable from the cargo area of a truck by the user.

(i) "Sunscreening material" means a film, material, tint, or device applied to motor vehicle windows for the purpose of reducing the effects of the sun.

(6) Subsection (4) does not apply to a vehicle that is equipped with tinted windows of the type and specifications that were installed by the manufacturer of the vehicle or to any hearse, ambulance, government vehicle, or any other vehicle to which a currently valid certificate of waiver is affixed as specified under [section 2]. A certificate of waiver must be issued by the department for a vehicle that is registered in this state on [the effective date of this act] and is equipped with a sunscreening device or other material prohibited under subsection (4) on [the effective date of this act]."

Section 2. **Window tinting and sunscreening — waiver — conditions.** The highway patrol or a local law enforcement agency may grant a waiver of the standards of 61-9-405(4) for reasons of safety or security or for medical reasons based on an affidavit signed by a licensed physician. The waiver must be in writing and must include the vehicle identification number, registration number, or other description to clearly identify the motor vehicle to which the waiver applies and the date issued, the name of the owner of the vehicle, the reason for granting the waiver, the dates the waiver is effective, and the signature of the law enforcement officer granting the waiver. The highway patrol or the local law enforcement agency shall keep a copy of the waiver until the waiver expires.

Section 3. **Window tinting and sunscreening — penalty.** (1) A person who owns or operates a motor vehicle in violation of 61-9-405(4) is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) A person who applies a sunscreening material or a glass-plastic glazing material in a manner that results in a motor vehicle having a window that violates the requirements of 61-9-405(4) is guilty of a misdemeanor and is punishable as provided in 46-18-212.

Section 4. **Codification instruction.** [Sections 2 and 3] are intended to be codified as an integral part of Title 61, chapter 9, part 4, and the provisions of Title 61, chapter 9, part 4, apply to [sections 2 and 3].

Approved May 17, 1991.

CHAPTER NO. 778

[HB 151]

AN ACT REVISING THE PROPERTY TAXATION OF MIGRATORY PROPERTY; PROVIDING FOR A REFUND ON PROPERTY TAXES PAID ON MIGRATORY PROPERTY FOR A PERIOD LONGER THAN THE ACTUAL NUMBER OF MONTHS THE PROPERTY IS IN THE STATE; AMENDING SECTION 15-16-613, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-613, MCA, is amended to read:

"**15-16-613. Refund of certain taxes paid ~~in other states~~ *on migratory property.*** *(1)* Subject to the provisions of 15-16-601 ~~and upon proof that tax was paid in another state, a taxpayer is entitled to a refund equal to the amount of tax paid in another state on a helicopter or property that was assessed in Montana under 15-6-138(1)(g) on January 1 of the year for which the refund is due. The refund under this section may not exceed the tax that was paid in Montana on the same property for the same period of time.~~ *and upon proof that a tax was paid in another state on the same property, a taxpayer whose property is assessed under 15-24-303 for a period longer than the actual number of months that the property has taxable situs in the state is entitled to a refund, as provided in this section.*

(2) To obtain a refund, a taxpayer shall file an application for refund with the county treasurer in the county where the property was originally taxed. A taxpayer shall apply for a refund allowed under this section by January 31 following the year of assessment, and the county shall make the refund within the first quarter of the following fiscal year. The application must be made on a form provided by the department of revenue and may require information as prescribed by rule of the department.

(3) The amount of the refund is the difference between the amount of tax paid under 15-24-303 and the tax owed based upon the number of months the property had taxable situs in the state for the year. The refund may not exceed the amount of the tax paid.

(4) For the purposes of this section, "month" means any part of a calendar month."

Section 2. **Retroactive applicability.** [Section 1] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved May 17, 1991.

CHAPTER NO. 779

[HB 179]

AN ACT APPROPRIATING FUNDS TO THE DEPARTMENT OF MILITARY AFFAIRS FOR THE UPGRADING AND MAINTENANCE OF THE STATE VETERANS' CEMETERY; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated the following amounts from the general fund to the department of military affairs for the upgrading and maintenance of the state veterans' cemetery:

Fiscal year 1992	$22,806
Fiscal year 1993	22,795

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved May 17, 1991.

CHAPTER NO. 780

[HB 240]

AN ACT CLARIFYING THAT PROJECTS PROPOSED BY PUBLIC ENTITIES TO RESEARCH AND DEMONSTRATE LOW AGRICULTURAL CHEMICAL INPUT FARMING PRACTICES ARE ELIGIBLE FOR GRANTS FROM THE RENEWABLE RESOURCE DEVELOPMENT GRANT PROGRAM; AND AMENDING SECTION 90-2-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-2-111, MCA, is amended to read:

"**90-2-111. Grants to state and local government.** (1) The department of natural resources and conservation may recommend to the governor that grants from the renewable resource development account provided for by this part be made to any department, agency, board, commission, or other division of state government or to any political subdivision of state government.

(2) The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies, and other subdivisions of state and federal government and of other interested and affected persons.

(3) The governor shall submit those grant proposals having his approval to the legislature by the 20th day of any legislative session. Those grant proposals approved by the legislature shall be administered by the department.

(4) The grants provided for by this section may be made for the purchase, lease, or construction of projects for the conservation, management, utilization, development, or preservation of the land, vegetation, fish, wildlife, recreational, and other renewable resources in the state, *including projects that provide research and demonstration of farming practices that reduce agricultural chemical use*; for the purpose of feasibility and design studies for such projects; for development of plans for the rehabilitation, expansion, or modification of existing projects; and for such other and further similar purposes as the legislature may approve.

(5) In recommending grants under this section, the department and the governor shall consider the special requirements and benefits of proposals that provide for the long-term compilation and management of information on the natural resources of Montana. These proposals contribute to the efficient management of renewable resources, benefit a variety of public and private users, and require a continuing commitment of resources to maintain currency and utility. In consequence of these values and conditions, projects providing for the long-term compilation and management of natural resource information may be considered for funding in consecutive funding cycles and may not be penalized for having received funds previously from the renewable resource development program.

(6) The department may adopt rules as required to govern the terms and conditions for making grants pursuant to this section."

Approved May 17, 1991.

CHAPTER NO. 781

[HB 268]

AN ACT CREATING AN APPELLATE DEFENDER SYSTEM; CREATING AN APPELLATE DEFENDER COMMISSION AND THE OFFICE OF APPELLATE DEFENDER; ESTABLISHING DUTIES OF THE COMMISSION; ESTABLISHING DUTIES OF AND QUALIFICATIONS FOR THE APPELLATE DEFENDER; PROVIDING AN APPROPRIATION TO FUND THE COMMISSION AND THE OFFICE OF APPELLATE DEFENDER FOR THE BIENNIUM; AMENDING SECTION 3-5-901, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 2] grants the appellate defender commission rulemaking authority for the conduct of the commission's affairs. It is the intent that the commission adopt rules of procedure necessary to implement and carry out the duties of the commission.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 and 3 through 5] may be cited as the "Appellate Defender Act".

Section 2. **Appellate defender commission — duties — rules.** (1) There is an appellate defender commission.

(2) The commission consists of five members appointed by the governor as follows:

(a) one district judge nominated by the district judges under a nominating procedure initiated and conducted by the supreme court and certified by the chief justice of the supreme court;

(b) three attorneys. In selecting the attorney appointees, the governor shall consider recommendations submitted by the president of the state bar of Montana, as follows:

(i) at least two attorneys who are experienced in the defense of felonies, at least one of whom has served a minimum of 1 year as a full-time public defender for a governmental agency or a public corporation; and

(ii) at least one attorney who has been licensed to practice law in this state for a minimum of 10 years.

(c) one member of the general public who is not an attorney or a judge, active or retired.

(3) The members shall serve staggered 3-year terms.

(4) The commission is allocated to the department of administration for administrative purposes only pursuant to 2-15-121.

(5) A member of the commission may not while serving a term on the commission serve as a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(6) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(7) The commission shall make rules for the conduct of its affairs.

(8) The commission shall develop a system of indigent appellate defense services.

(9) The commission shall propose to the supreme court minimum standards to which all trial and appellate public defenders, including locally appointed private counsel, shall conform.

(10) The commission shall compile and keep current a statewide roster of attorneys eligible for appointment by an appropriate court as trial and appellate defense counsel for indigent defendants. The roster must be supplied to all justices and judges in the state.

(11) The commission shall establish qualifications, duties, and priorities for the appellate defender, provided for in [section 3], not inconsistent with those established in [section 4].

Section 3. **Office of appellate defender — appellate defender — hiring — dismissal — staff.** (1) There is an office of appellate defender.

(2) The appellate defender must be hired by and shall serve at the pleasure of the appellate defender commission.

(3) The appellate defender shall hire and supervise the work of supporting personnel authorized by the commission.

Section 4. **Appellate defender — qualifications — duties.** (1) The appellate defender and any deputy or assistant appellate defender:

(a) must be an attorney licensed to practice law in this state;

(b) shall perform duties as may be provided by law or established by the appellate defender commission; and

(c) must have those qualifications otherwise required by the commission.

(2) The duties of the appellate defender are to:

(a) assume responsibility for appeals from district court and petitions for postconviction relief from proceedings in district court on behalf of indigent defendants only after conviction, as defined by 46-1-201(2), when:

(i) the defendant alleges that ineffective assistance of counsel resulted in conviction;

(ii) a district judge or the chief justice or an associate justice of the supreme court finds further representation by previously appointed counsel would not serve the interests of justice; or

(iii) the appellate defender agrees to assist in or assume responsibility for appeal;

(b) aid the commission in compiling and keeping current a statewide roster of attorneys eligible for appointment by an appropriate court as trial and appellate defense counsel for the indigent;

(c) keep a record of those services and expenses for the commission; and

(d) perform the duties otherwise established by the commission.

Section 5. **Appellate defender — classification — salary — expenses.** The appellate defender and staff must be classified according to the state classification pay plan and are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

Section 6. Section 3-5-901, MCA, is amended to read:

"**3-5-901. State assumption of certain district court expenses.** (1) Effective July 1, 1985, the state shall, to the extent that money is appropriated, fund the following district court expenses in criminal cases only:

(a) salaries of court reporters;

(b) transcripts of proceedings;

(c) witness fees and necessary expenses;

(d) juror fees;

(e) indigent defense; ~~and~~

(f) expenses of the appellate defender commission and the office of appellate defender; and

~~(f)~~*(g)* psychiatric examinations.

(2) The department of commerce, in consultation with the district judges for each judicial district *and the appellate defender commission,* shall include within the department's biennial budget request to the legislature a request for funding the expenses listed in subsection (1).

(3) (a) If money appropriated for the expenses listed in subsection (1):

(i) exceeds the amount necessary to fully fund those expenses, the excess amount must be used for district court grants as provided in 7-6-2352; or

(ii) is insufficient to fully fund those expenses, the *appellate defender commission and the office of appellate defender must be funded first and the* county is responsible for payment of the balance.

(b) If no money is appropriated, the county is responsible for payment of all expenses."

Section 7. **Implementation of staggered terms.** (1) To implement the staggered-term system provided for in [section 2(3)], beginning January 1, 1991, the first terms of the members are as follows:

(a) the member of the general public shall serve a 1-year term;

(b) two of the attorney members shall serve 2-year terms, as designated by the president of the Montana state bar association at the time of appointment; and

(c) the other members shall serve 3-year terms.

(2) Upon expiration of the terms provided in subsection (1), each member shall serve a 3-year term.

Section 8. **Initial report to legislature.** At the end of the first biennium following the selection of the first appellate defender, the appellate defender commission shall submit a report to the legislature evaluating the performance and needs of the office of appellate defender.

Section 9. **Appellate defender — appropriation.** The following money is appropriated from funds available as provided in 3-5-901(2) to the appellate defender commission for the operation of the commission and the office of appellate defender:

Fiscal year 1992	$100,000
Fiscal year 1993	100,000

Section 10. **Codification instruction.** (1) [Sections 1 and 3 through 5] are intended to be codified as an integral part of Title 46, chapter 8, part 2, and the provisions of Title 46, chapter 8, part 2, apply to [sections 1 and 3 through 5].

(2) [Section 2] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to [section 2].

Section 11. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to January 1, 1991.

Section 12. **Effective date.** [This act] is effective on passage and approval.

Section 13. **Termination.** [This act] terminates July 1, 1993.

Approved May 17, 1991.

CHAPTER NO. 782

[HB 285]

AN ACT ALLOWING COUNTY COMMISSIONERS TO CHARGE FEES ON STRUCTURES FOR THE OPERATION OF A MOSQUITO CONTROL DISTRICT; AMENDING SECTION 7-22-2432, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-22-2432, MCA, is amended to read:

"7-22-2432. ~~**Levy**~~ ***Financing of mosquito control district — levy*** **of district taxes — limit on mill levy —** ***fee on structures.*** (1) ~~At the time fixed by law for levy and assessment of taxes, the~~ *The* board of county commissioners of any county within which a mosquito control board has been created shall *finance the operation of the district by* ~~levy~~ *levying* a tax not exceeding 5 mills on the dollar of the total taxable valuation in ~~such~~ *the* district on all property situated within the ~~said~~ district *at the time fixed by law for levy and assessment of taxes.*

(2) Instead of or in addition to imposing the levy authorized in subsection (1), the county commissioners may, upon an affirmative vote of a majority of the qualified voters residing in the mosquito control district, collect an annual fee from the owners of structures that are benefited by the mosquito control services offered by the district. The schedule of fees is as follows:

(a) up to $20 per single-unit dwelling;

(b) up to $20 per unit in a duplex dwelling;

(c) up to $5 per unit in a multiple-unit dwelling;

(d) up to $75 per commercial establishment~~.~~*;*

(e) up to $50 on each irrigated parcel of property that does not contain a dwelling; and

(f) up to $15 on each nonirrigated parcel of property that does not contain a dwelling.

(3) A countywide mosquito control district may be financed by a property tax pursuant to subsection (1) or a fee under subsection (2), but not by both a tax and a fee.

~~(2)~~*(4) The fees provided for in subsection (2) must be collected with the general taxes of the county. The assessments are a lien on the property assessed.*

(5) The proceeds ~~of~~ *from* the tax *and the fees* ~~shall~~ *must* be placed in a separate fund with the county treasurer of ~~such~~ *the* county and ~~shall~~ *must* be used solely for the purpose for which ~~such~~ *the* mosquito control district was created."

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved May 17, 1991.

CHAPTER NO. 783

[HB 340]

AN ACT TO GENERALLY REVISE THE TAXATION OF PRIVATE FOREST LANDS; DEFINING FOREST LAND AND FOREST PRODUCTIVITY VALUE; REQUIRING THE DEPARTMENT OF REVENUE TO VALUE FOREST LANDS OF 15 ACRES OR MORE ON THE BASIS OF PRODUCTIVITY BY CAPITALIZING THE NET INCOME OF FOREST LAND; AUTHORIZING THE DEPARTMENT OF REVENUE TO ESTABLISH FOREST VALUATION ZONES; PROVIDING FOR A TRANSITION PERIOD IN THE TAXATION OF FOREST LANDS BY EXTENDING THE TERMINATION DATE OF CLASS THIRTEEN PROPERTY; PROVIDING THAT CLASS THIRTEEN WILL APPLY TO THE TAXATION OF FOREST LANDS BEGINNING JANUARY 1, 1994; EXEMPTING TIMBER FROM AD VALOREM PROPERTY TAXATION; IMPOSING AN ASSESSMENT ON ALL PRIVATELY OWNED TIMBERLAND; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-1-101, 15-6-143, 15-6-201, AND 15-8-111, MCA, AND SECTION 10, CHAPTER 681, LAWS OF 1985; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE.

WHEREAS, the Department of Revenue does not have adequate resources to properly administer the existing standing inventory method of taxing forest lands; and

WHEREAS, the standing inventory method of taxing forest lands encourages landowners to harvest timber without regard to good forest management; and

WHEREAS, the valuation of forest lands in Montana is often based on outdated information; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee found that the forest productivity method of taxing forest lands encourages good forest management and is a more equitable method of taxing forest lands; and

WHEREAS, the forest productivity method of taxing forest lands is in the long run easier and less costly to administer than the standing inventory method; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee recommends that forest lands be taxed on the basis of productivity; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Forest Taxation Subcommittee of the Revenue Oversight Committee.

THEREFORE, it is the purpose of this bill to implement the recommendation to change the method of taxing forest lands in the state.

STATEMENT OF INTENT

A statement of intent is required for this bill because the department of revenue is granted authority to adopt rules for the administration and enforcement of the forest productivity method of taxing forest lands.

The legislature contemplates that rules adopted by the department should, at a minimum, address the following:

(1) guidelines for information that must be contained in the statement of intent submitted by the forest landowner as provided for in [section 2(5)(b)];

(2) the form to be used by the forest landowner for the statement of intent;

(3) the procedures for determining appropriate forest valuation zones and for computing forest land valuation schedules;

(4) the notification of landowners who may be eligible for forest land classification under this bill;

(5) the process by which a landowner may appeal the valuation of the owner's forest land; and

(6) the definition of terms and establishment of procedures as appropriate for the efficient administration of the forest productivity method of taxation.

In determining forest productivity values and in computing forest land valuation schedules, the department shall use the assistance of the university of Montana. The legislature also intends that, in implementing this bill, the department seek the advice of the department of state lands, landowners of private forest lands, the timber industry, and local governments.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 5] may be cited as the "Forest Lands Tax Act".

Section 2. **Definitions.** For the purposes of [sections 1 through 5], unless the context requires otherwise, the following definitions apply:

(1) "Culmination of mean annual increment" means the point of optimum net wood production on an acre of forest land.

(2) "Cultivated Christmas trees" means Christmas trees that are grown on land prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled for the exclusive purpose of raising Christmas trees.

(3) "Department" means the department of revenue.

(4) "Forest" means forest land and the timber on the land.

(5) "Forest land" means contiguous land of 15 acres or more in one ownership that is capable of producing timber that can be harvested in commercial quantity and is producing timber unless the trees have been removed by man through harvest, including clearcuts, or by natural disaster, including but not limited to fire. Forest land includes land:

(a) that has not been converted to another use; or

(b) that has a dedicated use that is evidenced by a statement of intent by the owner for the eventual harvest of timber.

(6) "Forest productivity value" means the value of forest land for assessment purposes, which value is determined only on the basis of its ability to produce timber, other forest products, and associated agricultural products through an income approach provided for in [section 3].

(7) "Harvest" means an activity related to the cutting or removal of timber for use or sale as a forest product.

(8) "Landowner" means an individual, corporation, association, company, firm, joint venture, syndicate, or trust.

(9) "Mean annual net wood production" means the average net usable volume of wood 1 acre of forest land will grow in 1 year under average current and actual forest conditions and under current and reasonable management practices for each forest valuation zone established under [section 3].

(10) "Stumpage value" means the amount that timber would sell for under an arm's-length transaction made in the ordinary course of business, expressed in terms of dollars per unit of measure.

(11) "Timber" means all wood growth on privately owned land, mature or immature, alive or dead, standing or down, that is capable of furnishing raw material used in the manufacture of lumber or other forest products. The term does not include cultivated Christmas trees.

Section 3. **Legislative intent — value of forest lands — valuation zones.** (1) In order to encourage landowners of private forest lands to retain and improve their holdings of forest lands, to promote better forest practices, and to encourage the investment of capital in reforestation, forest lands must be classified and assessed under the provisions of this section.

(2) The forest productivity value of forest land must be determined by:

(a) capitalizing the value of the mean annual net wood production at the culmination of mean annual increment plus other agriculture-related income, if any; less

(b) annualized expenses, including but not limited to the establishment, protection, maintenance, improvement, and management of the crop over the rotation period.

(3) To determine the forest productivity value of forest lands, the department shall:

(a) divide the state into appropriate forest valuation zones, with each zone designated so as to recognize the uniqueness of marketing areas, timber types, growth rates, access, operability, and other pertinent factors of that zone; and

(b) establish a uniform system of forest land classification that takes into consideration the productive capacity of the site to grow forest products and furnish other associated agricultural uses.

(4) In computing the forest land valuation schedules for each forest valuation zone to take effect on January 1, 1994, the department shall determine the productive capacity value of all forest lands in each forest valuation zone using the formula V = I/R, where:

(a) V is the per-acre forest productivity value of the forest land;

(b) I is the per-acre net income of forest lands in each valuation zone and is determined by the department using the formula I = (M x SV) + AI - C, where:

(i) I is the per-acre net income;

(ii) M is the mean annual net wood production;

(iii) SV is the stumpage value;

(iv) AI is the per-acre agriculture-related income; and

(v) C is the per-unit cost of the forest product and agricultural product produced, if any; and

(c) R is the capitalization rate determined by the department as provided in subsection (6).

(5) Net income must:

(a) be calculated for each year of a base period, which is the most recent 5-year period for which data is available;

(b) be based on a rolling average of stumpage value of timber harvested within the forest valuation zone and on the associated production cost data for the base period from sources considered appropriate by the department; and

(c) include agriculture-related net income for the same time period as the period used to determine average stumpage values.

(6) The capitalization rate must be calculated for each year of the base period and is the annual average interest rate on agricultural loans as reported by the federal land bank association of Spokane, Washington, plus the effective tax rate.

(7) The effective tax rate must be calculated for each year of the base period by dividing the total estimated tax due on forest lands subject to the provisions of this section by the total forest value of those lands.

(8) For the purposes of this section, if forest service sales are used in the determination of stumpage values, the department shall take into account purchaser road credits.

(9) In determining the forest productivity value of forest lands and in computing the forest land valuation schedules, the department shall use information and data provided by the university of Montana.

Section 4. **Reduction in valuation on forest lands for trees destroyed by natural disaster.** (1) Forest lands upon which, at any time after December 31, 1993, trees are destroyed by fire, disease, insect infestation, or other natural disaster so that the lands affected will not meet minimum stocking requirements are eligible for a reduction in value for the first 20 tax years following the loss.

(2) If a landowner shows to the department's satisfaction that the landowner's forest lands have been destroyed as provided in subsection (1), the department shall reduce the value of the forest land by 50% of the original forest productivity value per year.

Section 5. **Administration — rules.** The department shall:

(1) administer and enforce the provisions of [sections 1 through 5];

(2) arrange for the preparation and distribution of forms and information necessary to administer the provisions of [sections 1 through 5]; and

(3) promulgate rules necessary to administer and enforce the provisions of [sections 1 through 5].

Section 6. Section 15-6-143, MCA, is amended to read:

"**15-6-143.** *(Temporary)* **Class thirteen property — description — taxable percentage.** (1) Class thirteen property includes all timberland.

(2) Timberland is contiguous land exceeding 15 acres in one ownership that is capable of producing timber that can be harvested in commercial quantity.

(3) Class thirteen property is taxed at ~~the percentage rate "P"~~ *4%* of the combined appraised value of the standing timber and grazing productivity of the property.

~~(4) For taxable years beginning January 1, 1986, and thereafter, the taxable percentage rate "P" applicable to class thirteen property is 30%/B, where B is the certified statewide percentage increase to be determined by the department of revenue as provided in subsection (5). The taxable percentage rate "P" shall be rounded downward to the nearest 0.01% and shall be calculated by the department before July 1, 1986.~~

~~(5) (a) Prior to July 1, 1986, the department shall determine the certified statewide percentage increase for class thirteen property using the formula B = X/Y, where:~~

~~(i) X is the appraised value, as of January 1, 1986, of all property in the state, excluding use changes occurring during the preceding year, classified under class thirteen as class thirteen is described in this section; and~~

~~(ii) Y is the appraised value, as of January 1, 1985, of all property in the state that, as of January 1, 1986, would be classified under class thirteen as class thirteen is described in this section.~~

~~(b) B shall be rounded downward to the nearest 0.0001%.~~

~~(6) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a valuation has been made as provided in 15-7-111.~~ ~~*(Terminates January 1, 1991—sec. 10, Ch. 681, L. 1985.)*~~"

Section 7. Section 15-6-143, MCA, is amended to read:

"**15-6-143.** ~~*(Temporary)*~~ **Class thirteen property — description — taxable percentage — *alternative classification.*** ~~(1) Class thirteen property includes all timberland.~~

~~(2) Timberland is contiguous land exceeding 15 acres in one ownership that is capable of producing timber that can be harvested in commercial quantity.~~

~~(3) Class thirteen property is taxed at the percentage rate "P" of the combined appraised value of the standing timber and grazing productivity of the property.~~

~~(4) For taxable years beginning January 1, 1986, and thereafter, the taxable percentage rate "P" applicable to class thirteen property is 30%/B, where B is the certified statewide percentage increase to be determined by the department of revenue as provided in subsection (5). The taxable percentage rate "P" shall be rounded downward to the nearest 0.01% and shall be calculated by the department before July 1, 1986.~~

~~(5) (a) Prior to July 1, 1986, the department shall determine the certified statewide percentage increase for class thirteen property using the formula B = X/Y, where:~~

~~(i) X is the appraised value, as of January 1, 1986, of all property in the state, excluding use changes occurring during the preceding year, classified under class thirteen as class thirteen is described in this section; and~~

~~(ii) Y is the appraised value, as of January 1, 1985, of all property in the state that, as of January 1, 1986, would be classified under class thirteen as class thirteen is described in this section.~~

~~(b) B shall be rounded downward to the nearest 0.0001%.~~

~~(6) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a valuation has been made as provided in 15-7-111. *(Terminates January 1, 1991—sec. 10, Ch. 681, L. 1985.)*~~

(1) Class thirteen property includes all forest lands as defined in [section 2].

(2) Class thirteen property is taxed at the percentage rate "P" of its forest productivity value.

(3) For taxable years beginning January 1, 1994, and thereafter, the taxable percentage rate "P" applicable to class thirteen property is 4%/B, where B is the certified statewide percentage increase to be determined by the department of revenue as provided in subsection (4). The taxable percentage rate "P" must be rounded downward to the nearest 0.01% and must be calculated by the department before July 1, 1994.

(4) (a) Prior to July 1, 1994, the department shall determine the certified statewide percentage increase for class thirteen property using the formula B = X/Y, where:

(i) X is the appraised value, as of January 1, 1994, of all property in the state, excluding use changes occurring during the preceding year, classified under class thirteen as class thirteen is described in this section; and

(ii) Y is the appraised value, as of January 1, 1993, of all property in the state that would be classified under class thirteen as class thirteen is described in this section as this section reads in 1993.

(b) B must be rounded downward to the nearest 0.0001%."

Section 8. Section 15-1-101, MCA, is amended to read:

"**15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to the raising of livestock, poultry, bees, and other species of domestic animals and wildlife in domestication or a captive environment, and the raising of field crops, fruit, and other animal and vegetable matter for food or fiber.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a nonprofit corporation as defined in 35-2-102 or used for the production of income, except that property described in subsection (ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands *and, beginning January 1, 1994, forest lands*;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as his stock in trade;

(E) all property described in 15-6-135; and

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(h) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(i) The term "livestock" means cattle, sheep, swine, goats, horses, mules, and asses.

(j) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(k) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(l) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(m) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(n) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(o) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(p) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(q) The term "weighted mean assessment ratio" means the total of the assessed values divided by the total of the selling prices of all area sales in the stratum.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Section 9. Section 15-6-201, MCA, is amended to read:

"**15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts, except, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) provided the tools are owned by the taxpayer, the first $15,000 or less of market value of tools that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment; ~~and~~

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105*; and*

(u) beginning January 1, 1994, timber as defined in [section 2].

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 10. Section 15-8-111, MCA, is amended to read:

"**15-8-111. Assessment — market value standard — exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri;

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual where the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Title 15 and Title 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) ~~Properties~~ *Beginning January 1, 1990, and ending December 31, 1993, properties* in 15-6-143, under class thirteen, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland.

(e) Beginning January 1, 1994, properties in 15-6-143, under class thirteen, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(7) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town."

Section 11. Section 10, Chapter 681, Laws of 1985, is amended to read:

"Section 10. **Effective date — termination date.** This act is effective January 1, 1986, and, except for ~~section 3~~ *sections 2 through 4*, terminates January 1, 1991."

Section 12. **Appropriation.** (1) There is appropriated from the general fund to the department of revenue $614,076 to fund the determination of the forest productivity value of forest lands required by [section 3].

(2) There is appropriated from the general fund to the department of revenue $366,762 to administer the provisions of [sections 1 through 5 and section 7].

(3) Notwithstanding the provisions of 17-7-302 through 17-7-304, the unexpended appropriation in subsection (1) may be encumbered for payment in fiscal year 1994.

(4) Notwithstanding the provisions of 17-7-302 through 17-7-304, the unexpended appropriation in subsection (2) is reappropriated for fiscal year 1994.

Section 13. **Assessment on privately owned timberland — collection — disposition.** (1) An assessment of 10 cents per acre or portion of an acre is imposed on all privately owned timberland for tax years 1991 through 1993. The assessment is imposed on the owner of the land as of January 1 of each year.

(2) This assessment is done on November 30 of each year and must be paid with the property tax due as provided in 15-16-101.

(3) (a) By September 1 of each year, the department of revenue shall provide county treasurers with a list showing:

(i) all owners of private timberland in the county as of January 1 of that year; and

(ii) the number of acres of timberland owned by each as of January 1 of that year.

(b) The county treasurer shall send each listed owner a bill for the assessment imposed in subsection (1) with the property tax notice required in 15-16-101.

(4) The county treasurer shall collect the assessment imposed in subsection (1) and remit collections to the state treasurer by December 20 of each year.

(5) The state treasurer shall deposit all collections from the assessment imposed in subsection (1) in the general fund.

Section 14. **Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 5].

Section 15. **Saving clause.** [This act] does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 16. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. **Applicability — retroactive applicability.** (1) Except as provided in subsection (2), [this act] applies to taxable years beginning after December 31, 1993.

(2) [Sections 6, 11, and 13] apply retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Section 18. **Effective dates.** (1) Except as provided in subsections (2) and (3), [this act] is effective July 1, 1991.

(2) [Sections 6, 11, and 13] and this section are effective on passage and approval.

(3) [Section 7] is effective January 1, 1994.

Section 19. **Termination.** [Sections 6, 10(6)(d), and 13] terminate January 1, 1994.

Approved May 17, 1991.

CHAPTER NO. 784

[HB 360]

AN ACT PROVIDING TERMS FOR MEMBERS OF THE RESERVED WATER RIGHTS COMPACT COMMISSION; EXTENDING THE TERMINATION DATE FOR THE SUSPENSION OF ADJUDICATION REQUIREMENTS; AMENDING SECTIONS 2-15-212, 85-2-217, AND 85-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-212, MCA, is amended to read:

"**2-15-212. Reserved water rights compact commission.** (1) There is created a reserved water rights compact commission.

(2) Commissioners are appointed ~~within 30 days of May 11, 1979,~~ as follows:

(a) two members of the house of representatives appointed by the speaker, each from a different political party;

(b) two members of the senate appointed by the president, each from a different political party;

(c) four members designated by the governor; and

(d) one member designated by the attorney general.

(3) Legislative members of the commission are entitled to receive compensation and expenses as provided in 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as state employees.

(4) The commission is attached to the governor's office for administrative purposes only. The costs of the commission shall be paid from funds appropriated for that purpose from the water right adjudication account established in 85-2-241.

(5) ~~Members appointed to the commission shall serve until the work of the commission is completed or until they resign or are otherwise unable to serve.~~ *Members are appointed for 4-year terms and may be reappointed. A legislative member position is vacant if the person no longer serves in the legislature. The position of a member appointed by the governor or attorney general is vacant if that person is elected to the legislature.* A vacancy must be filled in the manner of the original appointment."

Section 2. Section 85-2-217, MCA, is amended to read:

"**85-2-217. Suspension of adjudication.** While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies which are negotiating are suspended. The obligation to file water rights claims for those reserved rights is also suspended. This suspension shall be effective until July 1, ~~1993~~ *1999*, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, ~~1993~~ *1999*, the suspension shall terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies shall be subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their reserved water rights ~~shall be~~ *are* subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section."

Section 3. Section 85-2-702, MCA, is amended to read:

"**85-2-702. Negotiation with Indian tribes.** (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings shall be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Upon receipt of such written designation from the governing body of a tribe, compact negotiations shall be considered to have commenced.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy

and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana and any affected tribal governing body, and approval by the appropriate federal authority.

(3) Upon its ratification by the Montana legislature and the tribe, the terms of a compact must be included in the preliminary decree as provided by 85-2-231, and unless an objection to the compact is sustained under 85-2-233, the terms of the compact must be included in the final decree without alteration. However, if approval of the state legislature and *the* tribe has not been accomplished by July 1, ~~1993~~ *1999*, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 6 months. These new filings shall be used in the formulation of the preliminary decree and shall be given treatment similar to that given to all other filings."

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved May 17, 1991.

CHAPTER NO. 785

[HB 391]

AN ACT TO INCLUDE CLERGY IN THE LIST OF PERSONS REQUIRED TO REPORT SUSPECTED CHILD ABUSE; AND AMENDING SECTION 41-3-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-201, MCA, is amended to read:

"**41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of family services or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;

(f) foster care, residential, or institutional worker; ~~or~~

(g) a peace officer or other law enforcement official*; or*

(h) clergy.

(3) Any person may make a report under this section if he knows or has reasonable cause to suspect that a child is abused or neglected.

(4) *(a)* ~~No~~ *Except as provided in subsection (4)(b) or (4)(c), a* person listed in subsection (2) may *not* refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A clergyperson or priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the clergyperson or priest in his capacity as a clergyperson or priest;

(ii) the statement was intended to be a part of a confidential communication between the clergyperson or priest and a member of his church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the clergyperson or priest.

(c) A clergyperson or priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(5) The reports referred to under this section shall contain:

(a) the names and addresses of the child and his or her parents or other persons responsible for his or her care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Approved May 17, 1991.

CHAPTER NO. 786

[HB 452]

AN ACT PROVIDING A 7-YEAR TAXABLE VALUE DECREASE FOR QUALIFYING MACHINERY AND EQUIPMENT OF EXPANDING INDUSTRIES THAT PROCESS MONTANA RAW MATERIALS OR USE MONTANA SEMIFINISHED PRODUCTS IN MANUFACTURING; DEFINING QUALIFYING PROPERTY; PROVIDING FOR GOVERNING BODY APPROVAL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because the department of revenue is granted authority to adopt rules for the administration of this bill.

The legislature contemplates that rules adopted by the department should, at a minimum, provide the following:

(1) guidelines for information that must be contained in the application for taxable value decrease;

(2) the forms to be used by a firm to apply for the taxable value decrease and to report employment associated with the use of qualifying property;

(3) the procedures to ensure that a taxpayer receiving a taxable value decrease under this bill does not receive any other property tax reduction for qualifying property;

(4) the definition of terms and establishment of procedures that are appropriate for the efficient administration of the taxable value decrease;

(5) procedures for the annual recomputation of numbers of existing employees and numbers of new employees;

(6) criteria the department intends to use to safeguard the faithful reporting of existing and new employees to deter taxpayers from using temporary measures or other artifices to deflate the number of existing employees or inflate the number of new employees contrary to the spirit of the program; and

(7) procedures for the department to review the specific responsibilities of each new employee to ensure that the employee is a qualifying employee.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of [sections 1 through 5] is to encourage value-added manufacturing in Montana by providing a taxable value decrease for a 7-year period for qualifying personal property of expanding industries that process Montana raw materials or use Montana semifinished products in manufacturing.

Section 2. **Definitions.** Unless the context requires otherwise, in [sections 1 through 5], the following definitions apply:

(1) "Expansion" means that after December 31, 1991, the industry has added qualifying property within the jurisdiction either in the first tax year in which the taxable value decrease provided for in [section 3] is to be received or in the preceding tax year. Expansion does not include property that:

(a) has qualified for the tax exemption under 15-24-1402; or

(b) will create an adverse impact on existing state, county, or municipal services.

(2) "Industry" is a firm that engages in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1987 Standard Industrial Classification Manual prepared by the United States office of management and budget and that engages in the:

(a) processing of Montana raw materials such as minerals, ore, oil, gas, coal, agricultural products, and forestry products; or

(b) processing of semifinished products produced in Montana that are used by the industry as a raw material in further manufacturing.

(3) "Qualifying employee" means a person:

(a) whose job was created as a result of expansion; and

(b) whose position pays not less than three-quarters of the amount of the average wage as determined by the quarterly statistical report published by the department of labor and industry.

(4) "Qualifying property" means machinery and equipment that results in the hiring of qualifying employees used for the manufacture or processing of products described in subsection (2).

Section 3. **Expanding industry taxable value decrease — application — approval — reports.** (1) After December 31, 1991, an existing industry with qualifying property that represents an expansion of the industry is entitled to receive a decrease in the tax rate for class eight property if the property results in the hiring of full-time qualifying employees for each year in which the taxable value decrease is in effect.

(2) A person, firm, or other group seeking to qualify its property for the taxable value decrease under subsection (1) shall apply to the department of revenue on a form provided by the department. The application must include:

(a) the description of the personal property that may qualify for the taxable value decrease;

(b) the date on which the qualifying property is intended to be operational;

(c) the rate of pay and number of existing employees and new employees to be used in the operation of the qualifying property;

(d) a statement that the new employees are in addition to the existing workforce of the industry and the specific responsibilities of each new employee; and

(e) a statement that all the applicant's taxes are paid in full.

(3) The department shall make an initial determination as to whether the industry qualifies for the taxable value decrease.

(4) (a) If the department determines that the property qualifies for a taxable value decrease, the governing body of the affected county, consolidated government, incorporated city or town, or school district shall give due notice as defined in 76-15-103 and hold a public hearing. Each governing body may either approve or disapprove the grant of taxable value decrease. A governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) The resolution provided for in subsection (4)(a) must include the document that grants approval of the application that was submitted to the department by the taxpayer seeking the taxable value decrease.

(5) The tax reduction described in subsection (1) applies to:

(a) the number of mills levied and assessed by each governing body approving the benefit over which the governing body has sole discretion; and

(b) statewide levies if the governing body approving the tax reduction is a county, consolidated government, or incorporated city or town.

(6) The number of new employees used by the department to calculate the taxable value decrease in subsection (7), must be determined by the wages paid to qualifying employees. A qualifying employee paid the amount of the average wage as determined by the quarterly statistical report published by the department of labor and industry is considered one new employee. Qualifying employees are considered equivalent new employees if they are paid three-quarters of the average wage or more. The qualifying employee is the equivalent of a new employee in the same fraction that his

wages are to the average wage, but a qualifying employee may not be considered more than two new employees.

(7) (a) Qualifying property is entitled to a decrease in the taxable rate of class eight property based upon a percentage difference between a possible low rate of 3% and a high rate of the existing class eight property tax rate. The reduced taxable value rate is determined by calculating the inverse of the number of equivalent new employees divided by the number of existing employees and multiplying the product of that calculation by the decimal equivalent of the tax rate for class eight property.

(b) For each year that the taxable value decrease is in effect, the taxpayer shall report by March 1 to the department on forms prescribed by the department the wages of and the number of qualifying employees that are used in the operation of the qualifying property for which the taxable value decrease was granted.

Section 4. **Exclusion from other property tax reductions or exemptions.** If a taxable value decrease is taken pursuant to [sections 1 through 5], other property tax reductions or exemptions, including but not limited to those provided in 15-6-135, 15-24-1402, and 15-24-1501, are not allowed for the qualifying property.

Section 5. **Rules.** The department of revenue shall prescribe rules necessary to carry out the purposes of [sections 1 through 5].

Section 6. **Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [sections 1 through 5].

Section 7. **Effective date — applicability.** [This act] is effective on passage and approval and applies to tax years beginning after December 31, 1991.

Approved May 17, 1991.

CHAPTER NO. 787

[HB 454]

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO APPROPRIATIONS; CODIFYING CONDITIONS FOR APPROPRIATIONS USUALLY CONTAINED IN EACH GENERAL APPROPRIATIONS ACT; PROVIDING FOR A STATUTORY APPROPRIATION OF THE INCOME AND EARNINGS OF COAL SEVERANCE TAX FUNDS; AMENDING SECTIONS 5-12-303, 17-1-102, 17-2-108, 17-5-704, 17-6-305, 17-6-306, 17-7-102, 17-7-304, 17-7-502, 20-9-343, AND 75-10-621, MCA; REPEALING SECTION 17-7-401, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY PROVISION, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-12-303, MCA, is amended to read:

"**5-12-303. Fiscal analysis information from state agencies.** (1) The legislative fiscal analyst has the authority to investigate and examine the costs and revenues of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.

(2) When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of such confidential records and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

(3) The legislative fiscal analyst may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by a masking method that conceals the identity of the taxpayer. The masking method may not destroy the statistical integrity of the individual income tax records. The masking method, including how data is masked, must be disclosed to the legislative fiscal analyst.

(4) ~~Every state agency~~ *The budget director* shall furnish the legislative fiscal analyst with copies of all budget requests, at the time of submission to the budget director as provided by law, and if requested, all underlying and supporting documentation.

(5) In the year preceding each legislative session, the budget director shall furnish the legislative fiscal analyst on a confidential basis:

(a) by December 1, a copy of the documents which reflect the anticipated receipts and other means of financing the budget for each fiscal year of the ensuing biennium;

(b) by December 1, a preliminary budget which shall meet the statutory requirements for submission of the budget to the legislature; ~~and~~

(c) by December 3, a paper copy and an electronic copy of the documents which reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity; and

~~(c)~~*(d)* by December 15, all amendments to the preliminary budget.

(6) Within 1 day after the legislative finance committee presents its budget analysis to the legislature, the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This information must be filed in the respective offices and be made available to the legislature and the public.

~~(6)~~*(7)* This section does not authorize publication or public disclosure of information if the law prohibits such publication or disclosure."

Section 2. Section 17-1-102, MCA, is amended to read:

"**17-1-102. Uniform accounting system and expenditure control.** (1) The department shall establish a system of financial control so that the functioning of the various agencies of the state may be improved, duplications of work by different state agencies and employees eliminated, public service improved, and the cost of government reduced.

(2) The department shall prescribe and install uniform accounting and reporting for all state agencies and institutions, showing the receipt, use, and disposition of all public money and property in accordance with generally accepted accounting principles, and shall develop plans for improvements and economies in the organization and operation thereof, which shall be submitted to the respective heads of agencies and institutions. Copies of all such plans shall be delivered to the governor, and additional copies shall be retained in the office of the department for inspection by the members of the legislature.

(3) The uniform accounting and reporting system must contain three levels of expenditure. The first level must include general categories, such as personal services, operating expenses, equipment, capital outlay, local assistance, grants, benefits and claims, transfers, and debt service. The second level of expenditure must include specific categories of expenditures within each first-level category. The third level of expenditure must include specific items of expenditure within each category of the second level.

~~(3)~~*(4)* The department shall examine all financial affairs of every state agency and institution for the purpose of developing plans for improvements and economies in the organization and operation thereof and for the purpose of enabling the department to properly perform any of the duties imposed upon the department by this part.

~~(4)~~*(5)* All state agencies, including units of the university system, *excluding community colleges,* and the vocational-technical centers, shall input all necessary transactions to the accounting system prescribed in subsection (2) before the accounts are closed at the end of the fiscal year in order to present the receipt, use, and disposition of all money and property for which the agency is accountable in accordance with generally accepted accounting principles, except that for budgetary control purposes, encumbrances which are required by generally accepted accounting principles to be reported as a reservation of fund balance shall be recorded as expenditures and liabilities on the accounting records."

Section 3. Section 17-2-108, MCA, is amended to read:

"**17-2-108. Expenditure of nongeneral fund money first.** *(1)* An office or entity of the executive, legislative, or judicial branch of state government shall apply expenditures against *appropriated* nongeneral fund money whenever possible before using general fund appropriations.

(2) The approving authority, as defined in 17-7-102, shall authorize the decrease of the general fund appropriation of an agency by the amount of money received from federal sources in excess of the appropriation in an appropriation act unless the decrease is contrary to federal law, federal rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If directed by an appropriation act, the approving authority shall decrease the general fund appropriation of an agency by the amount of money received from nonfederal sources in excess of the appropriation unless the decrease is contrary to state law, state rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If the general fund appropriation of an agency is decreased pursuant to this section, the appropriation for the fund in which the money is received is increased in the amount of the general fund decrease."

Section 4. Section 17-5-704, MCA, is amended to read:

"**17-5-704. Investment of funds.** ~~(1)~~ Money in the coal severance tax bond fund, the coal severance tax permanent fund, and the coal severance tax income fund must be invested in accordance with the investment standards for coal severance tax funds ~~except as provided in subsection (2)~~. Income and earnings from all funds ~~must be transferred to and retained in the coal severance tax income fund until appropriated by the legislature.~~ *are statutorily appropriated, as provided in 17-7-502, as follows:*

(1) 15% to the state equalization aid account; and

(2) ~~Except as provided in section 1, Chapter 634, Laws of 1989, beginning on July 1, 1990, the legislature shall appropriate 15% of the income and earnings from all funds to be deposited to the state equalization aid account each year~~ *85% to the state general fund."*

Section 5. Section 17-7-102, MCA, is amended to read:

"**17-7-102. Definitions.** As used in ~~parts 1 through 3 of~~ this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government, except for purposes of capital projects administered by the department of administration, for which institutions are treated as one department and university units as one system.

(3) "Approved long-range building program budget amendment" means approval by the budget director of a request submitted through the architecture and engineering division of the department of administration to transfer excess funds appropriated to a capital project within an agency to increase

the appropriation of another capital project within that agency or to obtain financing to expand a project with funds that were not available for consideration by the legislature.

(4) "Approving authority" means:

(a) the governor or his designated representative for executive branch agencies;

(b) the chief justice of the supreme court or his designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(5) "Budget amendment" means a legislative appropriation to increase spending authority for the special revenue fund, proprietary funds, or unrestricted subfund, contingent on total compliance with all budget amendment procedures.

~~(1)~~*(6)* "Current funding level" means that level of funding required to maintain operations and services at the level authorized by the previous legislature, after adjustment for inflation.

~~(2)~~*(7)* "Effectiveness measure" means a criterion for measuring the degree to which the objective sought is attained.

(8) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time an agency's appropriation was made, which was clearly not within the contemplation of the legislature and the governor, that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

~~(3)~~*(9)* "Modified funding level" means the current funding level as adjusted to reflect workload increases, the provision of new services, or changes in authorized funding.

(10) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(11) "Priority listing" means a ranking of proposed expenditures in order of importance.

~~(4)~~*(12)* "Program" means a combination of resources and activities designed to achieve an objective or objectives.

~~(5)~~*(13)* "Program size" means the magnitude of a program such as the size of clientele served, the volume of service in relation to the population or area, etc.

~~(6)~~*(14)* "Program size indicator" means a measure to indicate the magnitude of a program.

~~(7) "Priority listing" means a ranking of proposed expenditures in order of importance.~~

(15) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(16) "University system unit" means the board of regents of higher education, office of the commissioner of higher education, university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, the bureau of mines and geology with central offices at Butte, the fire services training school at Great Falls, the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula, or the community colleges at Miles City, Glendive, and Kalispell."

Section 6. Section 17-7-304, MCA, is amended to read:

"**17-7-304. Disposal of unexpended appropriations.** *(1)* All moneys appropriated for any specific purpose *except those appropriated for the university system units listed in subsection (2)* shall, after the expiration of the time for which so appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

(2) Except as provided in 17-2-108, all money appropriated for the university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, the bureau of mines and geology with central offices in Butte, and the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula shall, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of

regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning."

Section 7. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; *17-5-704;* 17-5-804; *17-7-304;* 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 8. **Operating budget.** (1) Expenditures by a state agency must be made in substantial compliance with an operating budget approved by an approving authority. Substantial compliance means that a first-level category in the operating budget may not be exceeded by more than 5%. Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget by August 1 of each fiscal year. An approved original operating budget must comply with state law and statements of intent adopted as part of a bill.

(2) The expenditure of money appropriated in the general appropriations act to the university system units, as defined in [section 5], is contingent upon approval of an operating budget by October 1 of each fiscal year. All other requirements in this section apply to the university system.

(3) The operating budget for money appropriated by the general appropriations act must be separate from the operating budget for money appropriated by another law except a law appropriating money for the state pay plan or any portion of the state pay plan. Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget and any approved changes on the statewide budget and accounting system. Forms used for changing an operating budget must reference the current, fully complete, and approved operating budget, show the proposed changes to the operating budget, and reference any other pending documents to change the operating budget.

Section 9. **Program transfers.** Unless prohibited by law, the approving authority may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year. The transfer may not exceed 5% of the total agency appropriation, excluding statutory appropriations, administrative authorizations, and budget amendments. All program transfers must be completed within the same fund from which the transfer originated. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the office of budget and program planning. Upon approval of the transfer, the approving authority shall inform the legislative fiscal analyst of the approved transfer and the justification for the transfer.

Section 10. **Reduction of appropriation.** (1) Except as provided in subsection (2), in the event of a shortfall in revenue, the governor may reduce appropriations. An appropriation may not be reduced by more than 15%.

(2) The appropriations for the following may not be reduced:

(a) payment of interest and principal on state debt;

(b) the legislative branch;

(c) the judicial branch;

(d) the school foundation program, including special education; and

(e) salaries of elected officials during their terms of office.

Section 11. **Audit costs.** Amounts appropriated for audits conducted under Title 5, chapter 13, may be transferred between fiscal years. Agencies shall reserve enough money in each fund to pay for audit costs and to the maximum extent allowable under federal regulations shall charge audit costs to federal funds.

Section 12. **Access to records of contracting entities.** Money may not be spent by a state agency under a contract with a nonstate entity unless the contract contains a provision that allows the legislative auditor and the legislative fiscal analyst sufficient access to the records of the nonstate entity to determine whether the parties have complied with the terms of the contract. The access to records is necessary to carry out the functions provided for in Title 5, chapters 12 and 13. A state agency may terminate a contract, without incurring liability, for the refusal of a nonstate entity to allow access to records as required by this section.

Section 13. **Expansion to be authorized.** An existing capital project may not be expanded beyond the scope of the project approved by the legislature unless the expansion of the project is authorized by an approved long-range building program budget amendment.

Section 14. **Reappropriation of capital projects.** The remaining balances on capital projects previously approved by the legislature are reappropriated for the purposes of the original appropriation until the project is completed.

Section 15. Section 75-10-621, MCA, is amended to read:

"75-10-621. Hazardous waste/CERCLA special revenue account. (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the hazardous waste/CERCLA account:

(a) revenues obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on those revenues;

(b) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds thereof; and

(c) revenues from penalties or damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

(a) funds are statutorily appropriated, as provided in 17-7-502(4), to the CERCLA match debt service account necessary to make principal, interest, and premium payments due on CERCLA bonds;

(b) not more than one-half of the interest income received for any biennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the administration of the environmental sciences division of the department in administering and overseeing the implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) state expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

(c) to the extent funds are available after the appropriations in subsections (3)(a) and (3)(b), the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

(ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection (3)(c), the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the purpose of meeting the definition of "emergency" in ~~17-7-401~~ *17-7-102.* The legislature further finds that the inability of the department to match such federal funds as may become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. Unused balances remain in the account until such time as appropriated by the legislature for the purposes specified in this section."

Section 16. Section 17-6-305, MCA, is amended to read:

"**17-6-305. Investment of twenty-five percent of the coal tax trust fund in the Montana economy.** (1) Twenty-five percent of all revenue deposited after June 30, 1983, into the permanent coal tax trust fund established in 17-6-203(5) ~~and 15% of the annual income and earnings on the Montana in-state investment fund appropriated to the coal severance tax permanent fund by 17-5-704(2)~~ shall be invested in the Montana economy with special emphasis on investments in new or expanding locally owned enterprises.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy shall be considered.

(3) The legislature may provide additional procedures to implement this section."

Section 17. Section 17-6-306, MCA, is amended to read:

"**17-6-306. Montana in-state investment fund.** The Montana in-state investment fund consists of:

(1) 25% of the revenue deposited after June 30, 1983, into the permanent coal tax trust fund established in 17-6-203(6); *and*

(2) the principal payments on all investments made from the Montana in-state investment fund; ~~and~~

~~(3) 15% of the annual income and earnings on the Montana in-state investment fund appropriated to the coal severance tax permanent fund by 17-5-704(2)~~."

Section 18. Section 20-9-343, MCA, is amended to read:

"**20-9-343. Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for distribution to the public schools for the purposes of payment of guaranteed tax base aid and equalization of the foundation program.

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid as required for guaranteed tax base aid and foundation program purposes throughout the biennium.

(3) The following must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;

(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) money allocated to state equalization from the collection of the severance tax on coal;

(d) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) money received from the state equalization aid levy under 20-9-360;

(g) income from the lottery, as provided in 23-5-1027;

(h) the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333;

(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; and

(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704~~(2)~~.

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium."

Section 19. **Repealer.** Section 17-7-401, MCA, is repealed.

Section 20. **Codification instruction.** (1) [Sections 8 through 11] are intended to be codified as an integral part of Title 17, chapter 7, part 1, and the provisions of Title 17, chapter 7, part 1, apply to [sections 8 through 11].

(2) [Section 12] is intended to be codified as an integral part of Title 18, chapter 1, part 1, and the provisions of Title 18, chapter 1, part 1, apply to [section 12].

(3) [Sections 13 and 14] are intended to be codified as an integral part of Title 17, chapter 7, part 2, and the provisions of Title 17, chapter 7, part 2, apply to [sections 13 and 14].

Section 21. **Applicability.** [Section 6(2)] applies to reversions due from fiscal year 1991.

Section 22. **Effective date.** [This act] is effective July 1, 1991.

Section 23. **Termination.** [Section 6(2)] terminates June 30, 1996.

Approved May 17, 1991.

CHAPTER NO. 788

[HB 551]

AN ACT AMENDING THE WASTEWATER TREATMENT REVOLVING FUND ACT TO ALLOW NET PROCEEDS OF BONDS TO BE DEPOSITED IN THE STATE ALLOCATION ACCOUNT; REMOVING THE REQUIREMENT THAT PRINCIPAL REPAYMENTS MUST BE CRED-

ITED PROPORTIONATELY TO THE STATE ALLOCATION ACCOUNT AND THE FEDERAL ALLOCATION ACCOUNT; AUTHORIZING BONDS TO BE ISSUED BY RESOLUTION OR TRUST INDENTURE; REQUIRING LOCAL GOVERNMENTS TO ESTABLISH AND MAINTAIN RESERVES; AMENDING SECTIONS 75-5-1106, 75-5-1113, AND 75-5-1121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-1106, MCA, is amended to read:

"**75-5-1106. Revolving fund.** (1) There is established in the state treasury a separate account designated as the wastewater treatment works revolving fund. There are established in the revolving fund as subaccounts a federal allocation account, a state allocation account, an administration account, an investment income account, and a debt service account.

(2) There must be credited to:

(a) the federal allocation account, all amounts received by the state pursuant to the federal act as capitalization grants for a state revolving fund to assist construction of wastewater treatment works and grants or transfers of grants received under subchapter II of the federal act for construction of wastewater treatment works;

(b) the state allocation account, the *net* proceeds of bonds of the state issued pursuant to 75-5-1121 and other money appropriated by the legislature;

(c) the administration account, 4%, or the maximum amount allowed by the federal act, of the capitalization grant award for payment of administrative costs;

(d) the investment account, all money received from investment of amounts in ~~the other~~ *those* accounts in the revolving fund *designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds*; and

(e) the debt service account, ~~all interest earnings on bond proceeds and~~ the interest portion of loan repayments.

(3) Each loan made as authorized by 75-5-1113 must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department of natural resources and conservation as recommended by the department~~, and all amounts received in repayment of principal of a loan must be credited in the same proportion to the federal allocation account or the state allocation account, or both~~. All amounts received in payment of *principal or* interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to 75-5-1121 and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred ~~by the board of examin-~~

~~ers, upon request of the department of natural resources and conservation,~~ to other accounts within the revolving fund *as provided in the resolution or trust indenture authorizing the bonds.*

(4) The department of natural resources and conservation may establish additional accounts and subaccounts within the revolving fund as it considers necessary to account for the program money and to ensure compliance with the federal act and this part."

Section 2. Section 75-5-1113, MCA, is amended to read:

"**75-5-1113. Loans.** (1) Upon approval of an application by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a municipality or private concern to pay part or all of the cost of a project or to buy or refinance an outstanding obligation of a municipality that was issued to finance a project. The loan is subject to the municipality or private concern complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to assure sufficient revenues to operate and maintain the project for its useful life and to repay the loan, *including the establishment and maintenance by the municipality of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the municipality's obligation*;

(b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than 20 years;

(c) agreeing to maintain proper financial records in accordance with recognized government accounting procedures and agreeing that all records are subject to audit;

(d) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(e) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(f) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(g) complying with plan and specification requirements for public wastewater systems established by the board; and

(h) providing for proper construction inspection and project management.

(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the completion date.

(3) Subject to the limitations of the federal act, the interest rate on a loan must *ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if paid timely and in full, with other available funds in the revolving fund, including investment income, to* enable the state to pay the principal of and interest on the bonds issued pursuant to 75-5-1121.

(a) The interest rate must be determined as of the date the loan is authorized by the department of natural resources and conservation.

(b) The rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loan. The additional rate may be fixed or variable or may be calculated according to a formula, and it may differ from the rate established for any other loan.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the municipality or private concern, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private concern. Administrative fees ~~must~~ *may* be deposited*:*

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in 75-5-1106*; or*

(b) in the administration account. Money deposited in the special administrative costs account *or the administration account* must be used for the payment of administrative costs of the program."

Section 3. Section 75-5-1121, MCA, is amended to read:

"**75-5-1121. Authorization of bonds — appropriation of proceeds.** (1) The board of examiners is authorized, upon request of the department of natural resources and conservation, to issue and sell bonds of the state in an aggregate principal amount not exceeding $10 million to provide money for the revolving loan program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premium and accrued interest received *or amounts to be used to pay interest on the bonds or the costs of issuing the bonds*, are appropriated to the state allocation account of the wastewater treatment works revolving fund. Any premium and accrued interest *and bond proceeds to be used to pay interest* must be deposited ~~to~~ *in* the debt service account. Proceeds of bonds ~~deposited in the state allocation account may~~ *to* be used to pay the costs of issuing the bonds *must be deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds.* For purposes of sections 17-5-803 and 17-5-804, the state allocation account *and the costs of issuance account* ~~constitutes~~ *constitute* a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the interest component of the loan repayments credited to the revolving fund and the revolving fund as security for the bonds.

(4) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the powers of a trustee inside or outside the state.

(a) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(b) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, provide for the rights of the bondholders, and ensure compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer, department, or department of natural resources and conservation, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(c) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state."

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved May 17, 1991.

CHAPTER NO. 789

[HB 559]

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO OPERATING MOTOR VEHICLES, BOATS, AND AIRCRAFT WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTIONS 23-2-523, 23-2-535, 45-5-205, 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406, 61-8-714, 61-8-722, 61-8-805, 61-8-806, 61-11-101, AND 67-1-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-401, MCA, is amended to read:

"**61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable as provided in 61-8-714 and 61-8-723 for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a ~~narcotic~~ *dangerous* drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any *dangerous or other* drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination thereof, a person's ability to safely operate a motor vehicle has been diminished.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the ~~person's blood~~ *person* at the time alleged, as shown by ~~chemical~~ analysis of the person's blood, urine, *or* breath, ~~or other bodily substance,~~ shall give rise to the following ~~presumptions~~ *inferences*:

(a) If there was at that time an alcohol concentration of 0.05 or less, it ~~shall~~ *may* be ~~presumed~~ *inferred* that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any ~~presumption~~ *inference* that the person was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it ~~shall~~ *may* be ~~presumed~~ *inferred* that the person was under the influence of alcohol. ~~Such presumption~~ *The inference* is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, *drugs, or a combination of the two.*

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided.

(7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

Section 2. Section 61-8-402, MCA, is amended to read:

"**61-8-402. ~~Chemical blood~~ *Blood,* breath, or urine tests.** (1) Any person who operates *or is in actual physical control of* a vehicle upon ways of this state open to the public shall be deemed to have given consent, subject to the provisions of 61-8-401, to a ~~chemical~~ test of his blood, breath, or urine for the purpose of determining ~~the alcoholic content of his blood~~ *any measured amount or detected presence of alcohol in his body* if arrested by a peace officer for driving or *for being* in actual physical control of a vehicle while under the influence of alcohol, *drugs, or a combination of the two.* The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, *drugs, or a combination of the two.* The arresting officer may designate which ~~one of the aforesaid~~ *test or* tests shall be administered.

(2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a ~~resident~~ driver under arrest refuses upon the request of a peace officer to submit to a ~~chemical~~ test designated by the arresting officer as provided in subsection (1) ~~of this section~~, none shall be given, but the officer shall, on behalf of the department, immediately seize his driver's license. The peace officer shall forward the license to the department, along with a sworn report that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, *drugs, or a combination of the two,* and that the person had refused to submit to the test upon the request of the peace officer. Upon receipt of the report, the

department shall suspend the license for the period provided in subsection (5).

(4) Upon seizure of a ~~resident~~ driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is valid for 72 hours after the time of issuance.

(5) The following suspension and revocation periods are applicable upon refusal to submit to a ~~chemical~~ test:

(a) upon a first refusal, a suspension of 90 days with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

(6) ~~Like refusal by a~~ *A* nonresident *driver's license seized under this section* ~~shall~~ *must* be ~~subject to suspension~~ *sent* by the department ~~in like manner, and the same temporary driving permit shall be issued to nonresidents~~ *to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to a test.*

(7) All such suspensions are subject to review as hereinafter provided."

Section 3. Section 61-8-403, MCA, is amended to read:

"**61-8-403. Right of appeal to court.** The department shall immediately notify any person whose license or privilege to drive has been suspended or revoked, as hereinbefore authorized, in writing and such person shall have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person resides or in the district court in the county in which this arrest was made. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 10 days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, *drugs, or a combination of the two,* whether the person was placed under arrest, and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided."

Section 4. Section 61-8-404, MCA, is amended to read:

"**61-8-404. Evidence admissible — conditions of admissibility.** (1) Upon the trial of any criminal action or other proceeding arising out of acts alleged to have been committed by any person in violation of 61-8-401 or 61-8-406:

(a) evidence of ~~the~~ *any measured amount or detected presence of* ~~amount of~~ alcohol in the ~~person's blood~~ *person* at the time of the act alleged, as shown by ~~a chemical~~ *an* analysis of his blood, breath, or urine, is admissible; and

(b) a report of the facts and results of any ~~chemical~~ test of a person's blood, breath, or urine administered under 61-8-402 is admissible in evidence if:

(i) the breath ~~analysis report~~ *test* was ~~prepared and verified~~ *performed* by ~~the~~ *a* person ~~who performed the test~~ *certified by the forensic sciences division of the department to administer breath tests* or the blood or urine test was a laboratory analysis and the analysis was done in a laboratory operated by the department ~~of justice~~ or by any other laboratory or facility certified or exempt from certification under the rules of the department; and

(ii) ~~the report was prepared in accordance with any applicable rules of the department; and~~

~~(iii)~~ if the test was on a blood sample, the person withdrawing the blood ~~must have been~~ *was* competent to do so under 61-8-405(1).

(2) If the person under arrest refused to submit to the test as ~~hereinabove~~ provided *in this section*, proof of refusal ~~shall be~~ *is* admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, *drugs, or a combination of the two.*

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, *drugs, or a combination of the two.*"

Section 5. Section 61-8-405, MCA, is amended to read:

"**61-8-405. Administration of tests.** (1) Only a physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse acting at the request of a peace officer may withdraw blood for the purpose of determining ~~alcoholic content~~ *any measured amount or detected presence of alcohol in the person.* This limitation does not apply to the taking of breath or urine specimens.

(2) The person ~~tested~~ may, at his own expense, have a physician or registered nurse of his own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of determining ~~the amount of alcohol in his blood~~ *any measured amount or detected presence of alcohol in the person* at the time alleged, as shown by ~~chemical~~ analysis of his blood, breath, or urine. The failure or inability to obtain an additional test by a person does not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning the test taken at the direction of the peace officer must be made available to him or his attorney.

(4) No physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse shall incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer such a test.

(5) If ~~the~~ *a* test given under 61-8-402 or 61-8-806 is a ~~chemical~~ test of urine, the person tested must be given such privacy in the taking of the urine specimen as will ~~insure~~ *ensure* the ~~accuracy~~ *integrity* of the specimen and, at the same time, maintain the dignity of the individual involved.

(6) The department ~~of justice~~ in cooperation with any appropriate agency shall adopt uniform rules for the giving of ~~blood-alcohol~~ tests and may require certification of training to administer the tests as considered necessary."

Section 6. Section 61-8-406, MCA, is amended to read:

"**61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more.** It is unlawful and punishable as provided in 61-8-722 and 61-8-723 for any person to drive or be in actual physical control of a vehicle upon the ways of this state open to the public while the *person's* alcohol concentration ~~in his~~, *as shown by analysis of the person's* blood, breath, or urine, is 0.10 or more. Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

Section 7. Section 61-8-714, MCA, is amended to read:

"**61-8-714. Penalty for driving under the influence of alcohol or drugs.** (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(2) On a second conviction, he shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year, and by a fine of not less than $500 or more than $1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail

sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which must include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure. As long as the alcohol information course and treatment program are approved as provided in this subsection, the defendant may attend the information course and treatment program of his choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to his alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of ~~this section~~ *sentencing* if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then all records and data relating to the prior conviction are confidential criminal justice information as defined in 44-5-103 and public access to the information may only be obtained by district court order upon good cause shown.

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401."

Section 8. Section 61-8-722, MCA, is amended to read:

"**61-8-722. Penalty for driving with excessive ~~blood~~ alcohol concentration.** (1) A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) On a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) On a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d) relating to revocation and suspension of driver's licenses shall apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of ~~this section~~ *sentencing* if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then such prior offense shall be expunged from the defendant's record."

Section 9. Section 61-8-805, MCA, is amended to read:

"**61-8-805. Suspension for operating a commercial vehicle with a ~~blood~~ alcohol concentration of 0.04 or more — hearing.** (1) A person whose ~~blood~~ alcohol concentration is 0.04 or more while he drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of his commercial vehicle operator's endorsement. If the department receives a sworn report from a peace officer that the person was operating a commercial motor vehicle while his ~~blood~~ alcohol concentration was 0.04 or more, the department shall suspend the driver's commercial vehicle operator's endorsement:

(a) for 1 year, with no provision for a restricted probationary license or endorsement, upon receipt of the first report, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension must be for 3 years; and

(b) for 10 years, with no provision for a restricted probationary license or endorsement, upon receipt of a second or subsequent report at any time as determined from the records of the department.

(2) A peace officer who determines that a commercial motor vehicle operator's ~~blood~~ alcohol concentration is 0.04 or more shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that any person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against any charge of violating the provisions of subsection (1).

(4) The department shall immediately notify in writing any person whose commercial vehicle operator's endorsement is suspended under this section. The person ~~suspended~~ has the right to file a petition within 30 days after the notice is given for a hearing in the matter in the district court in the county in which the finding of ~~blood~~ alcohol concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days' written notice to the county attorney of the county in which the appeal is filed. The county attorney shall represent the state. The court shall take testimony and examine the facts of the case, except that the issue is limited to whether the person was driving or had actual physical control of a commercial motor vehicle while his ~~blood~~ alcohol concentration was 0.04 or more. The court shall determine whether the petitioner is entitled to a commercial vehicle operator's endorsement or is subject to suspension as provided in this section. The provisions of 61-8-404 apply to any proceedings under this section."

Section 10. Section 61-8-806, MCA, is amended to read:

"61-8-806. ~~Chemical blood~~ *Blood*, breath, or urine tests of commercial vehicle operators — procedure — suspension. (1) A person who operates a commercial motor vehicle upon the ways of this state open to the public is considered to have given consent, subject to the provisions of 61-8-401 and 61-8-805, to a ~~chemical~~ test of his blood, breath, or urine for the purpose of determining ~~the alcohol content of his blood~~ *any measured amount of alcohol in his body* if he is requested to submit to the test by a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public while his ~~blood~~ alcohol concentration was 0.04 or more. The peace officer may designate a blood, breath, or urine test to be administered.

(2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have withdrawn the consent provided in subsection (1).

(3) If a commercial motor vehicle operator who is a resident of Montana refuses upon the request of a peace officer to submit to a ~~chemical~~ test designated by the officer as provided in subsection (1), the test may not be given. On behalf of the department, the officer shall immediately seize the person's driver's license showing the commercial vehicle operator's endorsement and forward the license to the department, along with a sworn report that he had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while having ~~a blood~~ *an* alcohol concentration

of 0.04 or more and that the person had refused to submit to the test upon the request of the officer. Upon receipt of the report, the department shall suspend the license for a period provided in subsection (5).

(4) Upon seizure of a resident's driver's license showing a commercial vehicle operator's endorsement, the peace officer shall issue, on behalf of the department, a temporary driving permit without the commercial vehicle operator's endorsement. The temporary driving permit is valid for 72 hours after issuance.

(5) If a commercial motor vehicle operator refuses to submit to a ~~chemical~~ test as provided in subsection (3), the department shall suspend his commercial vehicle operator's endorsement:

(a) upon first refusal, for 1 year, with no provision for a restricted probationary license or endorsement, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension for a first refusal must be for 3 years;

(b) upon a second or subsequent refusal at any time as determined from the records of the department, for 10 years, with no provision for a restricted probationary license or endorsement.

(6) A nonresident commercial motor vehicle operator who refuses to submit to a ~~chemical~~ test as provided in subsection (3) is subject to suspension by the department as provided in subsection (5) and ~~may receive~~ *must be given* a temporary driving permit as provided in subsection (4)."

Section 11. Section 61-11-101, MCA, is amended to read:

"**61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses.** (1) Whenever any person is convicted of any offense for which chapter 5 makes mandatory the suspension or revocation of the driver's license of the person by the department, the court in which such conviction is had shall require the surrender to it of all driver's licenses then held by the person so convicted. The court shall thereupon, within 5 days, forward the license to the department and at the same time forward a record of such conviction to the department, providing that if such person does not possess a driver's license the court shall so indicate in its report to the department.

(2) Every court having jurisdiction over offenses committed under any act of this state or municipal ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days, to the department a record of the conviction or forfeiture of bail, not vacated, of any person in the court for a violation of any such laws, other than regulations governing standing or parking, and may recommend the suspension of the driver's license of the person so convicted. The court may also recommend that the department issue a restricted probationary license ~~in lieu of the suspension required in 61-5-208(2)~~ on the condition that the individual *comply with the requirement that he* attend *and complete* ~~a driver improvement school or~~ an alcohol ~~treatment program if one is available~~ *information course as provided in 61-8-714 and 61-8-722.* The department shall issue a restricted

probationary license unless the person otherwise is not entitled to a Montana driver's license. Upon issuance of a probationary license, the licensee is subject to the restrictions set forth thereon and may not operate a vehicle in violation of those restrictions.

(3) Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report any such action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department."

Section 12. Section 23-2-523, MCA, is amended to read:

"**23-2-523. Prohibited operation and mooring — enforcement.** (1) No person may operate or knowingly permit any person to operate any motorboat or vessel or manipulate any water skis, surfboard, or similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(2) No person may operate any motorboat, including a sailboat propelled by a motor of any kind, or manipulate any water skis, surfboard, or similar device attached to a motorboat while under the influence of alcohol, ~~or~~ drugs, *or a combination of the two.*

(3) It is unlawful for the owner of any motorboat or vessel or any person having such in charge or in control to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating such watercraft under the prevailing circumstances.

(4) No person may operate or knowingly permit any person to operate any motorboat or vessel at a rate of speed greater than will permit such person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. However, nothing in this part is intended to prevent the operator of a vessel actually competing in a regatta which is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) No person may make a reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by motorboats must have on their person a life preserver, buoyant vest, or ski belt.

(7) No person may moor a vessel to any of the buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the department or in any manner hang on with a vessel to such buoy or beacon, except in the act of maintenance work on such buoy or beacon, nor may any person deface, remove, or destroy any such buoy, beacon, or other authorized navigational marker maintained in the waters of this state.

(8) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in his judgment such use creates an especially hazardous condition, he may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring or launching site and to remain there until the situation creating the hazard is corrected or ended."

Section 13. Section 23-2-535, MCA, is amended to read:

"**23-2-535. ~~Blood-alcohol~~ *Alcohol* concentration standards — *drug detection* — evidence admissible — administration of tests.** (1) The ~~presumptions~~ *inferences* contained in 61-8-401~~(3)~~*(4)* apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of ~~the~~ *any measured* amount *or detected presence* of alcohol in a ~~person's blood~~ *person* at the time of the act alleged, *as shown by analysis of the person's blood, breath, or urine,* and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, *drugs, or a combination of the two* at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a ~~chemical~~ test of his blood, breath, or urine for the purpose of determining ~~the alcoholic content of his blood~~ *any measured amount or detected presence of alcohol,* none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-405 and the definition of ~~blood~~ alcohol concentration provided in 61-8-407 apply to any testing done to ~~determine the blood alcohol concentration of~~ a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" shall have the meaning provided in 61-8-401(3)."

Section 14. Section 45-5-205, MCA, is amended to read:

"**45-5-205. Negligent vehicular assault — penalty.** (1) If a person operates a motor vehicle in a negligent manner and he is driving while under the influence of alcohol, ~~or drugs~~ *a dangerous drug, any other drug, or any combination of the three,* as provided for in 61-8-401(1), and his conduct is the cause of bodily injury to another, he commits the offense of negligent vehicular assault.

(2) A person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed $1,000 or imprisoned in the county jail for a term not to exceed 1 year, or both."

Section 15. Section 67-1-211, MCA, is amended to read:

"**67-1-211. ~~Blood alcohol~~ *Alcohol* concentration standards — evidence admissible — administration of tests.** (1) If a person acting or attempting to act as a crewmember of an aircraft has ~~a blood~~ *an* alcohol concentration of 0.04% by weight or more as defined in 61-8-407, *it may be inferred* that *the* person is ~~conclusively presumed to be~~ under the influence of alcohol ~~or drugs~~ and is in violation of 67-1-204.

(2) Evidence of ~~the~~ *any measured* amount *or detected presence* of alcohol in ~~a person's blood~~ *the person* at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, *drugs, or a combination of the two* at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a ~~chemical~~ test of his blood, breath, or urine for the purpose of determining ~~the~~ *any measured amount or detected presence of* alcohol ~~or drug content of his blood~~ *in his body* if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, ~~or~~ drugs, *or a combination of the two.* The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, ~~or~~ drugs, *or a combination of the two.* The arresting officer may designate which ~~one~~ of the aforesaid tests must be administered. A person who is unconscious or who is otherwise in a condition rendering him incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with violation of 67-1-204 refuses to submit to a ~~chemical~~ test of his blood, breath, or urine for the purpose of determining ~~the alcohol content of~~ *any measured amount or detected presence of alcohol in* his ~~blood~~ *body*, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in 61-8-405 and the definition of alcohol concentration provided in 61-8-407 apply to any testing done to determine *any measured amount or detected presence of alcohol in a person and* the ~~blood~~ alcohol concentration of a person charged with violation of 67-1-204."

Approved May 17, 1991.

CHAPTER NO. 790

[HB 580]

AN ACT REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO USE THE PREVIOUS YEAR'S STATE, COUNTY, AND SCHOOL DISTRICT TAXABLE VALUE, INCLUDING A MULTIPLIER FOR NONTAX REVENUE, FOR DETERMINING MILL VALUES PER AVERAGE NUMBER BELONGING FOR THE PURPOSE OF CALCULATING GUARANTEED TAX BASE AID; REQUIRING THE DEPARTMENT OF REVENUE TO REPORT COUNTY AND SCHOOL DISTRICT TAXABLE VALUE BY DECEMBER 1 OF EACH YEAR; PROVIDING FOR A TRANSITION PERIOD TO REQUIRE THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO USE 1990 TAXABLE VALUES FOR GUARANTEED TAX BASE PURPOSES FOR THE SCHOOL YEAR BEGINNING JULY 1, 1991; AMENDING SECTIONS 15-23-607, 15-23-703, 20-9-366, AND 20-9-369, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, APPLICABILITY DATES, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-366, MCA, is amended to read:

"**20-9-366. Definitions.** As used in 20-9-366 through 20-9-369, the following definitions apply:

(1) "County mill value per elementary ANB" or "county mill value per high school ANB" means the sum of the ~~current~~ taxable valuation *in the previous year* of all property in the county ~~plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of nonlevy revenue for the support of schools, other than Public Law 81-874 funds,~~ divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. ~~The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of nonlevy revenue received by a district in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000.~~

(2) "District mill value per ANB" means the ~~current~~ taxable valuation *in the previous year* of all property in the district ~~plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of nonlevy revenue for the support of schools, other than Public Law 81-874 funds,~~ divided

by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year foundation program ~~schedule~~ amount. ~~The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of nonlevy revenue received by a district in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000.~~

(3) "~~Guaranteed overschedule general fund budget~~ *Permissive amount*" means that portion of a district's general fund budget in excess of the foundation program amount for the district, as provided in 20-9-316 through 20-9-321, but not exceeding ~~135%~~ *35%* of the district's foundation program amount, and which excess is authorized under the provisions of 20-9-145 and 20-9-353.

(4) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts' and high school districts' current year foundation program amounts.

~~(4) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB" means the sum of the current taxable valuation of all property in the state plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of nonlevy revenue for the support of schools, other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of nonlevy revenue received by a district in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000.~~"

Section 2. Section 20-9-369, MCA, is amended to read:

"**20-9-369. Duties of superintendent of public instruction and department of revenue.** (1) The superintendent of public instruction shall administer the distribution of guaranteed tax base aid by:

(a) providing each school district and county superintendent, by ~~June 15~~ *March 1* of each year, with the preliminary statewide and county mill values per ANB and, by ~~July 15~~ *May 1* of each year, with the final statewide, district, and county mill values per ANB, for use in calculating the guaranteed tax base aid available for the ensuing school fiscal year;

(b) requiring each county and district that qualifies and applies for guaranteed tax base aid to report to the county superintendent all budget and accounting information required to administer the guaranteed tax base aid;

(c) keeping a record of the complete data concerning appropriations available for guaranteed tax base aid and the entitlements for such aid of the counties and districts that qualify;

(d) distributing the guaranteed tax base aid entitlement to each qualified county or district from the appropriations for that purpose.

(2) The superintendent shall adopt rules necessary to implement 20-9-366 through 20-9-369.

(3) The department of revenue shall provide the superintendent of public instruction by ~~June~~ *December* 1 of each year ~~a preliminary determination of the taxable value of property within each school district and county of the state and shall provide by July 1 of each year~~ a final determination of the taxable ~~values~~ *value of property within each school district and county of the state reported to the department of revenue based on information delivered to the county clerk and recorder as required in 15-10-305.*"

Section 3. **Transition period for school year beginning July 1, 1991.** The superintendent of public instruction shall, for the purposes of the definitions contained in 20-9-366 and for performing the duties required in 20-9-369, use for the school fiscal year beginning July 1, 1991, the taxable value of all property for calendar year 1990 reported to the department of revenue based on information delivered to the county clerk and recorder as required in 15-10-305, which taxable value the department of revenue has provided to the superintendent of public instruction.

Section 4. Section 15-23-607, MCA, is amended to read:

"**15-23-607. County assessors to compute taxes.** (1) Immediately after the board of county commissioners has fixed tax levies on the second Monday in August, the county assessor shall, subject to the provisions of 15-23-612, compute the taxes on net proceeds, as provided in subsection (2) of this section, and royalty assessments and shall deliver the book to the county treasurer on or before September 15. The county treasurer shall proceed to give full notice of the assessments to the operator and shall collect the taxes as provided by law.

(2) For interim production or new production, as defined in 15-23-601, the county assessor may not levy or assess any mills against the value of the interim production or new production, but shall instead levy a tax as follows:

(a) for interim production or new production of petroleum or other mineral or crude oil, 7% of net proceeds, as described in 15-23-603(2); or

(b) for interim production or new production of natural gas, 12% of net proceeds, as described in 15-23-603(2).

(3) The amount of tax levied in subsections (2)(a) and (2)(b), divided by the appropriate tax rate and multiplied by 60%, must be treated as taxable value for county bonding purposes.

(4) ~~The taxable value of net proceeds for the purpose of computing guaranteed tax base aid for schools is the amount of tax received by a district in the previous year divided by the number of mills levied by the district in the previous year, multiplied by 1,000. This amount must be added to the district, county, and statewide taxable value when computing guaranteed tax base aid under 20-9-368.~~

~~(5)~~ The operator or producer is liable for the payment of the taxes that, except as provided in 15-16-121, are payable by and must be collected from the operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines. However, the operator may at his option withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon the royalty or royalty interest. After the withholding, any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests."

Section 5. Section 15-23-703, MCA, is amended to read:

"**15-23-703. Taxation of gross proceeds — taxable value for bonding and guaranteed tax base aid to schools.** (1) The county assessor shall compute from the reported gross proceeds from coal a tax roll that he shall transmit to the county treasurer on or before September 15 each year. The county assessor may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall proceed to give full notice to each coal producer of the taxes due and to collect the taxes as provided in 15-16-101.

(2) For bonding, county classification, and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102(5).

(3) ~~The taxable value of gross proceeds for the purpose of computing guaranteed tax base aid for schools is the amount of tax received by a district in the previous year divided by the number of mills levied by the district in the previous year, multiplied by 1,000. This amount must be added to the district, county, and statewide taxable value when computing guaranteed tax base aid under 20-9-368.~~

~~(4)~~ The county treasurer shall credit all taxes collected under this part:

(a) to the state and to the counties that levied mills against production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in the year 1989 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills against production or used nontax revenue, such as Public Law 81-874 money, in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in 1989 in the school district."

Section 6. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 20, chapter 9, part 3, and the provisions of Title 20, chapter 9, part 3, apply to [section 3].

Section 7. **Applicability.** (1) [Section 3] applies retroactively, within the meaning of 1-2-109, to the taxable year beginning after December 31, 1990.

(2) Except as provided in subsection (1), [this act] applies to school fiscal years beginning after June 30, 1991.

Section 8. **Termination.** [Section 3] terminates December 1, 1991.

Section 9. **Effective date.** [This act] is effective on passage and approval.

Approved May 17, 1991.

CHAPTER NO. 791

[HB 597]

AN ACT REQUIRING RECREATIONAL VEHICLES AND VANS TO BE EQUIPPED WITH MUD FLAPS; AND AMENDING SECTION 61-9-407, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-407, MCA, is amended to read:

"**61-9-407. Fenders, splash aprons, or flaps required on certain vehicles — dimension and location.** (1) ~~It shall be unlawful for any~~ *A* person ~~to~~ *may not* move, or permit to be moved, any *recreational vehicle, van,* truck, bus, truck tractor, trailer, pole trailer, or semitrailer, as defined in this title, upon the public highways without having first equipped the rearmost wheels or set of wheels of ~~such~~ *the* vehicle with fenders, splash aprons, or flaps. ~~Such~~ *The* fenders, splash aprons, or flaps ~~shall~~ *must* be designed, constructed, and attached to the vehicle in ~~such~~ *a* manner ~~so as to arrest~~ *that arrests* and ~~deflect~~ *deflects* dirt, mud, water, rocks, and other substances ~~which~~ *that* may be picked up by the rear wheels of ~~such~~ *the* vehicle and thrown into the air, as follows:

(a) If the vehicle is equipped with fenders, the ~~same shall~~ *fenders must* extend in full width from a point above and forward of the center of the tire or tires over and to the rear ~~thereof~~ *of the tires.*

(b) If the vehicle is equipped with splash aprons or flaps, ~~the same shall~~ *the splash aprons or flaps must* extend downward in full width from a point not lower than halfway between the center of the tire or tires and the top of ~~said~~ *the* tire or tires and to the rear ~~thereof~~ *of the tires.*

(c) If the vehicle is in excess of 8,000 pounds gross vehicle weight, ~~such~~ *the* fenders, splash aprons, or flaps ~~shall~~ *must* extend downward to a point that is not more than 10 inches above the surface of the highway when the vehicle is empty.

(d) If the vehicle is 8,000 pounds or less gross vehicle weight, ~~such~~ *the* fenders, splash aprons, or flaps ~~shall~~ *must* extend downward to a point that is not more than 20 inches above the surface of the highway when the vehicle is empty.

(2) Fenders, splash aprons, or flaps, as used in subsection (1) ~~of this section~~, ~~shall be deemed~~ *are considered* to be of sufficient size and construction as to comply with the requirements ~~thereof~~ *of this section,* if constructed as follows:

(a) when measured on the cross-sections of the tread of the wheel or on the combined cross-sections of the treads of multiple wheels, ~~such~~ *the* fender, splash apron, or flap extends at least to each side of the width of the tire or of the combined width of the multiple tires, as the case may be; and

(b) ~~such~~ *the* fender, splash apron, or flap is so constructed ~~as to be~~ *that it is* capable at all times of arresting and deflecting ~~such~~ dirt, mud, water, or other substance ~~as~~ *that* may be picked up and carried by ~~such~~ *the* wheel or wheels."

Section 2. **Van.** "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 61, chapter 1, part 1, and the provisions of Title 61, chapter 1, part 1, apply to [section 2].

Approved May 17, 1991.

CHAPTER NO. 792

[HB 677]

AN ACT AUTHORIZING A COUNTY TO LEVY UP TO 1 MILL FOR THE SUPPORT OF COUNTY LITERACY PROGRAMS THAT GIVE FIRST PRIORITY TO PROVIDING DIRECT INSTRUCTION TO ADULTS, WHICH LEVY IS SUBJECT TO LIMITATIONS ON PROPERTY TAXES SET FORTH IN TITLE 15, CHAPTER 10, PART 4, MCA; PROVIDING FOR THE ADMINISTRATION OF A COUNTY ADULT LITERACY FUND BY A COUNTY ADULT LITERACY BOARD; AND ESTABLISHING CONDITIONS FOR THE USE OF COUNTY LITERACY FUNDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **County adult literacy programs — authorization to levy tax and establish fund.** (1) (a) The governing body of a county may, in its discretion, establish a fund and levy up to 1 mill on each dollar of taxable property in the county for the support of county literacy programs that give first priority to providing direct instruction to adults. The tax levy is in addition to all other tax levies and is subject to limitations on property taxes set forth in 15-10-402.

(b) The fund may be used only for the support of adult literacy programs within the county.

(2) (a) If a county levies a property tax for adult literacy programs, the county governing body shall appoint a county adult literacy board to administer the expenditure of funds from the county adult literacy fund established in subsection (1).

(b) The county adult literacy board shall coordinate all adult literacy programs receiving county adult literacy funds. The board may adopt policies concerning program standards and financial accountability for organizations receiving adult literacy funds. The board may require that adult literacy programs match adult literacy funds with federal, state, or private money. The board may, with the concurrence of the appropriate county officials, arrange for county in-kind services to support adult literacy programs.

(c) County adult literacy funding may be expended only on literacy programs for persons who are at least 19 years of age and whose high school class has graduated.

Approved May 17, 1991.

CHAPTER NO. 793

[HB 684]

AN ACT PROVIDING AN APPROPRIATION OF $500,000 FOR A CLEAN FUELS INFORMATION CENTER; PROVIDING AN APPROPRIATION TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO MAKE A LOAN TO THE MHD-CORETTE PROJECT; PROVIDING FOR MATCHING REQUIREMENTS; DESIGNATING THE PURPOSE FOR WHICH THE LOAN MUST BE USED; PROVIDING FOR LOAN REPAYMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** (1) There is appropriated $750,000 from the local impact account, to be used by June 30, 1993, as provided in subsection (2).

(2) (a) There is appropriated $500,000 from the local impact account to eastern Montana college to be used by June 30, 1993, to provide funding for a clean fuels information depository, distribution, and market development center at eastern Montana college. The center shall focus on all available clean coal technology information worldwide in order to allow Montana to become a leader in the field of clean fuels technology information and marketing. The clean fuels information center shall enhance the current technology research and development being conducted in the Montana university system.

(b) There is appropriated $250,000 from the local impact account to the department of natural resources and conservation to be used by June 30, 1993, for the loan described in subsection (2).

(3) A loan of $250,000 to the MHD-Corette project is approved at an interest rate of 12% compounded annually. The loan must be matched on a 1-to-1 basis from nonstate appropriated sources, used for developing the project's application to receive clean coal technology program funding from the U.S. department of energy, and repaid to the state special revenue fund for state equalization aid to public schools from revenue the project's owner derives from the sale or licensing of the MHD technology or from the sale, lease, or licensing of the project. The total debt of the project related to this loan may not exceed 2 1/2 times the loan amount.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved May 17, 1991.

CHAPTER NO. 794

[HB 747]

AN ACT TO PROVIDE ALTERNATIVES TO SENTENCING OFFENDERS TO THE STATE PRISON OR A WOMEN'S CORRECTIONAL FACILITY; TO CLARIFY THE CORRECTIONAL POLICY OF THE STATE REGARDING THE SENTENCING OF OFFENDERS; TO ALLOW THE COURTS TO SENTENCE OFFENDERS TO A COMMUNITY CORRECTIONS FACILITY OR PROGRAM; TO REQUIRE COURTS TO CONSIDER ALTERNATIVES TO SENTENCING NONVIOLENT FELONY OFFENDERS TO THE STATE PRISON OR A WOMEN'S CORRECTIONAL FACILITY, INCLUDING SENTENCING THE OFFENDER TO A COMMUNITY CORRECTIONS FACILITY OR PROGRAM; TO PROVIDE CRITERIA FOR SENTENCING NONVIOLENT FELONY OFFENDERS; TO AUTHORIZE THE DEPARTMENT OF INSTITUTIONS TO PROVIDE COMMUNITY CORRECTIONS FACILITIES AND PROGRAMS; AMENDING SECTIONS 46-18-101 AND 46-18-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1, 4, and 5], 46-18-101, and 46-18-201, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections" or "community corrections facility or program" means a community-based or community-oriented facility or program designed to provide an alternative method for the rehabilitation of nonviolent felony offenders. The term does not include a state prison, a women's correctional facility, or a jail.

(2) "Crime of violence" means:

(a) a crime in which an offender uses or possesses and threatens to use a deadly weapon during the commission or attempted commission of a crime;

(b) a crime in which the offender causes a serious bodily injury or death to a person other than himself; or

(c) any sexual offense in which the offender causes bodily injury to the victim or uses threat, intimidation, or force against the victim.

(3) "Nonviolent felony offender" means a person who has entered a plea of guilty to a felony offense other than a crime of violence or who has been convicted of a felony offense other than a crime of violence.

Section 2. Section 46-18-101, MCA, is amended to read:

"**46-18-101. Correctional policy.** (1) It is the purpose of this section to declare the correctional policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted are drawn to implement the policy established by this section.

(2) The correctional policy of the state of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for his actions. Corrections laws and programs must be implemented to impress upon each individual his responsibility for obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore, it is the state's policy that persons convicted of a crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities.

(3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

(i) the crime committed;

(ii) the prospects of rehabilitation of the offender;

(iii) the circumstances under which the crime was committed; ~~and~~

(iv) the criminal history of the offender; *and*

(v) consideration of alternatives to imprisonment of the offender in the state prison or a women's correctional facility.

(b) Dangerous offenders who habitually violate the law and victimize the public shall be removed from society and correctively treated in custody for long terms as needed. Other offenders shall be dealt with by probation, suspended sentence, *community corrections, community service,* or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual. Whenever possible, sentences for offenders shall include restitution to the victim, payment of costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.

(4) It is also the policy of the state that alternatives to imprisonment, such as community corrections, should be used whenever appropriate for nonviolent felony offenders in order to provide them opportunities to gain work experience, to learn life skills, to obtain education and training, or to participate in other activities that will reduce recidivism and enable offenders to become productive members of society."

Section 3. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, placement in a community corrections facility or program;

~~(ix)~~*(x)* community service;

~~(x)~~*(xi)* any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

~~(xi)~~*(xii)* any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through ~~(1)(a)(xi)~~ *(1)(a)(xii).*

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution, with or without a fine as provided by law for the offense;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program;

~~(f)~~*(g)* impose any combination of subsections (1)(b) through ~~(1)(e)~~ *(1)(f).*

(2) If any financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail time already served.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-502(3), 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of such imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in [section 4]. If the offender is subsequently sentenced to the state prison or a women's correctional facility, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in [section 4]."

Section 4. **Criteria for sentencing nonviolent felony offenders.** Prior to sentencing a nonviolent felony offender to a term of imprisonment in the state prison or a women's correctional facility, the court shall take into account whether:

(1) the interests of justice and the needs of public safety truly require the level of security provided by imprisonment of the offender in the state prison or a women's correctional facility;

(2) the needs of the offender can be better served in the community or in a facility or program other than the state prison or a women's correctional facility;

(3) there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;

(4) the offender acted under strong provocation;

(5) the offender has made restitution or will make restitution to the victim of his criminal conduct;

(6) the offender has no prior history of conviction for a criminal act or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(7) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

(8) the character and attitude of the offender indicate that he is likely to commit another crime;

(9) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

(10) imprisonment of the offender would create an excessive hardship on himself or his family.

Section 5. **Community corrections facilities or programs.** The department of institutions may provide community corrections facilities or programs for the rehabilitation of nonviolent felony offenders[, as authorized under House Bill No. 272].

Section 6. **Codification instruction.** [Sections 1, 4, and 5] are intended to be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to [sections 1, 4, and 5].

Section 7. **Coordination instruction.** (1) If House Bill No. 272 is not passed and approved, the bracketed language in [section 5 of this bill] is void.

(2) If this bill and House Bill No. 272 are both passed and approved, then the definition of "community corrections" or "community corrections facility or program" contained in [section 1(1) of this act] is amended to read:

"(1) "Community corrections" or "community corrections facility or program" means a community corrections facility or program as defined in [section 3 of House Bill No. 272]."

Section 8. **Effective date.** [This act] is effective July 1, 1991.

Approved May 17, 1991.

CHAPTER NO. 795

[HB 752]

AN ACT TO ESTABLISH A PROCEDURE FOR SUMMARY DISSOLUTION OF MARRIAGE; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Summary dissolution — conditions necessary at commencement of proceedings.** A marriage may be dissolved by the summary dissolution procedure specified in [sections 1 through 7] if all of the following conditions exist on the date the proceeding is commenced:

(1) Each party has met the requirements of 40-4-104 with regard to dissolution of marriage.

(2) Irreconcilable differences have caused the irretrievable breakdown of the marriage, and both parties agree that the marriage should be dissolved.

(3) There are no children from the relationship born before or during the marriage or adopted by the parties during the marriage, and the wife is not pregnant.

(4) (a) Except as provided in subsection (4)(b), neither party has any interest in real property.

(b) The limitation of subsection (4)(a) does not apply to the lease of a residence occupied by either party if the lease does not include an option to purchase and if it terminates within 1 year from the date of the filing of the petition.

(5) There are no unpaid obligations in excess of $4,000 incurred by either or both of the parties after the date of their marriage, excluding the amount of any unpaid obligations with respect to a motor vehicle with a rated carrying load in persons and property of 1 ton or less.

(6) The total fair market value of property assets, excluding all encumbrances and motor vehicles with a rated carrying load in persons and property of 1 ton or less, is less than $13,000, and neither party has separate property assets in excess of $13,000, excluding all encumbrances and motor vehicles with a rated carrying load in persons and property of 1 ton or less.

(7) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities and have duly executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(8) The parties waive any right to maintenance.

(9) The parties, upon entry of final judgment of dissolution of marriage, irrevocably waive their respective rights to appeal the terms of the dissolution and their rights to move for a new trial on the dissolution.

(10) The parties have read and state that they understand the contents of the summary dissolution brochure provided for in [section 7].

(11) The parties desire that the court dissolve the marriage.

Section 2. **Joint petition — filing — form — contents.** (1) A proceeding for summary dissolution of marriage is commenced by filing in the district court a joint petition in the form prescribed by the court.

(2) The petition must:

(a) be signed under oath by both parties;

(b) state that, as of the date of the filing of the joint petition, each condition set forth in [section 1] has been met;

(c) state the mailing address of both parties; and

(d) state whether or not the wife elects to have her maiden or former name restored and, if so, state the name to be restored.

Section 3. **Revocation of joint petition — termination of proceeding — notice — copy to other party.** (1) At any time prior to the entry of final judgment, either party to the marriage may revoke the joint petition and thereby terminate the summary dissolution proceeding filed pursuant to [sections 1 through 7].

(2) The revocation is effected by filing with the clerk of the court in which the proceeding was commenced a notice of revocation in the form and content prescribed by the district court.

(3) The revoking party shall send a copy of the notice of revocation to the last-known address of the other party by first-class mail, postage prepaid.

Section 4. **Hearing and final judgment — entry — effect.** After 20 days from the date of the filing of the joint petition for summary dissolution, the district court shall hold a hearing at which both parties must be present, and if the court determines that the conditions in [section 1] exist, the court shall enter the final judgment dissolving the marriage. Entry of final judgment restores each party to the status of a single person and permits either to marry.

Section 5. **Final judgment as final adjudication of rights and obligations.** Except as provided in [section 6], entry of final judgment constitutes a final adjudication of the rights and obligations of the parties with respect to the status of the marriage and property rights and constitutes a waiver of their respective rights to maintenance, rights to appeal the terms of the dissolution, and rights to a new trial.

Section 6. **Actions to set aside final judgment.** (1) A final judgment made pursuant to [section 4] does not prejudice or bar the rights of either party to institute an action to set aside the final judgment for fraud, duress, accident, mistake, or other grounds recognized at law or in equity or to make a motion pursuant to the Montana Rules of Civil Procedure.

(2) The district court shall set aside a final judgment made pursuant to [section 4] regarding all matters except the status of the marriage upon proof that the parties did not meet the requirements of [section 1] on the date the petition was filed.

Section 7. **Brochure to describe proceedings — availability — distribution — contents and form.** (1) Each district court shall make available a brochure, prepared and distributed by the attorney general, describing the requirements, nature, and effect of proceedings under [sections 1 through 7].

(2) (a) In nontechnical language, the brochure must:

(i) state that it is in the best interests of the parties to consult an attorney regarding the dissolution of their marriage. The services of an attorney may be obtained through lawyer referral services, group or prepaid legal services, or legal aid organizations.

(ii) state that the brochure is not intended as a guide for self-representation in proceedings under [sections 1 through 7] and should not be relied upon exclusively by the parties;

(iii) provide a concise summary of the provisions of [sections 1 through 7] and 40-4-104;

(iv) describe the nature of services of the conciliation court, if available;

(v) state that under the provisions of [sections 1 through 7], neither party to the marriage may obtain maintenance from the other;

(vi) state in boldface type that, upon entry of final judgment, the parties' rights and obligations with respect to the marriage, including property and maintenance rights, are permanently adjudicated without right of appeal but that neither party is barred from instituting an action to set aside the final judgment for fraud, duress, accident, mistake, or other grounds recognized at law or in equity or to make a motion pursuant to the Montana Rules of Civil Procedure; and

(vii) state that until final judgment is entered, the parties retain the status of married persons and cannot remarry.

(b) The brochure may include other matters that the attorney general considers appropriate.

Section 8. **Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 40, chapter 4, part 1, and the provisions of Title 40, chapter 4, part 1, apply to [sections 1 through 7].

Section 9. **Effective date.** [This act] is effective July 1, 1992.

Approved May 17, 1991.

CHAPTER NO. 796

[HB 959]

AN ACT TO GENERALLY REVISE THE INDIVIDUAL INCOME TAX LAWS OF THE STATE; PROVIDING THAT TO BE ELIGIBLE TO APPLY FOR AN EXTENSION OF TIME FOR FILING A RETURN, A TAXPAYER MUST HAVE PAID BY ESTIMATED TAX PAYMENTS, WITHHOLDING TAX, OR A COMBINATION OF ESTIMATED TAX PAYMENTS AND WITHHOLDING TAX 95 PERCENT OF THE CURRENT YEAR'S TAX LIABILITY OR 100 PERCENT OF THE PREVIOUS YEAR'S TAX LIABILITY; PROVIDING AN APPROPRIATION; AMENDING SECTION 15-30-144, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-144, MCA, is amended to read:

"**15-30-144. Time for filing — extensions of time.** (1) Returns shall be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return shall be made on or before the 15th day of April following the close of the calendar year. Each return shall set forth such facts as the department considers necessary for the proper enforcement of this chapter. There shall be annexed to such return the affidavit or affirmation of the persons making the return to the effect that the statements contained therein are true. Blank forms of return shall be furnished by the department upon application, but failure to secure the form shall not relieve any taxpayer of the obligation to make any return required under this law. Every taxpayer liable for a tax under this law shall pay a minimum tax of $1.

(2) An automatic 6-month extension of time for filing a return is allowed, provided that*:*

(a) on or before the due date of the return, an application is made on forms available from the department or in writing to the department*; and*

(b) the applicant has paid by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 95% of the current year's tax liability or 100% of the previous year's tax liability."

Section 2. **Appropriation.** There is appropriated from the general fund to the department of revenue $108,225 for fiscal year 1992 and $78,705 for fiscal year 1993 to implement the provisions of [this act].

Section 3. **Coordination instruction.** In any bill referring to Senate Bill No. 461, the reference to Senate Bill No. 461 is changed to House Bill No. 959.

Section 4. **Retroactive applicability.** [Section 1] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Section 5. **Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective July 1, 1991.

Approved May 17, 1991.

CHAPTER NO. 797

[HB 995]

AN ACT AUTHORIZING THE BOARD OF INVESTMENTS TO ISSUE BONDS PAYABLE BY THE EMPLOYER'S PAYROLL TAX TO PAY OFF THE UNFUNDED LIABILITY IN THE STATE'S WORKERS' COMPENSATION INSURANCE PROGRAM; CREATING A STATE DEBT; ALLOWING MUTUALLY AGREEABLE LUMP-SUM SETTLEMENTS; AMENDING SECTIONS 39-71-2321, 39-71-2351, 39-71-2352, 39-71-2503, AND 39-71-2504, MCA; REPEALING SECTION 39-71-2353, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Use of payroll tax proceeds — loans — bonds.** (1) Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying bonds issued and loan proceeds given under [section 2] and this section. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund may, through its board of directors, request the budget director to certify to the board of investments that additional funding is necessary. If the budget director agrees with the state fund's board of directors that additional funding is necessary, the budget director shall certify to the board of investments the amount that the budget director determines is necessary to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in subsection (2), the board of investments shall, at times and in amounts it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or a bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Loans must be from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990. The board of investments shall choose the method of financing that is most cost-effective for the state fund. A loan must bear interest at the rate the money would earn in the pooled investment fund required by 17-6-203. The board of investments may also, upon request of the board of directors of the state fund, give the state fund the proceeds of a bond issue, to be used to pay off loans made under [section 2] and this section. Bonds for the state fund must be workers' compensation bonds issued under [section 2].

(2) The total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under [section 2], except bonds issued to repay loans as provided for in subsection (1), may not exceed $220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020.

Section 2. **Workers' compensation bonds — loans — form — principal and interest.** (1) Subject to the $220 million limit contained in [section 1(2)], the board of investments may not give the state fund loan proceeds or issue workers' compensation bonds unless the aggregate amount of outstanding and proposed loans and bonds can be serviced with no more than 90% of the amount of tax revenue that the department of revenue estimates will be raised by the tax imposed under 39-71-2503 during the remainder of the then current fiscal year and during each succeeding fiscal year through the end of the fiscal year in which the last then outstanding or proposed loan or bond will be repaid or retired.

(2) Bonds are limited obligations payable solely from and secured by the money deposited in the workers' compensation bond repayment account created by 39-71-2504. Each series of bonds may be issued by the board of investments at public or private sale, in denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at a rate or rates or the method of determining the rate or rates, maturing at times, not later than June 30, 2020, subject to redemption at earlier times and prices and upon notice, and payable at the office of a fiscal agency of the state, as determined by the board of investments. Any action taken by the board of investments under [section 1] and this section must be approved by at least a majority vote of its members.

(3) In all other respects the board of investments is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(4) Bonds and any interest coupons appurtenant thereto must be signed by the members of the board of investments, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all bonds issued and sold.

(5) All loan and bond proceeds given to the state fund must be deposited to the credit of the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and may be used only for the administration and payment of those claims and for the costs of giving the loan proceeds and issuing the bonds.

Section 3. **Mutually agreeable lump-sum settlements.** During the period beginning October 1, 1991, and ending September 30, 1992, a workers' compensation claimant and the state fund may, regardless of the lump-sum law in effect on the date of the injury, mutually agree to a lump-sum settlement of a claim. If a mutual agreement is not reached, the lump-sum law in effect on the date of the injury applies.

Section 4. Section 39-71-2321, MCA, is amended to read:

"**39-71-2321. What to be deposited in state fund.** (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) The ~~loan~~ proceeds *of bonds issued and loans* given to the state fund under ~~39-71-2353~~ *[sections 1 and 2]* must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 5. Section 39-71-2351, MCA, is amended to read:

"**39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date.** (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) extend the payroll tax imposed by 39-71-2503 and dedicate the tax money first to the repayment of ~~loans given~~ *bonds issued* under ~~39-71-2353~~ *[sections 1 and 2]* and then to the *repayment of loans given under [sections*

1 and 2] and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased."

Section 6. Section 39-71-2352, MCA, is amended to read:

"**39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 — spending limit.** (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in 39-71-2316(9) and ~~39-71-2353~~ *[section 1]*, premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 7. Section 39-71-2503, MCA, is amended to read:

"**39-71-2503. Workers' compensation payroll tax.** (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% of the employer's payroll in the preceding week. This payroll tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. ~~The department must report past and projected future tax proceeds to the legislature, which shall consider the report and determine the tax rate~~

~~necessary for repayment of loans with interest.~~ *If one or more loans or bonds are outstanding, the tax must be continued at the 0.28% rate and the legislature may not modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of the tax or reduce the tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds. The legislature may not increase the tax rate except upon a two-thirds vote of each house.*

(b) Each employer shall maintain the records the department requires concerning the employer's payroll. The records are subject to inspection by the department and its employees and agents during regular business hours.

(2) All collections of the tax are appropriated to and must be deposited as received in the tax account. The tax is in addition to any other tax or fee assessed against employers subject to the tax.

(3) (a) On or before the 20th day of May, August, November, and February, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a).

(c) A tax payment required by subsection (1)(a) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and

industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department."

Section 8. Section 39-71-2504, MCA, is amended to read:

"**39-71-2504. Workers' compensation tax account.** (1) There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account consists of a tax account and a workers' compensation ~~loan~~ *bond* repayment account.

(2) All collections of the tax, interest and penalties on the tax, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989, must be deposited in the workers' compensation tax account. All such money deposited in the workers' compensation tax account must be credited to the workers' compensation ~~loan~~ *bond* repayment account to the extent necessary to pay the principal of *and redemption premium* and interest due on workers' compensation ~~loans~~ *bonds* issued under ~~39-71-2353~~ *[sections 1 and 2] and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year*. The balance in the workers' compensation ~~loan~~ *bond* repayment account must be credited to the tax account within the workers' compensation tax account and is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 9. **Repealer.** Section 39-71-2353, MCA, is repealed.

Section 10. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 11. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1 through 3].

Section 13. **Requirements for approval of state debt.** Because [this act] authorizes the creation of a state debt, a vote of two-thirds of the members of each house of the legislature is required for enactment of [this act]. If [this act] is not approved by the required vote, [this act] is void.

Section 14. **Effective date.** [This act] is effective July 1, 1991.

Approved May 17, 1991.

CHAPTER NO. 798

[SB 16]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE REGULATION OF INSURERS AND MOTOR CLUB SERVICE COMPANIES; DIRECTING THE CODE COMMISSIONER TO CHANGE ANY REFERENCE TO THE TERM "SOLICITOR" TO "INSURANCE PRODUCER" WHEREVER IT APPEARS IN THE MONTANA CODE ANNOTATED; AMENDING SECTIONS 33-1-704, 33-1-711, 33-2-705, 33-2-708, 33-2-709, 33-3-401, 33-3-431, 33-17-102, 33-17-208, 33-17-603, 33-20-303, 33-20-305, 33-22-229, 33-22-502, 33-22-921, 33-22-923, 33-22-924, 33-22-1501, 33-22-1504, 33-22-1511, 33-22-1512, 33-22-1513, 33-22-1514, 33-22-1515, 33-22-1516, 33-22-1521, 33-23-302, 61-12-303, 61-12-304, AND 61-12-305, MCA; AND REPEALING SECTION 33-22-1522, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-711, MCA, is amended to read:

"**33-1-711. Appeals from the commissioner.** (1) An appeal from the commissioner may be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to the hearing or whose pecuniary interests are directly and immediately affected by any order or refusal and who is aggrieved by an order or refusal may, within 30 days after the order has been mailed or delivered to the persons entitled to receive the same, the commissioner's order denying rehearing or reargument has been so mailed or delivered, or the commissioner's refusal to grant a hearing, appeal from the order on hearing or the refusal of a hearing. Any request for a stay of the commissioner's order must be made within 60 days, to run concurrently with the 30 days for appeal. The appeal must be taken to the district court of Lewis and Clark County by filing written notice of appeal in the court and by filing a copy of the notice with the commissioner, except that in appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an insurance producer or surplus lines insurance producer, the person taking the appeal may at his option, in lieu of the district court of Lewis and Clark County, take the appeal to the district court of the county of Montana in which the insurer has its principal place of business or the licensee resides.

(2) Upon filing of the notice of appeal, the court has full jurisdiction and shall determine whether the filing operates as a stay of the order or action appealed from.

(3) Within 20 days after filing of the copy of the notice of appeal in his office, the commissioner shall make and return to the court in which the appeal is pending a copy of his order appealed from and a full and complete transcript, duly certified by the commissioner, of his record of the hearing upon which the order was issued, together with all exhibits and documentary evidence introduced at the hearing. If the appeal is from an action of the commissioner with respect to which a hearing was refused, the commissioner shall, within the 20-day period, make and return to the court a full and complete transcript, duly certified by him, of all documents on file in his office directly relating to the matter as to which the appeal is taken.

(4) Upon receipt of the transcripts and evidence, the court shall hear the matter ~~de novo~~ as soon as reasonably possible thereafter. Upon the hearing of the appeal, the court shall consider the evidence contained in the transcript, exhibits, and documents filed by the commissioner, together with additional proper evidence as may be offered by any party to the appeal.

(5) After hearing the appeal, the court may affirm, modify, or reverse the order or action of the commissioner, in whole or in part, or remand the action to the commissioner for further proceedings in accordance with the court's direction.

(6) Costs must be awarded as in civil actions.

(7) Appeal may be taken to the supreme court from the judgment of the district court as in other civil cases to which the state is a party. A stay of the effectiveness of any judgment may be made only by order of the supreme court upon the giving of security as that court considers proper.

(8) This section does not apply to appeals as to matters covered by chapter 16."

Section 2. Section 33-2-705, MCA, is amended to read:

"33-2-705. Report on premiums and other consideration — tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums so received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in form as prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by ~~it~~ *a life insurer or written by an insurer other than a life insurer* during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to such property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from such total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to such policies. As to title insurance, "premium" includes the total charge for such insurance. No deduction shall be made of the cash surrender values of policies. Considerations received on annuity contracts shall not be included in total direct premium income and shall not be subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums computed at the rate of 2 3/4%.

(3) That portion of the tax paid hereunder by an insurer on account of premiums received for fire insurance shall be separately specified in the report as required by the commissioner, for apportionment as provided by law. Where insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make such reasonable allocation from such entire premium to the fire portion of the coverage as shall be stated in such report and as may be approved or accepted by the commissioner.

(4) With respect to authorized insurers the premium tax provided by this section shall be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(5) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section.

(6) In addition to the penalty provided for in subsection (5), the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of $100 a day for each day the tax remains unpaid past the due date or 1% of the amount owed in tax, whichever is greater.

(7) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which such tax liability is accrued."

Section 3. Section 33-2-708, MCA, is amended to read:

"**33-2-708. Fees and licenses.** (1) Except as provided in 33-17-212(2), the commissioner shall collect in advance and the persons served shall pay to the commissioner the following fees:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (1)(b)) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with the application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers	$ 600.00
(B) foreign insurers	600.00
(ii) annual continuation of certificate of authority	600.00
(iii) reinstatement of certificate of authority	25.00
(iv) amendment of certificate of authority	50.00
(b) articles of incorporation:	
(i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state	20.00
(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation	25.00
(c) filing bylaws or amendment to bylaws where required	10.00
(d) filing annual statement of insurer, other than as part of application for original certificate of authority	25.00
(e) insurance producer's license:	
(i) application for original license, including issuance of license, if issued	15.00
(ii) appointment of insurance producer, each insurer	10.00
(iii) temporary license	15.00
(iv) amendment of license (excluding additions to license) or reissuance of master license	15.00
(f) nonresident insurance producer's license:	
(i) application for original license, including issuance of license, if issued	100.00
(ii) appointment of insurance producer, each insurer	10.00
(iii) annual renewal of license	10.00
(iv) amendment of license (excluding additions to license) or reissuance of master license	~~10.00~~ *15.00*

(g) examination, *if administered by the commissioner,* for license as insurance producer, each examination 15.00

(h) surplus lines insurance producer license:

(i) application for original license and for issuance of license, if issued 50.00

(ii) annual renewal of license 50.00

(i) adjuster's license:

(i) application for original license and for issuance of license, if issued 15.00

(ii) annual renewal of license 15.00

(j) insurance vending machine license, each machine, each year 10.00

(k) commissioner's certificate under seal (except when on certificates of authority or licenses) 10.00

(l) copies of documents on file in the commissioner's office, per page .... .50

(m) policy forms:

(i) filing each policy form 25.00

(ii) filing each application, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days 100.00

(n) applications for approval of prelicensing education courses:

(i) reviewing initial application 150.00

(ii) periodic review 50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges that are collected by him pursuant to Title 33 and the rules adopted under Title 33.

(3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 4. Section 33-2-709, MCA, is amended to read:

"**33-2-709. Retaliatory fees, taxes, and other obligations.** (1) When by or pursuant to the laws of any other state or foreign country any taxes, licenses, and other fees, in the aggregate, and any fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions are or would be imposed upon Montana insurers or upon the insurance producers or representatives of such insurers which are in excess of such taxes, licenses, and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar insurers or upon the insurance producers or representatives of such insurers of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses, and other fees, in the aggregate, or fines, penalties, or deposit requirements or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the commissioner upon the insurers or upon the insurance producers or representatives of such insurers of such other state or country doing business or seeking to do business in Montana. Any tax, license, or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on Montana insurers or their insurance producers or representatives shall be deemed to be imposed by such state or country within the meaning of this section.

(2) This section shall not apply as to any fees in conjunction with the licensing of insurance producers, personal income taxes, ad valorem taxes on real or personal property, or special purpose obligations or assessments imposed by another state *or by an agency of this state other than the department* in connection with particular kinds of insurance other than property insurance, except that deductions from premium taxes or other taxes otherwise payable allowed on account of real estate or personal property taxes paid shall be taken into consideration by the commissioner in determining the propriety and extent of retaliatory action under this section.

(3) (a) For the purposes of this section the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state designated by the insurer in writing filed with the commissioner at time of admission to this state or within 6 months after January 1, 1961, whichever date is the later, and may be any one of the following states:

(i) that in which the insurer was first authorized to transact insurance;

(ii) that in which is located the insurer's principal place of business in the United States;

(iii) that in which is held the larger deposit of trusteed assets of the insurer for the protection of its policyholders and creditors in the United States.

(b) If the insurer makes no such designation, its domicile shall be deemed to be that state in which is located its principal place of business in the United States."

Section 5. Section 33-3-401, MCA, is amended to read:

"33-3-401. Home office and records — penalty for unlawful removal of records or assets. (1) Every domestic insurer shall have and maintain its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary or suitable as to the kind or kinds of insurance transacted. *Records of the insurer's operations and other financial records reasonably related to its insurance operations for the preceding 5 years must be maintained and be available to the commissioner or his duly constituted examiner.*

(2) Every domestic insurer shall have and maintain its assets in this state, except as to:

(a) real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this state; and

(b) such property of the insurer as may be customary, necessary, and convenient to enable and facilitate the operation of its branch offices and regional home offices located outside this state as referred to in subsection (4) below.

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the commissioner under this code or for such reasonable purposes and periods of time as may be approved by the commissioner in writing in advance of such removal or concealment of such records or assets or material part thereof from the commissioner is prohibited. Any person who removes or attempts to remove such records or assets or such material part thereof from the home office or other place of business or of safekeeping of the insurer in this state with the intent to remove the same from this state or who conceals or attempts to conceal the same from the commissioner, in violation of this subsection, shall upon conviction thereof be guilty of a felony punishable by a fine of not more than $10,000 or by imprisonment in the penitentiary for not more than 5 years or by both such fine and imprisonment in the discretion of the court. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or material part thereof outside this state beyond the period therefor specified in the commissioner's consent under which the records were so removed thereat or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 2, part 13.

(4) This section shall not be deemed to prohibit or prevent an insurer from:

(a) establishing and maintaining branch offices or regional home offices in other states where necessary or convenient to the transaction of its business and keeping therein the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the commissioner at his request;

(b) having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside of this state as reasonably and customarily required in the regular course of its business;

(c) making deposits under custodial arrangements as provided by 33-2-604(3)."

Section 6. Section 33-3-431, MCA, is amended to read:

"**33-3-431. Borrowed surplus.** (1) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. The agreement may provide for interest ~~not exceeding 6% per annum~~ *at a rate no greater than the rate established in 25-9-205*, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan.

(2) Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement or be the basis of any setoff; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.

(3) Any such loan to a mutual insurer shall be subject to the commissioner's approval. The insurer shall, in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within 15 days after date of such filing the insurer is notified of the commissioner's disapproval and the reasons therefor. The commissioner shall disapprove any proposed loan or agreement if he finds the loan is unnecessary or excessive for the purpose intended or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.

(4) Any such loan to a mutual insurer or substantial portion thereof shall be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such loan shall be made by a mutual insurer unless in advance approved by the commissioner.

(5) This section shall not apply to loans obtained by the insurer in ordinary course of business from banks and other financial institutions or to loans secured by pledge or mortgage of assets."

Section 7. Section 33-17-208, MCA, is amended to read:

"**33-17-208. Prelicensing education — basic requirement.** (1) (a) A person applying for a license to act as an insurance producer for property, casualty, and surety insurance shall complete 40 hours of approved prelicensing education courses in those areas of insurance within 12 months prior to the examination, unless he is exempted from the requirement under subsection (3).

(b) A person applying for a license to act as an insurance producer for life and disability insurance or as an enrollment representative for a health service corporation shall complete 40 hours of approved prelicensing education courses in those areas of insurance within 12 months prior to the examination, unless he is exempted from the requirement under subsection (3).

(2) A person applying for licenses to act as an insurance producer for both the property, casualty, and surety areas and the life ~~and~~ *or* disability areas must meet the education requirements in all the areas of insurance.

(3) The minimum prelicensing education requirement does not apply to a person who:

(a) has been licensed within the 12 preceding months as an insurance producer in another state that requires prelicensing education and has completed the education in the other state;

(b) seeks a nonresident license, having been licensed as an insurance provider in his state of residence for at least 1 year;

(c) seeks a nonresident license and is from a state having a prelicensing education requirement;

(d) seeks to reinstate a license lapsed for less than 2 years;

(e) seeks a temporary license under 33-17-216; or

(f) is exempt from examination requirements under 33-17-212~~(5)~~*(7)*."

Section 8. Section 33-17-603, MCA, is amended to read:

"**33-17-603. Certificate of registration.** (1) Except as provided in 33-17-604, a person may not act as or hold himself out to be an administrator in this state unless he holds a certificate of registration as an administrator.

(2) An application for a certificate of registration must be accompanied by a fee of $100. The commissioner shall issue the certificate unless he finds that the applicant is not competent, trustworthy, financially responsible, or of good personal and business reputation or that the applicant has had a previous application for a license denied for cause within 5 years.

(3) The certificate of registration is renewable annually on ~~the date of issue~~ *July 1*. A request for renewal must be accompanied by a renewal fee of $100.

(4) The certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the administrator has violated any of the requirements of this part or that the administrator is

not competent, trustworthy, financially responsible, or of good personal and business reputation.

(5) Unless the certification requirement is waived, a person who acts as an administrator without a certificate of registration is subject to a fine of not less than $500 or more than $1,500."

Section 9. Section 33-20-303, MCA, is amended to read:

"33-20-303. **Incontestability.** If any statements other than those relating to age~~, sex,~~ and identity are required as a condition to issuing an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, and subject to 33-20-305, there shall be a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom such statements are required, for a period of 2 years from its date of issue, except for nonpayment of stipulated payments to the insurer; and at the option of the insurer such contract may also except any provisions relative to benefits in the event of disability and any provisions which grant insurance specifically against death by accident or accidental means."

Section 10. Section 33-20-305, MCA, is amended to read:

"33-20-305. **Misstatement of age ~~or sex~~.** In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that if the age ~~or sex~~ of the person or persons upon whose life or lives the contract is made, or of any of them, has been misstated, the amount payable or benefits accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age ~~or sex~~ and that if the insurer shall make or has made any overpayment or overpayments on account of any such misstatement, the amount thereof, with interest at the rate to be specified in the contract but not exceeding 6% per annum, may be charged against the current or next succeeding payment or payments to be made by the insurer under the contract."

Section 11. Section 33-22-502, MCA, is amended to read:

"33-22-502. **Required provisions of group policies.** Each ~~such~~ group disability insurance policy ~~shall~~ *delivered or issued for delivery in this state must* contain in substance the following provisions:

(1) a provision that, in the absence of fraud, all statements made by applicants or the policyholder or by an insured person shall be deemed representations and not warranties and that no statement made for the purpose of effecting insurance shall avoid such insurance or reduce benefits unless contained in a written instrument signed by the policyholder or the insured person, a copy of which has been furnished to such policyholder or to such person or his beneficiary;

(2) a provision that the insurer will furnish to the policyholder for delivery to each employee or member of the insured group a statement in summary form of the essential features of the insurance coverage of such

employee or member and to whom benefits thereunder are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit.

(3) a provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy.

(4) a provision or the equivalent thereto that reads:

"Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy.""

Section 12. Section 33-22-921, MCA, is amended to read:

"**33-22-921. Discontinuance or nonrenewal — alternate policy *or certificate* — same insurer.** (1) If a disability insurer discontinues or does not renew a medicare supplement policy product *or certificate* and offers an alternate medicare supplement policy *or certificate* to its insureds within this state, it may not deny benefits under the replacing policy *or certificate* to an insured who receives treatment for a condition that was a covered expense under the replaced policy *or certificate* and is a covered expense under the replacing policy *or certificate* if the insured enrolls in and pays the premium for the replacing policy *or certificate* within 31 days after the termination of the replaced policy *or certificate.*

(2) A disability insurer who discontinues or does not renew a medicare supplement policy product *or certificate* and offers an alternate medicare supplement policy *or certificate* shall base its premium for the alternate policy *or certificate* on the rates currently in place for that policy *or certificate.*

(3) If the insured has not satisfied the preexisting condition limitation under the replaced medicare supplement policy *or certificate,* any period of time that was covered by that policy *or certificate* must be credited toward the preexisting condition limitation period of the replacing policy *or certificate.*"

Section 13. Section 33-22-923, MCA, is amended to read:

"**33-22-923. Replacement policy *or certificate* — different insurer.** (1) If a disability insurer replaces a medicare supplement policy *or certificate,* it may not deny benefits under the replacing policy *or certificate* to an insured who receives treatment for a condition that was a covered expense under the replaced policy *or certificate* and is a covered expense under the replacing policy *or certificate* if the insured pays the premium for the replacing policy *or certificate* when due or within 31 days after the termination of the replaced policy *or certificate.*

(2) An insurer who replaces a medicare supplement policy *or certificate* shall base its premium for the replacement policy *or certificate* on the rates currently in place for that policy *or certificate.*

(3) If the insured has not satisfied the preexisting condition limitation under the replaced medicare supplement policy *or certificate,* any period of time that was covered by that policy *or certificate* must be credited toward the preexisting condition limitation period of the replacing policy *or certificate.*

(4) To receive the benefits of subsections (1) through (3), a person shall submit to the replacing insurer proof of prior coverage, evidence of benefits provided under the previous policy *or certificate,* and the effective date and the date of termination of coverage under the previous policy *or certificate.*"

Section 14. Section 33-22-924, MCA, is amended to read:

"**33-22-924. Renewal requirement.** (1) If a person pays a renewal premium on the date it is due or within 31 days after it is due, an insurer may not refuse to renew a medicare supplement policy *or certificate* unless the insurer:

(a) refuses to renew all policies *or certificates* in this state that are of the same form and issued to persons of the same class; and

(b) offers a replacement policy *or certificate* at actuarially justified rates.

(2) If an insurer refuses to renew all policies *or certificates* in this state that are of the same form and issued to persons of the same class, the policies *or certificates* will remain in force during the grace period stated in the replaced policy *or certificate.* An insurer's refusal to renew a policy *or certificate* may not affect a claim that arose under the ~~replaced~~ *discontinued* policy *or certificate* during the period in which an insured was confined without interruption to a medical care facility for treatment."

Section 15. Section 33-22-1501, MCA, is amended to read:

"**33-22-1501. Definitions.** As used in this part, the following definitions apply:

(1) "Association" means the comprehensive health association created by 33-22-1503.

(2) "Association plan" means a policy of insurance coverage offered by the association ~~through the lead carrier~~ *that is certified by the association as required by 33-22-1521.*

(3) "Association plan premium" means the charge determined pursuant to 33-22-1512 for membership in the association plan based on the benefits provided in 33-22-1521.

(4) "Eligible person" means an individual who:

(a) is a resident of this state and applies for coverage under the association plan; and

(b) *unless the individual's eligibility is waived by the association,* within 6 months prior to the date of application, has been rejected for disability insurance or health service benefits by at least two insurers, societies, or health service corporations, or has had a restrictive rider or preexisting conditions limitation, which limitation is required by at least two insurers, societies, or health service corporations, which has the effect of substantially reducing coverage from that received by a person considered a standard risk.

(5) "Health service corporation" means a corporation operating pursuant to Title 33, chapter 30, and offering or selling contracts of disability insurance.

(6) "Insurance arrangement" means any plan, program, contract, or other arrangement to the extent not exempt from inclusion by virtue of the provisions of the federal Employee Retirement Income Security Act of 1974 under which one or more employers, unions, or other organizations provide to their employees or members, either directly or indirectly through a trust of a third-party administrator, health care services or benefits other than through an insurer.

(7) "Insurer" means a company operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

(8) "Lead carrier" means the licensed administrator or insurer selected by the association to administer the association plan.

(9) "Preexisting condition" means any condition for which an applicant for coverage under the association plan has received medical attention during the 5 years immediately preceding the filing of an application.

~~(10) "Qualified plan" means those health benefit plans certified by the commissioner as providing the minimum benefits required by 33-22-1521 or the actuarial equivalent of those benefits.~~

~~(11)~~*(10)* "Society" means a fraternal benefit society operating pursuant to Title 33, chapter 7, and offering or selling certificates of disability insurance."

Section 16. Section 33-22-1504, MCA, is amended to read:

"**33-22-1504. Association board of directors — organization.** (1) There is a board of directors of the association, consisting of eight individuals:

(a) one from each of the seven participating members of the association with the highest annual premium volume of disability insurance contracts or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner; and

(b) a member at large, appointed by the commissioner to represent the public interest, who shall serve in an advisory capacity only.

(2) Each of the seven board members representing the association members is entitled to a weighted average vote, in person or by proxy, based on the association member's annual Montana premium volume. *However, a board member may not have more than 50% of the vote.*

(3) Members of the board may be reimbursed from the money of the association for expenses incurred by them due to their service as board members but may not otherwise be compensated by the association for their services. The costs of conducting the meetings of the association and its board of directors must be borne by participating members of the association in accordance with 33-22-1513."

Section 17. Section 33-22-1513, MCA, is amended to read:

"**33-22-1513. Operation of association plan.** (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Not less than 88% of the association plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

(3) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses due to claims expenses of the association plan or be allocated to reduce association plan premiums.

(4) *(a)* Each participating member of the association shall share the losses due to claims expenses of the association plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs. Claims expenses of the association plan that exceed the premium payments allocated to the payment of benefits are the liability of the association members. Association members shall share in the claims expenses of the association plan and operating and administrative expenses of the association in an amount equal to the ratio of:

~~(a)~~*(i)* the association member's total disability insurance premium received from or on behalf of Montana residents divided by;

~~(b)~~*(ii)* the total disability premium received by all association members from or on behalf of Montana residents, as determined by the commissioner.

(b) For purposes of this subsection (4), "total disability insurance premium" does not include premiums received from disability income insur-

ance, credit disability insurance, disability waiver insurance, or life insurance.

(5) The association shall make an annual determination of each association member's liability, if any, and may make an annual fiscal yearend assessment if necessary. The association may also, subject to the approval of the commissioner, provide for interim assessments against the association members as may be necessary to assure the financial capability of the association in meeting the incurred or estimated claims expenses of the association plan and operating and administrative expenses of the association until the association's next annual fiscal yearend assessment. Payment of an assessment is due within 30 days of receipt by an association member of a written notice of a fiscal yearend or interim assessment. Failure by a contributing member to tender to the association the assessment within 30 days is grounds for termination of membership. An association member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year during which disability insurance business ceased. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed $10.

(6) Any annual fiscal yearend or interim assessment levied against an association member may be offset, in an amount equal to the assessment paid to the association, against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual fiscal yearend or interim assessment is levied. The insurance commissioner shall, each year the legislature meets in regular session, on or before January 15, report to the legislature the total amount of premium tax offset claimed by association members during the preceding biennium."

Section 18. Section 33-23-302, MCA, is amended to read:

"**33-23-302. Cancellation or *alteration of policy* — increase of premium rates — sixty days' written notice required.** Any insurer who insures a physician and surgeon, dentist, registered nurse, nursing home administrator, registered physical therapist, podiatrist, licensed psychologist, osteopath, chiropractor, pharmacist, optometrist, or veterinarian, duly licensed ~~as such~~ under the laws of this state, or a licensed hospital or long-term care facility as the employer of any such person against liability for error, omission, professional negligence, or performance of services without consent ~~shall~~ *may* not cancel *or alter* the policy ~~so~~ insuring ~~such~~ *the* person or increase the premium rates thereon without first providing the insured 60 days' written notice of the insurer's intention to cancel *or alter* the policy or increase the premium rates."

Section 19. Section 61-12-303, MCA, is amended to read:

"**61-12-303. Requirements for license.** (1) ~~No license shall be issued by the~~ *The* commissioner *may not issue a license to a company* until the company has filed with him the following:

(a) a formal application in such form and detail as the commissioner may require, executed under oath by its president or other principal officer;

(b) a copy of the form of its contract;

(c) a certified copy of its charter or articles of incorporation and its bylaws, if any;

(d) a financial statement in such form and detail as the commissioner may require, executed on oath by its president or other principal officer;

(e) a certificate from the ~~state treasurer~~ *commissioner* that it has complied with 61-12-304 in all cases where a deposit of cash or a bond is required by this part;

(f) a certificate from the corporation commissioner of the state of Montana, in the event it be a corporation, that it has complied with the corporation laws of said state.

(2) ~~No license shall be issued by the~~ *The* commissioner *may not issue a license to a company* until the company has paid to the commissioner $100 as an annual license fee, or the pro rata portion thereof necessary to be paid to the end of the current calendar year from the date of the application for ~~such~~ *the* license.

(3) ~~No license shall be issued by the~~ *The* commissioner *may not issue a license to a company* until the company has satisfied him by ~~such~~ *an* examination ~~as he may make~~ and ~~such~~ evidence ~~as he~~ *the commissioner* may require, in his discretion, that ~~such~~ *the* company has complied with the laws of the state of Montana and that its management is trustworthy and competent."

Section 20. Section 61-12-304, MCA, is amended to read:

"**61-12-304. Deposits required.** ~~No license shall be granted~~ *The commissioner may not grant a license* to a company ~~as herein defined except as hereinafter stated~~ until it has deposited with the ~~state treasurer~~ *commissioner* the sum of $25,000 in cash or in lieu thereof a bond in a form prescribed by the commissioner payable to the state of Montana in the sum of $25,000, with surety approved by the commissioner, conditioned upon the faithful performance of its service contracts and payment of any fines or penalties levied against it for failure to comply with this part~~; provided, however, that~~. *However,* when any company~~, as herein defined, shall prove~~ *proves* to the commissioner that it has been in continuous, active operation in the state for a period of more than *the preceding* 5 years ~~immediately last past~~ and has a paid membership of more than 5,000 members within the state or that there are more than 5,000 holders of its service contracts within the state and that it is being properly managed, is rendering to its members the services promised to them, and is financially responsible, ~~no such~~ *the commissioner may not require a* cash deposit or bond ~~shall be required~~ while ~~such~~ *the* company remains in ~~such~~ *that* condition. The ~~foregoing~~ cash deposit or bond is not ~~required in any instance as~~ a penalty, but *is* for the protection of the public only."

Section 21. Section 61-12-305, MCA, is amended to read:

"61-12-305. ~~**Expiration**~~ ***Continuance*** **of license.** ~~Every~~ *Subject to payment by January 1 of each year of the annual license fee required under 61-12-303, each* license ~~issued hereunder shall expire annually on January 1 of each year unless sooner~~ *continues in force as long as the company is entitled to the license under this part or until the license is* revoked, ~~or~~ suspended, ~~as hereinafter provided~~ *or otherwise terminated.*"

Section 22. **Policy provisions — conformity with state statutes.** Each policy regulated by this part must contain a provision or the equivalent thereto as follows:

"Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy."

Section 23. **Casualty insurance policy — conformity with state statutes.** A casualty insurance policy relative to a risk resident, located, or to be performed in this state must contain a provision or the equivalent thereto as follows:

"Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy."

Section 24. **Property insurance policy — conformity with state statutes.** A property insurance policy relative to a risk resident, located, or to be performed in this state must contain a provision or the equivalent thereto as follows:

"Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy."

Section 25. Section 33-17-102, MCA, is amended to read:

"**33-17-102. Definitions.** As used in this title, the following definitions apply:

(1) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer. The term does not include a:

(a) licensed attorney who is qualified to practice law in this state;

(b) salaried employee of an insurer or of a managing general agent; or

(c) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer.

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on such coverage.

(b) The term does not mean:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims; or

(xi) a person who adjusts or settles claims in the normal course of his practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities.

(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.

(5) "Consultant" means a person who for a fee examines, appraises, reviews, or evaluates an insurance policy, annuity, or pension contract,

plan, or program or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.

(6) "Consultant license" means a document issued by the commissioner that authorizes a person to act as an insurance consultant.

(7) "Controlled business" means insurance procured or to be procured by or through a person upon the life, person, property, or risks of himself, his spouse, his employer, or his business.

(8) "Individual" means a private or natural person, as distinguished from a partnership, corporation, or association.

(9) "Insurance producer", except as provided in 33-17-103:

(a) means:

(i) a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:

(A) policies of insurance for risks residing, located, or to be performed in this state; or

(B) membership contracts as defined in 33-30-101;

(ii) a managing general agent. For purposes of this definition, a "managing general agent" is a person who, on behalf of an insurer, exercises general supervision over the business of the insurer in this state *or in any other state,* including the authority to contract with an insurance producer for the insurer and terminate those contracts.

(b) does not mean a customer service representative. For purposes of this definition, a "customer service representative" means a salaried employee of an insurance producer who assists and is responsible to the insurance producer.

(10) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the kinds of insurance specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

(11) "Person" means an individual, partnership, corporation, association, or other legal entity.

(12) "Public adjuster" means an adjuster employed by and representing the interests of the insured."

Section 26. Section 33-22-1511, MCA, is amended to read:

"33-22-1511. **Minimum benefits of association plan.** The association through the association plan shall offer a policy that provides at least the benefits ~~of a qualified plan as~~ required by 33-22-1521."

Section 27. Section 33-22-1512, MCA, is amended to read:

"**33-22-1512. Association plan premium.** The association shall establish the schedule of premiums to be charged eligible persons for membership in the association plan. The schedule of premiums may not be less than 150% or more than 400% of the average premium rates charged by the five ~~largest~~ insurers with the largest *premium amount of* individual ~~qualified plan~~ *plans* of *major medical* insurance in force in this state. The premium rates of the five insurers used to establish the premium rates for each type of coverage offered by the association must be determined by the commissioner from information provided annually by all insurers at the request of the commissioner. ~~The information requested must include the number of qualified plans or actuarial equivalent plans offered by each insurer, the rates charged by the insurer for each type of plan offered by the insurer, and any other information the commissioner considers necessary.~~ The association shall utilize generally acceptable actuarial principles and structurally compatible rates."

Section 28. Section 33-22-1514, MCA, is amended to read:

"**33-22-1514. Administration of association plan — rules.** ~~(1) Any member of the association may submit to the commissioner policies to be proposed to serve as the association plan. The commissioner shall prescribe by rule the time and manner of the submission.~~

~~(2)~~*(1)* ~~Upon the commissioner's approval of the policy forms and contracts submitted, the association shall select policies and contracts by a member or members of the association to be the association plan.~~ The association shall select one lead carrier to issue the ~~qualified plans~~ *association plan.* The board of directors of the association shall prepare appropriate specifications and bid forms and may solicit bids from licensed administrators and the members of the association for the purpose of selecting the lead carrier. The selection of the lead carrier must be based upon criteria established by the board of directors.

~~(3)~~*(2)* The lead carrier shall perform all administrative and claims payment functions required by this section upon the commissioner's approval of the policy forms and contracts submitted. The lead carrier shall provide these services for a period of at least 3 years, unless a request to terminate is approved by the association and the commissioner. The association and the commissioner shall approve or deny a request to terminate within 90 days of its receipt. A failure to make a final decision on a request to terminate within the specified period is considered an approval. The association shall invite submissions of policy forms from members of the association, including the lead carrier, 6 months prior to the expiration of each 3-year period. The association shall follow the procedure provided in subsection ~~(2)~~ *(1)* in selecting a lead carrier for the subsequent 3-year period or, if a request to terminate is approved, on or before the end of the 3-year period.

~~(4)~~*(3)* The lead carrier shall provide all eligible persons involved in the association plan an individual certificate setting forth a statement as to the insurance protection to which the person is entitled, the method and place of filing claims, and to whom benefits are payable. The certificate must indicate that coverage was obtained through the association.

~~(5)~~*(4)* The lead carrier shall submit to the association and the commissioner on a semiannual basis a report of the operation of the association plan. The association must determine the specific information to be contained in the report prior to the effective date of the association plan.

~~(6)~~*(5)* The lead carrier shall pay all claims pursuant to this part and shall indicate that the claim was paid by the association plan. Each claim payment must include information specifying the procedure involved in the event a dispute over the amount of payment arises.

~~(7)~~*(6)* The lead carrier must be reimbursed from the association plan premiums received for its direct and indirect expenses. Direct and indirect expenses include a prorated reimbursement for the portion of the lead carrier's administrative, printing, claims administration, management, and building overhead expenses, which are assignable to the maintenance and administration of the association plan. The association must approve cost accounting methods to substantiate the lead carrier's cost reports consistent with generally accepted accounting principles. Direct and indirect expenses may not include costs directly related to the original submission of policy forms prior to selection as the lead carrier.

~~(8)~~*(7)* The lead carrier is, when carrying out its duties under this part, an independent contractor for the association and is individually liable for its actions, subject to the laws of this state."

Section 29. Section 33-22-1515, MCA, is amended to read:

"**33-22-1515. Solicitation of eligible persons.** (1) The association, pursuant to a plan approved by the commissioner, shall disseminate appropriate information to the residents of this state regarding the existence of the association plan and the means of enrollment. Means of communication may include use of the press, radio, and television, as well as publication in appropriate state offices and publications.

(2) The association shall devise and implement means of maintaining public awareness of this part and shall administer this part in a manner which facilitates public participation in the association plan.

(3) All licensed disability insurance producers may engage in the selling or marketing of ~~qualified~~ *the* association ~~plans~~ *plan*. The lead carrier shall pay an insurance producer's referral fee of $25 to each licensed disability insurance producer who refers an applicant to the association plan, if the applicant is accepted. The referral fees must be paid ~~to~~ *by* the lead carrier from money received as premiums for the association plan.

(4) An insurer, society, or health service corporation that rejects or applies underwriting restrictions to an applicant for disability insurance must notify the applicant of the existence of the association plan, requirements for being accepted in it, and the procedure for applying to it."

Section 30. Section 33-22-1516, MCA, is amended to read:

"**33-22-1516. Enrollment by eligible person.** (1) The association plan must be open for enrollment by eligible persons. An eligible person may enroll in the plan by submission of a certificate of eligibility to the lead carrier. The certificate must provide:

(a) the name, address, and age of the applicant and length of the applicant's residence in this state;

(b) the name, address, and age of spouse and children, if any, if they are to be insured;

(c) written evidence that he fulfills all of the elements of an eligible person, as defined in 33-22-1501; and

(d) a designation of coverage desired.

(2) Within 30 days of receipt of the certificate, the lead carrier shall either reject the application for failing to comply with the requirements of subsection (1) or forward the eligible person a notice of acceptance and billing information. Insurance is effective on the first of the month following acceptance.

(3) An eligible person may not purchase more than one policy from the association plan.

(4) A person who obtains coverage pursuant to this section may not be covered for any preexisting condition during the first 12 months of coverage under the association plan if the person was diagnosed or treated for that condition during the 5 years immediately preceding the filing of an application. This subsection does not apply to a person who has had continuous coverage under an individual, family, or group policy during the year immediately preceding the filing of an application *and whose cancellation date was within 30 days prior to the date of submission of a certificate of eligibility to the lead carrier* for nonelective procedures.

(5) A change of residence from Montana to another state immediately terminates eligibility for renewal of coverage under the association plan."

Section 31. Section 33-22-1521, MCA, is amended to read:

"**33-22-1521. ~~Qualified~~ *Association* plan — minimum benefits.** A plan of health coverage must be certified as a ~~qualified~~ *association* plan if it otherwise meets the requirements of Title 33, chapters 15, 22 (excepting part 7), and 30, and other laws of this state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

(1) The minimum benefits for an insured must, subject to the other provisions of this section, be equal to at least 80% of the covered expenses required by this section in excess of an annual deductible that does not exceed $1,000 per person. The coverage must include a limitation of $5,000 per person on the total annual out-of-pocket expenses for services covered

under this section. Coverage must be subject to a maximum lifetime benefit, but such maximums may not be less than $100,000.

(2) Covered expenses must be the usual and customary charges for the following services and articles when prescribed by a physician or other licensed health care professional provided for in 33-22-111:

(a) hospital services;

(b) professional services for the diagnosis or treatment of injuries, illness, or conditions, other than dental;

(c) use of radium or other radioactive materials;

(d) oxygen;

(e) anesthetics;

(f) diagnostic x-rays and laboratory tests, except as specifically provided in subsection (3);

(g) services of a physical therapist;

(h) transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition;

(i) oral surgery for the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth or in connection with TMJ;

(j) rental or purchase of medical equipment, which shall be reimbursed after the deductible has been met at the rate of 50%, up to a maximum of $1,000;

(k) prosthetics, other than dental; and

(l) services of a licensed home health agency, up to a maximum of 180 visits per year.

(3) (a) Covered expenses for the services or articles specified in this section do not include:

(i) drugs requiring a physician's prescription;

(ii) services of a nursing home;

(iii) home and office calls, except as specifically provided in subsection (2);

(iv) rental or purchase of durable medical equipment, except as specifically provided in subsection (2);

(v) the first $20 of diagnostic x-ray and laboratory charges in each 14-day period;

(vi) oral surgery, except as specifically provided in subsection (2);

(vii) that part of a charge for services or articles which exceeds the prevailing charge in the locality where the service is provided; or

(viii) care that is primarily for custodial or domiciliary purposes which would not qualify as eligible services under medicare.

(b) Covered expenses for the services or articles specified in this section do not include charges for:

(i) care or for any injury or disease either arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable under another policy of disability insurance or medicare;

(ii) treatment for cosmetic purposes other than surgery for the repair or treatment of an injury or congenital bodily defect to restore normal bodily functions;

(iii) travel other than transportation provided by a licensed ambulance service to the nearest facility qualified to treat the condition;

(iv) confinement in a private room to the extent it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician;

(v) services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles;

(vi) organ transplants, *including bone marrow transplants*;

(vii) room and board for a nonemergency admission on Friday or Saturday;

(viii) pregnancy, except complications of pregnancy;

(ix) routine well baby care;

(x) complications to a newborn, unless no other source of coverage is available;

(xi) sterilization or reversal of sterilization;

(xii) abortion, unless the life of the mother would be endangered if the fetus were carried to term;

(xiii) weight modification or modification of the body to improve the mental or emotional well-being of an insured;

(xiv) artificial insemination or treatment for infertility; or

(xv) breast augmentation or reduction."

Section 32. Section 33-1-704, MCA, is amended to read:

"**33-1-704. Hearing procedure.** (1) All hearings shall be open to the public unless closed pursuant to the provisions of 2-3-203.

(2) The commissioner shall allow any party to the hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence and to examine witnesses, to present evidence in support of his interest, and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence in his behalf.

(3) The commissioner shall permit to become a party to the hearing by intervention, if timely, any person who was not an original party thereto and whose pecuniary interests will be directly and immediately affected by the commissioner's order made upon the hearing.

(4) Except as provided in 33-31-404, rules of pleading ~~or evidence~~ need not be observed at any hearing, *but the rules of evidence must be observed.*

(5) Upon written request seasonably made by a party to the hearing and at that person's expense, the commissioner shall cause a full stenographic record of the proceedings to be made by a competent reporter. If transcribed, a copy of such stenographic record shall be furnished to the commissioner without cost to the commissioner or the state and shall be a part of the commissioner's record of the hearing. If so transcribed, a copy of such stenographic record shall be furnished to any other party to such hearing at the request and expense of such other party. If no stenographic record is made or transcribed, the commissioner shall prepare an adequate record of the evidence and of the proceedings."

Section 33. Section 33-22-229, MCA, is amended to read:

"**33-22-229. Conformity with state statutes.** There must be a provision *or the equivalent thereto* as follows:

"Conformity with ~~State Statutes~~ *Montana statutes*: ~~Any provision of this policy which on its effective date is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.~~ *The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy.*""

Section 34. **Repealer.** Section 33-22-1522, MCA, is repealed.

Section 35. **Name change — short form amendment.** Wherever it appears in 33-7-519, 33-17-206, 33-18-210, and 33-18-501 or in insurance laws enacted by the 52nd legislature, the code commissioner is directed to change the term "solicitor" to "insurance producer".

Section 36. **Codification instruction.** (1) [Section 22] is intended to be codified as an integral part of Title 33, chapter 20, parts 1 and 12, and the provisions of Title 33, chapter 20, parts 1 and 12, apply to [section 22].

(2) [Section 23] is intended to be codified as an integral part of Title 33, chapter 23, part 1, and the provisions of Title 33, chapter 23, part 1, apply to [section 23].

(3) [Section 24] is intended to be codified as an integral part of Title 33, chapter 24, part 1, and the provisions of Title 33, chapter 24, part 1, apply to [section 24].

Approved May 17, 1991.

CHAPTER NO. 799

[SB 37]

AN ACT REQUIRING COUNTIES TO PROVIDE YOUTH DETENTION SERVICES; AUTHORIZING ESTABLISHMENT OF REGIONAL DETENTION FACILITIES; DEFINING COUNTY RESPONSIBILITIES FOR THE COST OF PLACING A YOUTH IN A COUNTY OR REGIONAL DETENTION FACILITY; PROVIDING STATE GRANTS TO FUND COUNTY YOUTH DETENTION SERVICES, INCLUDING YOUTH DETENTION FACILITIES, HOLDOVERS, SHORT-TERM DETENTION CENTERS, AND PROGRAMS FOR THE TRANSPORTATION OF YOUTH TO REGIONAL DETENTION FACILITIES; REQUIRING STATE APPROVAL OF COUNTY PLANS FOR PROVIDING YOUTH DETENTION SERVICES AS A CONDITION OF PROVIDING STATE GRANTS TO COUNTIES; LIMITING STATE GRANTS FOR COUNTY YOUTH DETENTION SERVICES; PROVIDING THE BOARD OF CRIME CONTROL AUTHORITY TO ADOPT RULES; CLARIFYING USE OF THE TAX ON DANGEROUS DRUGS TO FUND YOUTH DETENTION SERVICES; STATUTORILY APPROPRIATING A PORTION OF LOTTERY PROCEEDS TO FUND STATE GRANTS TO COUNTIES FOR YOUTH DETENTION SERVICES; AMENDING SECTIONS 15-25-122, 23-5-1007, 23-5-1027, 41-3-1103, 41-5-103, 41-5-105, 41-5-306, 41-5-308, 41-5-802, AND 41-5-809, MCA; AMENDING SECTIONS 14 AND 17, CHAPTER 434, LAWS OF 1989; REPEALING SECTIONS 41-5-315, 41-5-316, AND 41-5-808, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 14] grants the board of crime control authority to adopt rules necessary to implement provisions of this bill.

It is the intent of the legislature, in enacting this bill, to provide alternatives to the detention of youth in adult jails in order to meet the requirements of Senate Bill No. 38, which prohibits the detention of youth in adult jails.

In order to ensure that alternatives to jail are established, the legislature intends that each county have the primary responsibility to provide youth detention services, as required by [section 2]. In addition, in order to stimulate the development of needed services, the legislature intends to provide state grants authorized in [section 8], using state and federal funds, to assist counties in providing a spectrum of services for the detention and care of youth. These services are intended to include but are not limited to youth detention facilities, short-term detention centers, holdovers, attendant care, home detention, and programs for the transportation of youth to regional detention facilities.

The legislature intends that counties receiving state grants should share in the costs of services in order to prevent excessive utilization of services and to give counties a financial incentive to hold down program costs. For this reason, [section 10] requires that state grants be provided on a matching basis or, if in a block grant, based on a percentage of the approved cost of services.

In order to discourage the use of secure detention and to promote the use of less costly, nonsecure community-based programs, the legislature intends to provide state grants to counties at a higher rate of payment for such services, including holdovers, attendant care, and other alternatives to secure detention.

The legislature further intends that, as a condition of receiving state grants under [section 8], each county shall develop a written plan for providing youth detention services, including alternatives to secure detention. The development of county plans is required to ensure that formal planning does, in fact, occur and to make certain that state grants are not provided for services that are not well planned in advance.

As a further condition of receiving state grants under [section 8], each county shall, within a reasonable period of time, demonstrate compliance or substantial compliance with state law and policies contained in the Montana Youth Court Act relating to the detention and placement of youth. The legislature intends that the board of crime control review and monitor counties receiving grants under [section 8] to assure compliance or substantial compliance with the Montana Youth Court Act.

Finally, the legislature intends that the board of crime control adopt rules as authorized in [section 14]. In adopting rules, the board may:

(1) establish requirements for approved holdovers consistent with the definition of holdovers provided in 41-5-103(13);

(2) designate geographical areas of the state that are eligible for creation of a youth detention region under [section 4]. In designating these areas, the board shall use available state data showing the number of youth held in detention in each county of the state.

(3) adopt procedures governing the distribution and allocation of funds in accordance with [sections 10 and 11];

(4) provide a system to review and monitor counties under [section 9] to assure that counties receiving grants are in compliance or substantial compliance with the Montana Youth Court Act;

(5) provide standards for determining compliance or substantial compliance with the Montana Youth Court Act pursuant to [section 9]. These standards should be based upon comparable standards for compliance with sections 223(a)(12) and 223(a)(14) of the federal Juvenile Justice and Delinquency Prevention Act of 1974.

(6) establish a process for providing notice and fair hearings required under [section 9] in order to terminate state grants to counties that fail to attain compliance or substantial compliance with the Montana Youth Court Act.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-103, MCA, is amended to read:

"41-5-103. **Definitions.** ~~For the purposes of~~ *As used in* the Montana Youth Court Act, unless *the context requires* otherwise ~~stated~~, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(6) "Delinquent youth" means a youth:

(a) who has committed an offense that if committed by an adult, would constitute a criminal offense; or

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

~~(5)~~*(7)* "Department" means the department of family services provided for in 2-15-2401.

(8) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of his case.

(9) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(10) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-523.

~~(6)~~*(11)* "Foster home" means a private residence licensed by the department for placement of a youth.

~~(7)~~*(12)* "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(13) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(14) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

~~(8)~~*(15)* "Judge", when used without further qualification, means the judge of the youth court.

~~(9)~~*(16)* (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(17) "Necessary parties" includes the youth, his parents, guardian, custodian, or spouse.

~~(10)~~*(18)* "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(19) "Probable cause hearing" means the hearing provided for in 41-5-303.

(20) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in [section 3].

(21) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.

(22) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(23) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(24) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-306(1).

(25) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 96 hours, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility or shelter care facility.

(26) "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school in Helena.

(27) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

~~(11)~~*(28)* "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

~~(12)~~*(29)* "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court judge and probation officers.

(30) "Youth detention facility" means a detention facility licensed by the department for the temporary substitute care of youth that:

(a) is operated, administered, and staffed separately and independently of a jail; and

(b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.

~~(13) "Delinquent youth" means a youth:~~

~~(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;~~

~~(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.~~

(31) "Youth in need of care" has the meaning provided for in 41-3-102.

~~(14)~~*(32)* "Youth in need of supervision" means a youth who commits an offense prohibited by law ~~which~~ *that,* if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) habitually disobeys the reasonable and lawful demands of his parents, foster parents, physical custodian, or guardian or is ungovernable and beyond their control;

(c) being subject to compulsory school attendance, is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

~~(15) "Youth in need of care" means a youth as defined in 41-3-102.~~

~~(16) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given but does not include a person who has only physical custody.~~

~~(17) "Necessary parties" include the youth, his parents, guardian, custodian, or spouse.~~

~~(18) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills school in Miles City, and Mountain View school in Helena.~~

~~(19) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.~~

~~(20) "Detention" means the temporary substitute care of youth in physically restricting facilities.~~

~~(21) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will.~~

~~(22) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.~~

~~(23) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety,~~

~~guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.~~

~~(24) "Serious juvenile offender" means a youth who has committed an offense against the person, an offense against property, or an offense involving dangerous drugs which would be considered a felony offense if committed by an adult.~~"

Section 2. **County responsibility to provide youth detention services.** (1) Each county shall provide services for the detention of youth in facilities separate from adult jails.

(2) In order to fulfill its responsibility under subsection (1), a county may:

(a) establish, operate, and maintain a holdover, a short-term detention center, or a youth detention facility at county expense;

(b) provide shelter care facilities as authorized in 41-5-802;

(c) contract with another county for the use of an available shelter care facility, holdover, short-term detention center, or youth detention facility;

(d) establish and operate a network of holdovers in cooperation with other counties;

(e) establish a regional detention facility; or

(f) enter into an agreement with a private party under which the private party will own, operate, or lease a shelter care facility or youth detention facility for use by the county. The agreement may be made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.

(3) Each county or regional detention facility must be licensed by the department in accordance with rules adopted under 41-5-809.

Section 3. **Regional detention facilities.** (1) Two or more counties may, by contract, establish and maintain a regional detention facility.

(2) For the purpose of establishing and maintaining a regional detention facility, a county may:

(a) issue general obligation bonds for the acquisition, purchase, construction, renovation, and maintenance of a regional detention facility;

(b) levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping, operating, and maintaining the facility; and

(c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry out the purposes of [section 2] and this section.

(3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(4) Contracts between counties participating in a regional detention facility must be for a term of not less than 10 years. In addition, the contracts must:

(a) specify the responsibilities of each county participating in the agreement;

(b) designate responsibility for operation of the regional detention facility;

(c) specify the amount of funding to be contributed by each county toward payment of the cost of establishing, operating, and maintaining the regional detention facility, including the necessary expenditures for the transportation of youth to and from the facility;

(d) include the applicable per diem charge for the detention of youths in the facility, as well as the basis for any adjustment in the charge; and

(e) specify the number of beds to be reserved for the use of each county participating in the regional detention facility.

Section 4. **Creation of regions — requirements — limitation on number of regions.** (1) Counties that wish to establish a regional detention facility shall form a youth detention region.

(2) Each youth detention region must:

(a) be composed of contiguous counties participating in the regional detention facility; and

(b) include geographical areas of the state that contain a substantial percentage of the total youth population in need of detention services, as determined by the board of crime control.

(3) There may be no more than five youth detention regions established in the state at any one time.

Section 5. **Contracts with nonparticipating counties.** Counties participating in a regional detention facility may enter into agreements with nonparticipating counties to provide services for the detention of youth. The costs of services must be based upon a per diem charge for the detention of youth in the facility.

Section 6. **Responsibility for payment of detention costs.** Absent a contract or agreement between counties, all costs for the detention of a youth in a county or regional detention facility, including medical costs incurred by the youth during detention, must be paid by the county at whose instance the youth is detained.

Section 7. **Definitions.** As used in [sections 7 through 14], unless the context requires otherwise, the following definitions apply:

(1) "Attendant care" means the direct supervision of youth by a trained attendant in a physically unrestricting setting.

(2) "Board" means the board of crime control provided for in 2-15-2006.

(3) "County" means a county, city-county consolidated government, or a youth detention region created pursuant to [section 4].

(4) "Home detention" means the use of a youth's home for the purpose of ensuring the continued custody of the youth pending adjudication or final disposition of his case.

(5) "Plan" means a county plan for providing youth detention services as required in [section 9].

(6) "Secure detention" means the detention of youth in a physically restricting facility designed to prevent a youth from departing at will.

(7) "Youth detention service" means service for the detention of youth in facilities separate from adult jails. The term includes the services described in [section 8].

Section 8. **State grants to counties.** (1) Within the limits of available funds, the board shall provide grants in accordance with [sections 9 through 11] to assist counties in establishing and operating youth detention services, including but not limited to youth detention facilities, short-term detention centers, holdovers, attendant care, home detention, and programs for the transportation of youth to regional detention facilities.

(2) Grants available under subsection (1) consist of state appropriations and federal funds received by the board for the purpose of administering [sections 7 through 11].

Section 9. **Application for grants — county plans — obligation of counties receiving grants — review and monitoring.** (1) In order to receive funds under [section 8], a county shall submit an application to the board in a manner and form prescribed by the board.

(2) The application must include a written plan for providing youth detention services in the county. Each plan must include:

(a) an assessment of the need for services;

(b) a description of services to be provided, including alternatives to secure detention;

(c) the estimated number of youth who will receive services;

(d) criteria for the placement of youth in secure detention; and

(e) a budget describing proposed expenditures for youth detention services.

(3) If the application and plan are approved by the board, the county may receive a grant in the amount provided for in [section 10].

(4) As a condition of receiving funds under [section 8], each county shall, within a reasonable period of time, comply or substantially comply

with state law and policies contained in the Montana Youth Court Act concerning the detention and placement of youth.

(5) The board shall periodically review and monitor counties receiving grants under [section 8] to assure compliance or substantial compliance with the Montana Youth Court Act, as required under subsection (4). If, after notice and fair hearing, the board determines that a county is not in compliance or substantial compliance with the Montana Youth Court Act, the board shall terminate the grant to the county.

Section 10. **Distribution of grants — limitation of funding — restrictions on use.** (1) The board shall award grants on an equitable basis, giving preference to services that will be used on a regional basis.

(2) The board shall award grants to eligible counties:

(a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure detention; or

(b) on a matching basis in an amount not to exceed:

(i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to secure detention, except for shelter care. Shelter care must be paid as provided by law.

(ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention or shelter care facilities, including regional detention facilities.

(3) Grants under [section 8] may not be used to pay for the cost of youth evaluations. The cost of evaluations must be paid as provided for in 41-5-523.

Section 11. **Allocation of grants.** (1) Each fiscal year, the board shall allocate grants under [section 8] for distribution to eligible counties based upon:

(a) the relative population of youth residing in geographical areas of the state, as determined by the board; and

(b) the estimated cost of youth detention services in each county eligible for funding under [section 8].

(2) A county is not automatically entitled to receive a grant from funds available under [section 8].

Section 12. **Amendment of state plan.** The board shall amend the state plan required under section 223 of the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5633), to reflect the contents of approved county plans for providing youth detention services.

Section 13. **Compliance with federal requirements.** The board shall administer federal funds available under section 222 of the federal

Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5632), in compliance with the requirements of 42 U.S.C. 5633(a)(21) and 42 U.S.C. 5674.

Section 14. **Rulemaking authority.** The board may adopt rules necessary to implement the provisions of 41-5-103(13), [section 4], and [sections 7 through 14].

Section 15. Section 15-25-122, MCA, is amended to read:

"**15-25-122. Disposition of proceeds.** (1) The department shall transfer all taxes collected pursuant to this chapter, less the administrative fee authorized in 15-25-111(1), to the state treasurer on a monthly basis.

(2) The state treasurer shall deposit one-third of the tax to the credit of the department of family services to be used for the youth evaluation program and chemical abuse aftercare programs.

(3) The treasurer shall credit the remaining two-thirds of the tax proceeds as follows:

(a) one-half to the department of justice to be used*:*

(i) for grants to youth courts to fund chemical abuse assessments*;* and

(ii) for grants to counties to fund services for the detention of juvenile offenders in facilities separate from adult jails, *as authorized in [section 8]*; and

(b) one-half to the account created by 44-12-206(3) if a state government law enforcement agency seized the drugs. If a local government law enforcement agency seized the drugs, then that amount must be credited to the treasurer or finance officer of the local government, be deposited in its general fund, and be used to enforce drug laws."

Section 16. Section 23-5-1027, MCA, is amended to read:

"**23-5-1027. Disposition of revenue.** (1) A minimum of 45% of the money paid for tickets or chances must be paid out as prize money. The prize money is statutorily appropriated, as provided in 17-7-502, to the lottery.

(2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

(3) That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund, is net revenue ~~and~~. *Except for the amount required to be paid under subsection (5), net revenue* must be paid quarterly from the enterprise fund established by 23-5-1026 to the superintendent of public instruction for distribution as state equalization aid to the public schools of Montana as provided in 20-9-343. The net revenue is statutorily appropriated, as provided in 17-7-502, to the superintendent of public instruction.

(4) The spending authority of the lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the budget office.

(5) (a) For the fiscal year beginning July 1, 1991, 1.6% of the net revenue derived under subsection (3) must be paid quarterly to the board of crime control.

(b) For the fiscal year beginning July 1, 1992, and thereafter, 9.1% of the net revenue derived under subsection (3), but not to exceed $1 million in any fiscal year, must be paid to the board of crime control.

(c) All money paid to the board of crime control under this subsection (5) must be used to fund state grants to counties for youth detention services as authorized in [section 8]. The revenue is statutorily appropriated, as provided in 17-7-502, to the board of crime control."

Section 17. Section 23-5-1007, MCA, is amended to read:

"**23-5-1007. Powers and duties of commission.** The commission shall:

(1) establish and operate a state lottery and may not become involved in any other gambling or gaming;

(2) determine policies for the operation of the state lottery, supervise the director and his staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the state lottery, and transact other necessary business;

(3) maximize the net revenue paid to the superintendent of public instruction *and to the board of crime control* under 23-5-1027 and ensure that all policies and rules adopted further revenue maximization;

(4) subject to 23-5-1027(1), determine the percentage of the money paid for tickets or chances to be paid out as prizes;

(5) determine the price of each ticket or chance and the number and size of prizes;

(6) provide for the conduct of drawings of winners of lottery games;

(7) carry out, with the director, a continuing study of the state lotteries of Montana and other states to make the state lottery more efficient, profitable, and secure from violations of the law;

(8) study and may enter into agreements with other lottery states to offer lottery games;

(9) prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to this

part, and deliver a copy of each report to the governor, the department of administration, the legislative auditor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house; and

(10) adopt rules relating to lottery staff sales incentives or bonuses and sales agents' commissions and any other rules necessary to carry out this part."

Section 18. Section 41-3-1103, MCA, is amended to read:

"**41-3-1103. Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, *and* child-care agencies~~, and detention facilities and services~~ for youth in need of care, youth in need of supervision, and delinquent youth, as defined in 41-5-103;

(b) exercise licensing authority over all ~~detention facilities as defined in 41-5-103,~~ youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and delinquent youth;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of supervision, and indigent delinquent youths who require such treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide ~~facilities and services~~ *substitute care* for youth in need of care, youth in need of supervision, and delinquent youth *in youth care facilities*;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in such facilities."

Section 19. Section 41-5-105, MCA, is amended to read:

"**41-5-105. Youth court committee.** In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three or more than seven reputable citizens, including youth representatives~~, which committee shall~~. *The committee must* be designated as a youth court committee. This committee shall ~~be~~ *meet* subject to the call of the judge ~~to meet and~~ *to* confer with him on all matters pertaining to the youth department of the court, including the appointment of probation officers, and shall act as a supervisory committee of youth detention ~~homes~~ *facilities*."

Section 20. Section 41-5-306, MCA, is amended to read:

"**41-5-306.** *(Temporary)* **Place of shelter care or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only in:

(a) a licensed youth foster home as defined in 41-3-1102;

(b) a facility operated by a licensed child welfare agency; or

(c) a licensed youth group home as defined in 41-3-1102.

(2) A youth alleged to be *a youth* in need of care ~~shall~~ *may* be placed only in the facilities stated in subsection (1) ~~of this section~~ and ~~shall~~ *may* not be placed in a jail or other facility intended or used for the ~~detention~~ *confinement* of adults ~~charged with~~ *accused or convicted of* criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in*:*

(a) the facilities described in subsection (1)~~, in~~*;*

(b) a short-term detention facility;

(c) a *youth* detention facility~~, or in~~*; or*

(d) a jail or other facility for the ~~detention~~ *confinement* of adults *but* only if ~~the facilities in subsection (1)~~*:*

(i) alternative facilities are not available or *available facilities* do not provide adequate security*;* and

(ii) ~~the detention is in an area physically and visually separate and removed from that of adults~~ *the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses. (Terminates July 1,* ~~*1991*~~ *1992—sec. 14, Ch. 434, L. 1989.)*"

Section 21. Section 41-5-306, MCA, is amended to read:

"**41-5-306.** *(Effective July 1,* ~~*1991*~~ *1992)* **Place of shelter care or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only in:

(a) a licensed youth foster home as defined in 41-3-1102;

(b) a facility operated by a licensed child welfare agency; or

(c) a licensed youth group home as defined in 41-3-1102.

(2) A youth alleged to be *a youth* in need of care ~~shall~~ *may* be placed only in the facilities stated in subsection (1) ~~of this section~~ and ~~shall~~ *may* not be placed in a jail or other facility intended or used for the ~~detention~~ *confinement* of adults ~~charged with~~ *accused or convicted of* criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in*:*

(a) the facilities described in subsection (1) ~~or in~~*;*

(b) a short-term detention facility; or

(c) a *youth* detention facility ~~as defined in 41-5-103~~."

Section 22. Section 41-5-308, MCA, is amended to read:

"**41-5-308. Placement of youth before probable cause hearing.** (1) Before the probable cause hearing, a youth alleged to be a delinquent youth may be held in a jail or other facility for adults only if:

(a) ~~the~~ *alternative* facilities ~~in 41-5-306~~ are not available or *available facilities* do not provide adequate security;

(b) ~~the placement is in an area physically, aurally, and visually separate from those of adults~~ *the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses*; and

(c) it appears that public safety and protection reasonably require the youth to be held.

(2) The official in charge of a jail or other facility for the ~~detention~~ *confinement* of adult offenders ~~or persons charged with a crime~~ shall inform

the court immediately if a person who is or appears to be under the age of 18 years is received at the facility."

Section 23. Section 41-5-802, MCA, is amended to read:

"**41-5-802. Shelter care ~~and detention~~ facilities.** ~~(1) The county commissioners in each county shall provide for the availability of detention facilities for youths.~~

~~(2) (a) The county commissioners may maintain, by purchase, lease, or otherwise, a detention facility, which may not be used for the confinement of adult persons charged with criminal offenses, where delinquent youths may be detained until final disposition.~~

~~(b) The county commissioners may appoint necessary personnel who have charge of the facility and of the youths detained therein.~~

~~(c) The compensation of the personnel must be fixed by the county commissioners, and the compensation and the maintenance of the facility must be paid out of the county treasury. These funds may be supplemented by state appropriation and federal funds.~~

~~(d) The county commissioners shall provide for inspection of any county detention facility every 3 months. Inspection must include but is not limited to health, fire safety, security, rehabilitation programs, recreation, treatment of youths, and personnel training.~~

~~(e) The judge of the youth court for the county shall inspect any detention facility at least once a year.~~

~~(3) The county commissioners may contract with the department or public or private agencies to purchase detention services.~~

~~(4) (a)~~*(1)* Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

~~(b) The~~ *(2) A shelter care* facility must be physically unrestricting and may be used to provide shelter care for youth alleged or adjudicated delinquent, in need of supervision, or in need of care.

~~(c) The~~ *(3) A shelter care* facility must be separate and apart from any facility housing adults ~~charged with~~ *accused or convicted of* criminal offenses.

~~(d)~~*(4)* State appropriations and federal funds may be received by the counties, cities, or nonprofit corporations for establishment, maintenance, or operation of ~~the~~ *a shelter care* facility.

~~(e) The~~ *(5) A shelter care* facility must be furnished in a comfortable manner and be as nearly as possible like a family home.

~~(f) The~~ *(6) A shelter care* facility may be operated in conjunction with a *youth* detention facility."

Section 24. Section 41-5-809, MCA, is amended to read:

"41-5-809. **Rules.** The department shall adopt rules governing ~~the:~~

~~(1)~~ licensing procedures for regional and county detention facilities~~; and~~

~~(2) procedures for distributing funds for detention facilities and services as provided in 41-5-315 and 41-5-316~~."

Section 25. Section 14, Chapter 434, Laws of 1989, is amended to read:

"Section 14. Section 16, Chapter 475, Laws of 1987, is amended to read:

"Section 16. **Effective dates — termination date.** (1) Except as provided in subsections (2) and (3), sections 1 through 13 are effective October 1, 1987.

(2) The bracketed language in subsection (5) of section 1 is effective July 1, ~~1991~~ *1992.*

(3) The bracketed language in subsection (3) of section 9 terminates July 1, ~~1991~~ *1992.*""

Section 26. Section 17, Chapter 434, Laws of 1989, is amended to read:

"Section 17. **Effective** ~~date~~ ***dates.*** ~~[Sections 5 and 7 of this act] are~~ *(1) [Section 7] is* effective July 1, 1991.

(2) [Section 5] is effective July 1, 1992."

Section 27. **Repealer.** Sections 41-5-315, 41-5-316, and 41-5-808, MCA, are repealed.

Section 28. **Codification instruction.** (1) [Sections 2 through 6] are intended to be codified as an integral part of Title 41, chapter 5, part 8, and the provisions of Title 41, chapter 5, part 8, apply to [sections 2 through 6].

(2) [Sections 7 through 14] are intended to be codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to [sections 7 through 14].

Section 29. **Coordination instruction.** If this bill and either Senate Bill No. 38 or Senate Bill No. 59 are passed and approved, then the definition of "youth in need of supervision" contained in the amendment to 41-5-103 in Senate Bill No. 38 and Senate Bill No. 59 is amended to read:

""Youth in need of supervision" means a youth who commits an offense prohibited by law that, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) habitually disobeys the reasonable and lawful demands of his parents, foster parents, physical custodian, or guardian or is *ungovernable and* beyond control;

(c) being subject to compulsory school attendance, is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of supervision."

Section 30. **Effective dates.** (1) [Sections 1 through 20 and 22 through 28] are effective July 1, 1991.

(2) [Section 21] is effective July 1, 1992.

(3) [Section 29 and this section] are effective on passage and approval.

Approved May 17, 1991.

CHAPTER NO. 800

[SB 51]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO CRIMINAL PROCEDURE; AMENDING SECTIONS 46-3-101, 46-3-102, 46-3-104, 46-3-105, 46-3-106, 46-4-101, 46-4-102, 46-4-103, 46-4-104, 46-4-201, 46-4-202, 46-4-203, 46-4-204, 46-4-205, 46-4-206, 46-4-301, 46-4-302, 46-4-303, 46-4-304, 46-4-305, 46-6-404, 46-6-302, 46-6-303, 46-6-304, 46-6-401, 46-6-202, 46-6-203, 46-6-106, 46-6-104, 46-6-105, 46-6-421, 46-6-403, 46-6-402, 46-6-411, 46-6-502, 46-5-401, 46-5-402, 46-5-502, 46-5-101, 46-5-103, 46-5-202, 46-5-203, 46-5-205, 46-5-206, 46-5-208, 46-5-209, 46-5-301, 46-5-207, 46-5-204, 46-5-303, 46-5-304, 46-8-101, 46-8-102, 46-8-103, 46-8-111, 46-8-113, 46-8-114, 46-8-115, 46-8-201, 46-9-103, 46-9-501, 46-9-202, 46-9-302, 46-9-401, 46-9-403, 46-9-412, 46-9-414, 46-9-503, 46-9-205, 46-9-504, 46-7-101, 46-7-102, 46-7-103, 46-10-102, 46-10-202, 46-10-203, 46-10-204, 46-11-101, 46-11-102, 46-11-201, 46-11-403, 46-11-203, 46-11-301, 46-11-302, 46-11-303, 46-11-311, 46-11-313, 46-11-314, 46-11-315, 46-11-316, 46-11-317, 46-11-318, 46-11-319, 46-11-331, 46-11-332, 46-11-401, 46-11-404, 46-11-502, 46-11-503, 46-11-504, 46-11-505, 46-12-102, 46-12-201, 46-12-204, 46-12-202, 46-12-206, 46-15-322, 46-15-323, 46-15-324, 46-15-325, 46-15-327, 46-15-328, 46-15-329, 46-15-331, 46-15-201, 46-15-202, 46-15-204, 46-14-101, 46-14-102, 46-14-103, 46-14-202, 46-14-212, 46-14-203, 46-14-213, 46-14-201, 46-14-401, 46-14-221, 46-14-222, 46-14-301, 46-14-302, 46-14-303, 46-14-304, 46-14-311, 46-14-312, 46-14-313, 46-13-101, 46-13-104, 46-18-503, 46-13-302, 46-13-301, 46-13-203, 46-13-201, 46-13-106, 46-15-101, 46-15-102, 46-15-112, 46-15-113, 46-15-103, 46-15-104, 46-15-114, 46-16-102, 46-16-301, 46-16-302, 46-16-303, 46-16-304, 46-16-305, 46-16-307, 46-16-201, 46-16-601, 46-16-212, 46-16-213, 46-16-401, 46-16-402, 46-16-403, 46-16-501, 46-16-502, 46-16-503, 46-16-504, 46-16-505, 46-16-603, 46-16-605, 46-16-701, 46-16-702, 46-17-201, 46-17-202, 46-17-311, 46-18-111, 46-18-112, 46-18-113, 46-18-203, 46-21-101, 46-21-102, 46-21-103, 46-21-104, 46-21-105, 46-21-201, 46-21-202, 46-21-203, 46-22-101, 46-22-102, 46-22-201, 46-22-202, 46-22-203, 46-22-204, 46-22-205, 46-22-206, 46-22-301, 46-22-302, 46-22-303, 46-22-304, 46-22-305, 46-22-306, 46-22-307, 1-1-202, 1-1-207, 7-16-2322, 7-32-201, 7-32-233, 7-32-4303, 16-11-147, 37-60-406, 44-11-303, 45-5-206, 45-8-209, 46-4-306, 46-10-201, 46-15-326, AND 46-16-103, MCA; AND REPEALING SECTIONS 46-1-101, 46-1-102, 46-1-201, 46-3-103, 46-3-201, 46-3-202, 46-3-203, 46-3-204, 46-3-205, 46-3-206, 46-5-104, 46-5-201, 46-5-302, 46-5-501, 46-5-503, 46-5-504, 46-5-505, 46-6-101, 46-6-103, 46-6-301, 46-6-501, 46-6-503, 46-8-112, 46-9-101, 46-9-204, 46-9-303, 46-9-404, 46-9-411, 46-9-413, 46-10-101, 46-11-202, 46-11-204, 46-11-312, 46-11-333, 46-11-402, 46-11-501, 46-12-101, 46-12-103, 46-13-102, 46-13-103, 46-13-105, 46-15-111, 46-15-203, 46-15-321, 46-15-401, AND 46-16-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Scope — purpose — construction.** (1) This title governs the practice and procedure in all criminal proceedings in the courts of Montana except where provision for a different procedure is specifically provided by law.

(2) This title is intended to provide for the just determination of every criminal proceeding. The purposes of this title are to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay.

(3) Any irregularity in a proceeding specified by this title that does not affect the substantial rights of the accused must be disregarded.

Section 2. **Definitions.** As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering a charge.

(2) "Arrest" means taking a person into custody in the manner authorized by law.

(3) "Arrest warrant" means a written order from a court directed to a peace officer or to some other person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.

(4) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.

(5) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

(6) "Concealment" means any act or deception done purposely or knowingly upon or outside the premises of a wholesale or retail store or other mercantile establishment with the intent to deprive the merchant of all or part of the value of the merchandise.

(7) "Conviction" means a judgment or sentence entered upon a guilty plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(8) "Court" means a place where justice is judicially administered and includes the judge of the court.

(9) "Included offense" means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or

(c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

(10) "Judge" means a person who is vested by law with the power to perform judicial functions.

(11) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(12) "Make available for examination and reproduction" means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make other or additional arrangements.

(13) "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

(14) "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

(15) "Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions.

(16) "Parole" means the release to the community of a prisoner by a decision of the board of pardons prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and the supervision of the department of institutions.

(17) "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person's authority.

(18) "Persistent felony offender" means an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either:

(i) the previous felony conviction; or

(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and

(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at the postconviction hearing.

(19) "Place of trial" means the geographical location and political subdivision in which the court that will hear the cause is situated.

(20) "Preliminary examination" means a hearing before a judge for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

(21) "Probation" means release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the department of institutions upon direction of the court.

(22) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

(23) "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

(a) a purpose to accomplish a criminal objective and that are necessary or incidental to the accomplishment of that objective; or

(b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the same person or the property of the same person.

(24) "Search warrant" means an order that is:

(a) in writing;

(b) in the name of the state;

(c) signed by a judge;

(d) a particular description of the place, object, or person to be searched and the evidence, contraband, or person to be seized; and

(e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or persons.

(25) "Sentence" means the judicial disposition of a criminal proceeding upon a plea, verdict, or finding of guilty.

(26) "Statement" means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a video or audio recording of a person's communications or a transcript of the communications; and

(c) a writing containing a summary of a person's oral communications or admissions.

(27) "Summons" means a written order issued by the court that commands a person to appear before a court at a stated time and place to answer a charge for the offense set forth in the order.

(28) "Superseded notes" means handwritten notes, including field notes, that have been substantially incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except as provided in 46-15-324.

(29) "Temporary road block" means any structure, device, or means used by a peace officer for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

(30) "Witness" means a person whose testimony is desired in a proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(31) "Work product" means legal research, records, correspondence, reports, and memoranda, both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel, or their staff or investigators.

Section 3. **Filing the charge.** In all criminal prosecutions, the charge must be filed in the county where the offense was committed unless otherwise provided by law.

Section 4. Section 46-3-101, MCA, is amended to read:

"**46-3-101. Place of trial ~~— change of venue.~~** (1) ~~In all criminal prosecutions the~~ *The place of* trial ~~shall~~ *must* be in the county where the ~~offense was committed~~ *charge is filed* unless otherwise provided by law.

(2) All objections ~~to improper place of trial~~ *that a charge is filed in the improper county* are waived by a defendant unless made before *the first witness is sworn at the time of* trial. If an objection is made, a hearing ~~shall~~ *must* be held and the ~~venue~~ *proper county in which to file the charge must be* established before ~~proceeding to trial~~ *further proceedings may take place.*"

Section 5. Section 46-3-102, MCA, is amended to read:

"**46-3-102. ~~When offense committed partly in one and partly in another county~~ *Requisite act in multiple counties.*** *(1)* When two or more acts are requisite to the commission of ~~any~~ *an* offense or when two or more acts ~~or offenses~~ are committed in furtherance of a common scheme, the ~~trial~~ *charge* may be *filed* in any county in which any of ~~such~~ *the* acts or offenses ~~occur~~ *occurred.*

(2) When an act requisite to the commission of an offense occurs or continues in more than one county, the charge may be filed in any county in which the act occurred or continued."

Section 6. Section 46-3-104, MCA, is amended to read:

"**46-3-104. ~~When a person commits or aids and abets an offense in another county~~ *Assisting in commission of or committing an offense.*** ~~Where~~ *When* a person in one county commits *an offense or*~~,~~ aids, abets, or procures the commission of an offense in another county, the ~~offender~~ *charge* may be ~~tried~~ *filed* in either county."

Section 7. Section 46-3-105, MCA, is amended to read:

"**46-3-105. ~~Offenses committed while in transit~~ *County of offense unknown.*** *(1) If the county in which the offense was committed cannot be readily determined, the offender may be charged in any county in which it appears that an element of the offense occurred.*

(2) ~~If~~ *When* an offense is committed in~~, on,~~ or against ~~any instrument of~~ *a public or private* conveyance ~~passing within this state~~ and it ~~cannot readily be determined~~ *is doubtful* in which county the offense ~~was committed~~ *occurred,* the ~~offender~~ *charge* may be ~~tried~~ *filed* in any county *in or* through which ~~such instrument of~~ *the* conveyance has ~~passed or in the county where the travel terminates~~ *traveled.*"

Section 8. Section 46-3-106, MCA, is amended to read:

"**46-3-106. Offense ~~commenced outside~~ *consummated within* the state.** If ~~the commission of~~ an offense ~~commenced outside the state is consummated~~ *is committed partly* within this state, the ~~offender shall be tried~~ *offense may be charged* in ~~the~~ *any* county where *an act requisite to the commission of* the offense ~~was consummated~~ *is committed or continued.*"

Section 9. Section 46-4-101, MCA, is amended to read:

"**46-4-101. Jurisdiction — death and cause of death in different counties.** When death occurs as a direct result of acts or events ~~which~~ *that* occurred in another county, the coroner of either county ~~shall have~~ *has* jurisdiction. If a conflict of jurisdiction should arise or should ~~said~~ ~~coroners~~ *either coroner* fail to act, the coroner of the county where the death occurred ~~shall have~~ *has* the primary jurisdiction."

Section 10. Section 46-4-102, MCA, is amended to read:

"**46-4-102. Investigation of suspicious deaths.** (1) Whenever a coroner is informed that a death was caused by other than natural causes or that a death has occurred under circumstances ~~such as to~~ *that* afford a reasonable ground to suspect that the death is the result of criminal conduct or when no physician or surgeon licensed in the state of Montana will sign a death certificate, the coroner shall ~~make an investigation~~ ~~thereof~~ *investigate the death.*

(2) It ~~shall be~~ *is* the duty of every person acquiring knowledge of ~~such~~ a death to *immediately* report the ~~same forthwith~~ *death* to the coroner of the county in which *the* death apparently occurred.

(3) In cases where criminal conduct is suspected, the coroner shall notify the state medical examiner and ~~one or more~~ *a* law enforcement ~~agencies~~ *agency* having jurisdiction. The law enforcement ~~agencies~~ ~~so~~ *agency* notified shall ~~have the responsibility to~~ investigate the case."

Section 11. Section 46-4-103, MCA, is amended to read:

"**46-4-103. Autopsy — when conducted, record, scope.** (1) If in the opinion of the coroner an autopsy is advisable, ~~he~~ *the coroner* shall order one and shall retain a medical examiner to perform it. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. In ordering an autopsy, the coroner shall order the body to be exhumed if it has been interred.

(2) A full record of the facts found ~~shall~~ *must* be made on a form *in triplicate* provided by the division of forensic science ~~in triplicate, the~~. *The* coroner and medical examiner ~~retaining~~ *shall each retain* one copy and ~~delivering~~ *shall deliver* the other *copy* to the county attorney.

(3) The right to conduct an autopsy ~~shall include~~ *includes* the right to retain ~~such~~ specimens ~~as~~ *that* the medical examiner performing the autopsy ~~deems~~ *considers* necessary.

(4) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the county attorney or county coroner."

Section 12. Section 46-4-104, MCA, is amended to read:

"**46-4-104. Liability of a mortuary or physician.** ~~No person or firm owning a~~ *A* mortuary *owner* or ~~any~~ person employed in ~~such~~ a mortuary ~~shall be~~ *is not* liable for the acts of the coroner performed in the removal of ~~any~~ *a* body to a mortuary or during the course of an autopsy on ~~such~~ *that* body. No criminal or civil action ~~shall~~ *may* arise against a licensed physician for performing an autopsy authorized by this chapter or for performing an autopsy on request of a federal officer investigating a death within a federal jurisdiction."

Section 13. Section 46-4-201, MCA, is amended to read:

"**46-4-201. Inquest — ~~definition,~~ when held~~,~~ — how conducted.** (1) ~~An inquest is a formal inquiry into the causes of and circumstances surrounding the death of any person.~~

~~(2)~~ The coroner shall hold an inquest only if requested to do so by the county attorney ~~of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred~~. However, when the death of ~~any~~ *a* person occurs in a jail or penal institution or *is caused* ~~from the use of a firearm~~ by a peace officer, except where criminal charges have been or will be filed, the county attorney shall direct the coroner to hold an inquest.

~~(3)~~*(2)* If an inquest is held, the proceedings ~~shall~~ *must* be public. The coroner shall conduct the inquest with the aid and assistance of the county attorney. ~~Such~~ *The* inquest ~~is to~~ *must* be held in accordance with this ~~part~~ *section*.

~~(4)~~*(3)* (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of a person who:

(i) died in a jail or penal institution;

(ii) died while in the custody of a peace officer; or

(iii) was killed by a peace officer.

(b) If a coroner is disqualified under subsection ~~(4)(a)~~ *(3)(a)*, the county attorney shall request a qualified coroner of a neighboring county to conduct the inquest. The expenses of a coroner fulfilling the request~~, including salary,~~ must be paid by the requesting county."

Section 14. Section 46-4-202, MCA, is amended to read:

"**46-4-202. Summoning and swearing in of jurors — instructions.** (1) For holding ~~such~~ *an* inquest, the coroner ~~must~~ *shall* summon a jury of not *less than three or* more than nine persons qualified by law to serve as jurors.

(2) ~~When six or more of the~~ *The* jurors ~~attend, they~~ *chosen to serve* must be sworn by the coroner to inquire who the person was and when, where, and by what means ~~he~~ *the person* came to ~~his~~ death and *to inquire* into the circumstances attending ~~his~~ *the person's* death and ~~to~~ render a true verdict

thereon~~,~~ according to the evidence offered ~~to them or arising from the inspection of the body~~.

(3) The jurors may be required to inspect the body of the decedent, whether or not an autopsy has been performed, at the discretion of the county attorney.

~~(3)~~*(4)* The coroner ~~must~~ *shall* instruct the jurors as to their duties."

Section 15. Section 46-4-203, MCA, is amended to read:

"**46-4-203. ~~Subpoenaing of witnesses~~** ***Coroner's subpoena.*** ~~A~~ *Upon the request of the county attorney, a* coroner ~~may~~ *shall* issue subpoenas for witnesses, returnable immediately or at ~~such~~ *a* time and place ~~as he~~ *the coroner* may designate, ~~which~~ *that* may be served by any competent person. ~~He shall summon and examine as a witness each person who, in his opinion or that of the jury, has any knowledge of the facts and may summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of the death.~~"

Section 16. Section 46-4-204, MCA, is amended to read:

"**46-4-204. Witness compelled to attend — examination.** (1) A witness served with a subpoena may be compelled to attend and testify or be punished *in the same manner* as ~~upon~~ *for failure to answer* a subpoena issued by a justice of the peace.

(2) The ~~coroner shall and the~~ county attorney ~~may~~ *shall* examine each witness, after which the witness may be examined by the *coroner and the* jurors."

Section 17. Section 46-4-205, MCA, is amended to read:

"**46-4-205. ~~Verdict of jury — form~~** ***Form of verdict.*** After inspecting the body, *if required,* and hearing the testimony, the jury ~~must~~ *shall* render its verdict, which ~~shall~~ *must* be by majority vote, and *shall* certify the same in writing signed by ~~them~~ *each juror* and setting forth who the deceased person ~~is, when, where, and by what means he came to his~~ *was and the location, time, circumstances, and means of the* death~~, and if he was killed or his death occasioned by the act of another by criminal means, who committed the act~~."

Section 18. Section 46-4-206, MCA, is amended to read:

"**46-4-206. Recording and filing of testimony and proceedings.** The testimony of the witnesses examined before the coroner's jury must be ~~reduced to writing by the coroner or under his direction and forthwith~~ *recorded and transcribed, the transcript of which must be* filed ~~by him~~ with ~~the inquisition in the office of~~ the clerk of the district court of the county. The ~~coroner must order the inquest proceedings recorded and transcribed by a qualified stenographer. Such~~ recording and transcribing expenses ~~shall~~ *must* be paid by the county upon claims duly rendered and certified ~~to~~ by the coroner in the same manner as other claims against the county are paid."

Section 19. Section 46-4-301, MCA, is amended to read:

"**46-4-301. Issuance of subpoena.** Whenever ~~the attorney general or a county attorney~~ *a prosecutor* has a duty to investigate alleged unlawful activity, any justice of the supreme court or district court judge of this state may cause subpoenas to be issued commanding the persons to whom they are directed to appear before the ~~attorney general or the county attorney~~ *prosecutor* and give testimony and produce ~~such~~ books, records, papers, documents, and other objects as may be necessary and proper to the investigation. A subpoena may ~~issue~~ *be issued* only when it appears upon the affidavit of the ~~attorney general or the county attorney~~ *prosecutor* that the administration of justice requires it to be issued."

Section 20. Section 46-4-302, MCA, is amended to read:

"**46-4-302. Penalty for failure to *appear or* obey.** (1) A person who, without just cause, fails to obey a subpoena served ~~on him~~ under this part is punishable for contempt of court.

(2) (a) A person who, after being granted immunity under 46-4-305, refuses to give testimony or produce evidence under this part must be brought without unnecessary delay before the judge issuing the subpoena or, in that judge's absence or inability to act, before the nearest or most accessible judge, who shall inform the person:

(i) of the contents and requirements of the subpoena;

(ii) that ~~he~~ *the person* has been granted immunity and may not be excused from testifying or producing evidence on the grounds that ~~his~~ *the* testimony may incriminate ~~him~~ *the person*; and

(iii) that a refusal to testify or produce evidence as commanded in the subpoena is punishable as a contempt of court under Title 3, chapter 1, part 5.

(b) In the presence of the judge, the person must be examined by the ~~county attorney~~ *prosecutor* or produce evidence as commanded in the subpoena.

(c) A refusal to testify or produce evidence may be punished as a contempt under Title 3, chapter 1, part 5."

Section 21. Section 46-4-303, MCA, is amended to read:

"**46-4-303. Relief from improper subpoena.** A person aggrieved by a subpoena issued pursuant to this part may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion ~~shall~~ *must* be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope."

Section 22. Section 46-4-304, MCA, is amended to read:

"**46-4-304. Conduct of investigative inquiry.** (1) The ~~attorney general or the county attorney~~ *prosecutor* may examine under oath all witnesses subpoenaed pursuant to this part. Testimony ~~shall~~ *must* be recorded. The witness has the right to have counsel present at all times. If ~~he~~ *the witness* does not have funds to obtain counsel, the judge or justice shall appoint counsel ~~for him~~.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part."

Section 23. Section 46-4-305, MCA, is amended to read:

"**46-4-305. Self-incrimination ~~and~~ — immunity.** (1) No person subpoenaed to give testimony pursuant to this part may be required to make ~~any~~ *a* statement or *to* produce ~~any~~ evidence ~~which~~ *that* may ~~incriminate him~~ *be personally incriminating.*

(2) The ~~attorney general or the county attorney~~ *prosecutor* may, with the approval of the ~~justice or~~ judge who authorized the issuance of the subpoena ~~on behalf of the state~~, grant ~~any~~ *a* person subpoenaed immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from ~~such~~ *the* testimony or evidence against that person in ~~any~~ *a* criminal prosecution.

(3) Nothing in this ~~section~~ *part* prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in ~~his~~ *the prosecutor's* sole discretion, that the ~~ends~~ *best interest* of justice would be served ~~thereby~~ *by granting immunity.*

(4) After being granted immunity, no person may be excused from testifying on the grounds that ~~his~~ *the* testimony may ~~incriminate him~~ *be personally incriminating.* ~~The immunity~~ *Immunity* may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

~~(2)~~*(5)* Nothing in this part requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law."

Section 24. Section 46-6-404, MCA, is amended to read:

"**46-6-404. Notice to appear.** (1) Whenever a peace officer is authorized to arrest a person without a warrant, ~~he~~ *the officer* may instead issue ~~to such~~ *the* person a notice to appear.

(2) The notice ~~shall~~ *must*:

(a) be in writing;

(b) state the ~~name of the person and his~~ *person's name and* address, if known;

(c) set forth the nature of the offense;

(d) be signed by the *issuing* officer ~~issuing the notice~~; and

(e) direct the person to appear before a court at a certain time and place.

(3) Upon failure of the person to appear, a summons or *arrest* warrant ~~of arrest~~ may ~~issue~~ *be issued.*"

Section 25. Section 46-6-302, MCA, is amended to read:

"**46-6-302. Form *and content* of summons.** *(1) When authorized to issue an arrest warrant, a court may instead issue a summons.*

(2) A summons may be served personally or by first-class mail.

(3) The summons ~~shall~~ *must*:

~~(1)~~*(a)* be in writing in the name of the state of Montana *or in the name of the municipality if the violation of a municipal ordinance is charged*;

~~(2)~~*(b)* state the name of the person summoned and ~~his~~ *that person's* address, if known;

~~(3)~~*(c)* set forth the nature of the offense;

~~(4)~~*(d)* state the date when issued and the municipality or county where issued;

~~(5)~~*(e)* be signed by the judge of the court with the title of ~~his~~ office *noted*; and

~~(6)~~*(f)* command the person to appear before a court at a certain time and place.

(4) The summons must plainly state that, upon failure to appear following the service of summons, an arrest warrant must be issued immediately or, if the service is made to a corporation, that a plea of not guilty will be entered."

Section 26. Section 46-6-303, MCA, is amended to read:

"**46-6-303. ~~When warrant issued after~~ *Failure to appear following* summons *or notice to appear*.** ~~Upon failure of the person summoned to appear, the magistrate shall issue a warrant of arrest.~~ If, after ~~issuing~~ *the issuance of* a summons *or notice to appear*, the ~~magistrate~~ *judge* becomes satisfied that the person ~~summoned~~ *has not appeared or* will not appear as commanded ~~by the summons~~, ~~he~~ *the judge* may at once issue ~~a warrant of~~ *an* arrest *warrant*."

Section 27. Section 46-6-304, MCA, is amended to read:

"46-6-304. **Summons to a corporation.** ~~(1) Upon a charge filed against a corporation for the commission of an offense, the court shall issue a summons setting forth the nature of the offense and commanding the corporation to appear before the court at a certain time and place.~~

~~(2) The summons for the appearance of a corporation may be served in the manner provided for service of summons upon a corporation in a civil action.~~

~~(3)~~ If after being summoned the corporation does not appear, a plea of not guilty ~~shall~~ *must* be entered ~~by the court having jurisdiction to try the offense for which the summons was issued and such court shall~~ *in accordance with 46-12-204 and the matter must* proceed to trial and judgment without further process."

Section 28. Section 46-6-401, MCA, is amended to read:

"**46-6-401.** ~~**Circumstances under which a peace officer may make arrests**~~ ***Arrest by peace officer.*** ~~(1)~~ A peace officer may arrest a person when~~:~~

~~(a) he~~ *the officer* has a warrant commanding that ~~such~~ *the* person be arrested~~;~~

~~(b) he~~ *or when the officer* believes on reasonable grounds*:*

(1) that a warrant for the person's arrest has been issued in this state, *except that a warrant for violation of a city ordinance may not be acted upon unless the person is located within the limits of the city in which the violation is alleged to have occurred; or*

~~(c)~~*(2)* ~~he believes on reasonable grounds~~ that a felony warrant for the person's arrest has been issued in another jurisdiction.~~; or~~

~~(d) he believes on reasonable grounds that the person is committing an offense or that the person has committed an offense and the existing circumstances require his immediate arrest.~~

~~(2) A peace officer may arrest a person anywhere, including his place of residence, if the peace officer has probable cause to believe the person is committing or has committed domestic abuse or aggravated assault against a family member or household member even though the offense did not take place in the presence of the peace officer. A summons of a peace officer to a place of residence by a family or household member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in domestic abuse cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.~~"

Section 29. **Issuance of arrest warrant or summons.** (1) Upon the filing of a charge, the court may issue a summons or an arrest warrant as provided in [section 97] and 46-11-201. A summons may be issued to a corporation upon the filing of a charge against it. More than one warrant or summons may be issued on the same charge.

(2) A summons may be served personally or by first-class mail.

Section 30. Section 46-6-202, MCA, is amended to read:

"**46-6-202. Form *and content* of *arrest* warrant — execution.** (1) ~~A~~ *An arrest* warrant ~~of arrest shall~~ *must:*

(a) be in writing in the name of the state of Montana or in the name of a municipality if a violation of a municipal ordinance is charged;

(b) set forth the nature of the offense;

(c) command that the person against whom the complaint was made be arrested and brought before ~~the court issuing the warrant or, if the judge is absent or unable to act, before~~ the nearest or most accessible court ~~in the same county or the adjoining county~~ *for an initial appearance*;

(d) specify the name of the person to be arrested or, if ~~his~~ *that person's* name is unknown, designate the person by any name or description by which ~~he~~ *the person* can be identified with reasonable certainty;

(e) state the date when issued and the municipality or county where issued; and

(f) be signed by the judge of the court with the title of ~~his~~ office *noted.*

(2) The ~~warrant of~~ arrest *warrant* may specify the amount of bail.

(3) ~~The~~ *An arrest* warrant ~~shall~~ *may* be directed to all peace officers in the state. It ~~shall~~ *must* be executed by a peace officer and may be executed in any county of the state. ~~However,~~ *Arrest* warrants issued for the violation of city ordinances ~~cannot~~ *may not* be executed outside the city limits, except as otherwise provided by ~~7-32-4301 and 7-32-4302~~ *law.*

~~(4) If an arrest is made in a county other than the one in which the warrant was issued, the arrested person shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made or the adjoining county.~~"

Section 31. Section 46-6-203, MCA, is amended to read:

"**46-6-203. Manner of arrest with ~~a~~ warrant.** *(1)* When making an arrest pursuant to a warrant, a peace officer shall inform the person to be arrested of the officer's authority, ~~of~~ the intention to arrest ~~him~~ *that person,* ~~of~~ the cause of the arrest, and ~~of~~ the fact that a warrant has been issued for ~~his~~ *that person's* arrest, except*:*

(a) when ~~he~~ *the person* flees or forcibly resists before the peace officer has an opportunity to ~~so~~ inform ~~him~~ *the person;* or

(b) when the giving of ~~such~~ *the* information will imperil the arrest.

(2) The peace officer need not have ~~the warrant in his~~ possession *of the warrant* at the time of the arrest, but after the arrest, the warrant must be

shown to the person arrested as soon as practicable if ~~such~~ *the* person ~~so~~ requests."

Section 32. **Basis for arrest without warrant.** (1) A peace officer may arrest a person when no warrant has been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) The summoning of a peace officer to a place of residence by a family member or household member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in domestic abuse cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

Section 33. Section 46-6-106, MCA, is amended to read:

"**46-6-106. Manner of arrest without a warrant.** A peace officer or person making an arrest without a warrant ~~must~~ *shall* inform the person to be arrested of ~~his~~ *the officer's* authority, ~~if any,~~ of the intention to arrest ~~him~~ *that person,* and *of* the cause of the arrest, except when the person to be arrested is actually engaged in the commission of or in an attempt to commit an offense or is pursued immediately after its commission ~~or~~, after an escape, or when the giving of ~~such~~ *the* information will imperil the arrest."

Section 34. Section 46-6-104, MCA, is amended to read:

"**46-6-104. Method of arrest.** (1) An arrest is made by an actual restraint of the person to be arrested or by ~~his~~ *the person's* submission to the custody of the person making the arrest.

(2) All necessary and reasonable force may be used in making an arrest, but the person arrested ~~shall~~ *may* not be subject to any greater restraint than is necessary to hold or detain ~~him~~ *that person.*

(3) All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest."

Section 35. Section 46-6-105, MCA, is amended to read:

"**46-6-105. Time of making arrest.** An arrest may be made ~~on any day and~~ at any time of the day or night, except that a person ~~cannot~~ *may not* be arrested in ~~his~~ *the person's* home or private dwelling place at night for a misdemeanor committed at some other time and place unless upon the direction of a ~~magistrate~~ *judge* endorsed upon ~~a~~ *an arrest* warrant ~~of arrest~~. However, a person may be arrested in ~~his~~ *the person's* home or private dwelling at night if ~~he~~ *the person* is being arrested pursuant to ~~46-6-401(2)~~ *[section 32]* for the offense of domestic abuse ~~or aggravated assault against a family member or household member. A summons of a peace officer to the home or private dwelling by a family or household member constitutes an exigent circumstance for making an arrest pursuant to 46-6-401(2)~~."

Section 36. Section 46-6-421, MCA, is amended to read:

"**46-6-421. Written report when no arrest made in domestic violence situation.** When a peace officer is called to the scene of a reported incident of domestic violence but ~~he~~ does not make an arrest, ~~he~~ *the peace officer* shall file a written report with the officer commanding the law enforcement agency employing ~~him~~ *the peace officer,* setting forth the reason or reasons for ~~his~~ *the* decision."

Section 37. Section 46-6-403, MCA, is amended to read:

"**46-6-403. Release ~~by officer of person arrested.~~** ~~A~~ *When no warrant has been issued, a* peace officer having custody of a person arrested ~~without a warrant is authorized to~~ *may* release the *arrested* person without requiring ~~him~~ *that person* to appear before a court when the officer is satisfied that there are ~~no~~ *insufficient* grounds ~~for criminal complaint against the person arrested~~ *to commence prosecution.*"

Section 38. Section 46-6-402, MCA, is amended to read:

"**46-6-402. Assisting a peace officer.** (1) A peace officer making a lawful arrest may command the aid of persons 18 years of age or older.

(2) A person commanded to aid a peace officer *in making an arrest:* ~~shall have~~

(a) *has* the same authority to arrest as that officer~~.~~*; and*

~~(3) A person commanded to aid a peace officer in making an arrest shall not be~~

(b) *is not* civilly liable for any reasonable conduct in aid of the officer."

Section 39. Section 46-6-411, MCA, is amended to read:

"**46-6-411. ~~Close pursuit — arrest by officers~~ *Assisting officer* of another state ~~— procedure~~.** (1) Any peace officer of another state, of the United States, *or of the District of Columbia* who enters this state in close pursuit ~~and continues within this state in such close pursuit~~ of a person in order to arrest ~~him~~ *the person* ~~shall have~~ *has* the same authority to arrest and hold ~~in custody such~~ *the* person *in custody* as peace officers of this state have to arrest and hold in custody a person on the ground that ~~he~~ *the person* has committed a crime in this state.

(2) If an arrest is made in this state by an officer of another state ~~in accordance with the provisions of subsection (1), he~~, *of the United States, or of the District of Columbia, the officer* shall without unnecessary delay take the *arrested* person ~~arrested~~ before a judge of a court of record, who shall conduct a hearing for the sole purpose of determining if the arrest was in accordance with the provisions of subsection (1) and not *for the purpose* of determining the guilt or innocence of the arrested person.

(3) If the judge determines that the arrest was in accordance with ~~such provisions, he~~ *subsection (1), the judge* shall commit the *arrested* person ~~arrested~~ to the custody of the officer making the arrest, who shall without unnecessary delay take ~~him~~ *the arrested person* to the state from which ~~he~~

that person fled. If the judge determines that the arrest was unlawful, ~~he~~ *the judge* shall discharge the person arrested.

~~(3) Subsection (1) shall~~

(4) This section may not be construed ~~so as~~ to make unlawful any arrest in this state ~~which~~ *that* would otherwise be lawful.

~~(4) For the purpose of this section, the word "state" shall include the District of Columbia.~~

~~(5) This section may be cited as the "Uniform Act on Close Pursuit".~~"

Section 40. Section 46-6-502, MCA, is amended to read:

"**46-6-502. ~~When arrest~~ *Arrest* by private person ~~authorized~~.** *(1)* A private person may arrest another when~~:~~

~~(1) he believes on reasonable grounds that an offense is being committed or attempted in his presence;~~

~~(2) a felony has in fact been committed and he believes on reasonable grounds that the person arrested has committed it; or~~

~~(3) he is a merchant, as defined in 30-11-301, and has probable cause to believe the other is shoplifting in the merchant's store~~ *there is probable cause to believe that the person is committing or has committed an offense and the existing circumstances require the person's immediate arrest.*

(2) A private person making an arrest shall immediately notify the nearest available law enforcement agency or peace officer and give custody of the person arrested to the officer or agency."

Section 41. **Custody by peace officer.** A peace officer who, pursuant to law, takes custody of a person arrested by a private citizen shall proceed in accordance with 46-6-104 and 46-6-106 and as otherwise provided by law.

Section 42. Section 46-5-401, MCA, is amended to read:

"**46-5-401. ~~Stop and frisk — when authorized~~ *Investigative stop.*** ~~(1) A~~ *In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a* peace officer may stop any person ~~he observes~~ *or vehicle that is observed* in circumstances that ~~give him reasonable cause to suspect~~ *create a particularized suspicion* that the person *or occupant of the vehicle* has committed, is committing, or is about to commit an offense. ~~involving the use or attempted use of force against a person or theft, damage, or destruction of property if the stop is reasonably necessary to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person.~~

~~(2) A peace officer may stop any person he finds near the scene of an offense that he has reasonable cause to suspect has just been committed if:~~

~~(a) he has reasonable cause to suspect that the person has knowledge of material aid to the investigation of the offense; or~~

~~(b) the stop is reasonably necessary to obtain or verify the person's identity or an account of the offense.~~

~~(3) A peace officer may stop any person in connection with an offense that he has probable cause to believe has been committed if:~~

~~(a) the offense is a felony involving the use or the attempted use of force against a person or theft, damage, or destruction of property;~~

~~(b) he has reasonable cause to suspect the person committed the felony; and~~

~~(c) (i) the stop is reasonably necessary to obtain or verify the person's identity to determine whether to arrest the person for the felony; or~~

~~(ii) the peace officer has reasonable cause to suspect that the person was present at the scene of the offense, and the stop is reasonably necessary to obtain or verify the person's identity.~~"

Section 43. Section 46-5-402, MCA, is amended to read:

"**46-5-402. Stop and frisk ~~— procedure~~.** ~~(1)~~ A peace officer who has lawfully stopped a person under ~~this part may~~ *46-5-401 or this section*:

~~(a)~~*(1)* *may* frisk the person and take other reasonably necessary steps for protection if ~~he~~ *the officer* has reasonable cause to suspect that the person is armed and presently dangerous to ~~him~~ *the officer* or another person present; ~~and~~

~~(b)~~*(2)* *may* take possession of any object that ~~he discovers~~ *is discovered* during the course of the frisk if ~~he~~ *the officer* has probable cause to believe the object is a deadly weapon~~.~~*;*

~~(2) A peace officer who has lawfully stopped a person under this part~~

(3) may demand ~~of~~ the ~~person~~ ~~his~~ name and ~~his~~ present ~~or last~~ address~~.~~ *of the person; and*

~~(3) A peace officer who has lawfully stopped a person under this part~~

(4) shall inform the person, as promptly as possible under the circumstances and in any case before questioning the person, that ~~he~~ *the officer* is a peace officer, that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation, the person will be released ~~unless he is~~ *if not* arrested.

~~(4) After the authorized purpose of the stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the peace officer shall allow the person to go unless he has arrested the person.~~"

Section 44. **Duration of stop.** A stop authorized by 46-5-401 or 46-6-411 may not last longer than is necessary to effectuate the purpose of the stop.

Section 45. Section 46-5-502, MCA, is amended to read:

"**46-5-502. Authority to establish roadblocks.** ~~The duly elected or appointed~~ *Any* law enforcement ~~officers~~ *agency* of this state ~~and their deputies are hereby~~ *is* authorized to establish, ~~in their respective jurisdictions or in other jurisdictions~~ within ~~the state~~ *its jurisdiction*, temporary roadblocks on the highways of this state for the purpose of *apprehending persons wanted for violation of the laws of this state, of any other state, or of the United States who are using the highways of this state,* identifying drivers, *or* checking for driver's licenses, ~~and apprehending persons wanted for violation of the laws of this state, of any other state, or of the United States who are using the highways of this state~~ *vehicle registration, and insurance.*"

Section 46. **Establishing roadblock.** A written plan for establishing a roadblock must be designed by supervisory officers within the law enforcement agency to ensure motorist safety, minimize motorist inconvenience, and prevent the arbitrary selection of vehicles by providing a schedule for the selection of vehicles to be stopped.

Section 47. Section 46-5-101, MCA, is amended to read:

"**46-5-101. Searches and seizures — when authorized.** A search of a person, object, or place may be made and ~~instruments, articles, or things~~ *evidence, contraband, and persons* may be seized in accordance with ~~the provisions of this chapter~~ *Title 46* when ~~the~~ *a* search is made:

(1) ~~as an incident to a lawful arrest;~~

~~(2) with the consent of the accused or of any other person who is lawfully in possession of the object or place to be searched or who is believed upon reasonable cause to be in such lawful possession by the person making the search;~~

~~(3)~~ by the authority of a ~~valid~~ search warrant; *or*

~~(4) under the authority and within the scope of a right of lawful inspection granted by law~~

(2) in accordance with recognized exceptions to the warrant requirement."

Section 48. Section 46-5-103, MCA, is amended to read:

"**46-5-103. When search and seizure not illegal.** *(1)* ~~No~~ *A* search and seizure, whether with or without *a* warrant, ~~shall~~ *may not* be held to be illegal ~~as to a defendant~~ if:

~~(1)~~*(a)* the defendant has disclaimed any right to or interest in the place or object searched or the ~~instruments, articles~~ *evidence, contraband,* or ~~things~~ *person* seized;

~~(2)~~*(b)* ~~no~~ *a* right of the defendant has *not* been infringed by the search and seizure; or

~~(3)~~*(c)* any ~~irregularities~~ *irregularity* in the proceedings ~~do not affect~~ *has no effect on* the substantial rights of the accused.

(2) Evidence, contraband, or persons lawfully seized are admissible as evidence in any prosecution or proceeding whether or not the prosecution or proceeding is for the offense in connection with which the search was originally made."

Section 49. **Authority to issue search warrant.** (1) A peace officer, the city or county attorney, or the attorney general may apply for a search warrant.

(2) A search warrant may be issued by:

(a) a city or municipal court judge or justice of the peace within the judge's geographical jurisdiction; or

(b) a district court judge within this state.

Section 50. Section 46-5-202, MCA, is amended to read:

"**46-5-202. Grounds for search warrant.** ~~(1) Any~~ *A* judge ~~may~~ *shall* issue a search warrant *to a person* upon ~~the written or telephonic~~ application ~~of any person~~, *in writing or by telephone,* made under oath or affirmation ~~before the judge~~, ~~which~~ *that:*

~~(a)~~*(1)* states *facts sufficient to support probable cause to believe* that an offense has been committed;

~~(b)~~*(2)* states facts sufficient to ~~show~~ *support* probable cause ~~for issuance of the warrant~~ *to believe that evidence, contraband, or persons connected with the offense may be found;*

~~(c)~~*(3)* particularly describes the place, ~~things~~ *object,* or persons to be searched; and

~~(d)~~*(4)* particularly describes ~~the things~~ *who or what is* to be seized.

~~(2) Whenever the application is made by telephone, the applicant's telephonic oath or affirmation is considered to have been made before the judge, and the sworn or affirmed telephonic testimony must be electronically recorded by the judge on a recording device in the custody of the judge when the application is made. The recording must be retained in the court records and transcribed verbatim, including the time and date of recording, as soon as possible thereafter.~~

~~(3) Whenever a law enforcement officer wishes to obtain a search warrant by telephone, he shall first contact the county attorney or a deputy~~

~~county attorney. If the county attorney or deputy county attorney is convinced that a warrant is justified and that the circumstances require its immediate issuance, he shall telephone the judge and state that he is convinced that the warrant should be issued by telephone. The judge shall then telephone the officer at the number provided by the county attorney or deputy county attorney, and the officer shall make his application as provided in subsection (2). If the judge approves a warrant, the officer shall sign the warrant with his own name and the judge's name. A search warrant issued upon the telephonic request of a person other than the county attorney or a deputy county attorney is not valid unless the procedure provided for in this subsection is followed.~~

~~(4) A search warrant issued upon any telephonic request is invalid unless it is subsequently signed by the issuing judge or his successor.~~"

Section 51. **Search warrants issued by telephone.** (1) Whenever the application for a search warrant is made by telephone, the applicant shall, in addition to the requirements contained in 46-5-202, state reasons to justify immediate issuance of a search warrant.

(2) All testimony given over the telephone that is intended to support an application for a search warrant must be given on oath or affirmation and must identify the person testifying. For the purpose of this section, the judge is authorized to administer an oath or affirmation by telephone.

(3) Sworn or affirmed testimony given over the telephone must be electronically recorded by the judge on a recording device in the custody of the judge when the application is made. The recording must be retained in the court records and must be transcribed verbatim as soon as possible after the application is made. The recording must include the time and date it was recorded.

(4) If the judge approves a warrant over the telephone, the peace officer serving the warrant shall sign the search warrant in the officer's own name and in the judge's name. The peace officer signing the judge's name shall initial the judge's name indicating the signature was authorized by the judge but signed by the officer.

(5) Any search warrant issued by telephone must be signed by the issuing judge or the judge's successor as soon as possible after it has been issued.

Section 52. **To whom search warrant directed.** A search warrant must be directed to a specific peace officer commanding the officer to search for and seize the evidence, contraband, or person designated in the warrant.

Section 53. Section 46-5-203, MCA, is amended to read:

"**46-5-203. What may be seized with *search* warrant.** A ~~search~~ warrant may ~~authorize the seizure of the following~~ *be issued under this section to search for and seize any*:

(1) evidence;

~~(1)~~*(2)* contraband; *or*

~~(2) any instruments, articles, or things which are the fruits of, have been used in the commission of, or may constitute evidence of any offense;~~.

(3) ~~any~~ person ~~who has been kidnapped in violation of the laws of this state or who has been kidnapped in another jurisdiction and is now concealed within this state~~ *for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained.*"

Section 54. Section 46-5-205, MCA, is amended to read:

"**46-5-205.** ~~**Who may serve**~~ ***Service of search*** **warrant.** A search warrant ~~may~~ *must* in all cases be served by ~~any of~~ the ~~officers mentioned in its direction but~~ *peace officer specifically named and* by no other person except in aid of the officer ~~on his requiring it, he~~ ~~being~~ *when the officer is* present and acting in its ~~execution~~ *service.*"

Section 55. Section 46-5-206, MCA, is amended to read:

"**46-5-206. Service and** ~~**execution**~~ ***return*** **of** ***search*** **warrant.** Service of a search warrant is made by exhibiting the original warrant *or a duplicate original warrant* at the place *or to the person* to be searched. ~~If the warrant is executed, a duplicate~~ *The officer taking property under the warrant shall give to the* ~~copy and a receipt for all articles taken shall be left with any~~ person from whom ~~any instruments, articles, or things are seized~~ or~~, if no person is available,~~ *from whose premises the property is taken a copy of the search warrant and a receipt for the property taken or shall leave* the copy and receipt ~~shall be left~~ at the place from which the ~~instruments, articles, or things were seized~~ *property was taken.* Failure to ~~give or~~ leave ~~such~~ a *copy and* receipt ~~shall~~ *may* not render the ~~evidence~~ *property seized* inadmissible ~~in a~~ *at* trial."

Section 56. Section 46-5-208, MCA, is amended to read:

"**46-5-208. Use of force in** ~~**execution**~~ ***service of search warrant.*** All necessary and reasonable force may be used to ~~execute~~ *serve* a search warrant or to effect an entry into any building, ~~or~~ property, or ~~part thereof~~ *object* to ~~execute~~ *serve* a search warrant."

Section 57. Section 46-5-209, MCA, is amended to read:

"**46-5-209. Detention and search of persons on premises.** ~~In the execution of the warrant the~~ *The* person ~~executing~~ *serving* the ~~same~~ *search warrant* may reasonably detain and search any person ~~in the place~~ *on the premises being searched* at the time *of the search*:

(1) ~~to protect himself from attack~~ *for self-protection*; or

(2) to prevent the disposal or concealment of any ~~instruments, articles,~~ *evidence, contraband,* or ~~things~~ *persons* particularly described in the warrant."

Section 58. Section 46-5-301, MCA, is amended to read:

"**46-5-301. Return ~~to court of things seized under search warrant.~~** *(1)* ~~The~~ *A* return ~~of the warrant and all instruments, articles, and things seized shall~~ *must* be made promptly ~~before the judge who issued the warrant or, if he is absent or unavailable, before the nearest available judge~~ and ~~shall~~ *must* be accompanied by a written inventory of any ~~property~~ *evidence or contraband* taken, verified by the person ~~executing~~ *serving* the warrant. *The return must be made before the judge who issued the warrant or, if the judge is absent or unavailable, before the nearest available judge.*

(2) The judge shall, upon request, deliver a copy of the inventory *and the order of custody or disposition* to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(3) The judge shall enter an order providing for the custody or appropriate disposition of the evidence or contraband seized pending further proceedings."

Section 59. Section 46-5-207, MCA, is amended to read:

"**46-5-207. When warrant may be ~~executed~~ *served.*** ~~(1)~~ The warrant may be ~~executed~~ *served* at any time of ~~any~~ *the* day or night.

~~(2)~~ The warrant ~~shall~~ *must* be ~~executed~~ *served* within 10 days from the time of issuance. Any warrant not ~~executed~~ *served* within ~~such time~~ *10 days* ~~shall be~~ *is* void and ~~shall~~ *must* be returned to the court or the judge issuing the ~~same~~ *warrant and identified* as "not ~~executed~~ *served*"."

Section 60. Section 46-5-204, MCA, is amended to read:

"**46-5-204. Filing of ~~application~~ *return.*** *(1)* The application on which the warrant is issued ~~shall~~ *must* be retained by the judge but ~~need~~ *is* not *required to* be filed with the clerk of the court or with the court, if there is no clerk, until the warrant has been ~~executed~~ *served* or has been returned "not ~~executed~~ *served*".

(2) The judge before whom the warrant is returned shall attach to the warrant a copy of the return, the inventory, and all other papers in connection with the warrant and shall file them with the issuing court."

Section 61. Section 46-5-303, MCA, is amended to read:

"**46-5-303. Custody and disposition ~~of things seized~~ — *seizure* without search warrant.** (1) *Evidence or contraband lawfully seized without a warrant may be retained in the custody of the officer making the seizure for a time sufficient to complete an investigation.*

(2) ~~Any peace officer seizing any instruments, articles, or things must give~~ *Notice of the seizure and* a receipt *for the evidence or contraband seized must be given* to the person from whose possession ~~they are~~ *the evidence or contraband was* taken *and to the owner of the evidence or contraband if the owner is reasonably ascertainable.*~~, but~~ *The* failure to give ~~such~~ a receipt ~~shall~~ *may* not render the evidence seized inadmissible ~~upon a~~ *at* trial.

~~(2) If an arrest has been made, all instruments, articles, or things seized on a search without warrant shall be delivered to the judge before whom the person arrested is taken and thereafter handled and disposed of in accordance with 46-5-301, 46-5-302, and 46-5-304. If the person arrested is released without a charge being preferred against him, all instruments, articles, or things seized from him other than contraband shall be returned to him upon release.~~

~~(3) If no arrest has been made, such instruments, articles, or things may be retained in the custody of the officer making the seizure for a time sufficient for investigation of the supposed crime, after which they must be delivered to the proper judge for disposition in accordance with 46-5-301, 46-5-302, and 46-5-304 or returned to the person from whom they were taken.~~"

Section 62. Section 46-5-304, MCA, is amended to read:

"**46-5-304. Return of property seized** — ***right to possess.*** (1) ~~Any~~ *A* person claiming the right to possession of property seized as evidence may apply to the judge ~~to whom it has been delivered~~ for its return. The judge shall give ~~such~~ *written* notice as ~~he deems~~ *the judge considers* adequate to the ~~county attorney~~ *prosecutor* and all persons who have or may have an interest in the property and shall hold a hearing to ~~hear all claims to its true ownership~~ *determine the right to possession.*

(2) If the right to possession is ~~proved to the judge's satisfaction, he~~ *established, the judge* shall order the property, other than contraband, returned if:

(a) the property is not needed as evidence; ~~or, if~~

(b) the property is needed~~,~~ *and* satisfactory arrangements can be made for its return for subsequent use as evidence; or

~~(b)~~*(c)* all proceedings in which ~~it~~ *the property* might be required have been completed."

Section 63. Section 46-8-101, MCA, is amended to read:

"**46-8-101. Right to counsel.** (1) ~~Every defendant brought~~ *During the initial appearance* before the court, *every defendant* must be informed ~~by the court that it is his~~ *of the* right to have counsel, ~~before proceeding~~ and must be asked if ~~he desires~~ the aid of counsel *is desired.*

(2) ~~The defendant, if charged with a felony, must be advised that counsel will be furnished at state expense if he is unable to employ counsel as determined under the provisions of 46-8-111. If the offense charged is a felony and if~~ *If* the defendant desires counsel, ~~and~~ is unable to employ counsel, ~~a~~ *and is entitled to have counsel assigned, the* court ~~must~~ *shall* assign counsel to ~~defend him~~ *the defendant without unnecessary delay.*

(3) ~~If the offense charged is a misdemeanor and if the defendant desires counsel and is unable to employ counsel, a court in the interest of justice~~

~~may assign counsel to defend him.~~ *The defendant, if unable to employ counsel, is entitled to have counsel assigned if:*

(a) the offense charged is a felony;

(b) the offense charged is a misdemeanor and the court desires to retain imprisonment as a sentencing option; or

(c) the interests of justice would be served by assignment."

Section 64. Section 46-8-102, MCA, is amended to read:

"**46-8-102. Waiver of counsel.** A defendant may waive ~~his~~ *the* right to counsel~~, except that in all felony cases where the defendant is under 18 years of age, the defendant shall be represented by counsel at every stage of the proceedings following the filing of a petition under 41-5-501~~ *when the court ascertains that the waiver is made knowingly, voluntarily, and intelligently."*

Section 65. Section 46-8-103, MCA, is amended to read:

"**46-8-103. Duration of appointment.** *(1)* ~~Where~~ *When* counsel has been assigned, ~~such~~ *the* assignment ~~shall be~~ *is* effective until final judgment, including any proceeding upon direct appeal *to the Montana supreme court,* unless relieved by order of the court *that assigned counsel or that has jurisdiction over the case.*

(2) If counsel finds the defendant's case on appeal to be wholly frivolous, counsel shall advise the court of that fact and request permission to withdraw. The request to withdraw must be accompanied by a memorandum referring to anything in the record that might arguably support the appeal. The defendant is entitled to receive a copy of counsel's memorandum and to file a reply with the court."

Section 66. Section 46-8-111, MCA, is amended to read:

"**46-8-111. Eligibility for court-appointed counsel — *determination of indigence.*** (1) *The court shall make a determination of indigence.*

(2) ~~Any defendant who desires counsel and is unable to employ counsel~~ *In applying for court-appointed counsel, a defendant* shall submit ~~under oath to the court at the time of his initial appearance a verified~~ *a sworn* financial statement ~~showing~~ *demonstrating* ~~his~~ financial inability to obtain ~~counsel.~~ *legal*

~~(2) Except as provided in subsection (3), appointed counsel may not be denied to any person merely because his friends or relatives have the resources to retain counsel or because he has deposited or is capable of depositing security for his release. Counsel shall be provided to any person who is financially unable to obtain~~ representation without substantial hardship in providing *for personal or family* necessities ~~to himself or his family~~. *The statement is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the declarant for perjury or false swearing.*

~~(3) In determining whether a minor charged with an offense which, if committed by an adult, would be a felony is eligible for court-appointed counsel, the court shall consider the resources of the minor and his parents and may deny or appoint counsel accordingly. The minor and his parents shall submit under oath the verified financial statement required by subsection (1).~~"

Section 67. Section 46-8-113, MCA, is amended to read:

"**46-8-113. Payment ~~of costs of~~ *for* court-appointed counsel by defendant ~~— condition of sentence.~~** (1) ~~Under the provisions of 46-18-201, the~~ *The* court may require a convicted defendant to pay the costs of court-appointed counsel as a part of or a condition under ~~his~~ *the* sentence *imposed as provided in Title 46.*

(2) Costs must be limited to reasonable compensation and costs incurred by the court-appointed counsel in the criminal proceeding. ~~Costs may not include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.~~

(3) The court may not sentence a defendant to pay the costs of court-appointed counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take *into* account ~~of~~ the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is ~~not in contumacious default in the payment~~ ~~thereof~~ *able to but refuses or fails to pay those costs* may at any time petition the court that sentenced ~~him~~ *the defendant* for remission of the payment of costs or of any unpaid portion ~~thereof~~ *of the costs*. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or ~~his~~ *the defendant's* immediate family, the court may remit all or part of the amount due in costs or modify the method of payment."

Section 68. Section 46-8-114, MCA, is amended to read:

"**46-8-114. Time and method of payment ~~of costs~~.** When a defendant is sentenced to pay the costs of court-appointed counsel, the court may order payment to be made within a specified period of time or in specified installments. ~~Such payments~~ ~~shall~~ *Payments must* be made to the clerk of the district court. The clerk of the district court shall ~~disburse~~ *distribute* the payments to the ~~county, agency, state agency, or local~~ government ~~unit~~ *agency* responsible for the ~~expenses~~ *expense* of court-appointed counsel as provided for in 46-8-201."

Section 69. Section 46-8-115, MCA, is amended to read:

"**46-8-115. Effect of nonpayment ~~of costs~~.** (1) When a defendant who is sentenced to pay the costs of court-appointed counsel defaults in payment ~~thereof~~ *of the costs* or of any installment, the court on motion of the county attorney or on its own motion may require him to show cause why ~~his~~ *the* default should not be treated as contempt of court and may issue a show cause citation or ~~a warrant of arrest for~~ ~~his~~ *an arrest warrant requiring the defendant's* appearance.

(2) Unless the defendant shows that ~~his~~ *the* default was not attributable to an intentional refusal to obey the order of the court or to a failure on ~~his~~ *the defendant's* part to make a good faith effort to make the payment, the court may find that ~~his~~ *the* default constitutes civil contempt.

(3) The term of imprisonment for contempt for nonpayment of the costs of court-appointed counsel ~~shall~~ *must* be set forth in the judgment and may not exceed 1 day for each $25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

(4) If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment ~~or~~ *of* the unpaid portion ~~thereof~~ *of the costs* in whole or in part.

(5) A default in the payment of costs or any installment ~~thereof~~ may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected."

Section 70. Section 46-8-201, MCA, is amended to read:

"**46-8-201. Remuneration of appointed counsel.** (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney ~~shall~~ *must* be paid for ~~his~~ *the* services ~~such~~ *a* sum as a district court *judge* or justice of the state supreme court certifies to be a reasonable compensation ~~therefor~~ and ~~shall~~ be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable as provided in 3-5-901 to the county in which the proceeding arose, the department of commerce, or both, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; ~~and~~ *or*

(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice and the charge is prosecuted by personnel of the state agency that made the charge, the expense must be borne by the prosecuting state agency."

Section 71. **General authority for release and detention.** (1) An arrested person must be released or detained pending judicial proceedings pursuant to [sections 73, 76, 77, 86]; Title 46, chapter 9; and this section.

(2) If a person is released, that person shall appear to answer the charge for the alleged commission of the offense, as ordered, in the court having jurisdiction.

Section 72. **Release or detention of defendant pending trial.** Before a verdict has been rendered, the court shall:

(1) authorize the release of the defendant upon reasonable conditions that ensure the appearance of the defendant and protect the safety of the community or of any person; or

(2) detain the defendant when there is probable cause to believe that the defendant committed an offense for which death is a possible punishment and adequate safeguards are not available to ensure the defendant's appearance and the safety of the community.

Section 73. Section 46-9-103, MCA, is amended to read:

"46-9-103. ~~Bail~~ ***Release or detention*** **pending** ~~sentence or~~ **appeal — *revocation — sentencing hearing.*** ~~(1) (a)~~ A person intending to appeal from a judgment imposing a fine only or from any judgment rendered by a justice's *court* or city court must be admitted to bail.

~~(b) A person~~ *The court shall order the detention of a defendant* found guilty of an offense ~~and~~ *who is* awaiting imposition or execution of sentence *or a revocation hearing* or ~~a person found guilty of an offense and sentenced to a term of imprisonment~~ who has filed an appeal ~~may be admitted to bail only if the judge~~ *unless the court* finds that, *if released,* the ~~person~~ *defendant* is not likely to flee ~~and does not~~ *or* pose a danger to the safety of any ~~other~~ person or the community.

~~(2) A person found guilty of the offense of deliberate homicide is presumed to pose a danger to the safety of the community, which presumption is rebuttable.~~"

Section 74. Section 46-9-501, MCA, is amended to read:

"46-9-501. ~~Form of conditions of bail~~ ***Conditions upon defendant's release.*** (1) ~~If a person is admitted to bail, the conditions of bail shall be:~~

~~(a) that he will appear to answer in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged on final order of the court and will not depart from this state without leave; and~~

~~(b) any other conditions that the~~ *The* court may *impose any condition that will* reasonably ~~prescribe to assure his~~ *ensure the* appearance *of the defendant* as required ~~and to protect any person from bodily injury~~ *or that will ensure the safety of any person or the community,* including but not limited to ~~a condition that the person admitted to bail~~ *the following conditions*:

(a) the defendant may not commit an offense during the period of release;

~~(i)~~*(b) the defendant shall* remain in the custody of a designated person who agrees to supervise ~~him~~ *the defendant* and ~~to~~ report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the ~~person~~ *defendant* will appear as required *and will not pose a danger to the safety of any person or the community*;

~~(ii)~~*(c) the defendant shall* maintain employment or, if unemployed, actively seek employment;

~~(iii) maintain or commence an educational program;~~

~~(iv)~~*(d) the defendant shall* abide by specified restrictions on *the defendant's personal associations, place of abode, and* travel;

~~(v)~~*(e) the defendant shall* avoid all contact with an alleged victim of the crime ~~or limit contact with a~~ *and any* potential witness who may testify concerning the offense~~, except that contact which is necessary to the preparation of the defense~~;

~~(vi)~~*(f) the defendant shall* report on a regular basis to a designated ~~law enforcement~~ agency or *individual*, ~~other~~ pretrial services agency, *or other appropriate individual*;

~~(vii)~~*(g) the defendant shall* comply with a specified curfew;

~~(viii)~~*(h)* ~~refrain from possessing~~ *the defendant may not possess* a firearm, destructive device, or other dangerous weapon;

~~(ix)~~*(i)* ~~refrain from~~ the *defendant may not* use ~~of~~ *or possess* alcohol, ~~or a~~ *or any* dangerous drug *or other controlled substance* without a *legal* prescription ~~from a licensed medical practitioner~~;

~~(x) undergo available medical or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose~~

(j) the defendant shall furnish bail in accordance with 46-9-401; or

(k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The *court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own*

motion or upon the motion of either party ~~judge may at any time amend his order to impose additional or different conditions of release.~~

~~(3) If the defendant is admitted to bail after conviction, the conditions of bail, in addition to those set forth in subsection (1), shall be that:~~

~~(a) he will duly prosecute his appeal; and~~

~~(b) if the judgment is affirmed or the cause reversed and remanded for a new trial, he will forthwith surrender to the officer from whose custody he was bailed.~~"

Section 75. **Release or detention hearing.** (1) The release or detention of the defendant must be determined immediately upon the defendant's initial appearance.

(2) In determining whether the defendant should be released or detained, the court shall take into account the available information concerning:

(a) the nature and circumstances of the offense charged, including whether the offense involved the use of force or violence;

(b) the weight of the evidence against the defendant;

(c) the history and characteristics of the defendant, including:

(i) the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to alcohol or drug abuse, criminal history, and record concerning the appearance at court proceedings; and

(ii) whether at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentencing for an offense;

(d) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; and

(e) the property available as collateral for the defendant's release to determine if it will reasonably ensure the appearance of the defendant as required.

(3) Upon the motion of any party or the court, a hearing may be held to determine whether bail is established in the appropriate amount or whether any other condition or restriction upon the defendant's release will reasonably ensure the appearance of the defendant and the safety of any person or the community.

Section 76. **Release order.** A release order issued by the court must include a written statement setting forth any restrictions or conditions upon the defendant's release.

Section 77. Section 46-9-202, MCA, is amended to read:

"**46-9-202.** ~~**Giving bail before another court or judge**~~ ***Release ordered by court where charge not pending.*** ~~The defendant, when arrested for a bailable offense, must be taken without unnecessary delay before the nearest or most accessible judge in order that bail may be fixed. If the defendant is brought before a judge~~ *If release is ordered or bail is accepted by a court* other than the court in which the charge is pending, ~~the judge must establish and accept bail and set the time for the appearance of the defendant in the court in which the charge is pending~~ *any bonds, instrument of ownership, or money posted and a written statement of other conditions of release must be delivered*~~. Upon acceptance of bail, the judge must deliver the bail~~ without delay to the court in which the charge is pending."

Section 78. Section 46-9-302, MCA, is amended to read:

"**46-9-302. Bail schedule** ~~**for minor offenses**~~ **— acceptance by peace officer.** (1) A ~~justice of the peace or city~~ judge may~~, in his discretion,~~ establish and post a schedule of ~~cash~~ bail for offenses~~, except for offenses amounting to felonies and the offense of domestic abuse~~ *over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is domestic abuse or any assault against a family member or a household member.*

(2) A peace officer may accept bail ~~in~~ *on* behalf of *a* ~~the justice of the peace or city~~ judge*:*

(a) in accordance with the *bail* schedule *established under subsection (1); or*

(b) whenever the warrant of arrest specifies the amount of bail.

(3) ~~In the event the~~ *Whenever a* peace officer accepts bail, ~~he~~ *the officer* shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the ~~justice of the peace or city~~ judge before whom the offender is to appear, and the ~~justice of the peace or city~~ judge shall give a receipt to the peace officer for the bail delivered."

Section 79. Section 46-9-401, MCA, is amended to read:

"**46-9-401.** ~~**How bail furnished**~~ ***Forms of bail.*** *(1)* Bail may be furnished ~~by the defendant~~ in ~~any of~~ the following ways:

~~(1)~~*(a)* by a deposit with the ~~clerk of the~~ court of an amount equal to the required bail of cash, stocks, ~~or~~ bonds, *certificates of deposit,* or ~~any combination thereof~~ *other personal property* approved by the ~~judge~~ *court;*

~~(2)~~*(b)* by *pledging* real estate situated ~~in this~~ *within the* state with *an* unencumbered equity, not exempt, owned by the ~~accused~~ *defendant* or sureties ~~worth~~ *at a value* double the amount of *the required* bail;

~~(3)~~*(c)* by *posting a* written undertaking executed by the defendant and by two sufficient sureties; or

~~(4)~~*(d)* by *posting* a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of ~~such~~ *the* surety company.

(2) The amount of the bond must ensure the appearance of the defendant at all times required through all stages of the proceeding including trial de novo, if any, and unless the bond is denied by the court pursuant to 46-9-103, must remain in effect until final sentence is pronounced in open court.

(3) Nothing in [sections 72, 73, 76, 77, 86], and this chapter prohibits a surety from surrendering the defendant pursuant to 46-9-205 in a case in which the surety feels insecure in accepting liability for the defendant."

Section 80. Section 46-9-403, MCA, is amended to read:

"**46-9-403. Qualifying property as bail.** (1) If ~~the bail is stock or bonds or both~~ *property posted as a condition of release is personal property,* the ~~accused~~ *defendant* or sureties shall file a sworn schedule ~~which~~ *that* must contain a list of the ~~stocks and bonds deposited describing each in sufficient detail that it may be identified~~ *personal property, including a description of each item,* ~~the~~ *its location and* market value ~~of each stock or bond~~, and the total market value of ~~the stocks and bonds~~ *all items* listed.

(2) ~~(a)~~ If the ~~bail~~ *property* is real estate*:*

(a) ~~, the accused~~ *the defendant* or sureties shall file a sworn schedule ~~which~~ *that* must contain a legal description of the ~~real estate~~ *property,* a description of any and all encumbrances on the ~~real estate~~ *property,* including the amount of each and the holder ~~thereof~~ *of the encumbrance,* and the market value of the unencumbered equity owned by the ~~affiant.~~ *defendant or sureties; and*

(b) ~~A~~ *a* certified copy of the schedule of ~~real estate~~ *the property* must be filed immediately by the court in the office of the clerk and recorder of the county in which the property is situated.~~, and the~~ *The* state has a lien on ~~such real estate~~ *the property* from the time the copy is filed. The clerk and recorder shall enter, index, and record the schedule without requiring any fee.

(3) If the ~~bail~~ *property posted as a condition of release* is a written undertaking with sureties, each surety must be a resident or freeholder within the state. Each surety must be worth the amount specified in the undertaking, exclusive of property exempt from execution, but the court or ~~magistrate~~ *judge* on taking ~~bail~~ *the property* may allow more than two sureties to justify severally *and* in amounts less than that expressed in the undertaking if the whole justification is equivalent to ~~that of sufficient bail~~ *the amount required.*

(4) If the ~~bail~~ *property posted as a condition of release* is a commercial ~~surety~~ bond, it may be executed by any domestic or foreign surety company ~~which~~ *that* is qualified to transact surety business in this state. *The undertaking must be in the form prescribed by the commissioner of insurance and must state the following:*

(a) the name and address of the commercial surety company that issued the bond;

(b) the amount of the bond and the unqualified obligation of the surety company to pay the court should the defendant fail to appear as guaranteed; and

(c) a provision that the surety company may not revoke the undertaking without good cause.

(5) The court may examine the sufficiency of an undertaking and take any action it considers proper to ensure that a sufficient undertaking is posted."

Section 81. Section 46-9-412, MCA, is amended to read:

"**46-9-412. ~~Sureties for guaranteed~~ *Guaranteed* arrest bond certificates.** (1) A domestic or foreign surety company ~~which~~ *that* has qualified to transact surety business in this state may, in any year, become surety in an amount not exceeding ~~$5,000~~ *$500* with respect to any guaranteed arrest bond certificates issued in ~~such~~ *the* year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state by filing with the commissioner of insurance an undertaking to become surety.

(2) The ~~undertaking shall be in a form to~~ *form of the undertaking must* be prescribed by the commissioner ~~and shall state the following~~ *of insurance and must include those matters required by 46-9-401.*~~:~~

~~(a) the name and address of the automobile clubs, automobile associations, or insurance companies which issued the guaranteed arrest bond certificates with respect to which the surety company undertakes to be surety; and~~

~~(b) the unqualified obligation of the surety company to pay the fine or forfeiture in an amount not exceeding $5,000 of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.~~"

Section 82. Section 46-9-414, MCA, is amended to read:

"**46-9-414. ~~Motor vehicle violations — certificates~~ *Certificates* accepted in lieu of cash.** *(1)* A guaranteed arrest bond certificate ~~with respect to which a surety company has become surety or a guaranteed arrest bond certificate issued by an insurance company authorized to transact both automobile liability insurance and surety business within this state as provided in 46-9-411 and 46-9-412 shall~~ *must*, when posted by the person whose signature appears on the certificate, be accepted in lieu of cash bail in an amount not exceeding ~~$5,000~~ *$1,000* as a bail bond to guarantee the appearance of the person in any court, including *a* municipal ~~courts~~ *court*, in this state at ~~a~~ *the* time ~~as may be~~ required by the court when the person was arrested for violation of a motor vehicle law of this state or *an* ordinance of a municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on the guaranteed arrest bond certificate.

(2) A guaranteed arrest bond certificate ~~posted as a bail bond in a court in this state~~ is subject to the same forfeiture and enforcement provisions ~~as bail bonds posted in criminal cases, and a guaranteed arrest bond certificate posted as a bail bond in a municipal court in this state is subject to the forfeiture and enforcement provisions of the chapter or ordinance of the particular municipality pertaining to bail bonds posted~~ *established by [sections 72, 73, 76, 77, 86], and this chapter unless otherwise provided by law.*"

Section 83. Section 46-9-503, MCA, is amended to read:

"**46-9-503. ~~Conditions not performed~~ *Violation of release condition* — forfeiture.** (1) If ~~the accused does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited~~ *a defendant violates a condition of release, including failure to appear, the prosecutor may make a written motion to the court for revocation of the order of release. A judge may issue a warrant for the arrest of a defendant charged with violating a condition of release. Upon arrest, the defendant must be brought before a judge in accordance with 46-7-101.*

(2) If ~~such forfeiture is declared by a district court,~~ *a defendant fails to appear before a court as required and bail has been posted, the judge may declare the bail forfeited.* ~~notice~~ *Notice* of ~~such~~ *the* order of forfeiture ~~shall~~ *must* be mailed ~~forthwith by the clerk of the court~~ to the ~~accused~~ *defendant* and ~~his~~ *the defendant's* sureties at their ~~last known~~ *last-known* address.

(3) If at any time within 30 days after the forfeiture the defendant or ~~his bail~~ *the defendant's sureties* appear and satisfactorily excuse ~~his negligence or~~ *the defendant's* failure to ~~comply with the conditions of the bail~~ *appear,* the ~~court, in its discretion,~~ *judge* may direct the forfeiture ~~of the bail~~ to be discharged upon ~~such~~ terms as may be just.

~~(4) If such forfeiture is declared by a district court and if the forfeiture is not discharged as provided in this section, the court shall enter judgment for the state against the accused and his sureties for the amount of the bail and costs of the proceedings.~~"

Section 84. Section 46-9-205, MCA, is amended to read:

"**46-9-205. Surrender of defendant.** (1) ~~(a)~~ At any time before the forfeiture of bail~~,~~*:*

(a) the defendant may surrender ~~himself~~ to the *court or any peace* officer ~~to whose custody he was committed at the time of giving bail.~~ *of this state; or*

(b) ~~At any time before the forfeiture of bail,~~ the ~~sureties or~~ surety company may *arrest the defendant and* surrender the defendant to ~~the~~ *the court or any peace* officer *of this state* ~~to whose custody he was committed~~

~~and for this purpose may themselves arrest the defendant or by written authority endorsed on a certified copy of the undertaking may empower any person of suitable age and discretion to do so.~~

(2) The *peace* officer ~~must~~ *shall* detain the defendant in ~~his~~ *the officer's* custody as upon commitment and shall file a certificate, ~~in the court having jurisdiction of the defendant~~ acknowledging the surrender, *in the court having jurisdiction of the defendant.* ~~Such~~ *The* court may then order the bail exonerated."

Section 85. **Forfeiture procedure.** When an order of forfeiture is not discharged, the court having jurisdiction shall proceed with the forfeiture of bail as follows:

(1) if money has been posted as bail, the court shall pay the money to the treasury of the city or county where the money was posted; or

(2) if other property is posted as a condition of release, the property must be sold in the same manner as property sold in civil actions. The proceeds of the sale must be used to satisfy all court costs and prior encumbrances, if any, and from the balance, a sufficient sum to satisfy the judgment or forfeiture must be paid into the treasury of the city or county where the case is pending.

(3) If a surety bond has been posted as bail, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.

Section 86. Section 46-9-504, MCA, is amended to read:

"**46-9-504.** ~~**Procedure on forfeiture —**~~ ***Use of forfeited bail as restitution.*** (1) ~~Unless restitution is ordered as provided for in subsection (2), the court having jurisdiction shall proceed with the disposition of forfeited bail as follows:~~

~~(a) If judgment be rendered or the forfeiture not discharged and the defendant has deposited money as bail, the court with whom it is deposited must, immediately after receiving notice of said judgment or order of forfeiture, pay over the money deposited to the treasury of the city or county wherein the bail was taken.~~

~~(b) When judgment is entered in favor of the state or the order of forfeiture is not discharged on any bail, execution may be issued forthwith for levy on stocks or bonds deposited with the court or upon the real estate described in the bail schedule. Such stocks, bonds, and real estate shall be sold in the same manner as in execution sales in civil actions. The proceeds of such sale shall be used to satisfy all court costs and prior encumbrances, if any, and from the balance a sufficient sum to satisfy the judgment or forfeiture shall be paid into the treasury of the city or county wherein the bail bond was taken. The balance shall be returned to the owner. The real estate so sold may be redeemed in the same manner as real estate may be redeemed after execution sales in civil actions.~~

~~(c) When judgment is entered in favor of the state and against the sureties or the surety company or when the forfeiture has not been discharged, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.~~

~~(2)~~ If the court enters a judgment declaring bail to be forfeited or if the order of forfeiture is not discharged, the court having jurisdiction may order the bail forfeited to be paid as restitution to any victim of the offense for which the court has received bail. ~~Except as provided in 87-1-111, whenever~~ *Whenever* the court believes that restitution may be proper, the court shall order a hearing for the purpose of considering the nature and extent of the victim's pecuniary loss as defined ~~in 46-18-243~~ *by law*.

(2) If the court finds that restitution is appropriate, the court shall order restitution in an amount not exceeding the amount of the victim's complaint or the amount of the victim's pecuniary loss.

(3) An order to require restitution is a judgment against the defendant and ~~his~~ *the defendant's* sureties, and the court may order the restitution to be made by payment of money deposited as bail. Any balance of the bail money must be disposed of in the same manner as provided in ~~subsection (1)~~ *[section 86]*.

(4) ~~Provided no such~~ *A* determination or decision under this ~~subsection shall be~~ *section is not* admissible as evidence in any other civil action~~, nor shall it be~~ *and is not* res judicata in any ~~other~~ civil action."

Section 87. Section 46-7-101, MCA, is amended to read:

"**46-7-101.** ~~**Bringing**~~ ***Appearance of*** **arrested person** ~~**before a court.**~~ ~~(1)~~ Any person ~~making an arrest under a warrant shall take the~~ arrested ~~person~~, *whether with or without a warrant, must be taken* without unnecessary delay ~~before the judge issuing the warrant or, if he is absent or unable to act,~~ before the nearest ~~or~~ *and* most accessible judge *for an initial appearance* ~~of the same county. If an arrest is made in a county other than the one in which the warrant was issued, the arrested person shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made~~.

~~(2) Any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest or most accessible judge in the same county, and a complaint stating the charges against the arrested person shall be filed forthwith.~~"

Section 88. Section 46-7-102, MCA, is amended to read:

"**46-7-102. Duty of ~~the~~ court ~~at initial appearance~~.** (1) The judge shall inform the defendant:

(a) of the charge *or charges* against ~~him~~ *the defendant*;

(b) of ~~his~~ *the defendant's* right to counsel;

(c) of ~~his~~ *the defendant's* right to have counsel assigned by a court of record in accordance with the provisions of 46-8-101;

(d) of the general circumstances under which the defendant may obtain pretrial release;

~~(d)~~*(e)* ~~that he is not required~~ *of the defendant's right to refuse* to make a statement and *the fact* that any statement made by ~~him~~ *the defendant* may be offered in evidence at ~~his~~ *the defendant's* trial*; and*

(f) of the defendant's right to a judicial determination of whether probable cause exists if the charge is made by a complaint alleging the commission of a felony.

(2) The judge shall admit the defendant to bail ~~in accordance with the provisions of this title~~ *as provided by law.*"

Section 89. Section 46-7-103, MCA, is amended to read:

"**46-7-103. Preliminary ~~hearing in justice's court~~ *examination — when held.*** After the initial appearance, *in all cases where the charge is triable in district court,* ~~a~~ *the* justice's court shall, within a reasonable time, hold a preliminary examination unless*:*

(1) the defendant waives a preliminary examination~~,~~*;*

(2) the district court has granted leave to file an information~~,~~*;*

(3) an indictment has been returned~~,~~*;* or

(4) the case is triable in justice's court."

Section 90. Section 46-10-102, MCA, is amended to read:

"**46-10-102. Waiver ~~of preliminary examination~~.** If the defendant waives the preliminary examination, the ~~justice~~ *judge* shall hold ~~him~~ *the defendant* to answer to the court having jurisdiction of the offense."

Section 91. Section 46-10-202, MCA, is amended to read:

"**46-10-202. Presentation of evidence.** (1) The defendant may not enter a plea. The ~~justice~~ *judge* shall hear the evidence without unnecessary delay. All witnesses must be examined in the presence of the defendant. The defendant may cross-examine witnesses against ~~him~~ *the defendant* and may introduce evidence in ~~his~~ *the defendant's* own behalf.

(2) During the examination of ~~any~~ *a* witness or when the defendant is making a statement or testifying, the ~~justice~~ *judge* may, and on the request of the defendant or state shall, exclude all other witnesses. ~~He~~ *The judge* may also cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

(3) An objection to evidence on the ground that it has been acquired by unlawful means is not properly made at the preliminary examination.

Motions to suppress must be made to the trial court as provided in 46-13-302."

Section 92. Section 46-10-203, MCA, is amended to read:

"**46-10-203. Disposition of defendant.** *(1)* If from the evidence it appears that there is probable cause to believe that an offense has been committed ~~by~~ *and that* the defendant *committed it,* the ~~justice~~ *judge* shall hold ~~him~~ *the defendant* to answer to the court having jurisdiction of the offense~~;~~.

(2) ~~otherwise~~ *If it appears from the evidence that there is insufficient probable cause to believe that an offense has been committed or that the defendant committed it,* the ~~justice~~ *judge* shall *dismiss the complaint and* discharge ~~him~~ *the defendant. The discharge of the defendant may not preclude the state from instituting a subsequent prosecution for the same offense."*

Section 93. Section 46-10-204, MCA, is amended to read:

"**46-10-204. Record of *preliminary* examination.** (1) The testimony of each witness~~, in cases of homicide, must be reduced to writing as a deposition by a court-appointed stenographer. In cases other than homicide, the testimony of each witness~~ must be taken by a court-appointed stenographer upon demand by the county attorney, the defendant, or the defendant's counsel.

(2) After concluding the proceeding, if the ~~justice~~ *judge* holds the defendant to answer *a charge,* ~~he~~ *the judge* shall transmit immediately to the clerk of the court having jurisdiction of the offense all papers in the proceeding and any bail taken by ~~him~~ *the judge."*

Section 94. Section 46-11-101, MCA, is amended to read:

"**46-11-101. Methods of commencing prosecution.** ~~When authorized by law, a~~ *A* prosecution may be commenced by:

(1) a complaint;

(2) an information following a preliminary examination or waiver ~~thereof~~ *of a preliminary examination*;

(3) an information after leave of court has been granted; *or*

(4) an indictment upon a finding by a grand jury."

Section 95. Section 46-11-102, MCA, is amended to read:

"**46-11-102. ~~When given~~ *Required* methods ~~required~~.** (1) All prosecutions of offenses ~~triable~~ *charged* in ~~the~~ *a* district ~~courts shall~~ *court must* be by indictment or information.

(2) All other prosecutions of offenses ~~may~~ *must* be by complaint."

Section 96. **Filing complaint.** (1) When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine the complainant and any affidavits, if filed, to determine whether a charge may be filed.

(2) If it appears from an affidavit filed with the charge or from testimony of the complainant that there is probable cause to believe that an offense has been committed and that the person against whom the charge is made has committed it, the court shall issue a summons or an arrest warrant.

Section 97. **Amending complaint.** A court may allow a complaint to be amended under the same circumstances and in the same manner as an information as provided in 46-11-103.

Section 98. Section 46-11-201, MCA, is amended to read:

"**46-11-201. Leave to file information.** (1) The ~~county attorney~~ *prosecutor* may apply directly to the district court for permission to file an information against a named defendant. *If the defendant named is a district court judge, the prosecutor shall apply directly to the supreme court for leave to file the information.*

(2) ~~The~~ *An* application must be by affidavit supported by ~~such~~ evidence ~~as~~ *that* the judge *or chief justice* may require. If it appears that there is probable cause to believe that an offense has been committed by the defendant, the judge *or chief justice* shall grant leave to file the information, otherwise the application ~~shall be~~ *is* denied.

~~(2)~~*(3)* When ~~there has been granted~~ leave to file an information *has been granted* ~~against the defendant~~, a warrant *or summons* may issue for ~~his~~ *the defendant's* arrest *or appearance* ~~and he must be brought before the court unless the court orders otherwise~~.

(4) When leave is granted to file an information against a district court judge, the chief justice shall designate and direct a judge of the district court of another district to preside at the trial of the information and hear and determine all pleas and motions affecting the defendant under the information before and after judgment. All necessary records must be transferred to the clerk of the district court of the district in which the action arose."

Section 99. Section 46-11-403, MCA, is amended to read:

"**46-11-403. Amending ~~the~~ information *as to substance or form.*** (1) ~~(a) An~~ *The court may allow an* information ~~may~~ *to* be amended in matters of substance at any time, *but* not less than 5 days before trial, ~~with leave of court.~~

~~(b) When the prosecution seeks leave to amend an information as to a matter of substance, the prosecuting attorney shall file:~~

~~(i)~~ *provided that* a motion ~~for leave to amend stating~~ *is filed in a timely manner, states* the nature of the proposed amendment,~~;~~

~~(ii) a copy of the proposed amended information;~~ and

~~(iii)~~ *is accompanied by* an affidavit ~~in compliance with 46-11-201(1),~~ stating facts ~~sufficient to~~ *that* show the existence of probable cause to support the charge as amended. *A copy of the proposed amended information must be included with the motion to amend the information.*

~~(c)~~*(2)* If ~~the motion is timely and the amended information is supported by probable cause,~~ the court ~~shall grant~~ *grants* leave to amend *the information,*~~.~~

~~(d) The~~ *the* defendant ~~shall~~ *must* be arraigned on the amended information without unreasonable delay~~.~~

~~(e) The defendant shall have~~ *and must be given* a reasonable period of time to prepare for trial on the amended information.

~~(2)~~*(3)* The court may permit an information to be amended as to form at any time before *a* verdict or finding *is issued* if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

~~(3) No charge may be dismissed because of a formal defect which does not tend to prejudice a substantial right of the defendant.~~"

Section 100. Section 46-11-203, MCA, is amended to read:

"**46-11-203. Time for filing information.** *(1)* After ~~the defendant has been examined and held to answer or has waived~~ *a finding of probable cause following a preliminary examination or waiver of a* preliminary examination ~~as provided in chapter 10~~ or after leave of court has been granted ~~as provided in 46-11-201 and 46-11-202~~, the ~~county attorney must~~ *prosecutor shall* file within 30 days in the proper district court an information charging the defendant with the offense ~~for which he is held to answer~~ or any other offense ~~disclosed by the evidence~~ *supported by probable cause.* ~~If the county attorney fails to file the information within the time specified, he may be found guilty of contempt and may be prosecuted for neglect of duty.~~

(2) Unless good cause to the contrary is shown, the court shall dismiss the prosecution if an information is not filed within 30 days as required in subsection (1)."

Section 101. Section 46-11-301, MCA, is amended to read:

"**46-11-301. Summoning grand ~~juries — composition~~** ***jury.*** (1) A grand jury ~~must~~ *may* only be drawn and summoned when the district judge, in his discretion, considers a grand jury ~~necessary and shall so order~~ *to be in the public interest and orders the grand jury to be drawn or summoned.* The composition and drawing of a grand jury ~~shall~~ *must* be in accordance with the provisions of Title 3, chapter 15, part 6.

(2) The district judge may direct the selection of one or more alternate jurors, who shall sit as regular jurors before an indictment is found or a

grand jury investigation is concluded. ~~If a~~ *A* member of the jury *who* becomes unable to perform ~~his~~ *the juror's* duty~~,~~ ~~he~~ may be replaced by an alternate."

Section 102. Section 46-11-302, MCA, is amended to read:

"**46-11-302. ~~Objections~~ *Challenges* to grand jury ~~and to~~ *or* grand jurors.** (1) The ~~state~~ *county attorney or attorney general* may challenge the panel of a grand jury on the ~~grounds~~ *ground* that the grand jury was not selected, drawn, or summoned according to law and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges *must be made before the administration of the oath of the jurors,* may be oral or in writing, and ~~shall~~ *must* be tried and decided by the court.

(2) At any time for cause shown, the *district* court may excuse or discharge a juror ~~or jurors~~ either temporarily or permanently, and in the latter event, the court may impanel another person ~~or persons~~ in place of the juror ~~or jurors~~ discharged.

~~(2)~~*(3)* A motion to dismiss the indictment may be based on the ~~grounds~~ *ground* that the grand jury was not selected, drawn, or summoned according to law or that an individual juror was not legally qualified. An indictment ~~shall~~ *may* not be dismissed on the ground that one or more members ~~of the grand jury were~~ *are* not legally qualified if it appears from the record kept pursuant to ~~46-11-303~~ *[sections 105, 107, 108, 112], and this part* that eight or more jurors, after deducting those not legally qualified, concurred in finding the indictment."

Section 103. Section 46-11-303, MCA, is amended to read:

"**46-11-303. Foreman ~~— powers and duties~~.** The *district* court shall appoint one of the jurors to be foreman. The foreman ~~shall have~~ *has* the power to administer oaths ~~and~~ *or* affirmations and shall sign all indictments. ~~He~~ *The foreman* or another juror designated by ~~him~~ *the foreman* shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of court, but the record ~~shall~~ *may* not be made public except on order of the *district* court."

Section 104. **Appointing special prosecutor.** When the county attorney or attorney general is the subject of a grand jury investigation, the district court shall appoint a special prosecutor. If a special prosecutor is appointed, the county attorney's or attorney general's office may not participate in an official capacity, but staff members may appear as witnesses.

Section 105. Section 46-11-311, MCA, is amended to read:

"**46-11-311. Charge ~~by court~~ *to grand jury*.** When ~~the~~ *a* grand jury is impaneled and sworn, it ~~shall~~ *must* be charged by the judge who summoned it. In ~~doing so~~ *making the charge*, the *district* court shall ~~give the grand jurors such information as it deems proper or as is required by law~~ *instruct the jury* as to ~~their~~ *its* duties and ~~as to any charges of public offenses known to the court and likely to come before the grand jury~~ *the matters that jurors may consider. The prosecutor may bring additional matters before the* *grand jury that are consistent with the original charge or that are developed during the proceedings.*"

Section 106. **Closed hearing.** Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed. This requirement may not affect a defendant's discovery rights after the filing of the indictment.

Section 107. **Duties of grand jurors.** The grand jury shall inquire into those matters as directed by the court summoning the jury and shall inquire into other matters as presented by the prosecutor.

Section 108. Section 46-11-313, MCA, is amended to read:

"**46-11-313. Subpoena of witnesses.** *(1)* A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the county attorney, by the foreman of the grand jury, or by the judge of the district court. ~~The subpoena may be directed to witnesses in the state in support of the prosecution, those witnesses whose testimony, in the opinion of the issuer, is material in an investigation before the grand jury, and such other witnesses as the grand jury may direct.~~

(2) The fees and mileage of witnesses subpoenaed pursuant to this section must be the same as those for witnesses in criminal actions.

(3) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this section, including the provisions of Title 46, chapter 15, part 1."

Section 109. Section 46-11-314, MCA, is amended to read:

"**46-11-314. Reception of evidence.** ~~(1)~~ In the investigation of a charge, the grand jury shall receive no other evidence than that given by witnesses produced and sworn before it or *that* furnished by legal ~~documentary~~ evidence or the deposition of a witness ~~in the cases mentioned in chapter 15, part 2, of this title~~.

~~(2) The grand jury is not required to hear evidence for the defendant, but it shall weigh all the evidence submitted to it. If it has reason to believe other evidence within its reach will explain away the charge, it shall order the evidence to be produced and for that purpose may require the county attorney to issue process for witnesses.~~"

Section 110. Section 46-11-315, MCA, is amended to read:

"**46-11-315. Advice and assistance to grand jury ~~— who may be present~~.** (1) The grand jury may at all times ask the advice of ~~the court or~~ the judge ~~thereof, the attorney general, or the county attorney~~. Unless ~~such~~ advice is asked, the judge ~~of the court shall~~ *may* not be present during the sessions of the grand jury.

(2) The ~~county attorney or the attorney general~~ *prosecutor* may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by the grand jury and may inter-

rogate witnesses before the grand jury whenever ~~he thinks~~ *the prosecutor finds* it necessary. ~~When a charge against or involving the county attorney, deputy county attorney, or anyone employed by or connected with the office of the county attorney is being investigated by the grand jury, the county attorney, deputy county attorney, or all or any one or more of them shall not be allowed to be present in an official capacity before the grand jury when the charge is being investigated. They or he shall only be present while a witness and after appearing as a witness shall leave the place where the grand jury is holding session.~~

(3) ~~When requested to do so by the grand jury of any county, the attorney general or~~ *Subject to the approval of the district court, the* county attorney may employ *a* special ~~counsel~~ *prosecutor,* ~~and~~ investigators, *interpreters, and experts at agreed-upon compensation to be first approved by the court* ~~who shall investigate and present the evidence acquired in such investigation to the grand jury~~.

~~(4) The grand jury or county attorney may require by subpoena the attendance of any person before the grand jury as interpreter. While his services are necessary, the interpreter may be present at the examination of witnesses before the grand jury. The compensation for the services of the interpreter constitutes a charge against the county and shall be fixed by the grand jury in an amount to be approved by the court. It shall be paid out of the county treasury on a warrant of the county auditor upon an order of the judge of the district court.~~"

Section 111. **Who may be present.** The prosecutor, witnesses, interpreters, and a stenographer or operator of a recording device used for the purpose of taking the evidence may be present while the grand jury is in session. No person other than the jurors may be present while the grand jury is deliberating or voting.

Section 112. Section 46-11-316, MCA, is amended to read:

"**46-11-316.** ~~**Stenographer — transcript of testimony**~~ ***Recorded proceedings.*** (1) The grand jury ~~may~~ *shall either* appoint a stenographer to take in shorthand the testimony of witnesses~~,~~ or the testimony ~~may~~ *must* be taken by a recording device, but the record so made ~~shall~~ *must* include the testimony of all witnesses on that particular investigation. ~~The shorthand notes or the recordings and transcript of the same, if any, shall be delivered to and retained by the clerk of the district court.~~

(2) ~~The stenographer and any typist who transcribes the stenographer's notes or recordings shall be sworn by the foreman not to disclose any testimony or the names of any witnesses except when so ordered by the court.~~

~~(3)~~ The stenographic reporter *or operator of a recording device* shall, *within 30 days after an indictment has been found,* certify and file with the clerk of the district court *the shorthand notes or the recordings made and* an original ~~transcription of his shorthand~~ *transcript of the* notes *or recordings.* ~~and a copy thereof and as many additional copies as there are defendants. The reporter shall complete the certification and filing within~~

~~10 days after the indictment has been found unless the court for good cause makes an order extending the time. The clerk of the district court shall deliver the original of the transcript filed with him to the county attorney immediately upon his receipt thereof, retain one copy for use only by judges in proceedings relating to the indictment, and deliver a copy of the transcript to each defendant or his attorney.~~

(3) An unintentional failure of any recording to reproduce all or any portion of a proceeding may not affect the validity of the prosecution."

Section 113. Section 46-11-317, MCA, is amended to read:

"**46-11-317. Secrecy of proceedings ~~and~~ — disclosure.** (1) Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to ~~the county attorney~~ *any prosecutor or investigator of this state and prosecutors or investigators from any other state or the federal government* for use in the performance of ~~his~~ *the prosecutor's or investigator's* duty.

(2) ~~Otherwise a~~ *A grand* juror, ~~attorney,~~ *an* interpreter, *a* stenographer, ~~or~~ *an* operator of a recording device, ~~or any~~ *a* typist who transcribes recorded testimony, *or the prosecutor* may *not* disclose matters occurring before the grand jury ~~only when so directed by the court preliminary to or in connection with a judicial proceeding or when~~ *except as otherwise permitted by Title 46. An obligation of secrecy may not be imposed on a person except in accordance with this section. A knowing violation of this section may be punishable as contempt of court.*

(3) Disclosure otherwise prohibited by this section of matters occurring before the grand jury may be made:

(a) if directed by the district court prior to or in combination with a judicial proceeding;

(b) when permitted by the *district* court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury ~~under 46-11-302(2).~~*; or*

(c) when permitted by the district court, to a defendant pursuant to a proper discovery motion ~~No obligation of secrecy may be imposed upon any person except in accordance with this rule~~.

~~(2) The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.~~"

Section 114. Section 46-11-318, MCA, is amended to read:

"**46-11-318. ~~Discharging~~ *Discharge of grand* jury.** When the grand jury certifies *the* completion of business before it and the *district* court concurs, ~~it shall~~ *the grand jury must* be discharged by the *district* court."

Section 115. Section 46-11-319, MCA, is amended to read:

"**46-11-319. Expenses of grand jury.** (1) ~~All~~ *Except as provided in subsection (2), all* expenses of the grand jury, including *expenses for* special ~~counsel and~~ *prosecutors, experts,* investigators, *and interpreters,* if any, ~~shall~~ *must* be paid by the treasurer of the county out of the general fund of the county~~, except as provided in subsection (2),~~ upon warrants drawn by the county auditor or *by* the clerk of the district court upon ~~the~~ *a* written order of the judge of the district court of the county.

(2) If ~~a~~ *the* county has a district court fund, all expenses of a grand jury must be paid out of ~~such~~ *that* fund.

(3) Subject to the procedures established ~~under 3-5-902(1)~~ *by law,* the state shall reimburse the ~~county~~ *court* for juror and witness fees ~~as provided in 3-5-903~~ and ~~for~~ witness expenses ~~as provided in 46-15-104~~. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in ~~such~~ *that* fund."

Section 116. Section 46-11-331, MCA, is amended to read:

"**46-11-331. Finding an indictment.** (1) The grand jury shall find an indictment when all the evidence before it taken together~~, if unexplained or uncontradicted,~~ would in its judgment warrant a conviction by a trial jury.

~~(2)~~ An indictment ~~cannot~~ *may* be found ~~without~~ *only upon* the concurrence of at least eight grand jurors. ~~When so found, it must be endorsed, "a true bill", and the endorsement must be signed by the foreman of the grand jury.~~

(2) If a complaint or information is pending against the defendant and eight jurors do not concur in finding an indictment, the foreman shall report the decision to the district court judge."

Section 117. Section 46-11-332, MCA, is amended to read:

"**46-11-332. Presenting the indictment.** (1) An indictment, when found by the grand jury, must be *signed by and* presented by ~~their~~ *the* foreman ~~in their presence~~ to the *district* court *in the presence of the grand jury* and must be filed with the clerk. *The district court shall then issue a warrant or summons for the defendant.*

(2) ~~When an indictment is filed against a district court judge, it must be transmitted directly to the supreme court, which shall thereupon designate and direct a judge of the district court of another district to preside at the trial of such indictment and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment.~~ *If a complaint or information is pending against the defendant and eight jurors do not concur in finding an indictment, the foreman shall report the decision to the district court judge."*

Section 118. Section 46-11-401, MCA, is amended to read:

"**46-11-401. Form of charge.** (1) ~~A~~ *The* charge ~~shall:~~

~~(a)~~ *must* be in writing and in the name of the state ~~of Montana~~ or ~~in~~ the ~~name of a~~ *appropriate* municipality ~~if a violation of a municipal ordinance is charged;~~

~~(b)~~ *and must* specify the ~~name of the~~ *district* court in which the charge is filed.~~; and~~

~~(c) charge the commission of an offense by:~~

~~(i) stating~~ *The charge must be a plain, concise, and definite statement of the offense charged, including* the name of the offense,~~;~~

~~(ii) citing in customary form the statute, rule, or other provision of law which the defendant is alleged to have violated;~~

~~(iii) stating the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended;~~

~~(iv) stating~~ *whether the offense is a misdemeanor or felony, the name of the person charged, and* the time and place of the offense as definitely as can be ~~done; and~~ *determined*

~~(v) stating the name of the accused, if known, and, if not known, designating the accused by any name or description by which he can be identified with reasonable certainty~~. *The charge must state for each count the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.*

(2) If the charge is by information or indictment, it ~~shall~~ *must* include endorsed ~~thereon~~ *on the information or indictment* the names of the witnesses for the state, if known.

(3) If the charge is by complaint, it ~~shall~~ *must* be signed on oath by a person having knowledge of the facts or by the ~~county attorney;~~ *prosecutor.*

(4) ~~if~~ *If the charge is* by information, it ~~shall~~ *must* be signed by the ~~county attorney or by his deputy; if~~ *prosecutor. If the charge is* by indictment, it ~~shall~~ *must* be signed by the foreman of the grand jury.

(5) The district court, on motion of the defendant, may strike surplusage from the indictment or information.

(6) A charge may not be dismissed because of a formal defect that does not tend to prejudice a substantial right of the defendant."

Section 119. Section 46-11-404, MCA, is amended to read:

"**46-11-404. Joinder ~~and severance~~ of offenses and defendants.** (1) ~~An indictment, information, or complaint may charge two~~ *Two* or more ~~different~~ offenses ~~connected together in their commission,~~ *or* different statements of the same offense~~, or two or more different offenses of the same class under separate counts~~ *may be charged in the same charging document* *in a separate count, or alternatively, if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same transactions connected together or constituting parts of a common scheme or plan.* ~~If two or more indictments, informations, or complaints are filed in such cases in the same court, the court may order them to be consolidated.~~ Allegations made in one count may be incorporated by reference in another count.

(2) If two or more charging documents are filed in the case, the court may order them to be consolidated.

(3) The prosecution is not required to elect between the different offenses ~~or counts~~ set forth in the ~~indictment, information, or complaint,~~ *charging document,* and the defendant may be convicted of any number of the offenses charged *except as provided in 46-11-502.* Each offense of which the defendant is convicted must be stated in the verdict or the finding of the court.

~~(2) The court in which the case is triable, in the interests of justice and for good cause shown, may, in its discretion, order that the different offenses or counts set forth in the indictment, information, or complaint be tried separately or divided into two or more groups and each of the groups tried separately. An acquittal of one or more counts shall not be considered an acquittal of any other count.~~

~~(3)~~*(4)* Two or more defendants may be charged in the same indictment, ~~or~~ information, *or complaint* if they are alleged to have participated in the same ~~series of acts or transactions~~ *transaction* constituting an offense or offenses. ~~Such~~ *The* defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

~~(4) If it appears that a defendant or the state is prejudiced by a joinder of related prosecutions or defendants in a single charge or by joinder of separate charges or defendants for trial, the court may order separate trials, grant a severance of defendants, or provide any other relief as justice may require.~~"

Section 120. Section 46-11-502, MCA, is amended to read:

"**46-11-502.** ~~**Prosecution when conduct constitutes more than one offense**~~ ***Multiple charges.*** *(1)* When the same transaction may establish the commission of more than one offense, a person charged with ~~such~~ *the* conduct may be prosecuted for each ~~such~~ offense.

(2) ~~He~~ *A defendant* may not, however, be convicted of more than one offense if:

~~(1)~~*(a)* one offense is included in the other;

~~(2)~~*(b)* one offense consists only of a conspiracy or other form of preparation to commit the other;

~~(3)~~*(c)* inconsistent findings of fact are required to establish the commission of the offenses;

~~(4)~~*(d)* the offenses differ only in that one is defined to prohibit a ~~designated kind of conduct generally and the other to prohibit a~~ specific instance of ~~such~~ *the* conduct; or

~~(5)~~*(e)* the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, unless the law provides that the specific periods of ~~such~~ *the* conduct constitute separate offenses."

Section 121. Section 46-11-503, MCA, is amended to read:

"**46-11-503. ~~When prosecution~~ *Prosecution* based on same transaction barred by former prosecution.** *(1)* ~~If the~~ *When two or more* offenses ~~were~~ *are* known to the ~~attorney prosecuting upon sufficient evidence to justify the filing of an information or the issuance of a warrant of arrest and were~~ *prosecutor, are supported by probable cause, and are* consummated prior to the original charge and ~~if the~~ jurisdiction and venue of the ~~several~~ offenses lie in a single court, a prosecution ~~based upon the same transaction as a former prosecution~~ is barred ~~by such former prosecution under the following circumstances~~ *if*:

~~(1)~~*(a)* ~~The~~ *the* former prosecution resulted in an acquittal. There is an acquittal whenever the prosecution results in a finding of not guilty by the trier of fact or in a determination that there is insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense ~~than the offense charged which~~ *that* is subsequently set aside is an acquittal of the greater ~~inclusive~~ offense that was charged.

~~(2)~~*(b)* ~~The~~ *the* former prosecution ~~was terminated, after a complaint had been filed on a misdemeanor charge or after an information had been filed or an indictment found on a felony charge, by a final order of judgment for the defendant which~~ *resulted in a conviction that* has not been set aside, reversed, or vacated*;* ~~and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.~~

~~(3) The former prosecution resulted in a conviction. There has been a conviction whenever the prosecution resulted in:~~

~~(a) a judgment of conviction which has not been reversed or vacated;~~

~~(b) a verdict of guilty which has not been set aside and which is capable of supporting a judgment, so long as failure to enter judgment was for a reason other than a motion of the defendant; or~~

~~(c) a plea of guilty accepted by the court, so long as failure to enter judgment was for a reason other than a motion of the defendant.~~

~~(4) The former prosecution was improperly terminated. Except as provided in this subsection (4), there is an improper termination of a prosecution whenever the termination is~~

(c) after a charge had been filed, the prosecution was terminated by a final order or judgment for the defendant that has not been set aside, reversed, or vacated; or

(d) the former prosecution was terminated for reasons not amounting to an acquittal and takes place*:*

(i) in a jury trial, after the first witness is sworn but before *a* verdict~~,~~ *is returned; or*

(ii) in a nonjury trial, after the first witness is sworn but before a judgment as to guilt or innocence is reached.

(2) ~~Termination under either of the following circumstances is not improper~~ *A prosecution based upon the same transaction as a former prosecution is not barred under subsection (1)(d) when*:

(a) ~~The~~ *the* defendant consents to the termination or waives his right to object to the termination~~.~~*; or*

(b) ~~The~~ *the* trial court~~, in the exercise of its discretion,~~ finds that the termination is necessary because:

(i) it is physically impossible to proceed with the trial in conformity with law;

(ii) there is a legal defect in the proceedings ~~which~~ *that* would make any judgment entered upon a verdict reversible as a matter of law;

(iii) prejudicial conduct ~~in or outside the courtroom~~ makes it impossible to proceed with the trial without manifest injustice to either the defendant or the state;

(iv) the jury is unable to agree upon a verdict; or

(v) false statements of a juror on voir dire prevent a fair trial."

Section 122. Section 46-11-504, MCA, is amended to read:

"**46-11-504. Former prosecution in another jurisdiction ~~— when a bar~~.** When conduct constitutes an offense within the concurrent jurisdiction of this state and of the United States or another state or of two courts of separate, overlapping, or concurrent jurisdiction in this state, a prosecution in any ~~such~~ other jurisdiction is a bar to a subsequent prosecution in this state under the ~~following~~ *same* circumstances *barring further prosecution in this state if*:

(1) ~~The~~ *the* first prosecution resulted in an acquittal or in a conviction ~~as defined in 46-11-503~~ and the subsequent prosecution is based on an offense arising out of the same transaction~~.~~*; or*

(2) ~~The~~ *the* former prosecution was terminated, after the ~~complaint~~ *charge* had been filed ~~on a misdemeanor charge or after the information had been filed or the indictment found on a felony charge~~, by an acquittal or by a final order or judgment for the defendant ~~which~~ *that* has not been set

aside, reversed, or vacated~~;~~ and the acquittal, final order, or judgment necessarily required a determination inconsistent with a fact ~~which~~ *that* must be established for conviction of the offense for which the defendant is subsequently prosecuted."

Section 123. Section 46-11-505, MCA, is amended to read:

"**46-11-505.** ~~**When former**~~ ***Former*** **prosecution not a bar.** A prosecution is not a bar ~~within the meaning of 46-11-503 and 46-11-504 under any one or more of the following circumstances~~ *if*:

(1) ~~The~~ *the* former prosecution was before a court ~~which~~ *that* lacked jurisdiction over the defendant or the offense~~.~~*; or*

(2) ~~The former prosecution was procured by the defendant without the knowledge of the proper prosecuting officer or with the purpose of avoiding the sentence which might otherwise be imposed.~~

~~(3) The~~ *the* former prosecution resulted in a judgment of conviction ~~which~~ *that* was held invalid in a postconviction hearing."

Section 124. **Pretrial proceedings — exclusion of public and sealing of records.** (1) Except as provided in this section, pretrial proceedings and records of those proceedings are open to the public. If, at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation of the news media in delaying dissemination of potentially prejudicial information until the impaneling of the jury or until an earlier time consistent with the administration of justice.

(2) The defendant may move that all or part of the proceeding be closed to the public, or with the consent of the defendant, the judge may take action on the judge's own motion.

(3) The judge may close a preliminary hearing, bail hearing, or any other pretrial proceeding, including a motion to suppress, and may seal the record only if:

(a) the dissemination of information from the pretrial proceeding and its record would create a clear and present danger to the fairness of the trial; and

(b) the prejudicial effect of the information on trial fairness cannot be avoided by any reasonable alternative means.

(4) Whenever all or part of any pretrial proceeding is held in chambers or otherwise closed to the public under this section, a complete record must be kept and made available to the public following the completion of the trial or earlier if consistent with trial fairness.

(5) When the judge determines that all or part of a document filed in support of a charge or warrant would present a clear and present danger to the defendant's right to a fair trial, the document or portion of the document

must be sealed until the trial is completed unless the document or portion of the document must be used for trial fairness.

(6) An affidavit filed in support of a motion for leave to file a charge or warrant must be sealed unless the judge determines that disclosure of the information in the affidavit is required to protect the health, safety, or welfare of the public.

Section 125. **Misdemeanor offenses.** In all cases in which the defendant is charged with a misdemeanor offense, the defendant may appear by counsel only, although the court may require the personal attendance of the defendant at any time.

Section 126. **Felony offenses.** (1) Except as otherwise provided in Title 46, the defendant in all cases in which a felony is charged must be present at the initial appearance, arraignment, entry of plea, preliminary examination, trial, and sentencing or when otherwise required by the court.

(2) The defendant may be present at all other proceedings.

(3) The presence of the defendant is not required before the supreme court.

Section 127. **Absence of defendant from trial.** (1) In a misdemeanor case, if the defendant fails to appear in person, either at the time set for the trial or at any time during the course of the trial and if the defendant's counsel is authorized to act on the defendant's behalf, the court shall proceed with the trial unless good cause for continuance exists.

(2) If the defendant's counsel is not authorized to act on the defendant's behalf as provided in subsection (1) or if the defendant is not represented by counsel, the court, in its discretion, may do one or more of the following:

(a) order a continuance;

(b) order bail forfeited;

(c) issue a bench warrant; or

(d) proceed with the trial after finding that the defendant had knowledge of the trial date and is voluntarily absent.

(3) After the trial of a felony offense has commenced in the defendant's presence, the absence of the defendant during the trial may not prevent the trial from continuing up to and including the return of a verdict if the defendant:

(a) has been removed from the courtroom for disruptive behavior after receiving a warning that removal will result if the defendant persists in conduct that is so disruptive that the trial cannot be carried on with the defendant in the courtroom; or

(b) is voluntarily absent and the offense is not one that is punishable by death.

(4) Nothing in this section limits the right of the court to order the defendant to be personally present at the trial for purposes of identification unless defense counsel stipulates to the issue of identity.

Section 128. **Absence of defendant on receiving verdict or at sentencing.** (1) In all misdemeanor cases, the verdict may be returned and the sentence imposed without the defendant being present.

(2) In all felony cases, the defendant shall appear in person when the verdict is returned or the sentence is imposed unless, after the exercise of due diligence to procure the defendant's presence, the court finds that it is in the interest of justice that the verdict be returned and the sentence be pronounced in the defendant's absence.

Section 129. **Pretrial diversion.** (1) The prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(a) that the defendant may not commit any offense;

(b) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(c) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(d) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or

(e) any other reasonable conditions.

(2) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

(3) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(4) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

Section 130. Section 46-12-102, MCA, is amended to read:

"**46-12-102. Place of arraignment.** The defendant ~~shall~~ *must* be arraigned in the court ~~in which the indictment, information, or complaint is filed unless before arraignment the cause has been removed to another court, in which case he shall be arraigned in that court~~ *that has trial jurisdiction of the charge.*"

Section 131. Section 46-12-201, MCA, is amended to read:

"**46-12-201. ~~General rules of procedure for~~ *Manner of conducting* arraignment.** *(1)* ~~The arraignment in any court in this state~~ *Arraignment* must be conducted ~~in the following manner:~~

~~(1) The arraignment must be~~ in open court *and must consist of reading the charge to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead to the charge. The defendant must be given a copy of the charging document before being called upon to plead.*

(2) The court ~~must~~ *shall* inquire of the defendant or ~~his~~ *the defendant's* counsel the defendant's true name, and if the defendant's true name ~~be~~ *is* given as any other than that used in the charge, the court ~~must~~ *shall* order the defendant's name to be substituted for the name under which ~~he~~ *the defendant* is charged. ~~The subsequent proceedings must be conducted with the defendant charged under that name, but in the discretion of the court, the defendant may also be referred to by the name by which he was first charged.~~

(3) The court ~~must~~ *shall* determine whether the defendant is under any disability ~~which~~ *that* would prevent the court, in its discretion, from proceeding with the arraignment. The arraignment may be continued until ~~such time as~~ the court determines the defendant is able to proceed."

Section 132. Section 46-12-204, MCA, is amended to read:

"**46-12-204. ~~The plea — plea bargains~~ *Plea alternatives.*** (1) ~~The~~ *A* defendant ~~shall enter a plea of~~ *may plead* guilty or not guilty ~~to the indictment, information, or complaint~~. If ~~the~~ *a* defendant refuses to plead ~~to the indictment, information, or complaint,~~ *or if a defendant corporation fails to appear, the court shall enter* a plea of not guilty ~~must be entered~~.

(2) The court may ~~refuse to~~ *not* accept a plea of guilty ~~and shall not accept the plea of guilty~~ without first determining that the plea is voluntary ~~with an understanding of the charge~~ *and not the result of force or threats or of promises apart from the plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the prosecutor and the defendant or the defendant's attorney.*

(3) ~~(a) A plea bargain agreement is an agreement between a defendant and a prosecutor that in exchange for a particular plea the prosecutor will recommend to the court a particular sentence. A judge may not participate in the making of, and is not bound by, a plea bargain agreement. If a judge does not impose a sentence recommended by a prosecutor pursuant to a plea bargain agreement, the judge is not required to allow the defendant to withdraw a plea of guilty.~~

~~(b) Before a judge accepts a plea of guilty, he must advise the defendant:~~

~~(i) of all the provisions of subsection (3)(a);~~

~~(ii) of the punishment as set forth by statute for the crime charged;~~

~~(iii) that prior to entering a plea of guilty, the defendant and his counsel should have carefully reviewed Title 46, chapter 18, and considered the most severe sentence that can be imposed for a particular crime; and~~

~~(iv) that the judge may impose any sentence allowed by law.~~ *With the approval of the court and the consent of the prosecutor, a defendant may enter a plea of guilty, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea."*

Section 133. Section 46-12-202, MCA, is amended to read:

"**46-12-202. ~~Court~~ *Advice* to ~~advise~~ defendant ~~of his rights and the charges.~~** ~~(1)~~ ~~The defendant shall be advised by~~ *Before accepting a plea of guilty,* the court ~~as follows~~ *shall determine that the defendant understands the following*:

(1) (a) ~~of~~ the nature of the ~~crime charged against him;~~ *charge for which the plea is offered;*

~~(b) of the punishment as set forth by statute for the crime charged;~~

~~(c) if the defendant intends to enter into a plea bargain agreement:~~

~~(i) that under 46-12-204, the court is not bound by such agreements;~~

~~(ii) that under 46-12-204, if the court does not impose the sentence recommended by the prosecution pursuant to a plea agreement, the court is not required to allow the defendant to withdraw a plea of guilty;~~

~~(iii) that criminal sentencing is governed by Title 46, chapter 18; and~~

~~(iv) that the defendant and his counsel should carefully review Title 46, chapter 18, and consider the most severe sentence that can be imposed for a particular crime;~~

~~(d) if the defendant appears for arraignment without counsel, of his right to counsel and of his right to assigned counsel if he is unable to employ counsel. If counsel is or has been waived by the defendant, the court shall ascertain if the waiver is or was voluntary before proceeding.~~

~~(e) of the time prescribed by statute to enter a plea;~~

~~(f) of his right to secure bail to release him from custody.~~

~~(2) The court, or the clerk or county attorney under its direction, must:~~

~~(a) deliver to the defendant a true copy of the indictment, information, or complaint, including the endorsements thereon and the list of witnesses when required;~~

~~(b) read the indictment, information, or complaint to the defendant unless the defendant or his counsel waives such reading; and~~

~~(c) ask him whether he pleads guilty or not guilty to the indictment, information, or complaint.~~

(b) the mandatory minimum penalty provided by law, if any;

(c) the maximum penalty provided by law, including the effect of any penalty enhancement provision or special parole restriction; and

(d) when applicable, the requirement that the court may also order the defendant to make restitution of the costs and assessments provided by law;

(2) if the defendant is not represented by an attorney, the fact that he has the right to be represented by an attorney at every stage of the proceeding against him and that, if necessary, one will be appointed to represent the defendant;

(3) that the defendant has the right:

(a) to plead not guilty or to persist in that plea if it has already been made;

(b) to be tried by a jury and at the trial has the right to the assistance of counsel;

(c) to confront and cross-examine witnesses against the defendant; and

(d) not to be compelled to reveal personally incriminating information;

(4) that if the defendant pleads guilty in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted pursuant to [section 135]; and

(5) that if the defendant's plea of guilty is accepted by the courts, there will not be a further trial of any kind, so that by pleading guilty the defendant waives the right to a trial."

Section 134. **Plea agreement procedure.** (1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

(a) move for dismissal of other charges;

(b) agree that a specific sentence is the appropriate disposition of the case; or

(c) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding upon the court.

(2) If a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good cause in camera, at the time the plea is offered. If the agreement is of the type specified in subsection (1)(a) or (1)(b), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact and advise the defendant that the court is not bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the defendant persists in the guilty plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

Section 135. **Determining accuracy of plea.** (1) The court may not accept a guilty plea without determining that there is a factual basis for the plea in charges of felonies or misdemeanors resulting in incarceration.

(2) A defendant who is unwilling to admit to any element of the offense that would provide a factual basis for a plea of guilty may, with the consent of the court, enter a plea of guilty to the offense if the defendant considers the plea to be in the defendant's best interest and if a factual basis exists for the plea.

Section 136. Section 46-12-206, MCA, is amended to read:

"**46-12-206. ~~Irregularity of arraignment~~** ***Harmless error.*** ~~No irregularity in the arraignment which~~ *Any variance from the procedure required by [section 135] that* does not affect the substantial rights of the defendant ~~shall affect the validity of any proceeding in the cause if the defendant pleads to the charge or proceeds to trial without objecting to such irregularity~~ *must be disregarded.*"

Section 137. Section 46-15-322, MCA, is amended to read:

"**46-15-322. Disclosure by prosecution.** (1) Upon ~~arraignment in district court or at such later time as the court may for good cause permit~~ *request*, the prosecutor shall make available to the defendant for examination and reproduction the following material and information within ~~his~~ *the prosecutor's* possession or control:

(a) ~~a list of~~ the names, ~~and~~ addresses, *and statements* of all persons whom the prosecutor ~~intends to~~ *may* call as witnesses in the case-in-chief~~,~~ ~~together with their relevant written or recorded statements~~;

(b) all written or oral statements of the ~~accused~~ *defendant* and of any person who will be tried with ~~him~~ *the defendant*;

(c) ~~the names and addresses~~ *all written reports or statements* of experts who have personally examined the ~~accused~~ *defendant* or any evidence in the particular case, together with the results of physical examinations, scientific tests, experiments, or comparisons~~, including all written reports or statements made by them in connection with the particular case~~;

(d) ~~a list or copies of~~ all papers, documents, photographs, or tangible objects that the prosecutor ~~will~~ *may* use at trial or that were obtained from or purportedly belong to the ~~accused~~ *defendant*; and

(e) all material or information that tends to mitigate or negate the ~~accused's~~ *defendant's* guilt as to the offense charged or that would tend to reduce ~~his punishment therefor~~ *the defendant's potential sentence.*

(2) At the same time, the prosecutor shall inform the defendant of, and make available to the defendant for examination and reproduction, any written or recorded material or information within ~~his~~ *the prosecutor's* ~~possession or~~ control regarding:

(a) whether there has been any electronic surveillance of any conversations to which the ~~accused~~ *defendant* was a party;

(b) whether ~~a search warrant~~ *an investigative subpoena* has been executed in connection with the case; *and*

(c) whether the case has involved an informant~~,~~ and, if so, ~~his~~ *the informant's* identity if the defendant is entitled to know either or both of these facts under Rule 502 of the Montana Rules of Evidence ~~and 46-15-324(3)~~.

(3) ~~The prosecutor, upon written request, shall make available to the defendant for examination, testing, and reproduction any specified items contained in the list submitted under subsection (1)(d).~~ The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under ~~this section~~ *subsection (1)(d).*

(4) The prosecutor's obligation of disclosure extends to material and information in the possession or control of members of ~~his~~ *the prosecutor's* staff and of any other persons who have participated in the investigation or evaluation of the case.

(5) Upon motion ~~of the defendant~~ showing that ~~he~~ *the defendant* has substantial need in the preparation of ~~his~~ *the* case for additional material or information not otherwise provided for and that ~~he~~ *the defendant* is unable, without undue hardship, to obtain the substantial equivalent by other means, the court, in its discretion, may order any person to make it available to ~~him~~ *the defendant.* The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would

be unreasonable or oppressive. *The prosecutor may not be required to prepare or disclose summaries of witnesses' testimony.*

(6) The prosecutor shall furnish to the defendant no later than 5 days before trial or at ~~such~~ *a* later time as the court may for good cause permit, together with their ~~relevant written or recorded~~ statements, a list of the names and addresses of all persons whom ~~he~~ *the prosecutor* intends to call as rebuttal witnesses to *evidence of good character or* the defenses of alibi, compulsion, entrapment, justifiable use of force, *or* mistaken identity~~, or good character~~ or the defense that the ~~accused~~ *defendant* did not have a particular state of mind that is an element of the offense charged."

Section 138. Section 46-15-323, MCA, is amended to read:

"**46-15-323. Disclosure by ~~accused~~ *defendant*.** (1) At any time after the filing in district court of an indictment or information, the ~~accused~~ *defendant,* in connection with the particular crime ~~with which he is~~ charged, shall upon written request of the prosecutor and ~~for good cause shown~~ *approval of the court*:

(a) appear in a ~~line-up~~ *lineup*;

(b) speak for identification by witnesses;

(c) be fingerprinted, palm printed, footprinted, or voiceprinted;

(d) pose for photographs not involving reenactment of an event;

(e) try on clothing;

(f) permit the taking of samples of his hair, blood, saliva, urine, or other specified materials that involve no unreasonable *bodily* intrusions ~~of his body~~;

(g) provide ~~specimens of his~~ handwriting *samples*; or

(h) submit to a reasonable physical or medical inspection ~~of his body~~; however, ~~such~~ *the* inspection does not include psychiatric or psychological examination.

(2) ~~The accused is entitled to the presence of counsel at the taking of any evidence pursuant to subsection (1). Subsection (1) supplements and does not limit any other procedures established by law.~~

~~(3)~~ Within ~~30~~ *10* days after ~~arraignment~~ *the omnibus hearing* in district court or at ~~such~~ *a* later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of ~~his~~ *the defendant's* intention to introduce evidence at trial of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity. ~~or the defense that~~

(3) Within 10 days after receiving a report of the defendant's mental condition from a psychiatrist or psychologist or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with

a written notice of the defendant's intention to introduce evidence at trial of the defense that due to a mental disease or defect, the ~~accused~~ *defendant* did not have a particular state of mind that is an essential element of the offense charged.

(4) The notice must specify for each defense the names and addresses of the persons ~~that will be called~~, *other than the defendant, whom the defendant may call* as witnesses ~~at trial~~ in support of the defense, *together with all written reports or statements made by them concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a privileged report or statement unless he intends to use the privileged report or statement, or the witness who made it, at trial.*

(5) Prior to trial the defendant ~~shall~~ *may,* upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses *and disclose their reports or statements as required by this section.* After the trial commences, no witnesses may be called by the defendant in support of these defenses unless the name of the witness is included on the list *and the witness's report or statement has been disclosed as required by this section,* except for good cause shown. ~~Any evidence that reasonably becomes available after the initial 30 days shall be admitted if 46-15-327 is complied with.~~

~~(4)~~*(6)* ~~Simultaneously with the notice of defenses submitted under subsection (3)~~ *Within 10 days after the omnibus hearing in district court or at a later time as the court may for good cause permit,* the defendant shall make available to the prosecutor for testing, examination, or reproduction:

(a) the names, ~~and~~ addresses, *and statements* of all persons, other than the ~~accused~~ *defendant,* whom ~~he~~ *the defendant* ~~will~~ *may* call as witnesses ~~at trial~~ *in the defense case-in-chief,* together with ~~all~~ *their* statements ~~made by them in connection with the particular case~~;

(b) the names and addresses of experts whom ~~he~~ *the defendant* ~~will~~ *may* call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by ~~them~~ *these experts* in connection with the particular case; and

(c) ~~a list of~~ all papers, documents, photographs, and other tangible objects that ~~he will~~ *the defendant may* use at trial.

~~(5)~~*(7)* The defendant's obligation under this section extends to material and information within the possession or control of the defendant, ~~or his attorneys and agents~~ *defense counsel, and defense counsel's staff or investigators.*

~~(6)~~*(8)* Upon motion of the prosecutor showing that ~~he~~ *the prosecutor* has substantial need in the preparation of ~~his~~ *the* case for additional material or information not otherwise provided for, that ~~he~~ *the prosecutor* is unable, without undue hardship, to obtain the substantial equivalent by other means, and that disclosure ~~thereof~~ *of the material or information* will not violate the ~~accused's~~ *defendant's* constitutional rights, the court, in its discretion, may order any person to make ~~such~~ *the* material or information available to ~~him~~ *the prosecutor.* The court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. *The defense counsel may not be required to prepare or disclose summaries of witnesses' testimony.*"

Section 139. Section 46-15-324, MCA, is amended to read:

"**46-15-324. Materials not subject to disclosure.** (1) Except as provided in ~~subsection (2)~~ *this section,* disclosure is not required for the *superseded notes or* work product of the prosecuting or defense attorney.

(2) If exculpatory information is contained in the *superseded notes or* work product *of the prosecution,* that information must be disclosed.

~~(3) Disclosure of the existence of an informant or of the identity of an informant who will not be called to testify is not required if:~~

~~(a) disclosure would result in substantial risk to the informant or to his operational effectiveness; and~~

~~(b) the failure to disclose will not infringe the constitutional rights of the accused.~~"

Section 140. Section 46-15-325, MCA, is amended to read:

"**46-15-325. Failure to call a witness or raise a defense.** The fact that a ~~witness'~~ *witness's* name is on a list furnished pursuant to ~~46-15-321 through 46-15-329~~ *this part but the witness does not testify* or that a matter contained in a pretrial notice is not raised may not be commented upon at trial unless the court, on motion of a party, allows ~~such~~ comment after finding that the inclusion of the ~~witness'~~ *witness's* name or the pretrial notice constituted an abuse of the applicable disclosure requirement or that other good cause is shown."

Section 141. Section 46-15-327, MCA, is amended to read:

"**46-15-327. Continuing duty to disclose.** If at any time after a disclosure has been made any party discovers additional information or material that would be subject to disclosure had it been known at the time of disclosure, ~~such~~ *the* party shall promptly notify all other parties of the existence of the additional information or material and make an appropriate disclosure."

Section 142. **Investigation not to be impeded.** Except as to matters to which discovery is restricted and except as to the defendant's counsel advising the defendant, a party or agent of a party may not discourage or obstruct communication between any person and any party or otherwise obstruct a party's investigation of the case.

Section 143. Section 46-15-328, MCA, is amended to read:

"**46-15-328. Excision and protective orders.** (1) Upon a motion of any party showing good cause, the court may at any time order that *any* disclosure ~~of the identity of any witness~~ be ~~deferred for any reasonable period of time, not to extend beyond 5 days prior to the date set for trial, or that any other disclosures required by 46-15-321 through 46-15-329 be denied,~~ deferred~~,~~ or regulated when it finds:

(a) that the disclosure would result in a risk or harm outweighing any usefulness of the *unrestricted* disclosure to any party; and

(b) that the risk cannot be eliminated by a less substantial restriction of discovery rights.

(2) Whenever the court finds, on motion of any party, that only a portion of a document or other material is discoverable ~~under 46-15-321 through 46-15-329~~, it may authorize the party disclosing it to excise that portion of the material ~~which~~ *that* is nondiscoverable and disclose the remainder.

(3) On motion of the party seeking a protective or excision order or in submitting for the court's determination the discoverability of any material or information, the court may permit ~~him~~ *that party* to present the material or information for the inspection of the judge alone. Counsel for all other parties are entitled to be present when ~~such~~ *the* presentation is made.

(4) If the court enters an order that any material or any portion ~~thereof~~ *of the material* is not discoverable ~~under 46-15-321 through 46-15-329~~, the entire text of the material must be sealed and preserved in the record in the event of an appeal."

Section 144. Section 46-15-329, MCA, is amended to read:

"**46-15-329. Sanctions.** If at any time during the course of the proceeding it is brought to the attention of the court that a party has failed to comply with any of the provisions of ~~46-15-321 through 46-15-329~~ *this part* or any order issued pursuant to ~~46-15-321 through 46-15-329~~ *this part*, the court may impose any sanction that it finds just under the circumstances, including but not limited to:

(1) ordering disclosure of the information not previously disclosed;

(2) granting a continuance;

(3) holding a witness, party, or counsel in contempt *for an intentional violation*;

(4) precluding a party from calling a witness, offering evidence, or raising a defense not disclosed; or

(5) declaring a mistrial when necessary to prevent a miscarriage of justice."

Section 145. Section 46-15-331, MCA, is amended to read:

"**46-15-331. Compelling testimony or production of evidence — immunity.** *(1)* Before or during trial in any judicial proceeding, a ~~justice of the supreme court or~~ judge of the district *or municipal* court, upon request by the ~~attorney prosecuting~~ *prosecutor* or *defense* counsel ~~for the defense~~, may require a person to answer any question or produce any evidence ~~that may incriminate him~~, *even though personally incriminating, following a grant of immunity.*

(2) If a person is required to give testimony or produce evidence in accordance with this section in any investigation or proceeding, ~~no~~ compelled testimony or evidence ~~or~~ *and* any information directly or indirectly derived from such testimony or evidence may *not* be used against the witness in any criminal prosecution.

(3) Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if ~~the prosecutor determines,~~ in ~~his~~ *the prosecutor's* sole discretion~~,~~ *it is determined* that the ends of justice would be served ~~thereby~~.

(4) Immunity may not extend to prosecution or punishment for false statements given in any testimony required under this section."

Section 146. Section 46-15-201, MCA, is amended to read:

"**46-15-201. When depositions *may be* taken.** (1) ~~If~~ *In district or municipal court cases, a deposition may be taken if* it appears that a prospective witness*:*

(a) ~~may be~~ *is likely to be either* unable to attend or *otherwise* prevented from attending a trial or hearing*;*

(b) ~~or is or may become a nonresident of~~ *is likely to be absent from* the state *at the time of the trial or hearing;* or

(c) is unwilling to provide relevant information to a requesting party and ~~that his~~ *the witness's* testimony is material and ~~that it is~~ necessary ~~to take his deposition~~ in order to prevent a failure of justice~~, the~~. *The district* court *shall,* ~~at any time after the preliminary hearing or the filing of the indictment or the information, may~~ upon motion *of any party* and *proper* notice, ~~to the parties~~ order that ~~his~~ *the* testimony *of the witness* be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be ~~produced~~ *introduced* at the ~~same~~ time ~~and place~~ *the deposition is taken.*

(2) ~~If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court must direct that his deposition be taken at the expense of the state. After the deposition has been subscribed, the court shall discharge the witness.~~ *The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the district court, taking into account the convenience of the parties and of the witness.*

(3) If the defendant is charged with a felony and it appears upon the affidavit of counsel for a party that good cause exists to believe that a witness will not respond to a subpoena and the administration of justice requires, any district judge may issue an arrest warrant commanding the arrest of a material witness. The arrest warrant must further order a deposition to be taken without unnecessary delay. A person may not be imprisoned for the purpose of securing testimony in any criminal proceeding longer than is necessary to take the person's deposition."

Section 147. Section 46-15-202, MCA, is amended to read:

"**46-15-202. Procedure for taking depositions ~~— filing~~.** (1) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice ~~shall~~ *must* state the name and address of each person to be examined. On motion of ~~a~~ *the* party upon whom the notice is served, the *district* court for cause shown may extend or shorten the time *or change the place for taking the deposition.*

(2) A deposition ~~shall~~ *must* be taken in the manner provided in civil actions. The *district* court, ~~at the~~ *upon* request, ~~of a defendant~~ may direct that a deposition be taken on written interrogatories in the manner provided in civil actions. *However, a deposition may not be taken of a party defendant without his consent, and the scope and manner of examination and cross-examination must be restricted as would be allowed in the trial itself.*

(3) The ~~court shall transmit the~~ deposition ~~to the clerk of the court making the order, there to~~ *must* be filed *with the district court making the order* and held until the ~~action shall come on for~~ trial. *Either party shall make available to the other party, or the other party's counsel, for examination and use at the taking of the deposition any relevant, nonprivileged statement of the witness being deposed that is in the possession of either party.*

(4) Objections to deposition testimony or evidence or parts of the testimony or evidence may be reserved for subsequent determination by the district court.

(5) Unless a defendant in custody has waived, in writing, the right to be present at the taking of a deposition, the officer having custody of the defendant must be notified of the time and place set for the deposition. The officer having custody shall produce the defendant and keep the defendant in the presence of a witness during the deposition.

(6) A defendant not in custody who fails to appear, without good cause, at the taking of a deposition after being notified of the time and place set for the deposition will be considered to have waived the right to be present as provided in [section 128]. The waiver includes a waiver of any objection to the taking and use of the deposition based upon that right.

(7) Whenever a deposition is taken at the instance of the prosecution or whenever a deposition is taken at the instance of a defendant who is unable

to bear the expense of taking a deposition, the district court shall direct that the expense of travel and subsistence of the defendant and the defendant's counsel for attendance at the examination and the cost of the transcript of the deposition be paid by the state."

Section 148. Section 46-15-204, MCA, is amended to read:

"**46-15-204. Use of depositions at trial.** ~~(1) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears that:~~

~~(a) the witness is dead;~~

~~(b) the witness is out of the state of Montana unless it appears that the absence of the witness was procured by the party offering the deposition;~~

~~(c) the witness is unable to attend or testify because of sickness or infirmity; or~~

~~(d) the party offering the deposition has been unable to procure the attendance of the witness by subpoena.~~

~~(2)~~ Any deposition may ~~also~~ be used by any party for ~~the~~ *any* purpose ~~of contradicting or impeaching the testimony of the deponent as a witness~~ *allowed by the Montana Rules of Evidence.*

~~(3) If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.~~

~~(4) Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.~~

~~(5) For the purposes of this section, the word "deposition" shall in addition include any sworn testimony previously given by a witness which has been recorded and transcribed by a qualified stenographer and given in the presence of the defendant and cross-examined by him or his attorney on matters relevant to the trial or hearing where such deposition is sought to be used.~~"

Section 149. Section 46-14-101, MCA, is amended to read:

"**46-14-101. Mental disease or defect.** As used in ~~this chapter~~ *[section 154], 46-14-312, 46-14-313, and this chapter,* the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or other antisocial ~~conduct~~ *behavior.*"

Section 150. Section 46-14-102, MCA, is amended to read:

"**46-14-102. Evidence of mental disease or defect admissible to prove state of mind.** Evidence that the defendant suffered from a mental disease or defect is admissible ~~whenever it is relevant~~ to prove that the defendant did or did not have a state of mind ~~which~~ *that* is an element of the offense."

Section 151. Section 46-14-103, MCA, is amended to read:

"**46-14-103. Mental disease or defect excluding fitness to proceed.** ~~No~~ *A* person who, as a result of mental disease or defect, is unable to understand the proceedings against ~~him~~ *the person* or to assist in ~~his~~ *the person's* own defense ~~shall~~ *may not* be tried, convicted, or sentenced for the commission of an offense so long as ~~such~~ *the* incapacity endures."

Section 152. Section 46-14-202, MCA, is amended to read:

"**46-14-202. ~~Psychiatric examination~~ *Examination* of defendant.** (1) If the defendant or ~~his~~ *the defendant's* counsel files a written ~~notice~~ *motion requesting an examination* ~~of his intent to rely on a mental disease or defect under 46-14-201~~ or ~~raises~~ *if* the issue of ~~his~~ *the defendant's* fitness to proceed *is raised by the district court, prosecution, or defense counsel,* the *district* court shall appoint at least one qualified psychiatrist or licensed clinical psychologist or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist or licensed clinical psychologist, which designation may be or include ~~himself~~ *the superintendent,* to examine and report upon the *defendant's* mental condition ~~of the defendant~~.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period ~~of~~ not exceeding 60 days or ~~such~~ *a* longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist or licensed clinical psychologist retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed ~~which~~ *that* is accepted by the medical *or psychological* profession for the examination of those alleged to be suffering from mental disease or defect.

(4) ~~The~~ *If the defendant is indigent or the examination occurs at the request of the prosecution, the* cost of the examination must be paid by the county or the state, or both, according to procedures established under 3-5-902(1)."

Section 153. **Prosecution's right to examination.** (1) When the defense discloses the report of the examination to the prosecution or files a notice of the intention to rely on a defense of mental disease or defect, the prosecution is entitled to have the defendant examined by a qualified psychiatrist or licensed clinical psychologist.

(2) The report of the examination must be disclosed to the defense within 10 days of its receipt by the prosecution.

Section 154. Section 46-14-212, MCA, is amended to read:

"**46-14-212. ~~Examination by expert chosen by state or defendant~~ *Access to defendant for examination.*** If either the defendant or the ~~state~~ *prosecution* wishes the defendant to be examined by a qualified psychiatrist~~,~~ *or* licensed clinical psychologist~~, or other expert~~ selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether ~~he~~ *the defendant* had, at the time the offense was committed, a particular state of mind ~~which~~ *that* is an essential element of the offense, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination."

Section 155. Section 46-14-203, MCA, is amended to read:

"**46-14-203. Report of ~~the~~ examination.** (1) ~~The~~ *A* report of the examination ~~shall~~ *may* include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant, *including an opinion as to whether the defendant is seriously mentally ill as defined in 53-21-102*;

(c) if the defendant suffers from a mental disease or defect, an opinion as to ~~his~~ *the defendant's* capacity to understand the proceedings against ~~him~~ *the defendant* and to assist in ~~his~~ *the defendant's* own defense; ~~and~~

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind ~~which~~ *that* is an element of the offense charged*; and*

(e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disease or defect, to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirement of the law.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate ~~therein~~ *in the examination*, the report ~~shall so~~ *must* state *that fact* and ~~shall~~ *must* include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

~~(3) The report of the examination shall be filed in triplicate with the clerk of court, who shall deliver copies to the county attorney and to counsel for the defendant.~~"

Section 156. Section 46-14-213, MCA, is amended to read:

"**46-14-213. Psychiatric *or psychological* testimony upon trial.** (1) Upon ~~the~~ trial, any psychiatrist or licensed clinical psychologist who reported under 46-14-202 ~~and~~ *or* 46-14-203 may be called as a witness by the ~~prosecution~~ *prosecutor* or by the defense. ~~If the issue is being tried before a jury, the jury may not be informed that the psychiatrist or licensed clinical psychologist was designated by the court or by the superintendent of the Montana state hospital.~~ Both the prosecution and the defense may summon any other qualified psychiatrist~~,~~ *or* licensed clinical psychologist~~, or other expert~~ to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist~~,~~ *or* licensed clinical psychologist~~, or other expert~~ who has examined the defendant testifies concerning the defendant's mental condition, ~~he~~ *the psychiatrist or licensed clinical psychologist* may make a statement as to the nature of ~~his~~ *the* examination~~, his~~ *and the medical or psychological* diagnosis of the mental condition of the defendant ~~at the time of the commission of the offense charged, and his opinion as to the ability of the defendant to have a particular state of mind which is an element of the offense charged~~. The expert may make any explanation reasonably serving to clarify ~~his~~ *the expert's examination and* diagnosis, ~~and opinion~~ and *the expert* may be cross-examined as to any matter bearing on ~~his~~ *the expert's* competency or credibility or the validity of ~~his~~ *the expert's examination or medical or psychological* diagnosis ~~or opinion~~. *A psychiatrist or licensed clinical psychologist may not offer an opinion to the jury on the ultimate issue of whether the defendant did or did not have a particular state of mind that is an element of the offense charged.*"

Section 157. Section 46-14-201, MCA, is amended to read:

"**46-14-201. ~~Requirement of notice — form~~ *Form* of verdict and judgment.** ~~(1) Evidence of mental disease or defect is not admissible in a trial on the merits unless the defendant, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit, files a written notice of his purpose to rely on a mental disease or defect to prove that he did not have a particular state of mind which is an essential element of the offense charged. Otherwise, except on good cause shown, he shall not introduce in his case in chief expert testimony in support of that defense.~~

~~(2)~~ When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental disease or defect ~~he~~ *the defendant* ~~could~~ *did* not have a particular state of mind that is an essential element of the offense charged, the verdict and the judgment ~~shall so~~ *must* state *that reason.*"

Section 158. Section 46-14-401, MCA, is amended to read:

"**46-14-401. Admissibility of statements made during examination or treatment.** A statement made for the purposes of psychiatric *or psychological* examination or treatment provided for in this ~~chapter~~ *section* by a person subjected to ~~such~~ examination or treatment is not admissible in evidence against ~~him~~ *the person* ~~in any criminal proceeding, except a sentencing hearing conducted under 46-14-311,~~ *at trial* on any issue other than that of ~~his~~ *the person's* mental condition. It is admissible on the issue of ~~his~~ *the person's* mental condition, whether or not it would otherwise be considered a privileged communication, ~~unless it constitutes an admission of guilt of the crime~~ *only when and after the defendant presents evidence that due to a mental disease or defect the defendant did not have a particular state of mind that is an element of the offense* charged. ~~In a hearing held~~

~~under 46-14-311, the court may hear and consider any such statement even if it constitutes an admission of guilt.~~"

Section 159. Section 46-14-221, MCA, is amended to read:

"**46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses.** (1) The issue of the defendant's fitness to proceed may be raised by *the court,* the defendant or ~~his~~ *the defendant's* counsel, or by the ~~county attorney~~ *prosecutor.* When the issue is raised, it ~~shall~~ *must* be determined by the court. If neither the ~~county attorney~~ *prosecutor* nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to ~~summon~~ *subpoena* and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against ~~him shall~~ *the defendant must* be suspended, except as provided in subsection (4) ~~of this section~~, and the court shall commit ~~him~~ *the defendant* to the custody of the director of the department of institutions to be placed in an appropriate institution of the department of institutions for so long as the unfitness endures. The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that ~~he~~ *the defendant* is still unfit to proceed and that it does not appear that ~~he~~ *the defendant* will become fit to proceed within the reasonably foreseeable future, the proceeding against ~~him shall~~ *the defendant must* be dismissed, except as provided in subsection (4) ~~of this section~~, and the ~~county attorney~~ *prosecutor* shall petition the court in the manner provided in chapter 20 or 21 of Title 53, whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions.

(3) If the court determines that the defendant lacks fitness to proceed because ~~he~~ *the defendant* is developmentally disabled as provided in 53-20-102(4), the proceeding against ~~him shall~~ *the defendant must* be dismissed and the ~~county attorney~~ *prosecutor* shall petition the court in the manner provided in chapter 20 of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution ~~which~~ *that* is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of institutions to be placed in an appropriate institution of the ~~state~~ department of institutions, of keeping ~~him~~ *the defendant* there, and of bringing ~~him~~ *the defendant* back are chargeable to the state and payable according to procedures established under 3-5-902(1)."

Section 160. Section 46-14-222, MCA, is amended to read:

"**46-14-222. Proceedings if fitness regained.** When the court, on its own motion or upon the application of the director of the department of institutions, the ~~county attorney~~ *prosecution*, or the defendant or ~~his~~ *the defendant's* legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding ~~shall~~ *must* be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from serious mental illness, order the defendant committed to an appropriate institution of the department of institutions."

Section 161. Section 46-14-301, MCA, is amended to read:

"**46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge.** (1) When a defendant is found not guilty for the reason that due to a mental disease or defect ~~he~~ *the defendant* could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial ~~shall~~ *must* be considered by the court in making its determination.

(2) The court, upon finding that the defendant may not be discharged or released without danger to others, shall order the defendant committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care, and treatment.

(3) A person committed to the custody of the superintendent shall have a hearing within 180 days of ~~his~~ confinement to determine ~~his~~ *the person's* present mental condition and whether ~~he~~ *the person* may be discharged or released without danger to others. The hearing ~~shall~~ *must* be conducted by the court ~~which~~ *that* ordered the commitment unless that court transfers jurisdiction to the third judicial district. The court shall cause notice of the hearing to be served upon the person, ~~his~~ *the person's* counsel, and the ~~prosecuting attorney~~ *prosecutor*. ~~Such a~~ *The* hearing ~~shall be deemed~~ *is* a civil proceeding, and the burden ~~shall be~~ *is* upon the defendant to prove by a preponderance of the evidence that ~~he~~ *the defendant* may be safely released.

(4) According to the determination of the court upon the hearing, the defendant ~~shall~~ *must* be discharged or released on ~~such~~ conditions ~~as~~ the court determines to be necessary or ~~shall~~ *must* be committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care, and treatment."

Section 162. Section 46-14-302, MCA, is amended to read:

"**46-14-302. Discharge or release upon motion of superintendent.** (1) If the superintendent of the Montana state hospital believes that a person committed to ~~his~~ *the superintendent's* custody under 46-14-301 may be discharged or released on condition without danger to ~~himself~~ *the person* or others, ~~he~~ *the superintendent* shall make application for the discharge or release of the person in a report to the court by which the person was committed and shall send a copy of the application and report to the ~~county attorney~~ *prosecutor* of the county from which the defendant was committed.

(2) The court shall then appoint at least two persons who are *either* qualified psychiatrists or licensed clinical psychologists to examine the person and to report their opinion as to ~~his~~ *the person's* mental condition within 60 days or a longer period ~~which~~ *that* the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings ~~thereon~~ *on the examinations,* the court may have the person confined in any institution located near the place where the court sits ~~which~~ *that* may ~~hereafter~~ be designated by the superintendent of the Montana state hospital as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed under subsection (1) ~~of this section~~ and the testimony of the reporting ~~psychiatrists~~ *psychiatrist* or licensed clinical ~~psychologists~~ *psychologist* ~~which the court considers necessary~~ that the committed person may be discharged or released on condition without danger to ~~himself~~ *the person* or others, the court shall order ~~his~~ *the person's* discharge or ~~his~~ release on conditions ~~which~~ *that* the court determines to be necessary.

(4) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released. A hearing is considered a civil proceeding, and the burden is upon the committed person to prove by a preponderance of the evidence that ~~he~~ *the person* may safely be discharged or released. According to the determination of the court upon the hearing, the committed person ~~shall~~ *must* then be discharged or released on conditions ~~which~~ *that* the court determines to be necessary or ~~shall~~ *must* be recommitted to the custody of the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedures ~~prescribed~~ *provided* in this section and 46-14-303."

Section 163. Section 46-14-303, MCA, is amended to read:

"**46-14-303. Application for discharge or release by committed person.** A committed person may make application for ~~his~~ discharge or release to the court by which ~~he~~ *the person* was committed, and the procedure to be followed upon the application is the same as that prescribed ~~above~~ *in 46-14-302* in the case of an application by the superintendent of the Montana state hospital. However, an application by a committed person need not be considered until ~~he~~ *the person* has been confined for a period of not less than 6 months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person ~~shall~~ *may* not be permitted to file a further application until 1 year has elapsed from the date of any preceding hearing on an application for ~~his~~ *the person's* release or discharge."

Section 164. Section 46-14-304, MCA, is amended to read:

"**46-14-304. Recommitment after conditional release.** If within 5 years after the conditional release of a committed person the court determines after hearing evidence that the conditions of release have not been fulfilled and that for the safety of the person or for the safety of others ~~his~~ *the person's* conditional release should be revoked, the court shall immediately order ~~him~~ *the person* to be recommitted to the *custody of the* superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedures ~~prescribed~~ *provided* in 46-14-302 and 46-14-303."

Section 165. Section 46-14-311, MCA, is amended to read:

"**46-14-311. Consideration of mental disease or defect in sentencing.** Whenever a defendant is convicted on a verdict or a plea of guilty and ~~he~~ claims that at the time of the commission of the offense of which ~~he was~~ convicted ~~he~~ *the defendant* was suffering from a mental disease or defect ~~which~~ *that* rendered ~~him~~ *the defendant* unable to appreciate the criminality of ~~his conduct~~ *the defendant's behavior* or to conform ~~his conduct~~ *the defendant's behavior* to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require ~~such~~ additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report ~~thereof~~ *of the examination* as provided in 46-14-202 and 46-14-203."

Section 166. Section 46-14-312, MCA, is amended to read:

"**46-14-312. Sentence to be imposed.** (1) If the court finds that the defendant at the time of the commission of the offense of which ~~he~~ *the defendant* was convicted did not suffer from a mental disease or defect as described in 46-14-311, ~~it~~ *the court* shall sentence ~~him~~ *the defendant* as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence ~~him~~ *the defendant* to be committed to the custody of the director of the department of institutions to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, ~~provided~~ *if* the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

(a) the defendant no longer suffers from a mental disease or defect;

(b) the defendant's mental disease or defect no longer renders him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law; or

(c) the defendant suffers from a mental disease or defect that makes him a danger to himself or others, but either there is no treatment available for his mental disease or defect or he refuses to cooperate with treatment.

(4) The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

Section 167. Section 46-14-313, MCA, is amended to read:

"**46-14-313. Discharge of defendant from supervision.** At the expiration of the period of commitment or period of treatment specified by the court under 46-14-312~~(2)~~, the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness."

Section 168. Section 46-13-101, MCA, is amended to read:

"**46-13-101.** ~~**Defenses and objections which may be raised before trial**~~ ***Pretrial motions and notices.*** *(1)* ~~Any~~ *Except for good cause shown, any* defense, ~~or~~ objection ~~which,~~ *or request that* is capable of determination without ~~the~~ trial of the general issue ~~may~~ *must* be raised *at or* before ~~trial by motion to dismiss or for other appropriate relief~~ *the omnibus hearing unless otherwise provided by Title 46.*

(2) Failure of a party to raise defenses or objections or to make requests that must be made prior to trial, at the time set by the court, constitutes a waiver of the defense, objection, or request.

(3) The court, for cause shown, may grant relief from any waiver provided by this section. Lack of jurisdiction or the failure of a charging document to state an offense is a nonwaivable defect and must be noticed by the court at any time during the pendency of a proceeding.

(4) Unless the court provides otherwise, all pretrial motions must be in writing and must be supported by a statement of the relevant facts upon which the motion is being made. The motion ~~shall~~ *must* state with particularity the grounds ~~therefor~~ *for the motion* and the order or relief sought."

Section 169. Section 46-13-104, MCA, is amended to read:

"**46-13-104.** ~~**Time of hearing motion**~~ ***Ruling on motions.*** *(1)* A motion *made* before trial ~~raising defenses or objections shall~~ *must* be determined before trial unless the court, *for good cause,* orders ~~that~~ it ~~be~~ deferred for determination at the trial of the general issue *or until after the verdict, but a determination may not be deferred if a party's right to appeal is adversely affected.*

(2) Except where mandated by Title 46, the court has discretion to conduct a hearing on the merits of a motion.

(3) The court's final determination of any pretrial motion must state, either in writing or on the record, the court's findings of fact and conclusions of law."

Section 170. **Omnibus hearing.** (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required. The prosecutor and the defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or defendants, [sections 177, 178], and 46-11-404;

(b) double jeopardy, 46-11-502 through 46-11-504;

(c) the need for exclusion of the public and for sealing records of any pretrial proceedings, [section 125];

(d) notification of the existence of a plea agreement, [section 135];

(e) disclosure and discovery motions, Title 46, chapter 15, part 3;

(f) notice of reliance on certain defenses, 46-15-323;

(g) notice of seeking enhanced punishment, 46-13-503;

(h) notice of other crimes, wrongs, or acts, 46-13-503;

(i) motion to suppress, 46-13-301 and 46-13-302;

(j) motion to dismiss, 46-13-106 and 46-13-201;

(k) motion for change of place of trial, 46-13-203, 46-13-204, and [section 176];

(l) reasonableness of bail, [sections 72, 73, 76, 77], and Title 46, chapter 9; and

(m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may

be scheduled for briefing and further hearing as the court considers necessary.

Section 171. Section 46-18-503, MCA, is amended to read:

"**46-18-503.** ~~**Procedural requirements if sentence to be imposed**~~ ***Notice by prosecutor seeking persistent felony offender status.*** (1) ~~If~~ *Except for good cause shown, if* the ~~state~~ *prosecution* seeks treatment of the accused as a persistent felony offender ~~under 46-18-502~~, notice of that fact must be given ~~in writing to the accused or his attorney before the entry of a plea of guilty by the accused or before the case is called for trial upon a plea of not guilty~~ *at or before the omnibus hearing pursuant to 46-13-101.*

(2) The notice must ~~conform to the following provisions:~~

~~(a) The notice must~~ specify the *alleged* prior convictions ~~alleged to have been incurred by the accused.~~

~~(b) The notice and the charges of prior convictions contained therein shall not be made public or in any manner~~ *and may not* be made known to the jury before the ~~jury's~~ verdict is returned ~~upon the felony charge. However, if the defendant testifies in his own behalf, he is subject to impeachment as provided in~~ *except as allowed by* the Montana Rules of Evidence.

(3) If the ~~accused is convicted upon the felony charge,~~ *defendant objects to the allegations contained in* the notice, ~~together with proper proof of timely service, shall be filed with the court before the time fixed for sentencing. The court~~ *the judge* shall ~~then fix a time for~~ *conduct a* hearing ~~with at least 3 days' notice to the accused~~ *to determine if the allegations in the notice are true.*

(4) The hearing ~~shall~~ *must* be held before the ~~court~~ *judge* alone. If the ~~court~~ *judge* finds any ~~of the~~ allegations of *the* prior ~~conviction~~ *convictions are* true, the accused ~~shall~~ *must* be sentenced ~~under the provisions of 46-18-502~~ *as provided by law.*

(5) The notice must be filed and sealed until the time of trial or until a plea of guilty is given by the defendant."

Section 172. Section 46-13-302, MCA, is amended to read:

"**46-13-302.** ~~**Motion to suppress**~~ ***Suppression of*** **evidence** ~~**illegally seized**~~. (1) A defendant aggrieved by an unlawful search and seizure may move the court to suppress as evidence anything ~~so~~ obtained *by the unlawful search and seizure.* ~~The motion shall be in writing and state facts showing wherein the search and seizure were unlawful.~~

(2) ~~The motion shall be made before trial unless for good cause shown the court shall otherwise direct.~~

~~(3) The defendant shall give at least 10 days' notice of such motion to the attorney prosecuting or such other time as the court may direct. The~~

~~defendant shall serve a copy of the notice and motion upon the attorney prosecuting.~~

~~(4)~~ If the ~~allegations of the~~ motion ~~state~~ *states* facts ~~which~~ *that,* if true, *would* show that the ~~search and seizure were unlawful~~ *evidence should be suppressed,* the court shall ~~conduct a hearing into~~ *hear* the merits of the motion *at the omnibus hearing or at a later date if the court orders.* ~~The burden of proving that the search and seizure were unlawful shall be on the defendant.~~

~~(5)~~*(3)* If the motion is granted, the evidence ~~shall~~ *is* not ~~be~~ admissible ~~against the movant~~ at ~~any~~ trial ~~of the case.~~"

Section 173. Section 46-13-301, MCA, is amended to read:

"**46-13-301.** ~~**Motion to suppress**~~ ***Suppression of*** **confession or admission.** (1) A defendant may move to suppress as evidence any confession or admission given by ~~him~~ *the defendant* on the ground that it was ~~not voluntary~~ *involuntary.* The motion ~~shall~~ *must* be in writing and state facts showing ~~wherein~~ *why* the confession or admission was involuntary.

(2) ~~The motion shall be made before the trial unless for good cause shown the court shall otherwise direct.~~

~~(3) The defendant shall give at least 10 days' notice of such motion to the attorney prosecuting or such other time as the court may direct. The defendant shall serve a copy of the notice and motion upon the attorney prosecuting.~~

~~(4)~~ If the allegations of the motion state facts ~~which~~ *that,* if true, show that the confession or admission was ~~not voluntarily made~~ *involuntary,* the court shall conduct a hearing into the merits of the motion. The prosecution must prove by a preponderance of the evidence that the confession or admission was voluntary.

~~(5)~~*(3)* The issue of the admissibility of the confession or admission may not be submitted to the jury. If the confession or admission is determined to be admissible, the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission.

~~(6)~~*(4)* If the motion is granted, the confession or admission is not admissible in evidence against the movant at the trial of the case."

Section 174. Section 46-13-203, MCA, is amended to read:

"**46-13-203. Change of place of trial *for prejudice.*** (1) The defendant or the prosecution may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in ~~such~~ *the* county. ~~The motion must be made at least 15 days prior to trial except that, if good cause is shown, it may be made thereafter.~~

(2) ~~The motion must be in writing and supported by an affidavit which must state facts showing the nature of the prejudice alleged. The defendant or the state may file counteraffidavits. The court shall conduct a hearing and determine the merits of the motion.~~

~~(3)~~ If the court determines that there exists in the county in which the prosecution is pending such prejudice that a fair trial cannot be had, ~~it~~ *the court* shall:

(a) transfer the cause to any other ~~court of competent jurisdiction in any~~ county in which a fair trial may be had;

(b) direct that a jury be selected in any county where a fair trial may be had and then returned to the county where the prosecution is pending to try the case; or

(c) take any other action designed to ~~insure~~ *ensure* that a fair trial may be had."

Section 175. **Return to original place of trial.** When a trial occurs after a change of place of trial and a retrial is required, the cause must be returned to the county in which the charge was originally properly filed for further proceedings.

Section 176. **Trial of indictments, informations, complaints, or defendants together.** The court may order two or more indictments, informations, complaints, or defendants to be tried together if the interests of justice require and the charges or defendants could have been joined in a single indictment, information, or complaint as provided for in 46-12-206, 46-15-322, and 46-15-323.

Section 177. **Relief from prejudicial joinder.** (1) If it appears that a defendant or the prosecution is prejudiced by a joinder of charges or defendants in an indictment, information, or complaint or by a joinder for trial together, the court may order separate trials, grant a severance of defendants, or provide whatever other relief justice requires.

(2) In ruling on a motion by a defendant for severance, the court may order the prosecutor to deliver to the court for inspection, in camera, any statements or confessions made by the defendants that the prosecution intends to introduce at trial.

Section 178. Section 46-13-201, MCA, is amended to read:

"**46-13-201. Dismissal at instance of court or prosecution.** (1) The court may, either on its own motion or upon the application of the *prosecuting* attorney ~~prosecuting~~ and in furtherance of justice, order a complaint, information, or indictment to be dismissed. ~~; however~~ *However,* the court may not order a dismissal of a complaint, information, or indictment, or a count contained ~~therein~~ *in a complaint, information, or indictment,* charging a felony, unless good cause for dismissal is shown and the reasons for the dismissal are set forth in an order entered upon the minutes.

(2) ~~The~~ *After the entry of a plea upon a misdemeanor charge, the* court, unless good cause to the contrary is shown, ~~must~~ *shall* order the prosecution to be dismissed, *with prejudice,* if a defendant whose trial has not been postponed upon ~~his application~~ *the defendant's motion* is not brought to trial within 6 months ~~after entry of plea upon a complaint, information, or indictment charging a misdemeanor~~.

~~(3) An order for the dismissal of an action as provided in this chapter is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony.~~"

Section 179. Section 46-13-106, MCA, is amended to read:

"**46-13-106. Effect of order ~~of dismissal~~ *to dismiss.*** If the court directs the action to be dismissed, the defendant must, if in custody, be discharged ~~therefrom or~~ *and,* if admitted to bail, have ~~his~~ bail exonerated or money deposited instead of bail refunded to ~~him~~ *the defendant.* ~~However, if the court grants a motion to dismiss based on a defect in the institution of the prosecution or in the indictment, information, or complaint or if it appears at any time before judgment that a mistake has been made in charging the proper offense, the court may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new complaint, indictment, or information.~~"

Section 180. Section 46-15-101, MCA, is amended to read:

"**46-15-101. Subpoenas.** *(1)* ~~Upon~~ *After the filing of charges and upon* the request of the prosecuting attorney, ~~or~~ the defendant, or ~~his~~ *the defendant's* attorney, ~~the court or~~ the clerk of the court shall issue subpoenas *with the name of the person to whom each subpoena is directed, commanding the person to appear and to give testimony.*

(2) ~~The~~ *A* subpoena ~~shall~~ *must* state the name of the court and the title, if any, of the proceeding and ~~shall~~ *must* command each person to whom it is directed to attend and give testimony ~~and produce objects and documents~~ at the time and place specified ~~therein~~ *in the subpoena.*

(3) The court, upon a timely motion, may quash or modify a subpoena if compliance would be unreasonable or oppressive."

Section 181. **Subpoenas for production of evidence.** (1) A subpoena may command the person to whom it is directed to produce the books, papers, documents, or other objects designated in the subpoena.

(2) The court may direct that the books, papers, documents, or other objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered into evidence and may upon their production permit the books, papers, documents, or objects, or portions thereof, to be inspected by the parties and their attorneys.

(3) The court, upon a timely motion, may quash or modify a subpoena if compliance would be unreasonable or oppressive.

Section 182. Section 46-15-102, MCA, is amended to read:

"**46-15-102. Service of subpoenas.** (1) A subpoena may be served by a peace officer or by any other person who is not a party and who is not less than 18 years of age. A peace officer ~~must~~ *shall* serve ~~in his county~~ any subpoena delivered to ~~him~~ *the peace officer* for service *in the peace officer's county* either on the part of the ~~state~~ *prosecution* or of the defendant.

(2) Service of a subpoena ~~shall~~ *must* be made by delivering a copy ~~thereof~~ *of the subpoena* to the person named and, if ordered by the court, by tendering to those residing outside the county of trial the fee for 1 day's attendance and the mileage allowed by law. The person making the service ~~must~~ *shall* without delay make a written return of the service subscribed by ~~him~~ *the person,* stating the time and place of service.

(3) A subpoena requiring attendance of a witness at a hearing or trial may be served anywhere within the state of Montana."

Section 183. Section 46-15-112, MCA, is amended to read:

"**46-15-112. ~~Summoning~~ *Subpoena of* witness in this state to testify in another state.** (1) If a judge of a court of record in any state, which by its laws has made provision for commanding persons within that state to attend and testify in this state, certifies under the seal of ~~such~~ *the* court that there is a criminal prosecution pending in ~~such~~ *the* court or that a grand jury investigation ~~has~~ *is* commenced or is about to commence, that a person being within this state is a material witness in ~~such~~ *the* prosecution or *a* grand jury investigation, and that ~~his~~ *the person's* presence will be required for a specified number of days, upon presentation of ~~such~~ *the* certificate to any judge of a court of record in the county in which ~~such~~ *the* person is *located,* ~~such~~ *the* judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

(2) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending or *a* grand jury investigation ~~has~~ *is* commenced or is about to commence will give ~~to him~~ *the witness* protection from arrest and the service of civil and criminal process, ~~he~~ *the judge* shall issue a ~~summons~~ *subpoena* with a copy of the certificate attached directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation ~~has~~ *is* commenced or is about to commence at a time and place specified in the ~~summons~~ *subpoena.* In ~~any such~~ *the* hearing, the certificate ~~shall be~~ *is* prima facie evidence of all the facts stated ~~therein~~ *in the certificate.*

(3) If ~~said~~ *the* certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure ~~his~~ *the witness's* attendance in the requesting state, ~~such~~ *the* judge may, in lieu of notification of the hearing, direct that ~~such~~ *the* witness be ~~forthwith~~ brought before ~~him~~ *the judge* for ~~said~~ *the* hearing. ~~The~~ *At the*

hearing, the judge ~~at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability,~~ may, in lieu of issuing *a* subpoena ~~or summons~~, order that ~~said~~ *the* witness be ~~forthwith~~ taken into custody and delivered to an officer of the requesting state.

~~(4) If the witness who is summoned as provided in this section, after being paid or tendered by some properly authorized person the sum of 10 cents a mile for each mile and $5 for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.~~"

Section 184. Section 46-15-113, MCA, is amended to read:

"**46-15-113. ~~Witness from~~ *Subpoena of witness in* another state ~~summoned~~ to testify in this state.** (1) Whenever a person in any state ~~which~~ *that* by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations in this state is a material witness in a prosecution pending in a court of record in this state or in a grand jury investigation ~~which has~~ *that is* commenced or is about to commence, a judge of the court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate ~~shall~~ *must* be presented to a judge of a court of record in the county in which the witness is found.

(2) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure ~~his~~ *the witness's* attendance in this state, it is prima facie proof of the desirability of ~~such~~ *the* custody and delivery, and the judge may direct that the witness be brought before ~~him~~ *the judge* immediately. If the judge is satisfied as to the desirability of ~~such~~ custody and delivery, ~~he~~ *the judge* may order that the witness be immediately taken into custody and delivered to an officer of this state. The order is sufficient authority for the officer to take the witness into custody and hold ~~him~~ *the witness* unless and until ~~he~~ *the witness* is released by bail, recognizance, or order of the judge issuing the certificate.

(3) ~~Whenever a witness is summoned to attend and testify in this state, he shall be tendered the sum of 10 cents a mile for each mile and $5 for each day that he is required to travel and attend as a witness. If the state wherein the witness is found has by statutory enactment required that the summoned witness be paid an amount in excess of the amount specified in the preceding sentence, the witness may be tendered the amount required by that state.~~

~~(4)~~ A witness who has appeared in accordance with the provisions of the ~~summons~~ *subpoena* may not be required to remain within this state for a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court.

~~(5)~~*(4)* If the witness fails without good cause to attend and testify as directed ~~in the summons,~~ ~~he shall~~ *the witness must* be punished in the manner provided for the punishment of any witness who disobeys ~~a summons~~ *an order* issued from a court of record in this state *in accordance with Title 3, chapter 1, part 5, or in accordance with 45-7-309.*"

Section 185. Section 46-15-103, MCA, is amended to read:

"**46-15-103.** ~~**Indigent defendants**~~ ***Subpoena for witness when defendant unable to pay.*** *(1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of the defendant and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witness and that the presence of the witness is necessary to an adequate defense.*

(2) ~~When the~~ *If a* defendant is indigent, a court order must be obtained if more than six witnesses are to be subpoenaed. ~~If a witness is to be paid more than the regular fee or there are more than six witnesses to be paid, an order of the court or judge is needed. Such order may be made upon proper showing by affidavit or otherwise.~~"

Section 186. Section 46-15-104, MCA, is amended to read:

"**46-15-104.** ~~**Expenses of witness**~~ ***Fees, costs, and expenses.*** (1) When a person attends before a ~~magistrate~~ *judge,* grand jury, or court as a witness in a criminal case upon a subpoena, ~~or in pursuance of an undertaking, the judge, at his discretion, by a written order may direct the clerk of the court to draw his warrant upon the county treasurer in favor of such witness for a reasonable sum, to be specified in the order, for the necessary expenses of~~ the witness *shall receive the witness fee prescribed by Title 26, chapter 2, part 5. The court, on motion by either party, may allow additional fees for expert witnesses.*

(2) The court may determine the reasonable and necessary expenses of subpoenaed witnesses and order the clerk of the court to pay the expenses from the county treasury.

(3) When a person is subpoenaed in this state to testify in another state or is subpoenaed from another state to testify in this state, the person must be paid for lodging, mileage or travel, and per diem, the sum equal to that allowed by Title 2, chapter 18, part 5, for each day that the person is required to travel and attend as a witness. If the state where the witness is found has by statutory enactment required that the subpoenaed witness be paid an amount in excess of the amount specified in this section, the witness may be paid the amount required by that state.

~~(2)~~*(4)* According to procedures established by the department of commerce under 3-5-902~~(1)~~, the clerk of *the* district court shall submit to the department a detailed statement containing a list of witnesses and the amount of expenses paid to each *witness* by the county. Upon receipt and verification of the statement, the department shall promptly reimburse the designated county for all or a portion of the ~~cost of~~ witness expenses. The county shall deposit the amount reimbursed in its general fund ~~unless the~~

~~county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in such fund.~~"

Section 187. Section 46-15-114, MCA, is amended to read:

"**46-15-114. Exemption from arrest and service of process.** (1) If a person comes into this state in obedience to a ~~summons~~ *subpoena* directing ~~him~~ *the person* to attend and testify in this state, ~~he shall~~ *the person may* not, while in this state pursuant to ~~such summons~~ *the subpoena* or order, be subject to arrest or the service of process, civil or criminal, in connection with matters ~~which~~ *that* arose before ~~his~~ *the person's* entrance into this state under the ~~summons~~ *subpoena.*

(2) If a person passes through this state while going to another state in obedience to a ~~summons~~ *subpoena* or order to attend and testify in that state ~~or while returning therefrom~~, ~~he shall~~ *the person may* not, while ~~so~~ passing through this state, be subject to arrest or the service of process, civil or criminal, in connection with matters ~~which~~ *that* arose before ~~his~~ *the person's* entrance into this state under the ~~summons or order~~ *subpoena.*"

Section 188. Section 46-16-102, MCA, is amended to read:

"**46-16-102. Right to jury trial — waiver.** (1) Defendants in all ~~criminal~~ *felony* cases shall have a right to trial by *a* jury ~~not to exceed~~ *of* 12 ~~in number~~ *persons.*

(2) The parties may agree in writing at any time before the verdict, with the approval of the court, that the jury shall consist of any number less than ~~12~~ *that to which they are entitled.*

~~(2)~~*(3)* Upon written consent of the ~~parties~~ *defendant,* a trial by jury may be waived."

Section 189. Section 46-16-301, MCA, is amended to read:

"**46-16-301. Formation of trial jury.** (1) Trial juries ~~for~~ *in* criminal ~~actions~~ *cases* are formed in the same manner as trial juries in civil ~~actions, except that the total number of jurors drawn shall be at least the number of jurors needed plus the total number of peremptory challenges~~ *cases.*

(2) The qualifications of jurors and excuses from jury duty are prescribed in Title 3, chapter 15, part 3."

Section 190. Section 46-16-302, MCA, is amended to read:

"**46-16-302. Motion to discharge jury panel.** (1) Any objection to the manner in which a jury panel has been selected or drawn ~~shall~~ *must* be raised by a motion to discharge the jury panel. ~~The~~ *Except for good cause shown, the* motion ~~shall~~ *must* be made at least 5 days prior to the term for which the jury is drawn. ~~For good cause shown, the court may entertain the motion at any time thereafter.~~

(2) The motion ~~shall~~ *must* be in writing supported by affidavit and ~~shall~~ *must* state facts ~~which~~ *that* show that the jury panel was improperly selected or drawn.

(3) If the motion states facts ~~which~~ *that* show that the jury panel has been improperly selected or drawn, it ~~shall be~~ *is* the duty of the court to conduct a hearing. The burden of proof ~~shall be~~ *is* on the movant.

(4) If the court finds that the jury panel was improperly selected or drawn, the court shall order the jury panel discharged and the selection or drawing of a new panel in the manner provided by law."

Section 191. Section 46-16-303, MCA, is amended to read:

"**46-16-303. Examination of prospective jurors.** (1) The clerk of court shall make available to the parties a list of prospective jurors with their ~~addresses~~ *questionnaires* when the names have been drawn.

(2) The ~~county attorney~~ *prosecutor* and the defendant or ~~his~~ *the defendant's* attorney shall conduct the examination of prospective jurors. The ~~court~~ *judge* may conduct an additional examination. The ~~court~~ *judge* may limit the examination by the defendant, ~~his~~ *the defendant's* attorney, or the ~~prosecuting attorney~~ *prosecutor* if the ~~court believes such~~ examination ~~to be~~ *is* improper."

Section 192. Section 46-16-304, MCA, is amended to read:

"**46-16-304. Challenges for cause.** (1) Each party may challenge jurors for cause, and each challenge must be tried by the court.

(2) A challenge for cause may be taken for all or any of the following reasons or for any other reason ~~which~~ *that* the court determines:

(a) *having* consanguinity or relationship to the defendant or to the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(b) standing in the relation of guardian and ward, attorney and client, master and servant, landlord and tenant, or debtor and creditor with or being a member of the family or in the employment of the defendant or the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(c) being a party adverse to the defendant in a civil action or having complained against or been accused by ~~him~~ *the defendant* in a criminal prosecution;

(d) having served on the grand jury ~~which~~ *that* found the indictment or on a coroner's jury ~~which~~ *that* inquired into the death of a person whose death is the subject of the indictment or information;

(e) having served on a trial jury ~~which~~ *that* tried another person for the offense charged *or a related offense*;

(f) having been a member of a jury formerly sworn to try the same charge, the verdict of which was set aside or which was discharged without verdict after the case was submitted to it;

(g) having served as a juror in a civil action brought against the defendant for the act charged as an offense;

(h) if the offense charged is punishable with death, having ~~such~~ *any* conscientious opinions *concerning the punishment* as would preclude ~~his~~ finding the defendant guilty, in which case ~~he~~ *the person* must neither be permitted nor compelled to serve as a juror;

(i) having a belief that the punishment fixed by law is too severe for the offense charged; *or*

(j) having a state of mind in reference to the case or to either of the parties ~~which~~ *that* would prevent ~~him~~ *the juror* from acting with entire impartiality and without prejudice to the substantial rights of either party.

(3) An excuse from service on a jury is not a cause of challenge but the privilege of the person excused."

Section 193. Section 46-16-305, MCA, is amended to read:

"**46-16-305. Peremptory challenges.** *(1)* Each defendant ~~shall be~~ *is* allowed eight peremptory challenges in capital cases~~;~~ *and* six in all other cases tried in the district court before a 12-person jury. There may not be additional challenges for separate counts charged in the indictment or information.

(2) If the indictment or information charges a capital offense as well as lesser offenses in separate counts, the maximum number of challenges is eight.

(3) The state ~~shall be~~ *is* allowed the same number of peremptory challenges as all of the defendants.

(4) In a criminal case tried ~~in the district court~~ before a six-person jury, the state and all the defendants ~~shall be~~ *are* allowed three peremptory challenges each.

(5) When the parties in a criminal case in the district court agree upon a jury consisting of a number of persons other than 6 or 12, they shall also agree in writing upon the number of peremptory challenges to be allowed."

Section 194. Section 46-16-307, MCA, is amended to read:

"**46-16-307. Alternate jurors.** (1) ~~After the jury is impaneled and sworn, the~~ *The* court may direct that one or more alternate jurors be selected in the same manner as principal jurors. The alternate jurors shall take the same oath as the principal jurors.

(2) Each party shall have one additional peremptory challenge for each alternate juror.

(3) Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury arrives at its verdict, become unable or disqualified to perform their duties. An alternate juror may not join the jury in its deliberation unless called upon by the court to replace a member of the jury. ~~His~~ *An alternate juror's* conduct during the period in which the jury is considering its verdict ~~shall be~~ *is* regulated by instructions of the trial court. An alternate juror who does not replace a principal juror ~~shall~~ *must* be discharged after the jury arrives at its verdict."

Section 195. Section 46-16-201, MCA, is amended to read:

"**46-16-201. Applicability of *rules of evidence and* civil rules.** The *Montana Rules of Evidence and the statutory* rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided ~~in this code~~."

Section 196. Section 46-16-601, MCA, is amended to read:

"**46-16-601. Defendant presumed innocent — reasonable doubt.** A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether ~~his~~ *the defendant's* guilt is satisfactorily shown, ~~he is entitled to an acquittal~~ *the defendant must be found not guilty.*"

Section 197. Section 46-16-212, MCA, is amended to read:

"**46-16-212. Competency of spouses.** *(1)* ~~Except with the~~ *Neither spouse may testify to the communications or conversations between spouses that occur during their marriage unless:*

(a) consent of ~~both or in cases of~~ *the defendant-spouse is obtained;*

(b) the defendant-spouse has been charged with an act of criminal violence ~~by one upon~~ *against* the other~~,~~*; or*

(c) the defendant-spouse has been charged with abuse, abandonment, or neglect of *the other spouse or either spouse's* children ~~by either party, or abandonment or neglect of one by the other, neither~~.

(2) Except as provided in subsection (1), a spouse is a competent witness for or against the other *spouse* ~~in a criminal action or proceeding to which one or both are parties~~."

Section 198. Section 46-16-213, MCA, is amended to read:

"**46-16-213. Testimony of person legally accountable.** A ~~conviction cannot be had~~ *person may not be found guilty of an offense* on the testimony of one responsible or legally accountable for the same offense, as defined in 45-2-301, unless the testimony is corroborated by other evidence ~~which~~ *that* in itself and without the aid of the testimony of the one responsible or legally accountable for the same offense tends to connect the defendant with the commission of the offense. ~~The corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.~~"

Section 199. **Use of confession.** Before an extrajudicial confession of the defendant to the crime charged may be admitted into evidence, the prosecution shall introduce independent evidence tending to establish the commission of the crime charged.

Section 200. **Videotaped testimony.** (1) For any prosecution commenced under 45-5-502(3), 45-5-503, 45-5-505, or 45-5-507, the testimony of the victim, at the request of the victim and with the concurrence of the prosecutor, may be recorded by means of videotape for presentation at trial. The recorded testimony may be presented at trial and must be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence.

(2) The procedural and evidentiary rules of the state that are applicable to criminal trials within the state apply to the videotape proceedings authorized by this section.

(3) The district court judge, the prosecutor, the victim, the defendant, the defendant's attorney, and other persons as are considered necessary by the court to make the recordings authorized under this section must be allowed to attend the videotape proceedings.

(4) Videotapes that are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

Section 201. Section 46-16-401, MCA, is amended to read:

"**46-16-401. Order of trial.** (1) ~~The~~ *After the jury is sworn but before the introduction of any evidence, the* court may ~~instruct~~ *give* the jury ~~as to its duties~~ *general instructions concerning the conduct of the trial.* ~~Such general instructions must be settled in the same manner as provided for the settlement of special instructions in subsection (4) of this section.~~ *The court shall give the jury such cautionary instructions as may be required during the course of the trial.*

(2) The ~~county attorney must state the case~~ *prosecutor may make an opening statement* and *shall* offer evidence in support of the prosecution. The defendant may make ~~his~~ *an* opening statement prior to the ~~state's~~ *prosecutor's* offer of evidence or *at the close of the prosecution's case but prior to the defendant's* ~~may state his defense and then~~ offer *of* evidence ~~in support thereof after the state rests~~.

(3) The ~~parties~~ *prosecutor and the defendant* may, ~~then~~ respectively, offer rebutting testimony only. ~~unless~~ *However,* the court, for good cause, ~~permits them~~ *may permit either party* to offer evidence upon ~~their~~ *the* original case *at any time before the close of evidence.*

(4) ~~(a) When the evidence is concluded, if either party desires special instructions to be given to the jury, such instructions shall be reduced to writing, numbered, signed by the party or his attorney, and delivered to the court.~~

~~(b) The instructions shall be settled by the court without the presence of the jury. At the settlement counsel for the parties or the defendant, if he is without counsel, shall be allowed reasonable opportunity to examine the instructions requested and proposed to be given by the court and to present and argue to the court objections to the adoption or rejection of any instruction offered by counsel or proposed to be given to the jury by the court. On such settlement of instructions, the respective counsel or the parties shall specify and state the particular ground on which an instruction is objected to. It shall not be sufficient to object generally that the instruction does not state the law or is against the law, but the objection must specify particularly wherein the instruction is insufficient or does not state the law or what particular clause therein is objected to.~~

~~(c) The court shall pass upon the objections to the instructions and shall either give each instruction as requested or proposed, positively refuse to do so, or give the instruction with modification. The court shall mark or endorse upon each instruction in such a manner that it shall distinctly appear what instructions were given in whole or in part and, in like manner, those refused or modified and, if modified, wherein and how modified. All instructions must be filed as a part of the record of the cause. No exceptions are necessary to the rulings of the court on the settlement of instructions.~~

~~(d) The court reporter shall be present at such settlement and shall take down all the objections to any or all of the instructions given or refused by the court together with modifications made therein and the ruling of the court thereon.~~

~~(5) When the instructions have been passed upon and settled by the court and before the arguments to the jury have begun, the court shall charge the jury in writing, giving in such charge only such instructions as have been passed upon and settled. In charging the jury, the court shall give them all matters of law which it thinks necessary for the jury's information in rendering a verdict.~~

~~(6) When the jury has been charged, unless the case is submitted to the jury on either side or on both sides without argument, the county attorney must commence and may conclude the argument. If several defendants having several defenses appear by different counsel, the court must determine their relative order in evidence and argument. Counsel, in arguing the case to the judge or jury, may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence of the case.~~ *Prior to final arguments, the court shall inform the parties as to the instructions that will be given and read them to the jury.*

(5) A written copy of the instructions, both general and special, must be delivered to the jury for its consideration during deliberations following the final arguments."

Section 202. Section 46-16-402, MCA, is amended to read:

"**46-16-402. When order may be departed from.** ~~When the state of the pleading requires it or in any other case for~~ *For* good ~~reasons~~ *cause* *shown* and in the discretion of the court, the order prescribed in 46-16-401 may be departed from."

Section 203. Section 46-16-403, MCA, is amended to read:

"**46-16-403. Evidence insufficient to go to jury.** When, at the close of the ~~state's~~ *prosecution's* evidence or at the close of all the evidence, the evidence is insufficient to support a finding or verdict of guilty, the court may, on its own motion or on the motion of the defendant, dismiss the action and discharge the defendant. However, *prior to dismissal,* the court may allow the case to be reopened for good cause shown."

Section 204. **Settlement of jury instructions.** (1) Any party may request special jury instructions. All requests for instructions must conform to the Uniform District Court Rules, and all instructions must be settled by the court out of the presence of the jury.

(2) A record must be made at the settlement of instructions.

(3) A party may not assign as error any portion of the instructions or omission from the instructions unless an objection was made specifically stating the matter objected to, and the grounds for the objection, at the settlement of instructions.

(4) The presence of the defendant is not required during the settlement of instructions.

Section 205. Section 46-16-501, MCA, is amended to read:

"**46-16-501. Conduct of jury during trial.** (1) The jurors sworn to try an action may at any time ~~before the submission of the case~~, in the discretion of the court, be permitted to separate or be ~~kept~~ *ordered to remain sequestered* in *the* charge of a proper officer. ~~The~~ *If sequestered, the* officer must be sworn to keep the jurors together ~~until the next meeting of the court~~, to ~~suffer~~ *allow* no person to ~~speak to them or~~ communicate with ~~them~~ *the jury* or to ~~do so himself~~ *personally communicate with the jury* on any subject connected with the trial, and to return ~~them~~ *the jury* into court ~~at the next meeting thereof~~ *as directed.*

(2) ~~(a) The jury must also~~ *Whether permitted to separate or sequestered,* at each adjournment of the court, ~~whether permitted to separate or kept in charge of officers,~~ *the jurors must* be admonished ~~by the court~~ that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial or to form or express any opinion ~~thereon~~ *on the trial* until the cause is finally submitted to them.

~~(b)~~*(3)* In all cases appealed to the supreme court, it ~~shall~~ *must* be conclusively ~~deemed~~ *considered* that the court or judge gave the proper admonition in accordance with the provision of subsection (2)~~(a)~~ unless the record affirmatively shows ~~to~~ the contrary."

Section 206. Section 46-16-502, MCA, is amended to read:

"**46-16-502. View of relevant place or property.** When the court ~~deems~~ *considers* it proper that the jury view any place or personal property pertinent to the case, it will order the jury to be conducted in a body under the custody of the sheriff or bailiff to view ~~said~~ *the* place or personal property in the presence of the *court, the prosecutor, the* defendant, and ~~his~~ *the defendant's* counsel. The place or personal property will be shown them by a person appointed by the court for that purpose, and they may personally inspect the ~~same~~ *place or personal property.* The sheriff or bailiff must be sworn to ~~suffer~~ *allow* no person to speak or otherwise communicate with the jury or to ~~do so himself~~ *personally communicate with the jury* on any subject connected with the trial and to return them into the courtroom without unnecessary delay or at a specified time, as the court may direct."

Section 207. Section 46-16-503, MCA, is amended to read:

"**46-16-503. Conduct of jury after retirement — advice from court.** (1) When the jury retires to consider its verdict, an officer of the court must be appointed to keep the jurors together and to prevent conversations between the jurors and others.

(2) After the jury has retired for deliberation, if there is any disagreement among the jurors as to the testimony or if the jurors desire to be informed on any point of law arising in the cause, they ~~must require~~ *shall notify* the officer *appointed to keep them together, who shall then notify the* ~~to conduct them into~~ court. ~~When the jurors are brought into court, the~~ *The* information requested may be given, in the discretion of the court, *after consultation with the parties.* ~~If such information is given, it must be given in the presence of the county attorney and the defendant and his counsel.~~"

Section 208. Section 46-16-504, MCA, is amended to read:

"**46-16-504. Items ~~which~~ *that* may be taken into ~~the~~ jury room.** Upon retiring for deliberation, the ~~jury~~ *jurors* may take with them ~~all papers which have been received as evidence in the cause, except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in his possession. The jury may also take with them any exhibits which the court may deem proper and~~ *the written jury instructions read by the court,* notes of the proceedings taken by themselves, *and all exhibits that have been received as evidence in the cause that in the opinion of the court will be necessary.*"

Section 209. Section 46-16-505, MCA, is amended to read:

"**46-16-505. Activity of court during jury's absence.** While the jury is absent, the court may adjourn ~~from time to time as to~~ *or conduct* other business, but it must ~~nevertheless~~ be open for every purpose connected with the cause submitted to the jury until a verdict is returned or the jury discharged."

Section 210. Section 46-16-603, MCA, is amended to read:

"**46-16-603. Form of verdict.** (1) The jury shall return a ~~general~~ verdict ~~to each offense charged~~ *as instructed by the court.* The verdict must be unanimous in all criminal actions. The verdict ~~shall~~ *must* be signed by the foreman and returned by the jury to the judge in open court.

(2) If there are two or more defendants, the jury, at any time during its deliberations, may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

~~(3) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.~~"

Section 211. Section 46-16-605, MCA, is amended to read:

"**46-16-605. ~~Acquittal~~ *Verdict of not guilty* — when defendant discharged.** If ~~judgment of acquittal~~ *a verdict of not guilty* is ~~given on a general verdict~~ *returned* and the defendant is not detained for any other legal cause, ~~he~~ *the defendant* must be discharged as soon as the judgment is given ~~except, where the acquittal is because of a variance between the pleading and proof which may be obviated by a new indictment or information, the court may order his detention to the end that a new indictment or information may be filed by the county attorney~~."

Section 212. **Conviction of lesser included offense.** (1) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included in the offense charged.

(2) A lesser included offense instruction must be given when there is a proper request by one of the parties and the jury, based on the evidence, could be warranted in finding the defendant guilty of a lesser included offense.

(3) When a lesser included offense instruction is given, the court shall instruct the jury that it must reach a verdict on the crime charged before it may proceed to a lesser included offense. Upon request of the defendant at the settling of instructions, the court shall instruct the jury that it may consider the lesser included offense if it is unable after reasonable effort to reach a verdict on the greater offense.

Section 213. Section 46-16-701, MCA, is amended to read:

"**46-16-701. ~~Definition and effect~~ *Effect* of a new trial.** ~~A "new trial" is a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.~~ The granting of a new trial places the parties in the same position as if there had been no trial."

Section 214. Section 46-16-702, MCA, is amended to read:

"**46-16-702. Motion for a new trial.** (1) Following a verdict or finding of guilty, the court may grant the defendant a new trial if required in the interest of justice.

(2) The motion for a new trial must be in writing and must specify the grounds ~~therefor~~ *for a new trial.* ~~It~~ *The motion* must be filed by the defendant within 30 days following a verdict or finding of guilty~~. Reasonable notice of the motion must~~ *and* be served ~~on~~ *upon* the ~~state~~ *prosecution.*

(3) On hearing the motion for a new trial, if justified by law and the weight of the evidence, the court may:

(a) deny the motion;

(b) grant a new trial; or

(c) modify or change the verdict or finding by finding the defendant guilty of a lesser included offense or finding the defendant not guilty."

Section 215. Section 46-17-201, MCA, is amended to read:

"**46-17-201.** ~~**Trial by jury**~~ ***Juries in misdemeanor cases.*** (1) The defendant *in a misdemeanor case* is entitled to a jury of six qualified persons, but the parties may agree to a number less than six *at any time before the verdict.*

(2) ~~A~~ *Upon consent of the defendant, a* trial by jury may be waived ~~by the consent of both parties expressed in open court and entered in the docket~~.

~~(3) Questions of law shall be decided by the court and questions of fact by the jury except that, when a jury trial is waived, the court shall determine both questions of law and questions of fact.~~"

Section 216. Section 46-17-202, MCA, is amended to read:

"**46-17-202. Formation of trial jury** ***for justices', municipal, and city courts.*** (1) At the time of preparing the district court jury list, the county commissioners and clerk and recorder shall prepare a jury list for each justice's, *municipal,* and city court within the county. Each list ~~shall~~ *must* consist of residents of the appropriate county, city, or town. The lists ~~shall~~ *must* be selected in any reasonable manner ~~which~~ *that* ensures fairness, and each ~~shall~~ *list must* include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists ~~shall~~ *must* be filed in the office of the clerk of the district court. The appropriate list ~~shall~~ *must* be posted in a public place in each county, city, or town, and ~~such~~ *the* list ~~shall~~ *must* comprise the trial jury list for the ensuing year for ~~such~~ *the* county, city, or town.

(2) Trial jurors ~~shall~~ *must* be summoned from the jury list by notifying each one orally that ~~he~~ *the person* is summoned and of the time and place at which ~~his~~ attendance is required.

~~(3) The prosecuting attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the de-~~

~~fendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.~~

~~(4) Each party may challenge jurors for cause, and each challenge must be tried by the court. The challenge may be for any cause enumerated in 46-16-304(2). Each defendant shall be allowed three peremptory challenges, and the state shall be allowed the same number of peremptory challenges as all of the defendants.~~"

Section 217. Section 46-17-311, MCA, is amended to read:

"**46-17-311. Appeal** ***from justices', municipal, and city courts.*** (1) Except *for cases in which legal issues are preserved for appeal* ~~as provided in 46-17-203~~ *pursuant to 46-12-204,* all cases on appeal from ~~justices'~~ *a justice's, municipal,* or city ~~courts~~ *court* must be tried anew in the district court and may be tried before a jury of six selected in the same manner as ~~a trial jury in a civil action, except that the total number of jurors drawn shall be at least six plus the total number of peremptory challenges~~ *for other criminal cases.*

(2) ~~A party~~ *The defendant* may appeal to the district court by ~~giving~~ *filing* written notice of ~~his~~ intention to appeal within 10 days after *a* judgment~~, except that the state~~ *is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date the order complained of is given. The prosecution* may only appeal in the cases provided for in 46-20-103.

(3) Within 30 days *of filing the notice of appeal, the court shall transfer* the entire record of the ~~justice's or city~~ court ~~proceedings must be transferred~~ *of limited jurisdiction* to the district court ~~or the appeal must be dismissed.~~ ~~It is the duty of the appellant to perfect the appeal.~~"

Section 218. Section 46-18-111, MCA, is amended to read:

"**46-18-111. Presentence investigation** — ***when required.*** *(1)* ~~No defendant convicted of an offense under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 against a victim who was less than 16 years old when the offense was committed may be sentenced or otherwise disposed of before a written report of investigation by a~~ *Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the* probation officer ~~is presented to and considered by the court. The investigation must include an evaluation of the defendant and a recommendation as to treatment by a person qualified by professional experience. No defendant convicted of any other offense that may result in commitment for 1 year or more in the state prison may be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the court unless the court deems such report unnecessary~~ *to make a presentence investigation and report.* The *district* court may, in its discretion, order a presentence investigation for a defendant convicted of ~~any lesser crime or offense~~ *a misdemeanor.*

(2) If the court finds that the record contains information sufficient to enable the meaningful exercise of discretion during sentencing, the defendant

may waive a presentence investigation and report. Both the finding and the defendant's waiver must be made in open court on the record."

Section 219. Section 46-18-112, MCA, is amended to read:

"**46-18-112. Content of *presentence* investigation *report.*** *(1)* Whenever an investigation is required, the probation officer shall promptly inquire into *and report upon:*

(a) the *defendant's* characteristics, circumstances, needs, and potentialities ~~of the defendant~~;

(b) ~~his~~ *the defendant's* criminal record and social history;

(c) the circumstances of the offense;

(d) the time *of* the ~~defendant has been in~~ *defendant's* detention *for the offenses charged*; and

(e) except in capital cases in which the death penalty may be imposed, the harm *caused, as a result of the offense,* to the victim, ~~his~~ *the victim's* immediate family, and the community.

(2) All local and state mental and correctional institutions, courts, and ~~police~~ *law enforcement* agencies shall furnish ~~the probation officer~~, ~~on~~ *upon* request *of the officer preparing a presentence investigation,* the defendant's criminal record and other relevant information.

(3) The *court may, in its discretion, require that the presentence* investigation *report* ~~shall~~ include a physical and mental examination of the defendant ~~when it is desirable in the opinion of the court~~.

(4) If applicable, the court may require the officer to inquire into the victim's pecuniary loss and make a restitution report to the court as provided by law."

Section 220. Section 46-18-113, MCA, is amended to read:

"**46-18-113. Availability of *presentence investigation* report ~~to defendant and others~~.** (1) ~~The judge may, in his discretion, make the investigation report or parts of it available to the defendants or others, while concealing the identity of persons who provided confidential information. If the court discloses the identity of persons who provided information, the judge may, in his discretion, allow the defendant to cross-examine those who rendered information.~~

~~(2) Such reports shall~~ *All presentence investigation reports must* be *a* part of the *court* record but ~~shall be sealed and~~ *may not be* opened ~~only on order of the court~~ *for public inspection. A copy of the presentence investigation report must be provided to the prosecution, the defendant and the defendant's attorney, and the agency or institution to which the defendant is committed.*

(2) The court having jurisdiction of the case may permit other access to the presentence investigation report as it considers necessary.

~~(3) If a defendant is committed to a state institution, the investigation report shall be sent to the institution at the time of commitment.~~"

Section 221. **Sentencing hearing.** Before imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

(1) The court shall afford the parties an opportunity to be heard on any matter relevant to the disposition, including the applicability of sentencing enhancement provisions, mandatory minimum sentences, persistent felony offender status, or an exception to these matters.

(2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided by 46-18-301.

(3) Except as provided in [sections 125 through 129], the court shall address the defendant personally to ascertain whether the defendant wishes to make a statement and to present any information in mitigation of punishment or reason why the defendant should not be sentenced. If the defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to do so.

(4) The court shall impose sentence or make any other disposition authorized by law.

(5) In felony cases, the court shall specifically state all reasons for the sentence, including restrictions, conditions, or enhancements imposed, in open court on the record and in the written judgment.

Section 222. **Judgment.** The judgment must set forth the plea, verdict or finding, and the adjudication. If the defendant is convicted, it must set forth the sentence or other disposition. The judgment must be signed and entered on the record.

Section 223. **Correction of sentence.** The court may correct an illegal sentence or disposition at any time and may correct a sentence imposed in an illegal manner within 120 days after the sentence is imposed or after remand from an appellate court.

Section 224. Section 46-18-203, MCA, is amended to read:

"**46-18-203. Revocation of suspended or deferred sentence.** (1) ~~A judge, magistrate, or justice of the peace who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under 46-18-201 or his successor is authorized in his discretion to revoke the suspension or impose sentence and order the person committed. He may also, in his discretion, order the prisoner placed under the jurisdiction of the department of institutions as provided by law or retain such jurisdiction with his court.~~ *Upon the filing of a petition for revocation, accompanied by an affidavit showing probable cause that the defendant has violated any* *condition of a sentence or any condition of a deferred imposition of sentence, the court may issue an order for a hearing on revocation. The order must require the defendant to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the defendant personally. The court may also issue an arrest warrant directing any peace officer or a probation officer to arrest the defendant and bring the defendant before the court.*

(2) ~~A~~ *The* petition ~~seeking~~ *for a* revocation ~~of a suspended sentence or imposition of a sentence previously deferred~~ must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of *its* jurisdiction to rule on the petition.

(3) ~~Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing.~~ *The provisions pertaining to bail, as set forth in [sections 72, 73, 76, 77], and Title 46, chapter 9, are applicable to persons arrested pursuant to this section.*

(4) Without unnecessary delay, the defendant must be brought before the court, and the defendant must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the defendant's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the defendant admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the defendant, and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the defendant for the purposes of this subsection (b).

(6) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. However, when a failure to pay restitution is the basis for the petition, the defendant may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the defendant's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) If the court finds that the defendant has violated the terms and conditions of the suspended or deferred sentence, the court may:

(a) continue the suspended or deferred sentence without a change in conditions;

(b) continue the suspended sentence with modified or additional terms and conditions;

(c) revoke the suspension of sentence and require the defendant to serve either the sentence imposed or any lesser sentence; or

(d) if the sentence was deferred, impose any sentence that might have been originally imposed.

(8) If the court finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the defendant, if in custody, immediately released."

Section 225. Section 46-21-101, MCA, is amended to read:

"**46-21-101. ~~Circumstances in which~~ *When* validity of sentence may be challenged.** *(1)* A person adjudged guilty of an offense in a court of record who has no adequate remedy of appeal and who claims that *a* sentence was imposed in violation of the constitution or the laws of this state or the constitution of the United States, that the court was without jurisdiction to impose the sentence, that a suspended or deferred sentence was improperly revoked, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy may petition the court ~~which~~ *that* imposed the sentence or the supreme court to vacate, set aside, or correct the sentence or revocation order.

(2) If the sentence was imposed by a justice's, municipal, or city court, the petition must be filed with the district court in the county where the lower court is located.

(3) If the person is in custody, the person may elect to file the petition directly with the supreme court."

Section 226. Section 46-21-102, MCA, is amended to read:

"**46-21-102. When petition may be filed.** A petition for ~~such~~ *the* relief *referred to in 46-21-101* may be filed at any time within 5 years of the date of the conviction."

Section 227. Section 46-21-103, MCA, is amended to read:

"**46-21-103. Commencement of proceedings.** The proceeding *for relief under 46-21-101* ~~shall~~ *must* be commenced by filing *a verified petition* with the clerk of the *appropriate* court ~~in which the conviction took place or the clerk of the supreme court a verified petition~~. The clerk shall docket the petition upon its receipt and bring the ~~same~~ *petition* promptly to the attention of the court."

Section 228. Section 46-21-104, MCA, is amended to read:

"**46-21-104. Contents of petition.** *(1)* The petition *for postconviction relief* ~~shall~~ *must:*

(a) identify the proceeding in which the petitioner was convicted, give *the* date of the rendition of the final judgment complained of, and clearly set forth the alleged violation or violations~~.~~*;*

(b) identify any previous proceedings that the petitioner may have taken to secure relief from his conviction; and

(c) ~~The petition shall~~ have attached ~~thereto~~ *any* affidavits, records, or other evidence supporting its allegations or ~~shall~~ state why the ~~same are~~ *evidence is* not attached. ~~They shall identify any previous proceedings that the petitioner may have taken to secure relief from his conviction.~~

(2) The petition must be accompanied by a supporting memorandum, including appropriate arguments and citations and discussion of authorities."

Section 229. Section 46-21-105, MCA, is amended to read:

"**46-21-105. ~~What~~ *Waiver of* grounds for relief ~~waived if not raised~~.** *(1)* All grounds for relief claimed by a petitioner under ~~this chapter~~ *46-21-101* must be raised in ~~his~~ *the* original or amended petition. ~~Any~~ *Those* grounds *for relief* not ~~so~~ raised are waived unless the court on hearing a subsequent petition finds grounds for relief ~~asserted therein which~~ *that* could not reasonably have been raised in the original or amended petition.

(2) When a petitioner has been afforded a direct appeal of ~~his~~ *the petitioner's* conviction, grounds for relief that could reasonably have been raised on direct appeal may not be raised in ~~his~~ *the* original or amended petition."

Section 230. Section 46-21-201, MCA, is amended to read:

"**46-21-201. Proceedings on ~~the~~ petition.** (1) Unless the petition and the files and records of the case conclusively show that the petitioner is *not* entitled to ~~no~~ relief, the court shall cause notice ~~thereof~~ *of the petition* to be served upon the county attorney in the county in which the conviction took place and *upon* the attorney general and order them to file a responsive pleading to the petition. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may grant a prompt hearing ~~thereon~~ *on the petition,* determine the issue, and make findings of fact and conclusions with respect ~~thereto~~ *to the petition.*

(2) If a hearing is required or the interests of justice require, the court shall appoint counsel for a petitioner who qualifies for the appointment of counsel under Title 46, chapter 8, part 1.

(3) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery

procedures may be used only to the extent and in the manner the court has ordered or to which the parties have agreed.

~~(2)~~*(4)* The court may receive proof ~~by~~ *of* affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

~~(3)~~*(5)* If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and ~~such~~ *any* supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the court finds for the ~~state~~ *prosecution*, the ~~petitioner shall be returned to the custody of the person to whom the writ was directed~~ *petition must be dismissed.*"

Section 231. Section 46-21-202, MCA, is amended to read:

"**46-21-202. Record ~~must be kept~~ *of proceedings*.** A court ~~which entertains~~ *that hears* a petition pursuant to this chapter ~~must~~ *shall* keep a record of the proceedings and enter its findings and conclusions."

Section 232. Section 46-21-203, MCA, is amended to read:

"**46-21-203. Review.** Either the petitioner or the ~~state~~ *prosecution* may appeal to the supreme court ~~of Montana~~ from an order entered on ~~the~~ *a* petition. The appeal must be taken within 60 days of the entry of the order."

Section 233. Section 46-22-101, MCA, is amended to read:

"**46-22-101. ~~Who may prosecute~~ *Applicability of* writ *of habeas corpus*.** (1) Except as provided in subsection (2), every person imprisoned or otherwise restrained of ~~his~~ liberty within this state may prosecute a writ of habeas corpus to inquire into the cause of ~~such~~ imprisonment or restraint and, if illegal, to be delivered ~~therefrom~~ *from the imprisonment or restraint.*

(2) ~~Relief under this chapter~~ *The writ of habeas corpus* is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense in a court of record and has exhausted ~~his~~ *the* remedy of appeal.~~; nor~~ ~~is~~ *The* relief under this chapter *is not* available to attack the legality of an order revoking a suspended or deferred sentence. ~~Relief for such purposes is limited to the provisions of Title 46, chapter 21.~~"

Section 234. Section 46-22-102, MCA, is amended to read:

"**46-22-102. No release for technical defects.** A person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting ~~his~~ *the person's* substantial rights."

Section 235. Section 46-22-201, MCA, is amended to read:

"**46-22-201. Application for writ *of habeas corpus*.** (1) Application for ~~the~~ *a* writ *of habeas corpus* is made by petition signed either by the party for whose relief it is intended or by some person ~~in his~~ *on the petitioner's* behalf. It must specify:

(a) that the ~~person in whose behalf the writ is applied for~~ *petitioner* is unlawfully imprisoned or restrained of ~~his~~ liberty;

(b) why the imprisonment or restraint is unlawful; *and*

(c) ~~the place~~ where and ~~the officer or person~~ by whom ~~he~~ *the petitioner* is ~~so~~ confined or restrained.

(2) All ~~the~~ parties must be named if they are known or *otherwise* described ~~if they are not known~~ *so that they may be identified.*

(3) The petition must be verified by the oath or affirmation of the party making the application."

Section 236. Section 46-22-202, MCA, is amended to read:

"**46-22-202. ~~By whom issued and before whom returnable~~ *Granting writ of habeas corpus.*** *(1)* ~~The~~ *A* writ of habeas corpus may be granted~~:~~

~~(1)~~ by *any justice of* the supreme court ~~or any justice thereof~~ *or by any district court judge* upon petition by or on behalf of any person restrained of ~~his~~ liberty ~~in this state~~ *within the justice's or judge's jurisdiction.*

(2) When ~~so~~ *a writ of habeas corpus is* issued, it may be made returnable before the *issuing* court ~~or any justice thereof or before any district court or judge thereof.~~

~~(2) by a district court or a judge thereof upon petition by or on behalf of any person restrained of his liberty in the court's or judge's respective district or county~~."

Section 237. Section 46-22-203, MCA, is amended to read:

"**46-22-203. Writ granted without delay.** Any ~~court~~ *justice* or judge authorized to grant ~~the~~ *a* writ *of habeas corpus* ~~to whom a petition therefor is presented must,~~ *shall grant the writ without delay* if it appears that ~~the~~ *a* writ ought to issue~~, grant the same without delay~~."

Section 238. Section 46-22-204, MCA, is amended to read:

"**46-22-204. Writ and process may issue at any time.** ~~Any~~ *The* writ *of habeas corpus* or *any associated* process ~~authorized by this chapter~~ may be issued and served on any day or at any time."

Section 239. Section 46-22-205, MCA, is amended to read:

"**46-22-205. ~~Contents~~ *Form* of writ.** (1) The writ *of habeas corpus* must be directed to the person having custody of or restraining the person on whose behalf the application is made and must command ~~him~~ *that person* to have the ~~body of such person~~ *petitioner* before the ~~court or~~ judge before whom the writ is returnable at a time and place ~~therein~~ specified.

(2) The issue or issues to be determined upon return of the writ may be stated either in the writ or in an order attached to the writ. If the ~~issue~~

~~or~~ issues to be determined ~~upon return of the writ~~ are not stated ~~therein~~ *in the writ* or in an *attached* order ~~attached thereto~~, then a copy of the petition must be attached to the writ."

Section 240. Section 46-22-206, MCA, is amended to read:

"**46-22-206. Service of writ.** (1) The writ *of habeas corpus* must be served upon the person to whom it is directed. If ~~the person to whom~~ the writ is directed ~~represents~~ *to* a state institution, a copy of the writ ~~shall~~ *must* be served upon the attorney general. If ~~such person represents~~ *the writ is directed to* a county ~~institution~~ *facility,* a copy of the writ ~~shall~~ *must* be served upon the county attorney.

(2) The writ ~~shall~~ *must* be served by the clerk of court, the sheriff, or any other ~~officer~~ *person* directed to do so by the court.

(3) The writ ~~shall~~ *must* be served in the same manner as a summons in civil actions, except when otherwise expressly directed by the ~~court or~~ judge."

Section 241. Section 46-22-301, MCA, is amended to read:

"**46-22-301.** ~~**Contents of return**~~ ***Return of service.*** (1) The person upon whom the writ is served ~~must~~ *shall* make a return and state in ~~his~~ *that* return:

(a) *(i)* whether ~~he has~~ the ~~party~~ *petitioner is* in ~~his~~ *that person's* custody or under ~~his~~ *that person's* power or restraint; *and*

~~(b)~~*(ii)* if ~~he has~~ the ~~party~~ *petitioner is* in ~~his~~ custody or ~~under his power or restraint~~ *otherwise restrained,* the authority for and cause of ~~such~~ *the* custody or restraint; *or* ~~if the detention is by legal process, a copy thereof must be annexed to the response;~~

~~(c)~~*(b)* if ~~he had~~ the ~~party in his custody or under his power or restraint at any time prior or subsequent to the date of the writ but~~ *petitioner* has *been* transferred ~~such~~ *to the* custody *of* or ~~restraint to~~ *otherwise restrained by* another, ~~particularly~~ to whom *the party was transferred,* ~~at what~~ *the* time and place *of the transfer,* ~~for what cause~~ *the reason for the transfer,* and ~~by what~~ *the* authority ~~such~~ *under which the* transfer took place.

(2) The return must be signed *and verified* by *oath unless* the person making the ~~same and, except when such person~~ *return* is a sworn public officer ~~and makes such~~ *making a* return in ~~his~~ *an* official capacity~~, it must be verified by his oath~~."

Section 242. Section 46-22-302, MCA, is amended to read:

"**46-22-302.** ~~**Production of person — exception for infirmity or illness**~~ ***Appearance of petitioner.*** *(1)* The person commanded by the writ shall bring the ~~detained person according to the command of~~ *petitioner before the court as required by* the writ unless ~~it is made to appear by affidavit that because of sickness or infirmity such person~~ *the petitioner* cannot be brought before the ~~judge~~ *court* without danger to ~~his~~ *the* *petitioner's* health. *Sickness or infirmity must be confirmed in an affidavit by the person having custody of the petitioner.*

(2) If the ~~judge~~ *court* is satisfied with the truth of the affidavit, ~~he~~ *the court* may proceed and dispose of the case as if the ~~party had been produced~~ *petitioner were present* or the hearing may be postponed until the ~~party can be~~ *petitioner is* present."

Section 243. Section 46-22-303, MCA, is amended to read:

"**46-22-303. Refusal to obey writ — contempt.** If the person commanded by the writ refuses to obey, ~~he shall~~ *that person must* be adjudged in contempt of court."

Section 244. Section 46-22-304, MCA, is amended to read:

"**46-22-304. Hearing on return.** ~~(1)~~ The court ~~or judge~~ before whom the writ is returned ~~must~~ *shall* immediately ~~after the return~~ proceed to hear and examine the return.

~~(2)~~ The hearing ~~on the writ~~ may be summary in nature."

Section 245. Section 46-22-305, MCA, is amended to read:

"**46-22-305. Production of evidence ~~— depositions~~.** Evidence may be produced and compelled *in preparation of a hearing* as *provided* in ~~civil actions~~ *Title 46, chapter 22.* ~~Depositions taken in accordance with the Montana Rules of Civil Procedure may be read as evidence at the hearing on the writ.~~"

Section 246. Section 46-22-306, MCA, is amended to read:

"**46-22-306. Disposition of petitioner.** *(1)* If the court finds in favor of the petitioner, ~~it shall enter~~ an appropriate order *must be entered* with respect to the judgment or sentence in the former proceeding and ~~such~~ *any* supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper.

(2) If the court finds for the ~~state~~ *prosecution*, the petitioner ~~shall~~ *must* be returned to the custody of the person to whom the writ was directed."

Section 247. Section 46-22-307, MCA, is amended to read:

"**46-22-307. Appeal by ~~state~~ *prosecution*.** An appeal may be taken to the supreme court by the ~~state~~ *prosecution* from an order of judgment discharging the petitioner. The court may admit the petitioner to bail pending appeal *as provided in 46-9-103.* The appeal ~~shall~~ *must* be taken in the same manner as in civil actions."

Section 248. Section 1-1-202, MCA, is amended to read:

"**1-1-202. Terms relating to procedure and the judiciary.** Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) A "deposition" ~~is~~ *means* a written declaration under oath or affirmation, made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine.

(2) "Judicial officers" means justices of the supreme court, judges of the district courts, justices of the peace, municipal judges, and city judges.

(3) A "judicial record" ~~is~~ *means* the record of official entry of the proceedings in a court of justice or of the official act of a judicial officer in an action or special proceeding.

(4) ~~"Magistrate" means any officer described in 46-1-201(6).~~

~~(5)~~ An "oral examination" ~~is~~ *means* an examination in the presence of the jury or tribunal ~~which~~ *that* is to decide the fact or act upon it~~,~~ *or* the testimony being heard by the jury or tribunal from the lips of the witness.

~~(6)~~*(5)* "Process" means a writ or summons issued in the course of judicial proceedings.

~~(7)~~*(6)* For purposes of legal notification, the term "registered mail" ~~includes~~ *means* registered or certified mail.

~~(8)~~*(7)* "Testify" ~~includes~~ *means* every mode of oral statement under oath or affirmation.

~~(9)~~*(8)* "Writ" means an order in writing issued in the name of the state or of a court or judicial officer."

Section 249. Section 1-1-207, MCA, is amended to read:

"**1-1-207. Miscellaneous terms.** Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Bribe" means anything of value or advantage, present or prospective, or any promise or undertaking to give anything of value or advantage, ~~which~~ *that* is asked, given, or accepted with a corrupt intent to unlawfully influence the person to whom it is given in his action, vote, or opinion in any public or official capacity.

(2) "Peace officer" ~~means any person described in 46-1-201(8)~~ *has the meaning as defined in [section 2].*

(3) "Vessel", when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place."

Section 250. Section 7-16-2322, MCA, is amended to read:

"**7-16-2322. Rules and ordinances to implement part.** (1) (a) A county park board, in addition to powers and duties now given under law, has the following powers and duties:

(i) to make rules necessary or convenient to protect and promote the improvement of land and facilities under the care and control of ~~said~~ *the* board and for the protection of birds and animals inhabiting or frequenting land and facilities in parks and public places;

(ii) to make rules for the use of land and facilities by the public; and

(iii) to provide penalties for the violation of ~~such~~ *the* rules.

(b) The rules authorized by subsection (1) have the force of resolutions of the county commissioners.

(2) The county governing body, by the adoption of an ordinance in substantial compliance with the provisions of 7-5-103 through 7-5-107, may:

(a) provide that violations of specific rules adopted pursuant to subsection (1) constitute criminal offenses and are punishable as provided in 7-5-109; and

(b) authorize a county park board to employ a county park warden to enforce park rules and ordinances. A county park warden is not a peace officer, as defined in ~~46-1-201~~ *[section 2]*. The law enforcement powers of a park warden are limited to issuing citations charging violations of park ordinances and rules."

Section 251. Section 7-32-201, MCA, is amended to read:

"**7-32-201. Definitions.** As used in this part, the following definitions apply:

(1) "Auxiliary officer" means an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities.

(2) "General law enforcement duties" means patrol operations performed for detection, prevention, and suppression of crime and the enforcement of criminal and traffic codes of this state and its local governments.

(3) "Law enforcement agency" means a law enforcement service provided directly by a local government.

(4) "Law enforcement officer" means a sworn, full-time, employed member of a law enforcement agency who is a peace officer as defined in ~~46-1-201(8)~~ *[section 2]* and has arrest authority as described in 46-6-401.

(5) "Reserve officer" means a sworn, part-time, volunteer member of a law enforcement agency who is a peace officer as defined in ~~46-1-201(8)~~ *[section 2]* and has arrest authority as described in 46-6-401 only when authorized to perform these functions as a representative of the law enforcement agency."

Section 252. Section 7-32-233, MCA, is amended to read:

"7-32-233. **Limitation on arrest authority of auxiliary officer.** An auxiliary officer has only the arrest authority granted a private person in 46-6-502 ~~and 46-6-503~~."

Section 253. Section 7-32-4303, MCA, is amended to read:

"7-32-4303. **Control of shoplifting.** The city or town council may define shoplifting ~~as provided in 46-6-501~~ and punish persons found guilty ~~thereof~~ *of shoplifting.*"

Section 254. Section 16-11-147, MCA, is amended to read:

"16-11-147. **Seizure and forfeiture of unlawful cigarettes.** (1) Any motor vehicle, airplane, conveyance, vehicle, or other means of transportation in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used in connection with ~~such~~ *and found in that* transportation ~~and found in such means of transportation~~, ~~shall be~~ *is* subject to seizure by the department, its duly authorized agent, any sheriff or deputy, or other peace officer and ~~shall be~~ *is* subject to forfeiture in the manner ~~hereinafter~~ provided *in subsection (2).*

(2) Upon the seizure of any cigarettes and within 2 days thereafter, the person or officer making ~~such~~ *the* seizure shall deliver an inventory of the property seized to the person from whom ~~such~~ *the* seizure was made, if known, and file a copy ~~thereof~~ *of the inventory* with the department. The person from whom the seizure was made or any other person claiming an interest in the property seized may apply for its return as provided in ~~46-5-302~~ *46-5-303* through 46-5-305."

Section 255. Section 37-60-406, MCA, is amended to read:

"37-60-406. **Peace officer's casual employment.** A peace officer, as defined in ~~46-1-201~~ *[section 2]*, or a reserve officer, as defined in 7-32-201, is not prohibited or restricted from accepting and engaging in employment as a security guard during his off-duty hours, provided that he does not advertise his services or solicit employment and further provided that the chief of his department previously approves the off-duty employment. A peace officer or reserve officer ~~so~~ engaged in casual employment is exempt from the provisions of this chapter only if the casual employment is authorized in writing by his sheriff or chief of police."

Section 256. Section 44-11-303, MCA, is amended to read:

"44-11-303. **Definitions.** When used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Law enforcement agency" means a public agency lawfully established by statute or executive order that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, or game laws.

(2) "Law enforcement agency of this state" or "law enforcement agency of another (or any other) state" includes, respectively, a law enforcement

agency of a political subdivision of this state and a law enforcement agency of a political subdivision of another state.

(3) "Mutual aid agreement" or "agreement" means an agreement between two or more law enforcement agencies, consistent with the purposes of this part.

(4) "Party law enforcement agency" means a law enforcement agency that is a party to a mutual aid agreement as set forth in this part.

(5) "Peace officer" has the meaning as ~~the term is~~ defined in ~~46-1-201~~ *[section 2]*."

Section 257. Section 45-5-206, MCA, is amended to read:

"**45-5-206. Domestic abuse.** (1) A person commits the offense of domestic abuse if he:

(a) purposely or knowingly causes bodily injury to a family member or household member; or

(b) purposely or knowingly causes reasonable apprehension of bodily injury in a family member or household member. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused ~~shall~~ *must* be presumed in any case in which a person knowingly points a firearm at or in the direction of a family member or household member, whether or not the offender believes the firearm to be loaded.

(2) For the purposes of *[section 32] and* this section ~~and 46-6-401~~, "family member or household member" means a spouse, former spouse, adult person related by blood or marriage, or adult person of the opposite sex residing with the defendant or who formerly resided with the defendant.

(3) A person convicted of domestic abuse for the first or second time shall be fined not to exceed $500 or be imprisoned in the county jail not to exceed 6 months, or both. On a third or subsequent conviction for domestic abuse, the person convicted shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

(4) (a) A person convicted of domestic abuse for the first or second time shall be required to pay for and complete at least 6 months of counseling, totaling at least 25 hours:

(i) with a person licensed under Title 37, chapter 3, 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the convicted person. Subsection (4)(a) does not prohibit the placement of the convicted person in other appropriate treatment if the court determines there is no available treatment program directed to the violent conduct of the convicted person.

(5) Willful failure to obtain or pay for counseling ordered under this section is a civil contempt of court."

Section 258. Section 45-8-209, MCA, is amended to read:

"**45-8-209. Harming a police dog — penalty.** (1) A person commits the offense of harming a police dog if he purposely or knowingly shoots, kills, or otherwise injures a police dog being used by a law enforcement officer in discharging or attempting to discharge any legal duty in a reasonable and proper manner.

(2) A person convicted of the offense of harming a police dog may be fined an amount not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 1 year, or both.

(3) As used in this section, the following definitions apply:

(a) "Law enforcement officer" means a person who is a peace officer as defined in ~~46-1-201~~ *[section 2]*.

(b) "Police dog" means a dog that is:

(i) used by a law enforcement agency, as defined in 7-32-201, in the exercise of its authority;

(ii) specifically trained for law enforcement work; and

(iii) under the control of a law enforcement officer."

Section 259. Section 46-4-306, MCA, is amended to read:

"**46-4-306. Applicability of other laws — costs.** (1) The fees and mileage of witnesses subpoenaed pursuant to this part ~~shall be~~ *are* the same as *those* required in criminal actions. The state shall bear all costs, including the cost of service, when the application for the subpoena is made by the attorney general, and the appropriate county shall bear all costs, including the cost of service, when the application for the subpoena is made by a county attorney.

(2) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this part, including the provisions of ~~46-15-111~~ *46-15-112* through 46-15-114."

Section 260. Section 46-10-201, MCA, is amended to read:

"**46-10-201. When examination not public.** The ~~justice~~ *judge* may, in ~~his~~ *the judge's* discretion, and ~~must~~ *shall*, upon the request of the defendant, exclude from the preliminary examination ~~every~~ *each* person not officially associated with the case before the court."

Section 261. Section 46-15-326, MCA, is amended to read:

"**46-15-326. Use of materials.** Except as provided in 46-11-401, any materials, including witness lists, furnished to an attorney pursuant to ~~46-15-321~~ *46-15-322* through 46-15-329 may not be disclosed to the public but may be disclosed to others only to the extent necessary for the proper conduct of the case."

Section 262. Section 46-16-103, MCA, is amended to read:

"**46-16-103. Who decides questions of law and fact.** (1) All prosecutions deciding issues of fact must be tried by the court and jury, except on a plea of guilty.

(2) Questions of law must be decided by the court and questions of fact by the jury, except that on a trial for criminal defamation, the jury shall determine both questions of law and of fact. Questions of law and fact must be decided by the court when a trial by jury is waived under 46-16-102~~(2)~~*(3)*."

Section 263. **Repealer.** Sections 46-1-101, 46-1-102, 46-1-201, 46-3-103, 46-3-201, 46-3-202, 46-3-203, 46-3-204, 46-3-205, 46-3-206, 46-5-104, 46-5-201, 46-5-302, 46-5-501, 46-5-503, 46-5-504, 46-5-505, 46-6-101, 46-6-103, 46-6-301, 46-6-501, 46-6-503, 46-8-112, 46-9-101, 46-9-204, 46-9-303, 46-9-404, 46-9-411, 46-9-413, 46-10-101, 46-11-202, 46-11-204, 46-11-312, 46-11-333, 46-11-402, 46-11-501, 46-12-101, 46-12-103, 46-13-102, 46-13-103, 46-13-105, 46-15-111, 46-15-203, 46-15-321, 46-15-401, and 46-16-108, MCA, are repealed.

Section 264. **Codification instruction.** [Sections 1 through 3, 29, 32, 41, 44, 46, 49, 51, 52, 71, 72, 75, 76, 85, 96, 97, 104, 106, 107, 111, 124 through 129, 134, 135, 142, 153, 170, 175 through 177, 181, 199, 200, 204, 212, and 221 through 223] are intended to be codified as an integral part of Title 46, and the provisions of Title 46 apply to [sections 1 through 3, 29, 32, 41, 44, 46, 49, 51, 52, 71, 72, 75, 76, 85, 96, 97, 104, 106, 107, 111, 124 through 129, 134, 135, 142, 153, 170, 175 through 177, 181, 199, 200, 204, 212, and 221 through 223].

Section 265. **Coordination instruction.** (1) If House Bill No. 618 is passed and approved and if it includes a section that amends 46-17-311, then that section of House Bill No. 618 is void.

(2) If Senate Bill No. 331 is passed and approved and if it repeals 46-4-102 and 46-4-204, then the sections of [this act] that amend 46-4-102 and 46-4-204 are void.

(3) If Senate Bill No. 331 is passed and approved and if it includes a section that amends 46-4-101, then the section of [this act] that amends 46-4-101 is void.

(4) If Senate Bill No. 331 is passed and approved and if it includes a section that amends 46-4-103, then the section of [this act] that amends 46-4-103 is void.

Approved May 17, 1991.

CHAPTER NO. 801

[SB 199]

AN ACT AMENDING THE HOUSING DISCRIMINATION LAWS TO MAKE THEM SUBSTANTIALLY EQUIVALENT TO FEDERAL DISCRIMINATION LAW; PROVIDING PROCEDURES AND REMEDIES FOR ENFORCEMENT OF HOUSING DISCRIMINATION LAWS; PROHIBITING INTIMIDATION OR INTERFERENCE IN THE RIGHT TO BE FREE FROM HOUSING DISCRIMINATION; PROVIDING PENALTIES; AMENDING SECTIONS 49-2-305, 49-2-501, 49-2-503, 49-2-506, 49-2-509, 49-3-106, 49-3-306, AND 49-4-212, MCA; AND REPEALING SECTIONS 49-2-401 AND 49-3-105, MCA.

WHEREAS, the Legislature has previously included housing discrimination as a subject of discrimination law in the Montana Human Rights Act; and

WHEREAS, the housing discrimination laws in the Montana Human Rights Act were modeled after the federal Fair Housing Act of 1968; and

WHEREAS, in 1988, Congress substantially amended the federal Fair Housing Act, enforced by the Department of Housing and Urban Development; and

WHEREAS, the Montana Commission for Human Rights processes housing discrimination complaints in Montana that allege a violation of both the Montana Human Rights Act and the federal Fair Housing Act; and

WHEREAS, the Montana Commission for Human Rights receives a substantial portion of its funding from contracts with the Department of Housing and Urban Development for processing federal housing discrimination cases; and

WHEREAS, after January 13, 1992, the Department of Housing and Urban Development will no longer contract with any state fair housing agency that does not enforce a state law providing rights and remedies substantially equivalent to those provided by the federal Fair Housing Act; and

WHEREAS, the rights and remedies provided by the Montana Human Rights Act are not presently substantially equivalent to those provided by the federal Fair Housing Act.

THEREFORE, it is appropriate for the Legislature to amend the housing discrimination laws in the Montana Human Rights Act to maintain substantial equivalency with the federal Fair Housing Act.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-2-305, MCA, is amended to read:

"**49-2-305. Discrimination in housing — exemptions.** (1) ~~Except when the distinction is based on reasonable grounds, it~~ *It* is an unlawful discriminatory practice for the owner, lessee, *or* manager~~,~~ *having the right to sell, lease, or rent a housing accommodation or improved or unimproved property* or *for any* other person ~~having the right to sell, lease, or rent a housing accommodation or improved or unimproved property~~:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, creed, religion, color, age, familial status, physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make ~~a written or oral inquiry or record of the sex, race, creed, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent the housing accommodation or property; or~~ *an inquiry of the sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or property for the purpose of discriminating on the basis of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin;*

(d) to refuse to negotiate for a sale or to *otherwise* make *unavailable or deny* a housing accommodation or property ~~unavailable~~ because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin;

(e) to represent to a person that a housing accommodation or property is not available for inspection, sale, or rental because of that person's sex, marital status, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin when the housing accommodation or property is in fact available; or

(f) for profit, to induce or attempt to induce a person to sell or rent a housing accommodation or property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, marital status, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin.

(2) ~~A private residence designed for single-family occupancy in which sleeping space is rented to guests and in which the landlord also resides is excluded from the provisions of subsection (1).~~ *The rental of sleeping rooms in a private residence designed for single-family occupancy in which the owner also resides is excluded from the provisions of subsection (1), provided that the owner rents no more than three sleeping rooms within the residence.*

(3) It is ~~also~~ an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimina-

tion that is prohibited by subsection (1) or any intention to make or have such a preference, limitation, or discrimination.

(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or mental handicap of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing accommodation or property after it is sold, leased, rented, or made available; or any person associated with that buyer, lessee, or renter:

(a) in the sale, rental, or availability of the housing accommodation or property;

(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or property; or

(c) in the provision of services or facilities in connection with the housing accommodation or property.

(5) For purposes of subsections (1) and (4), discrimination because of physical or mental handicap includes:

(a) refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person if the modifications may be necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the lessor's or renter's agreement to restore the interior of the premises to the condition that existed before the modification, except for reasonable wear and tear;

(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing accommodation or property; or

(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction of a covered multifamily housing accommodation, a failure to design and construct the housing accommodation in a manner that:

(A) provides at least one accessible building entrance on an accessible route;

(B) makes the public use and common use portions of the housing accommodation readily accessible to and usable by handicapped persons;

(C) provides that all doors designed to allow passage into and within all premises within the housing accommodation are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(D) ensures that all premises within the housing accommodation contain the following features of adaptive design:

(I) an accessible route into and through the housing accommodation;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an individual in a wheelchair to maneuver about the space;

(ii) a covered multifamily housing accommodation that does not have at least one building entrance on an accessible route because it is impractical to do so due to the terrain or unusual characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).

(6) For purposes of subsection (5), the term "covered multifamily housing accommodation" means:

(a) a building consisting of four or more dwelling units if the building has one or more elevators; and

(b) ground floor units in a building consisting of four or more dwelling units.

(7) (a) It is an unlawful discriminatory practice for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin against a person in making available a transaction or in the terms or conditions of a transaction.

(b) For purposes of this subsection (7), the term "residential real estate-related transaction" means any of the following:

(i) the making or purchasing of loans or providing other financial assistance:

(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation or property; or

(B) secured by residential real estate; or

(ii) the selling, brokering, or appraising of residential real property.

(8) It is an unlawful discriminatory practice to deny a person access to or membership or participation in a multiple-listing service; real estate brokers' organization; or other service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property or to discriminate against the person in the terms or conditions of access, membership, or participation because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin.

(9) It is an unlawful discriminatory practice to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of or because of his having exercised or enjoyed or having aided or encouraged any other

person in the exercise or enjoyment of a right granted or protected by this section.

~~(4)~~*(10)* The prohibitions of this section against discrimination because of age and familial status do not extend to housing for older persons. "Housing for older persons" means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. 3605(b)(2)(C) and (3) and 24 C.F.R. 100.304, as those sections read on October 1, 1989.

~~(5)~~*(11)* The prohibitions of ~~this section~~ *subsection (1)* against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his residence.

~~(6)~~*(12)* For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person."

Section 2. **Procedures and remedies for enforcement of housing discrimination laws.** (1) A complaint may be filed with the commission by or on behalf of a person claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be in written form and must be filed with the commission within 1 year after the alleged unlawful discriminatory practice occurred or was discovered.

(2) (a) Except as provided in subsection (2)(b), if the commission, in a hearing under 49-2-505, finds that a person, institution, entity, or agency against whom a complaint was filed under this part has engaged in a discriminatory practice in violation of 49-2-305, the commission may, in addition to the remedies and injunctive and other equitable relief provided by 49-2-506, to vindicate the public interest, assess a civil penalty:

(i) in an amount not exceeding $10,000 if the respondent has not been found to have committed any prior discriminatory housing practice in violation of 49-2-305;

(ii) in an amount not exceeding $25,000 if the respondent has been found to have committed one other discriminatory housing practice in violation of 49-2-305 during the 5-year period ending on the date of the filing of the complaint; and

(iii) in an amount not exceeding $50,000 if the respondent has been found to have committed two or more discriminatory housing practices in violation of 49-2-305 during the 7-year period ending on the date of the filing of the complaint.

(b) If the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously found to have committed acts constituting a discriminatory housing practice, the civil penalties provided in subsections (2)(a)(ii) and (2)(a)(iii) may be imposed without regard to the period of time within which any prior discriminatory housing practice occurred.

(3) In the case of an order with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, no later than 30 days after the date of the issuance of the order or, if the order is judicially reviewed, no later than 30 days after the order is in substance affirmed:

(a) send copies of the findings of fact, the conclusions of law, and the order to the licensing or regulatory agency; and

(b) recommend to the licensing or regulatory agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license of the respondent.

(4) (a) When a complaint is filed under 49-2-305, a complainant, respondent, or aggrieved person on whose behalf the complaint was filed may elect to have the claims decided in a civil action in lieu of a hearing under 49-2-505. The election must be made no later than 20 days after receipt by the electing person of service of notice of certification for hearing under 49-2-505. The person making the election shall give notice to the commission and to all other complainants and respondents to whom the complaint relates. Within 30 days after the election is made, the commission shall commence a civil action in an appropriate district court on behalf of the aggrieved person if the commission staff has made a finding that the allegations of the complaint are supported by substantial evidence. If the commission staff has made a finding that the allegations of the complaint are not supported by substantial evidence, the complainant may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved person with respect to the issues to be determined in a civil action brought by the commission staff may intervene in the action.

(b) The commission may not continue administrative proceedings on a complaint after an election is made in accordance with subsection (4)(a).

(5) (a) An aggrieved person may commence a civil action in an appropriate district court within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging a violation of 49-2-305. The computation of the 2-year period does not include any time during which an administrative proceeding under this title was pending with respect to a complaint alleging a violation of 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from breach of a conciliation agreement.

(b) An aggrieved person may commence a civil action under this subsection for a violation of 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status of a complaint filed with the commission except as provided in subsection (5)(d). If the commission has obtained a conciliation agreement with the consent of the aggrieved person, an action may not be filed under this subsection by the aggrieved person regarding the alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) The commission may not continue administrative proceedings on a complaint after the beginning of a trial of a civil action commenced by the aggrieved party under this subsection (5) seeking relief with respect to the same alleged violation of 49-2-305.

(d) An aggrieved person may not commence a civil action under this subsection (5) with respect to an alleged violation of 49-2-305 if the commission has commenced a hearing on the record under 49-2-505 regarding the same complaint.

(e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this subsection (5) or by a person against whom the violation is alleged, the court may:

(i) appoint an attorney for the applicant; or

(ii) authorize the commencement or continuation of a civil action without the payment of fees, costs, or security if, in the opinion of the court, the applicant is financially unable to bear the costs of the civil action.

(f) Upon timely application, the commission may intervene in a civil action brought under this subsection (5) if the commission certifies that the case is of general public importance. Upon intervention, the commission may obtain the same relief that would be available to the commission under subsection (7).

(6) If the court finds that a person, institution, entity, or agency against whom a complaint was filed under this section has engaged in a discriminatory practice in violation of 49-2-305, the court may, in addition to the other remedies and injunctive and other equitable relief provided under 49-2-506, award punitive damages. The court may also award attorney fees to the prevailing party.

(7) (a) Whenever the commission has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice in violation of 49-2-305 or that a group of persons has been discriminated against in violation of 49-2-305 and the denial raises an issue of general public importance, the commission may commence a civil action in an appropriate district court. The commission may also commence a civil action in any appropriate district court for relief regarding breach of a conciliation agreement in a case regarding an alleged violation of 49-2-305 if the commission is a party to the agreement.

(b) The commission may file a civil action under this subsection (7) within 18 months after the alleged breach of the conciliation agreement or unlawful discriminatory practice occurred or was discovered.

(c) In a civil action under this subsection (7), the court may, in addition to the remedies provided under 49-2-506, assess a civil penalty against the respondent:

(i) in an amount not exceeding $50,000 for a first violation; and

(ii) in an amount not exceeding $100,000 for any subsequent violation.

(d) Upon timely application, a person may intervene in a civil action under this subsection (7) that involves an alleged violation of 49-2-305 with respect to which the intervenor is an aggrieved person.

(8) Civil penalties under this section must be paid to the state treasurer to be deposited in an account in the state special revenue fund to be used by the commission for housing discrimination enforcement.

Section 3. Section 49-2-501, MCA, is amended to read:

"49-2-501. **Filing complaints.** (1) A complaint may be filed by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint must be in the form of a written, verified complaint stating the name and address of the person, educational institution, financial institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.

(2) (a) Except as provided in *[section 2] and* subsection (2)(b) *of this section*, a complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

(c) Any complaint not filed within the times set forth herein may not be considered by the commission."

Section 4. Section 49-2-503, MCA, is amended to read:

"49-2-503. **Temporary relief by court order.** ~~(1)~~ At any time after a complaint is filed under this chapter ~~alleging an unlawful discriminatory~~

~~practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurs or in the county in which a respondent resides or transacts business seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint.~~

~~(2) The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices~~, *a district court may, upon the application of the commission or the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions.*"

Section 5. Section 49-2-506, MCA, is amended to read:

"**49-2-506. Procedure upon a finding of discrimination.** (1) If the commission finds that a person, institution, entity, or agency against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order him or it to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) ~~The~~ *Except as provided in [section 2], the* order may not require the payment of any punitive damages.

(3) Whenever a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with that order or agreement, the period of time may not be more than 3 years."

Section 6. Section 49-2-509, MCA, is amended to read:

"**49-2-509. Filing a complaint in district court.** (1) Except as provided in subsection (2) *or with respect to complaints alleging a violation of 49-2-305,* the commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505; and

(b) 12 months have elapsed since the complaint was filed.

(2) The commission staff may refuse to permit removal of a case to district court if:

(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;

(b) the party requesting removal has waived the right to request removal to the district court;

(c) more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless the commission fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

(d) the party requesting removal has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint.

(3) The commission staff may dismiss a complaint filed under 49-2-501 and allow the complainant to file a discrimination action in district court if:

(a) the commission staff determines that the commission lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the commission advised of changes of address; or

(c) the commission staff determines that the allegations of the complaint are not supported by substantial evidence.

(4) A decision of the commission staff to dismiss a complaint or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on him. The commission shall review the decision in informal proceedings under 2-4-604, except that 2-4-604(5) applies only to review of a refusal to permit removal.

(5) Within 90 days after receipt of a notice of dismissal under subsection (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection (1), the complainant may petition the district court in the district in which the alleged violation occurred for appropriate relief. ~~If~~ *Except as provided in [section 2], if* the claimant fails to petition the district court within 90 days after receipt of the letter, notice, or order issued by the commission staff, the claim shall be barred.

(6) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by district court other than by the procedures specified in this chapter."

Section 7. Section 49-3-106, MCA, is amended to read:

"**49-3-106. Rulemaking authority.** The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:

(1) filing of complaints;

(2) conducting investigations of complaints;

(3) petitioning for a declaratory ruling~~, as provided in 49-3-105~~; and

(4) conduct of hearings."

Section 8. Section 49-3-306, MCA, is amended to read:

"**49-3-306. Temporary relief by court order.** ~~(1)~~ At any time after a complaint is filed with the commission under this chapter ~~alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurred or in the county in which a respondent resides or transacts business, seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint.~~

~~(2) The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices~~, *a district court may, upon the application of the commission or the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions.*"

Section 9. **Intimidation or interference in the right to be free from housing discrimination — penalties.** (1) It is unlawful for a person, whether or not acting under color of law, by force or threat of force to purposefully or knowingly injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with:

(a) a person because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin and because the person is or has been:

(i) selling, purchasing, renting, leasing, financing, or occupying or contracting or negotiating for the sale, purchase, lease, rental, financing, or occupation of any housing accommodation or property; or

(ii) applying for or participating in any service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property;

(b) a person because he is or has been:

(i) participating, without discrimination because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin in any of the activities, services, organizations, or facilities described in this subsection (1); or

(ii) affording another person or class of persons opportunity or protection to participate in those activities, services, organizations, or facilities; or

(c) a citizen because he is or has been, or in order to discourage him or any other citizen from, lawfully aiding or encouraging other persons to participate in any of the activities, services, organizations, or facilities described in this subsection (1) or because he is or has lawfully participated in speech or peaceful assembly opposing any denial of the opportunity to participate.

(2) A person who violates a provision of subsection (1):

(a) shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both;

(b) if bodily injury results, shall be fined not more than $10,000 or imprisoned for not more than 10 years, or both; or

(c) if death results, shall be subject to imprisonment for any term of years or for life.

Section 10. Section 49-4-212, MCA, is amended to read:

"**49-4-212. Access to housing accommodations.** ~~(1)~~ Blind, visually handicapped, and deaf persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state.

~~(2) Nothing in this section requires a person renting, leasing, or providing real property for compensation to modify his property in any way or provide a higher degree of care for a blind, visually handicapped, or deaf person than for a person who is not so disabled.~~"

Section 11. **Repealer.** Sections 49-2-401 and 49-3-105, MCA, are repealed.

Section 12. **Codification instruction.** (1) [Section 2] is intended to be codified as an integral part of Title 49, chapter 2, part 5, and the provisions of Title 49, chapter 2, part 5, apply to [section 2].

(2) [Section 9] is intended to be codified as an integral part of Title 49, chapter 2, part 6, and the provisions of Title 49, chapter 2, part 6, apply to [section 9].

Approved May 17, 1991.

CHAPTER NO. 802

[SB 204]

AN ACT PROVIDING ADDITIONAL ALTERNATIVE SENTENCING AUTHORITY FOR FELONY OFFENSES RELATED TO DANGEROUS DRUGS; PROVIDING GOVERNMENTAL IMMUNITY UNDER CERTAIN CIRCUMSTANCES; PROVIDING AN EXEMPTION FROM MANDATORY MINIMUM SENTENCES; AND AMENDING SECTIONS 45-9-202 AND 46-18-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-9-202, MCA, is amended to read:

"45-9-202. **Alternative sentencing authority.** *(1)* A person convicted of ~~criminal possession of dangerous drugs, criminal sale of imitation dangerous drugs, criminal possession of imitation dangerous drugs with purpose to sell, fraudulently obtaining dangerous drugs, or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs, as defined in 50-32-101, either from the face of the record or by a presentence investigation,~~ *a dangerous drug felony offense under this chapter* may, in lieu of imprisonment, be ~~committed to the custody of any institution for rehabilitative treatment for not less than 6 months or more than 2 years~~ *sentenced according to the alternatives provided in subsection (2).*

(2) If the court determines, either from the face of the record or from a presentence investigation and report, that incarceration of the defendant is not appropriate, the court may, as a condition of a suspended or deferred sentence, impose one or more of the following alternatives:

(a) imposition of a fine not to exceed the maximum amount provided by statute for those offenses that specify a fine as part of the penalty or $1,000 for those offenses that do not specify a fine;

(b) commitment to a residential drug treatment facility licensed and approved by the state for rehabilitative treatment for not less than the minimum recommended time determined necessary by the facility and not more than 1 year;

(c) mandatory service of not more than 2,000 hours in a community-based drug treatment or drug education program with compliance to be monitored by the probation and parole bureau of the department of institutions based upon information provided by the treatment or education program;

(d) if recommended by the probation and parole bureau, placement in a program of intensive probation that requires, at a minimum, that the defendant comply with all of the following conditions:

(i) maintain employment or full-time student status at an approved school, making progress satisfactory to the probation officer, or be involved in supervised job searches and community service work designated by the probation officer;

(ii) pay probation supervision fees through the clerk of the district court of not less than $50 per month to be deposited in an account in the state special revenue fund to the credit of the department of institutions;

(iii) find a place to reside approved by the probation officer that may not be changed without the officer's approval;

(iv) remain at the residence at all times except to go to work, to attend school, or to perform community service or as otherwise specifically allowed by the probation officer;

(v) remain drug free and submit to drug and alcohol tests administered randomly not less than once each month by or under supervision of the probation officer;

(vi) perform not less than 10 hours of community service each month as approved by the probation officer, except that full-time students may be exempted or required to perform fewer hours of community service;

(vii) enroll or make satisfactory effort to seek enrollment in an approved drug rehabilitation program; and

(viii) comply with any other conditions imposed by the court to meet the needs of the community and the defendant;

(e) suspension or revocation of the defendant's driver's license issued under Title 61, chapter 5, subject to the following terms and conditions:

(i) upon the first conviction of an offense under this chapter, the driver's license must be suspended for 6 months;

(ii) upon the second conviction, the driver's license must be revoked for 1 year;

(iii) upon a third or subsequent conviction, the driver's license must be revoked for 3 years."

Section 2. **Surrender of license.** If a court suspends or revokes a driver's license under 45-9-202(2)(e), the defendant shall, at the time of sentencing, surrender the license to the court. The court shall forward the license and a copy of the sentencing order to the department of justice. The defendant may apply to the department for issuance of a probationary license under 61-2-302.

Section 3. **Immunity from liability.** (1) Except as provided in [subsections (2) and (3)], if a court imposes mandatory service under 45-9-202(2)(c) or community service under 45-9-202(2)(d), a public or private agency supervising the service, treatment, or education program in which the defendant is participating and the officers, agents, and employees of the public or private agency are immune from liability to the defendant for any acts or omissions alleged to have occurred within the course and scope of supervision.

(2) The immunity provided in subsection (1) does not extend to acts or omissions alleged to constitute gross negligence or intentional acts.

(3) The immunity provided in subsection (1) for a public agency does not extend to claims for workers' compensation benefits when the defendant is injured while performing community service.

Section 4. **Exemption from mandatory minimum sentences.** If a court imposes any of the sentencing alternatives specified in 45-9-202, the mandatory minimum sentences provided in 46-18-201(4) do not apply.

Section 5. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court appointed counsel as provided in 46-8-113;

(ix) community service;

(x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution, with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If any financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail time already served.

(4) Except as provided in *45-9-202 and* 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-502(3), 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred

or suspended. Section 46-18-222 does not apply to the first 30 days of such imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program."

Section 6. **Codification instruction.** [Sections 2 through 4] are intended to be codified as an integral part of Title 45, chapter 9, part 2, and the provisions of Title 45, chapter 9, part 2, apply to [sections 2 through 4].

Section 7. **Two-thirds vote required.** Because [section 3] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house for passage.

Section 8. **Coordination instruction.** If Senate Bill No. 473 is not passed and approved, then [section 3 of this act] is amended as follows:

(1) the bracketed language in subsection (1) is amended to read "subsection (2)"; and

(2) subsection (3) is void.

Approved May 17, 1991.

CHAPTER NO. 803

[SB 246]

AN ACT EXTENDING THE TERMINATION DATE FOR LIMITATIONS ON GOVERNMENTAL LIABILITY FOR DAMAGES IN TORT ACTIONS; AMENDING SECTION 1, CHAPTER 228, LAWS OF 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1, Chapter 228, Laws of 1987, is amended to read:

"Section 1. Section 9, Chapter 22, Special Laws of June 1986, is amended to read:

"Section 9. **Effective dates — termination date.** This act is effective on passage and approval, except that section 3 is effective July 1, ~~1991~~ *1993*. Sections 1 and 2 of this act terminate on June 30, ~~1991~~ *1993*.""

Section 2. **Coordination instruction.** If Senate Bill No. 154 is not passed and approved in the form in which it is transmitted by the legislature to the governor, then [this act] is void.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved May 17, 1991.

CHAPTER NO. 804

[SB 249]

AN ACT AMENDING THE MONTANA CRIMINAL JUSTICE INFORMATION ACT BY EXPANDING THE DEFINITION OF CRIMINAL JUSTICE AGENCY TO INCLUDE FEDERAL LAW ENFORCEMENT AGENCIES; CLARIFYING THE DEFINITION OF PUBLIC CRIMINAL JUSTICE INFORMATION; CLARIFYING THE PROVISION CONCERNING DISSEMINATION OF CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; LIMITING THE CIRCUMSTANCES UNDER WHICH THE STATE REPOSITORY SHALL RETURN ALL COPIES OF AN INDIVIDUAL'S PHOTOGRAPHS AND FINGERPRINTS; AND AMENDING SECTIONS 44-5-103, 44-5-202, AND 44-5-303.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-5-103, MCA, is amended to read:

"44-5-103. **Definitions.** As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless such information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the department of justice; or

(ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance. It does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any *federal,* state, or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice; or

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order.

(8) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency. It does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached thereto by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) nolo contendere plea;

(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains such information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Public criminal justice information" means information~~, except confidential criminal justice information~~:

(a) made public by law;

(b) of court records and proceedings;

(c) of convictions, deferred sentences, and deferred prosecutions;

(d) of postconviction proceedings and status;

(e) originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(13) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(14) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable."

Section 2. Section 44-5-202, MCA, is amended to read:

"**44-5-202. Photographs and fingerprints.** (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of institutions; and

(c) the department of justice.

(2) The department of institutions may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony is not arrested, he shall submit himself to the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of his initial appearance in court to answer the information or indictment against him.

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if he has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless he is incarcerated.

(6) Within 10 days the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

(8) Photographs and fingerprints taken shall be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken, *in the following circumstances*:

(a) ~~if a court so orders~~ *upon order of the court that had jurisdiction*; or

(b) upon the request of the individual *when he was released without the filing of charges or when the charges did not result in a conviction*~~:~~

~~(i) if no charges were filed;~~

~~(ii) if a misdemeanor charge did not result in a conviction; or~~

~~(iii) if the individual was found innocent of the offense charged~~."

Section 3. Section 44-5-303, MCA, is amended to read:

"**44-5-303. Dissemination of confidential criminal justice information.** Dissemination of confidential criminal justice information is restricted to criminal justice agencies, ~~or~~ to those authorized by law to receive it, *and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure.* A criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of such information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential."

Approved May 17, 1991.

CHAPTER NO. 805

[SB 266]

AN ACT REVISING THE MONTANA WATER USE LAWS; DEFINING THE TERM "GROUND WATER"; CLARIFYING OBJECTIONS; MAKING PERMISSIVE AND AUTHORIZING FEES FOR THE SUBMISSION OF DEPARTMENT RECORDS OF WATER RIGHTS TO A COUNTY CLERK AND RECORDER; REQUIRING THE VERIFICATION OF COMPLETIONS OF PERMITS AND CHANGE APPROVALS; AMENDING SECTIONS 85-2-102, 85-2-113, 85-2-236, 85-2-306, 85-2-308, 85-2-312, 85-2-315, 85-2-317, 85-2-402, 85-2-424, AND 85-2-501, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide a guideline on the payment of fees. Rulemaking authority is granted to the board of natural resources and conservation to establish a fee schedule for payment of fees to be paid to the department for its costs incurred in providing water rights record information to a clerk and recorder. It is the intent of the legislature that the rules establish a reasonable fee schedule that approximates the department's actual and necessary costs. A published fee schedule will enable a clerk and recorder to know the cost prior to seeking the information from the department.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

"**85-2-102.** *(Temporary)* **Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Commission" means the fish and game commission provided for in 2-15-3402.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(10) "Ground water" means any water *that is* beneath the ~~land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water~~ *ground surface.*

(11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

(13) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(14) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(15) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(16) "Water division" means a drainage basin as defined in 3-7-102.

(17) "Water judge" means a judge as provided for in Title 3, chapter 7.

(18) "Water master" means a master as provided for in Title 3, chapter 7.

(19) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. *(Terminates June 30, 1993—sec. 11, Ch. 658, L. 1989.)*

85-2-102. *(Effective July 1, 1993)* **Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(9) "Ground water" means any water *that is* beneath the ~~land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water~~ *ground surface.*

(10) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(11) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

(12) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(13) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(14) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(15) "Water division" means a drainage basin as defined in 3-7-102.

(16) "Water judge" means a judge as provided for in Title 3, chapter 7.

(17) "Water master" means a master as provided for in Title 3, chapter 7.

(18) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-113, MCA, is amended to read:

"**85-2-113. Board powers and duties.** (1) The board may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, and all change approvals. There shall be no fees for any action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the board may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in excess of ~~100 gallons a minute~~ *the limitation contained in 85-2-306(1)*;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Section 3. Section 85-2-236, MCA, is amended to read:

"**85-2-236. Certificate of water right.** ~~(1)~~ When a final decree is entered, the water judge shall send a copy to the department. Except as provided in 85-2-306, the department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the person to whom the right is decreed. The department shall keep a copy of the certificate in its office in Helena.

~~(2) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all certificates of water right issued by the department within the county.~~"

Section 4. Section 85-2-306, MCA, is amended to read:

"**85-2-306. Exceptions to permit requirements.** (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of ~~less than 100~~ *35* gallons per minute *or less, not to exceed*

10 acre feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation shall be the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate shall be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) of this section, with the department to perfect the water right. The filing of a claim of existing water right pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation shall be the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of ~~less than 100~~ *35* gallons per minute *or less, not to exceed 10 acre feet per year,* the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional

permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

Section 5. Section 85-2-308, MCA, is amended to read:

"85-2-308. **Objections.** (1) *(a)* An objection to an application *for a permit* must be filed by the date specified by the department under 85-2-307(2).

~~(2)~~*(b)* The objection *to an application for a permit* must state the name and address of the objector and facts tending to show that ~~there are no unappropriated waters in the proposed source, that the proposed means of appropriation are inadequate, that the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation, that the proposed use of water is not a beneficial use, or that the proposed use will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved~~ *one or more of the criteria in 85-2-311 are not met.*

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts tending to show that one or more of the criteria in 85-2-402 are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts tending to show that one or more of the criteria in 85-2-316 are not met."

Section 6. Section 85-2-312, MCA, is amended to read:

"85-2-312. **Terms of permit.** (1) The department may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311, and it may issue temporary or seasonal permits. A permit shall be issued subject to existing rights and any final determination of those rights made under this chapter.

(2) The department shall specify in the permit or in any authorized extension of time provided in subsection (3), the time limits for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The department shall issue the permit or authorized extension of time subject to the terms, conditions, restrictions, and limitations it considers necessary to ensure that the work on the appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the permit.

(3) The department may, upon a showing of good cause, extend time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. All requests for extensions of time must be by affidavit and must be filed with the department prior to the expiration of the time limit specified in the permit or any previously authorized extension of time. The department may issue an order temporarily extending the time limit specified in the permit for 120 days or until the department has completed its action under this section, whichever is greater. Upon receipt of a proper request for extension of time, the department shall prepare a notice containing the facts pertinent to the request for extension of time and shall publish the notice in a newspaper of general circulation in the area of the source. The department may serve notice by first-class mail upon any public agency or other person the department determines may be interested in or affected by the request for extension of time. The department shall hold a hearing on the request for extension of time on its own motion or if requested by an interested party. The department may grant the extension of time in the absence of a hearing if no requests for a hearing are received and the extension of time is granted as requested, or the department may grant the extension of time in a modified form by following the process established in 85-2-310(2). Subsequent extensions of time may be made in the same manner.

(4) The original of the permit shall be sent to the permittee, and a copy shall be kept in the office of the department in Helena.

~~(5) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all water right permits, certificates, and change approvals issued by the department within the county.~~"

Section 7. Section 85-2-315, MCA, is amended to read:

"**85-2-315. Certificate of water right.** ~~(1)~~ Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been properly completed. *The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation* *works that the appropriation has been properly completed in substantial accordance with the terms and conditions of the permit.* The department may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the permittee, and a duplicate shall be kept in the office of the department in Helena.

~~(2) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all certificates of water right issued by the department within the county.~~"

Section 8. Section 85-2-317, MCA, is amended to read:

"85-2-317. **Limitation on appropriation of ground water.** (1) After ~~May 7, 1979, no application for a permit to appropriate ground water in excess of 3,000 acre feet per year may be granted, except pursuant to an act of the legislature permitting the specific appropriation~~ *[the effective date of this act], the department may not approve a permit to appropriate ground water in excess of 3,000 acre feet per year unless:*

(a) the applicant proves and the department finds that the applicable criteria in 85-2-311 are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(2) Subsection (1) applies to any permit to appropriate ground water for which application has been made but which has not been granted as of May 7, 1979.

(3) This section does not apply to appropriations by municipalities for municipal use or to appropriations for public water supplies as defined in 75-6-102 or to appropriations for the irrigation of cropland owned and operated by the applicant.

(4) Any person, association, corporation, or other entity that applies for a permit to appropriate ground water, singularly or collectively, for the purpose of circumventing this section is punishable by a fine not exceeding $5,000."

Section 9. Section 85-2-402, MCA, is amended to read:

"85-2-402. *(Temporary)* **Changes in appropriation rights.** (1) An appropriator may not make a change in an appropriation right except as permitted under this section and with the approval of the department or, if applicable, of the legislature.

(2) Except as provided in subsections (3) through (5), the department shall approve a change in appropriation right if the appropriator proves by substantial credible evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) Except for a lease authorization pursuant to 85-2-436 that does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(3) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by substantial credible evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (3) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(5) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (5)(b)(ii) and (5)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(6) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The

department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that a change might adversely affect the rights of other persons.

(7) The department or the legislature, if applicable, may approve a change subject to terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(8) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been properly completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works that the appropriation has been properly completed in substantial accordance with the terms and conditions of the change approval.

~~(8)~~*(9)* If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

~~(9)~~*(10)* The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

~~(10)~~*(11)* A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

~~(11)~~*(12)* A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section. *(Terminates June 30, 1993—sec. 11, Ch. 658, L. 1989.)*

85-2-402. *(Effective July 1, 1993)* **Changes in appropriation rights.** (1) An appropriator may not make a change in an appropriation right except as permitted under this section and with the approval of the department or, if applicable, of the legislature.

(2) Except as provided in subsections (3) through (5), the department shall approve a change in appropriation right if the appropriator proves by substantial credible evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(3) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by substantial credible evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (3) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(5) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water

supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (5)(b)(ii) and (5)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(6) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon

any other proposed change if it determines that such a change might adversely affect the rights of other persons.

(7) The department or the legislature, if applicable, may approve a change subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(8) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been properly completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works that the appropriation has been properly completed in substantial accordance with the terms and conditions of the change approval.

~~(8)~~*(9)* If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

~~(9)~~*(10)* The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

~~(10)~~*(11)* A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

~~(11)~~*(12)* A change in appropriation right contrary to the provisions of this section is invalid. No officer, agent, agency, or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized change in appropriation right. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section."

Section 10. Section 85-2-424, MCA, is amended to read:

"**85-2-424. Filing.** (1) The transferor of a water right or his agent or representative shall file with the department a water right transfer certificate within 60 days of recording a deed or other instrument evidencing a transfer of real property.

(2) Except in the case of a transfer of real property served by a public service water supply, when any person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate shall note whether or not the transfer includes a transfer of water

rights. If the realty transfer certificate notes a transfer of water rights, the clerk and recorder shall provide such person the form prescribed under 85-2-423 for the transfer of water rights. The recording of the deed or other instrument shall not be delayed because of the transfer of the water rights.

(3) The county clerk and recorder shall send to the department a list of all transfers that involve transfers of water rights. The list must be sent every month and must include all transfers for the month immediately preceding the date of submittal to the department. The list must include the names and addresses of all parties to the transfer and a legal description of the land subject to the transfer.

~~(4) The department shall send a reference copy of the water right transfer certificate to the office of the chief water judge and to the county clerk and recorder in the county in which the transfer occurred.~~"

Section 11. Section 85-2-501, MCA, is amended to read:

"**85-2-501. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(2) "Bureau" means the Montana state bureau of mines and geology provided for in 20-25-211.

(3) "Ground water" means any ~~fresh~~ water *that is* beneath the ~~land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and which is not a part of that surface water~~ *ground surface.*

(4) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of ground water, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable."

Section 12. **Water right records for filing with local clerk and recorder.** Upon payment of a fee established pursuant to 85-2-113, a county clerk and recorder of the county where the point of diversion or place of use is located or in which a transfer of water right occurred may require the department to provide a report of all water permits, certificates, change approvals, or water right transfer certificates issued or processed by the department pursuant to Title 85, chapter 2, parts 3 and 4.

Section 13. **Codification instruction.** [Section 12] is intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to [section 12].

Section 14. **Applicability.** [Sections 7 and 8], concerning certification by a person with experience in the design, construction, or operation of appropriation works, apply to all permits and change approvals issued after [the effective date of this act].

Section 15. **Effective date.** [This act] is effective July 1, 1991.

Approved May 17, 1991.

CHAPTER NO. 806

[SB 326]

AN ACT TO EXPAND MEMBERSHIP OF THE BOARDS OF REGIONAL MENTAL HEALTH CORPORATIONS TO INCLUDE CERTAIN CONSUMER MEMBERS; AMENDING SECTION 53-21-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-204, MCA, is amended to read:

"**53-21-204. Mental health corporations.** (1) Mental health regions shall be established in the state mental health plan and shall conform to the mental health regions as established in the state mental health construction plan promulgated by the board of health and environmental sciences under the federal Community Mental Health Centers Act.

(2) The mental health regions shall establish themselves under Title 35, chapter 2. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These nonprofit corporations shall not be considered agencies of the department or the state of Montana; however, they may retain and enter into retirement programs as established under Title 19, chapter 3, The Public Employees' Retirement System Act.

(3) Upon the establishment of the mental health regions, the county commissioners in each of the ~~participating~~ counties in the region~~, as defined in subsection (5)~~ *designated as participating counties pursuant to subsection (8)*~~,~~ shall ~~designate~~ *appoint* a person from their respective county to serve as a representative of the county on the regional mental health corporation board. *In addition, unless the groups in subsections (3)(a) and (3)(b) are already represented, the board must include three members-at-large who must be chosen according to the corporate bylaws, as follows:*

(a) Two members must be chosen, one from each of the following groups:

(i) persons with severe and disabling mental illnesses; and

(ii) family members of persons with severe and disabling mental illnesses.

(b) One person must be chosen from among the following three groups:

(i) parents of children with emotional disturbances;

(ii) advocates of mental health services for the elderly; or

(iii) health care professionals.

(4) Nothing in this section prohibits a regional mental health corporation from voluntarily expanding its board membership to include members-at-large, appointed by the board, from any of the groups described in subsections (3)(a) and (3)(b).

(5) The board shall be established under guidelines adopted by the bylaws of the corporation. All appointments to the board shall be for terms of 2 years, and the department shall be notified in writing of all appointments.

~~(3)~~*(6)* The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health services within the limits of this section;

(d) receipt and administration of moneys and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, tax moneys, gifts, donations, and any other type of support or income. All funds received by the board in accordance with this part shall be used to carry out the purposes of this part.

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

~~(4)~~*(7)* Regional mental health board members shall be reimbursed from funds of the board for actual and necessary expenses incurred in attending meetings and in the discharge of board duties when assigned by the board.

~~(5)~~*(8)* Prior to June 10 of each year, the board of mental health shall submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share. If the board of county commissioners includes in the county budget the county's proportionate share of the regional board's budget, it shall be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region shall be derived from the county's general fund. If the general fund is insufficient to meet the approved budget, a levy not to exceed 1 mill may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on such property.

~~(8)~~*(9)* The regional board of mental health with the approval of the department shall establish a schedule of fees for mental health services. The fees may be received by the board and used to implement the budget in accordance with ~~53-21-204(3)(d)~~ *subsection (6)(d).*"

Section 2. **Effective date.** [This act] is effective July 1, 1991.

Approved May 17, 1991.

CHAPTER NO. 807

[SB 333]

AN ACT REQUIRING THAT A MONTANA SHAREHOLDER OF A CORPORATION THAT IS NOT INCORPORATED IN MONTANA AND HAS NOT ELECTED TO BE TAXED AS A MONTANA SMALL BUSINESS CORPORATION BE SUBJECT TO THE SAME INDIVIDUAL INCOME TAX TREATMENT AS A MONTANA SHAREHOLDER OF A CORPORATION THAT IS INCORPORATED IN MONTANA AND HAS NOT ELECTED TO BE TAXED AS A MONTANA SMALL BUSINESS CORPORATION; REQUIRING THAT A CORPORATION THAT ELECTS TO USE THE SUBCHAPTER S. CORPORATION FILING STATUS FOR FEDERAL PURPOSES USE THE MONTANA SMALL BUSINESS CORPORATION FILING STATUS FOR MONTANA PURPOSES; PROVIDING A LIMITED EXCEPTION ALLOWING CORPORATIONS THAT CURRENTLY USE SUBCHAPTER S. CORPORATION STATUS FOR FILING FEDERAL INCOME TAX AND REGULAR CORPORATION STATUS FOR FILING MONTANA INCOME TAX TO CONTINUE THAT METHOD OF FILING; AMENDING SECTIONS 15-30-111, 15-30-117, 15-30-126, 15-30-136, 15-30-161, 15-31-201, 15-31-202, 15-31-204, AND 90-8-202, MCA; REPEALING SECTION 15-31-208, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"**15-30-111. Adjusted gross income.** (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) all benefits, not in excess of $3,600, received:

(i) under the Federal Employees' Retirement Act;

(ii) under the public employee retirement laws of a state other than Montana; or

(iii) as an annuity, pension, or endowment under any private or corporate retirement plan or system;

(d) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(e) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(f) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(g) all Montana income tax refunds or credits thereof;

(h) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans or specified as exempt from taxation by 19-13-1003;

(i) all benefits paid under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005;

(j) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(k) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(l) all benefits received under the workers' compensation laws;

(m) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(n) all benefits paid under an optional retirement program that are specified as exempt from taxation by 19-21-212; and

(o) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

~~(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.~~

~~(4)~~*(3)* A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

~~(5)~~*(4)* A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

~~(6)~~*(5)* Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

~~(7)~~*(6)* A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

~~(8)~~*(7)* A person receiving benefits described in subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not exclude benefits described in subsection (2)(c) from adjusted gross income unless the benefits received under subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are less than $3,600, in which case the person may combine benefits to exclude up to a total of $3,600 from adjusted gross income. *(Subsection (2)(k) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)*"

Section 2. Section 15-30-117, MCA, is amended to read:

"**15-30-117. Net operating loss — computation.** (1) A net operating loss must be determined in accordance with section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in accordance with the following:

(a) Additions to loss include:

(i) that portion of the federal income tax and motor vehicle tax allowed as a deduction under 15-30-121 or 15-30-131 which is attributable to income from a trade or business; and

(ii) wages and salaries allowed as a business deduction under 15-30-111~~(5)~~*(4)*.

(b) Reductions in the loss include:

(i) interest received on obligations of another state or territory or of a county, municipality, district, or political subdivision thereof allowed as nonbusiness income under 15-30-111(1)(a);

(ii) federal income tax refunds required to be reported under 15-30-111 and 15-30-131 as business income;

(iii) state income tax; and

(iv) any other nonbusiness deductions allowed under 15-30-121 in excess of nonbusiness income.

(2) Notwithstanding the provisions of section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, a net operating loss does not include:

(a) income defined as exempt from state taxation under 15-30-111(2); or

(b) a zero bracket deduction provided for under section 63 of the Internal Revenue Code of 1954 or as that section may be labeled or amended."

Section 3. Section 15-30-126, MCA, is amended to read:

"**15-30-126. Small business corporation — deduction for donation of computer equipment to schools.** A small business corporation ~~electing to be taxed under the provisions of 15-31-202~~, *as defined in 15-31-201,* is allowed a deduction equal to the fair market value, not to exceed 30% of the small business corporation's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(1) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(2) the property is not transferred by the donee in exchange for money, other property, or services;

(3) the electing small business corporation receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2); and

(4) the deduction allowed in this section is in lieu of the deduction allowed under 15-30-121 for charitable contributions."

Section 4. Section 15-30-136, MCA, is amended to read:

"**15-30-136. Computation of income of estates or trusts — exemption.** (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the taxable year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision thereof, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954, as amended;

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code of 1954, as amended;

(b) taxes paid or accrued within the taxable year, including but not limited to federal income tax, but excluding Montana income tax;

(c) that fiduciary's portion of depreciation or depletion which is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code of 1954, as amended;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code of 1954, as amended;

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code of 1954, as amended, if such expenses were not claimed as a deduction in the determination of Montana inheritance tax;

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code of 1954, as amended;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code of 1954, as amended, except estates may not claim losses that are deductible on the decedent's final return;

(h) all benefits, not in excess of $3,600, received:

(i) as federal employees' retirement;

(ii) as retirement from public employment in a state other than Montana; or

(iii) as an annuity, pension, or endowment under private or corporate retirement plans or systems;

(i) all benefits paid under the Montana teachers' retirement system that are specified as exempt from taxation by 19-4-706;

(j) all benefits paid under the Montana Public Employees' Retirement System Act that are specified as exempt from taxation by 19-3-105;

(k) all benefits paid under the Montana highway patrol officers' retirement system that are specified as exempt from taxation by 19-6-705;

(l) Montana income tax refunds or credits thereof;

(m) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firemen or their surviving spouses or children;

(n) all benefits paid under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005.

~~(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202 is not in effect, net income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S. election were not in effect.~~

~~(4)~~*(3)* The following additional deductions shall be allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the taxable year currently required to be distributed to beneficiaries for such year;

(b) any other amounts properly paid or credited or required to be distributed for the taxable year;

(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year.

~~(5)~~*(4)* The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and 15-30-112(8).

~~(6)~~*(5)* A trust or estate excluding benefits under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) may not exclude benefits described in subsection (2)(h) from net income unless the benefits received under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) are less than $3,600, in which case the trust or estate may combine benefits to exclude up to a total of $3,600 from net income."

Section 5. Section 15-30-161, MCA, is amended to read:

"**15-30-161. Purpose.** The purpose of 15-30-162 is to allow individuals, estates, and trusts, including those owning an interest in partnerships and in small business corporations ~~electing to be taxed under the provisions of 15-31-202~~ *defined in 15-31-201*, to take the investment credit as provided for in 15-30-162 in order to stimulate capital investment by the small business sector."

Section 6. Section 15-31-201, MCA, is amended to read:

"**15-31-201.** ~~**Definitions**~~ ***Definition of "small business corporation".*** (1) ~~For purposes of this part~~ *Except as provided in subsection (2),* the term "small business corporation" means a corporation ~~doing business in Montana and which~~ *that* has made a valid election under Subchapter S. of Chapter 1 of the Internal Revenue Code. ~~of 1954 and thereafter:~~

~~(a) has filed~~ *A small business corporation shall attach* a copy of the approved *federal* election with the *Montana return filed for the first taxable year the federal election is effective.* ~~department on or before the 15th day of the third month of the taxable year for which the election is to become effective; or~~

~~(b) files a copy of the federal Subchapter S corporate tax return with the tax return filed under this chapter.~~

~~(2) For purposes of this part, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an election under Subchapter S in effect for the taxable year and:~~

~~(a) has filed a copy of such election with the department on or before the 15th day of the third month of the taxable year for which the election is to become effective; or~~

~~(b) files a copy of the federal Subchapter S corporate tax return with the tax return filed under this chapter.~~

(2) A corporation that would otherwise be a small business corporation may continue to be subject to the taxes imposed by Title 15, chapter 31, if all of the following conditions are met:

(a) on December 31, 1991, the corporation was doing business in Montana and had a valid Subchapter S. corporation election but had not elected to be taxed as a Montana small business corporation;

(b) after December 31, 1991, the corporation has not filed as a Montana small business corporation; and

(c) the corporation files a corporate license tax return, as required by 15-31-111, reporting all income or loss as determined under Title 15, chapter 31, and attaches a copy of the federal Subchapter S. corporate tax return."

Section 7. Section 15-31-202, MCA, is amended to read:

"**15-31-202.** ~~**Election by small**~~ ***Small*** **business corporation** ***not subject to chapter.*** (1) A small business corporation ~~may elect~~ *is* not ~~to be~~ subject to the taxes imposed by this chapter.

~~(2) If a small business corporation makes an election under subsection (1), then:~~

~~(a) with respect to the taxable years of the corporation for which such election is in effect, such corporation is not subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this part apply to such corporation; and~~

~~(b) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this part apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this part apply to such shareholder.~~

~~(3) An election under subsection (1) must be made in accordance with rules prescribed by the department of revenue.~~

~~(4) This election is not effective unless the~~ *The* corporate net income or loss of ~~such electing~~ *the* corporation is included in the stockholders' adjusted gross income as defined in 15-30-111.

~~(5)~~*(2)* ~~Every electing~~ *Each small business* corporation is required to pay the minimum fee of $10 required by 15-31-204."

Section 8. Section 15-31-204, MCA, is amended to read:

"**15-31-204. Minimum fee of ~~qualifying~~ *small business* corporations unaffected.** Notwithstanding the provisions of 15-31-121, *small business* corporations ~~electing and qualifying under 15-31-202~~ shall pay a minimum fee of $10."

Section 9. Section 90-8-202, MCA, is amended to read:

"**90-8-202. Designation of qualified Montana capital companies — tax credit.** (1) The board shall designate as qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of $200,000. A certified company seeking designation as a qualified Montana capital company must make written application to the board on forms provided by the board. The application must contain the information required by 90-8-204 and such other information as the board requires.

(2) (a) The total amount of tax credits authorized for a single qualified company may not exceed $1,500,000. In the event the capitalization of the company is later increased, the company may apply for authorization of additional tax credits within the foregoing limitation.

(b) The total credits authorized for all companies may not exceed a total of $1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed $1 million plus any portion of the $1 million available for authorization before June 30, 1985, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1987, and June 30, 1989, may not exceed $3 million plus any portion of the credits available for authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1989, and June 30, 1991, may not exceed $3 million plus any portion of the credits available for authorization before June 30, 1989, that is allocated to qualified companies.

(3) The credits shall be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the board, and the board shall certify to each such company its appropriate allocation.

(4) Investors in a qualified Montana capital company are entitled to the tax credits provided for in subsection (5). Funds invested in a certified company prior to designation as a qualified Montana capital company may, at the discretion of the investor, be placed in an escrow account in a Montana financial institution pending designation of the company as a qualified Montana capital company.

(5) Subject to the provisions of subsections (2) and (8), an individual, small business corporation, partnership, trust, decedent's estate, or corporate taxpayer that makes a capital investment in a qualified Montana capital company is entitled to a tax credit equal to 50% of the investment, up to a maximum credit of $150,000 per taxpayer. The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30, 31, or 35. The credit for investments by a small business corporation ~~electing to be taxed under 15-31-202~~ *defined in 15-31-201* or a partnership may be claimed by the small business corporation shareholders or the partners.

(6) The tax credit allowed under subsection (5) is to be credited against the taxpayer's income tax liability or coal severance tax liability for the taxable year in which the investment in a qualified Montana capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in the following manner:

(a) If the sum of the amount of credit for the current taxable year plus the amount of credit, if any, carried forward from a previous taxable year exceeds the taxpayer's tax liability for the current taxable year, the excess must be carried back as a credit to the 3 preceding taxable years and, if the full credit remains unused, carried forward as a credit to the 15 succeeding taxable years.

(b) The amount of unused credit must be used to offset the entire tax liability of each of the 18 taxable years, beginning with the earliest and commencing to the next succeeding year until the credit is exhausted.

(7) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 4 years of July 1, 1987.

(8) An individual, small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (5) may

not obtain credits in excess of the $150,000 limit contained in subsection (5) by making investments as more than one entity. A partner or shareholder in a small business corporation may not obtain more than $150,000 in credits as an individual and as the partnership or small business corporation. A corporate taxpayer that obtains the maximum $150,000 credit may not obtain additional credits through investments by wholly owned subsidiaries or affiliates."

Section 10. **Repealer.** Section 15-31-208, MCA, is repealed.

Section 11. **Conditional grandfather clause for certain Montana shareholders of foreign corporations that have elected subchapter S. corporation status for federal tax purposes.** A Montana taxpayer who is a shareholder in a corporation that is not doing business in Montana and that has elected subchapter S. corporation status for federal tax purposes may apply 15-30-111(3) as it read in 1989 for all tax years beginning on or before December 31, 1996, if the following conditions are met:

(1) The taxpaper can establish by substantial, credible evidence that the department of revenue gave the taxpayer advice concerning the application of 15-30-111(3) to the taxpayer's facts and circumstances.

(2) The taxpayer can establish by substantial, credible evidence that he relied on that advice to his detriment.

Section 12. **Effective dates — applicability.** (1) Except for the purposes of subsection (2), [this act] is effective December 31, 1991, and applies to tax years beginning after December 31, 1991.

(2) For the purpose of promulgating administrative rules to implement [sections 1 through 10], [this act] is effective on passage and approval.

Approved May 17, 1991.

CHAPTER NO. 808

[SB 370]

AN ACT TO ESTABLISH A MONTANA DRUG ABUSE RESISTANCE EDUCATION (D.A.R.E.) PROGRAM; TO ESTABLISH A MONTANA DRUG ABUSE RESISTANCE EDUCATION TRUST FUND ACCOUNT; TO PROVIDE THAT THE MONTANA BOARD OF CRIME CONTROL ADMINISTER THE FUND; TO PROVIDE FOR CERTAIN RESTRICTIONS ON THE USE OF THE FUND; TO PROVIDE FOR A VOLUNTARY INCOME TAX CHECKOFF TO FUND THE DRUG ABUSE RESISTANCE EDUCATION PROGRAM; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 2] directs the Montana board of crime control to adopt rules to implement [section 2]. It is contemplated that the rules will address the following:

(1) the program's funding priorities;

(2) grant application format;

(3) criteria for evaluation of grant proposals;

(4) form and timing of grant award notification;

(5) procedure for monitoring the expenditure of funds by grantees;

(6) a method for evaluation of the effectiveness of services and activities provided by grantees; and

(7) a plan for distribution of any gifts and grants received by the program under [section 3].

Be it enacted by the Legislature of the State of Montana:

Section 1. **Montana drug abuse resistance education trust fund account — administration by board of crime control.** (1) There is a Montana drug abuse resistance education trust fund account in the state special revenue fund in the state treasury.

(2) Funds deposited in the account may be expended by the Montana board of crime control, as provided for in 2-15-2006, to fund services and activities under and payment of administrative costs of the Montana drug abuse resistance education program provided for in [section 2].

Section 2. **Montana drug abuse resistance education program.** (1) The Montana board of crime control shall use the money in the Montana drug abuse resistance education trust fund account established by [section 1] to fund services and activities operated by nonprofit, private, community-based educational and service organizations, units of local government, or school districts if those services and activities relate solely to the development, enhancement, and expansion of drug abuse resistance education in Montana.

(2) In administering the Montana drug abuse resistance education program, the Montana board of crime control shall:

(a) identify priorities for funding services, activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities under this section; and

(d) adopt rules necessary to implement [sections 3 and 4] and this section.

Section 3. **Gifts and grants to program.** The Montana board of crime control may accept contributions, gifts, and grants, in money or otherwise, to the Montana drug abuse resistance education program. Upon receipt, contributions, monetary gifts, and grants must be paid into the Montana drug abuse resistance education trust fund account established by [section 1].

Section 4. **Program costs.** The costs incurred by the Montana board of crime control in administering the Montana drug abuse resistance education program must be paid with money from the Montana drug abuse resistance education trust fund account established by [section 1]. The board shall keep costs to a minimum and shall use the board's existing office space, personnel, equipment, and supplies to the extent possible.

Section 5. **Restriction on use of funds.** Funds deposited in the Montana drug abuse resistance education trust fund account may be used only for the program authorized in [section 2] and may not be used to pay the expenses of any other program or service administered in whole or in part by the Montana board of crime control or the department of justice.

Section 6. Section 15-30-121, MCA, is amended to read:

"**15-30-121. Deductions allowed in computing net income.** In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) expenses of household and dependent care services as outlined in subsections (3)(a) through (3)(c) and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f) as follows:

(a) expenses for household and dependent care services necessary for gainful employment incurred for:

(i) a dependent under 15 years of age for whom an exemption can be claimed;

(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to care for himself because of physical or mental illness; and

(iii) a spouse who is unable to care for himself because of physical or mental illness;

(b) employment-related expenses incurred for the following services, but only if such expenses are incurred to enable the taxpayer to be gainfully employed:

(i) household services which are attributable to the care of the qualifying individual; and

(ii) care of an individual who qualifies under subsection (3)(a);

(c) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and his spouse;

(d) the amounts deductible in subsection (3)(a) through (3)(c) are subject to the following limitations:

(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent such expenses do not exceed $4,800;

(ii) expenses for services in the household are deductible under subsection (3)(a) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent such expenses incurred during the year do not exceed:

(A) $2,400 in the case of one qualifying individual;

(B) $3,600 in the case of two qualifying individuals; and

(C) $4,800 in the case of three or more qualifying individuals;

(e) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the taxable year during which the expenses are incurred, the amount of the employment-related expenses incurred must be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(f) for purposes of this subsection (3):

(i) married couples shall file a joint return or file separately on the same form;

(ii) if the taxpayer is married during any period of the taxable year, employment-related expenses incurred are deductible only if:

(A) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);

(iii) an individual legally separated from his spouse under a decree of divorce or of separate maintenance may not be considered as married;

(iv) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which was not otherwise deducted in computing taxable income; ~~and~~

(6) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156~~.~~*; and*

(7) contributions to the Montana drug abuse resistance education program provided for in [section 2], subject to the conditions set forth in [section 8]."

Section 7. **Voluntary checkoff for the Montana drug abuse resistance education program.** (1) Each individual taxpayer who is required to file an income tax return under this chapter and who is entitled to a refund may contribute to the Montana drug abuse resistance education program, provided for in [section 2], by marking the appropriate box on his state income tax return.

(2) Each state individual income tax return must contain a provision for indicating a contribution to the Montana drug abuse resistance education program in substantially the following form:

"Montana Drug Abuse Resistance Education (D.A.R.E.) Program. Check this box if you wish to designate $5 ..., $10 ..., or more ... (indicate amount) of your tax refund to help fund the Drug Abuse Resistance Education Program in Montana. On a joint return, check the corresponding box for your spouse if your spouse wishes to contribute $5 ..., $10 ..., or more ... (indicate amount) of the refund for the same purpose."

(3) Money received under this section must be deposited in the Montana drug abuse resistance education trust fund account, created under [section 1], after the department has deducted the amount necessary for the department to administer this section.

Section 8. **Deductions for contributions to Montana drug abuse resistance education program.** A taxpayer who files an individual tax return and who does not elect to take a standard deduction provided for in

15-30-122 may, in computing net income, claim a deduction for the payment of a contribution to the Montana drug abuse resistance education program as follows:

(1) If the taxpayer paid a contribution in the taxable year for which the return is filed, he may deduct the amount of the contribution paid during that year, unless the amount was deducted as provided in subsection (2).

(2) If the taxpayer encloses a check or money order as a contribution when filing his tax return in accordance with 15-30-144, he may elect to take a deduction for the amount of the contribution and apply the deduction in the taxable year for which he is filing the return.

Section 9. **Deposit of deductible contributions.** (1) All money received under [section 8] must be deposited in the Montana drug abuse resistance education trust fund account established in [section 1].

(2) The department shall immediately forward for deposit in the Montana drug abuse resistance education trust fund account all checks and other orders of payment made as contributions under [section 8]. The department may not make deductions for administrative expenses in the handling of direct payments to the Montana drug abuse resistance education program.

Section 10. **Codification instruction.** [Sections 7 through 9] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 7 through 9].

Section 11. **Effective date — retroactive applicability.** (1) [This act] is effective on passage and approval.

(2) [Section 6] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

(3) [Sections 7 and 8] apply to tax forms filed for taxable years beginning after December 31, 1990.

Section 12. **Contingent termination.** [Sections 6(7) and 7 through 9], concerning the voluntary income tax checkoff and allowable income tax deductions for contributions made to the D.A.R.E. program, terminate on January 1 of the first taxable year following the 2 immediately preceding taxable years in which the voluntary checkoff raises less than $20,000 in each of those 2 taxable years.

Approved May 17, 1991.

CHAPTER NO. 809

[SB 379]

AN ACT REQUIRING THE BOARD OF CRIME CONTROL TO ESTABLISH MINIMUM STANDARDS OF TRAINING FOR PROBATION AND PAROLE OFFICERS AND REQUIRING THE OFFICERS TO RECEIVE THE TRAINING; AND AMENDING SECTIONS 44-4-301 AND 46-23-1003, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 1] grants the board of crime control authority to adopt minimum standards for training of probation and parole officers.

It is the intent of the legislature that standards for training provide 2 weeks of training for probation and parole officers. Training should include courses in subjects relating to investigations and arrests performed by probation and parole officers within the scope of their duties under Title 46, chapter 23, part 10.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-4-301, MCA, is amended to read:

"**44-4-301. Functions.** (1) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature.

(2) The board shall have the authority to establish minimum qualifying standards for employment of peace officers, as defined in 7-32-303, detention officers, and detention center administrators.

(3) The board shall have the authority to require basic training for officers, establish minimum standards for equipment and procedures and for advanced in-service training for officers, and establish minimum standards for law enforcement and detention officer training schools administered by the state or any of its political subdivisions or agencies, to insure the public health, welfare, and safety.

(4) The board may waive the minimum qualification standard *provided in subsection (2)* for good cause shown.

(5) The board shall establish minimum standards for training of probation and parole officers, pursuant to 46-23-1003."

Section 2. Section 46-23-1003, MCA, is amended to read:

"**46-23-1003. Qualifications of probation and parole officers.** (1) Probation and parole officers shall have at least a college degree and some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in 2-15-2302(2) may be substituted for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the department. All present employees will be exempt from this requirement but are encouraged to further their education at the earliest opportunity.

(2) Each probation and parole officer must, through a source approved by his employer, obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers. *In addition, each probation and parole officer must receive training in accordance with standards adopted by the board of crime control, as provided in 44-4-301. The training must be at the Montana law enforcement academy unless the board finds that training at some other place is more appropriate.*"

Approved May 17, 1991.

CHAPTER NO. 810

[SB 441]

AN ACT REVISING THE LAW GOVERNING THE JUDICIAL NOMINATION COMMISSION; EXTENDING ALL TERMS OF MEMBERS TO 4 YEARS; LIMITING MEMBERS TO TWO TERMS; IMPLEMENTING STAGGERED TERMS FOR ALL MEMBERS; PROVIDING FOR PUBLIC NOTICE OF VACANCIES; PROVIDING FOR PUBLIC COMMENT ON APPLICATIONS; AMENDING SECTIONS 3-1-1001, 3-1-1002, 3-1-1007, AND 3-1-1010, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-1001, MCA, is amended to read:

"**3-1-1001. Creation, composition, and function of commission.** (1) A judicial nomination commission for the state is created. Its function is to provide the governor with a list of candidates for appointment to fill any vacancy on the supreme court or any district court and to provide the chief justice of the supreme court with a list of candidates for appointment to fill any term or vacancy for the chief water judge pursuant to 3-7-221. The commission shall be composed of seven members as follows:

(a) four lay members who are neither judges nor attorneys, active or retired, who reside in different geographical areas of the state, and each of whom is representative of a different industry, business, or profession, whether actively so engaged or retired, who shall be appointed by the governor;

(b) two attorneys actively engaged in the practice of law, ~~one from each congressional district,~~ *one from that part of the state that is composed of judicial districts 1 through 5, 9, 11, and 18 through 20 and one from that part of the state that is composed of judicial districts 6 through 8, 10, and 12 through 17* who shall be appointed by the supreme court;

(c) one district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to such election by the chief justice of the supreme court. The election shall be considered an appointment for the purposes of this part.

(2) Appointments provided for in this section shall be made within 30 days of the completion of the preceding terms."

Section 2. Section 3-1-1002, MCA, is amended to read:

"**3-1-1002. Staggered terms of members.** (1) ~~All original members named to~~ *Members of* the commission shall serve ~~until January 1, 1976. Their successors shall serve as follows:~~

~~(a) The members appointed by the governor shall serve~~ *staggered* 4-year terms.

~~(b) The attorneys appointed by the supreme court shall serve 2-year terms.~~

~~(c) The judge elected shall serve a 2-year term.~~

(2) ~~Thereafter all members shall serve terms of 4 years~~ *A member may not serve more than two full 4-year terms.*"

Section 3. Section 3-1-1007, MCA, is amended to read:

"**3-1-1007. Commission to make rules — confidentiality of proceedings.** (1) The commission shall ~~make~~ *adopt and publish* rules*:*

(a) for the conduct of its affairs *and the format of reports filed under 3-1-1010;*

(b) establishing a procedure for providing the public with notice of a vacancy within 10 days of receipt of the notice of the vacancy;

(c) establishing an application period of not less than 30 days from the date of public notice under subsection (1)(b) and the procedure for applying for a position; and

(d) establishing a reasonable period for reviewing applications and interviewing of applicants that provides at least 30 days for public comment concerning applicants.

(2) A copy of the rules must be filed with the clerk of the supreme court.

(3) The total time from receipt of notice of a vacancy until a list of names is submitted to the governor or chief justice may not exceed 90 days.

~~(2)~~*(4)* The proceedings of the commission and the related documents shall be open to the public except when the demands of individual privacy clearly exceed the merits of public ~~exposure~~ *disclosure.*"

Section 4. Section 3-1-1010, MCA, is amended to read:

"**3-1-1010. Lists submitted to governor and chief justice — report on proceedings.** (1) If a supreme court justice, ~~or~~ *a* district judge, *the workers' compensation judge, or the chief water judge* gives notice of his resignation to take effect on a specific date, the commission shall meet as soon as possible after the justice's or judge's proposed resignation date has been verified by the chief justice of the supreme court. If no notice is given, the commission shall meet as soon as possible after a vacancy occurs. *The meeting must be held in compliance with 3-1-1007.* The commission shall submit to the governor *or chief justice,* within ~~30 days after the resignation date has been verified by the chief justice, or within 30 days after the date of the vacancy if no notice of intent to resign is given~~ *the time period established under 3-1-1007,* a list of not less than three or more than five nominees for appointment *to the vacant position.*

~~(2) The commission shall meet to prepare and submit to the chief justice of the supreme court a list of not less than three or more than five nominees for appointment to fill any term or vacancy for the chief water judge. The list must be submitted at least 30 days prior to a new term or within 30 days from the date of a vacancy.~~

~~(3)~~*(2)* Any list must be accompanied by a written report indicating the vote on each nominee, the content of the application submitted by each nominee, *letters and public comments received regarding the nominee,* and the commission's reasons for recommending each nominee for appointment. *The report must give specific reasons for recommending each nominee.*"

Section 5. **Implementation of staggered terms.** In order to implement the staggering of terms required in 3-1-1002, the initial appointment of members must be as follows:

(1) the governor shall appoint members to replace the members whose terms expire December 31, 1991, to terms of 1, 2, 3, and 4 years;

(2) the two attorney members appointed by the supreme court whose terms expire December 31, 1994, shall be appointed to a 2-year and a 3-year term, respectively; and

(3) the judicial member elected under 3-1-1001(1)(d) shall serve a 4-year term.

Section 6. **Coordination instruction.** If House Bill No. 934 is passed and approved, then the phrase "18 through 20" in the amendment inserted by [section 1 of this act] is changed to "18 through 21".

Section 7. **Applicability.** The limitation on terms contained in 3-1-1002(2) applies to terms commencing after October 1, 1991.

Section 8. **Effective date.** [Section 6] is effective January 1, 1993.

Approved May 17, 1991.

CHAPTER NO. 811

[SB 445]

AN ACT PROVIDING MONTANA TAXPAYERS WITH A SIMPLE, INEXPENSIVE, AND EFFECTIVE TAX REVIEW PROCESS FOR TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE EXCEPT PROPERTY, INHERITANCE, AND ESTATE TAXES BUT INCLUDING REVISED ASSESSMENTS OF CENTRALLY ASSESSED PROPERTY TAXES; PROVIDING AUTHORITY TO ENTER INTO CLOSING AGREEMENTS; AMENDING SECTIONS 15-1-403, 15-1-406, 15-1-705, 15-8-601, 15-23-104, 15-25-114, 15-30-148, 15-30-149, 15-31-503, 15-31-532, 15-31-701, 15-35-112, 15-36-105, 15-36-113, 15-37-110, 15-37-114, 15-37-210, 15-38-110, 15-51-109, 15-53-105, 15-55-106, 15-58-110, 15-59-112, 15-59-212, 15-65-115, 69-1-225, AND 69-1-226, MCA; REPEALING SECTION 15-55-107, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Uniform tax review procedure — notice — appeal.** (1) The department shall provide a uniform tax review procedure for all taxpayers, except as provided in subsection (1)(a).

(a) The tax review procedure described in this section applies to all taxes administered by the department except inheritance taxes, estate taxes, and property taxes. The procedure applies to any revised assessment of centrally assessed property taxed pursuant to chapter 23.

(b) The term "taxpayers", as used in this section, includes all persons determined by the department to have a potential tax liability.

(2) (a) If the department determines that a request for a refund should be denied in whole or part, it shall notify the taxpayer of the determination. If the department determines that a person has failed to pay a sufficient tax, interest, or penalty, it shall provide the taxpayer with notice. The notice stops the running of any applicable statute of limitations regarding the assessment of the tax.

(b) A notice under this section must clearly state:

(i) the reasons for the department's determination that a refund is not due or that tax plus interest and penalty, if any, is due;

(ii) the taxpayer's right to a review by the department and his right to appeal after a final department decision;

(iii) failure to notify the department within 30 days will result in a forfeiture of the taxpayer's right to contest the department's determination under this section or to file an appeal with the state tax appeal board;

(iv) that the taxpayer has 30 days to either notify the department in writing that he does not agree with an assessment or pay the amount assessed;

(v) that a warrant for distraint placing a lien on the taxpayer's property may be issued unless he notifies the department that he disagrees with an assessment or pays within 30 days; and

(vi) that the notice stops the running of the statute of limitations regarding the assessment of the tax.

(3) (a) A taxpayer shall notify the department, in writing, that he objects to the determination within 30 days from the date the notice is mailed. The notification by the taxpayer is not required to specify the reasons for the disagreement or be in any particular form. If the taxpayer does not notify the department within 30 days:

(i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;

(ii) the taxpayer waives any further right to review under this section or to appeal to the state tax appeal board; and

(iii) a warrant for distraint may be issued without further opportunity to be heard on the assessment.

(b) A taxpayer who notifies the department pursuant to subsection (3)(a) that he disagrees with a tax assessment shall present his objections, the reasons for his objections, and any other information to the administrator of the division that administers the tax or to his designee within 60 days after the notice referred to in subsection (3)(a) is mailed. The reasons for objections may be provided in writing, by telephone, or, if requested by the taxpayer, at an informal conference. An informal conference is not subject to the Montana Administrative Procedure Act.

(c) Within 60 days after the taxpayer has presented his objections, as provided in subsection (3)(b), the administrator or his designee shall issue a written decision addressing the taxpayer's objections and describing the reasons for the determination. The administrator's decision must also clearly set forth the taxpayer's review rights. The administrator's decision must be provided to the taxpayer and the director of revenue.

(4) (a) A taxpayer shall notify the department in writing that he objects to the administrator's decision within 30 days from the date that the decision is mailed, or he may appeal to the state tax appeal board as provided in subsection (6). If an objection is not made within 30 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer waives any further right to review or appeal and a

warrant for distraint may be issued without further opportunity to be heard on the assessment.

(b) Except as provided in subsection (6), a taxpayer who objects to the administrator's decision pursuant to subsection (4)(a) shall present his objections, his reasons for the objections, and any other information to the director of revenue or his designee within 60 days after the notice referred to in subsection (4)(a) is mailed. The director or his designee may consider written information, hold a telephone conference, or conduct an informal conference, none of which are subject to the Montana Administrative Procedure Act.

(c) Within 60 days after the taxpayer has presented his objections, the director or his designee shall issue a written decision addressing the objections and describing the reasons for the decision. The director's decision is the final decision and assessment of the department.

(5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by the board or, if further appeals are filed, by the appropriate court. However, any interest required by law shall continue to accrue.

(6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the department.

(b) If the director notifies the board within 30 days after an appeal is filed that he has not had an opportunity to review the administrator's decision and he believes a review may be helpful in resolving the controversy, the board shall stay the appeal for a time the board considers reasonable not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide his objections and reasons for his objections to the director so that the director or his designee may review the controversy and issue a decision within the period of the stay granted by the board. If the taxpayer is dissatisfied with the director's decision, the stay must be lifted and the appeal resumed.

(7) The time limits in this section must be applied and interpreted as provided in Rule 6 of the Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by mutual consent of the department and the taxpayer. The department shall consent to all reasonable requests for extension of deadlines.

(8) (a) The director of revenue or his designee is authorized to enter into an agreement with any taxpayer relating to the taxpayer's liability with respect to a tax administered by the department for any taxable period.

(b) An agreement under the provisions of subsection (8)(a) is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded.

Section 2. Section 15-1-403, MCA, is amended to read:

"**15-1-403. Assessment for taxation — increase over statement of owner.** (1) Whenever any person has delivered to the department of revenue or its agent a sworn statement of his *locally assessed* property subject to taxation as now provided by law and giving the estimated value of such property and the department or its agent shall increase such estimated value or add other property to such assessment list, the agent shall, at least 10 days prior to the meeting of the county tax appeal board, give to such person written notice of such change, which notice shall be substantially in the following form:

(Date) ....

Mr. ......:

A change has been made in your assessment list as follows:

(Set out and describe specifically changes made in list.)

......................, Agent
Department of Revenue

(2) Such person may then appear before the county tax appeal board and contest the same. If the assessment of any such person has been added to or changed, either by the department or by the county tax appeal board, and such person has not been notified thereof and given an opportunity to contest the same before the county tax appeal board, the tax on such increased value or added property shall, upon such facts being established, be adjudged by the state tax appeal board to be void, and such facts and all questions relating thereto, when said tax has been paid under protest, may be heard and determined in the action provided for in 15-1-402."

Section 3. Section 15-1-406, MCA, is amended to read:

"**15-1-406. Alternative remedy — declaratory judgment.** (1) An aggrieved taxpayer may, in lieu of proceeding under 15-1-402 *or [section 1]*, bring a declaratory judgment action in the district court seeking a declaration that a tax levied by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

(2) The action must be brought within 90 days of the imposition of the tax. The court shall consolidate all actions brought under subsection (1) which challenge the same tax levy. The decision of the court shall apply to all similarly situated taxpayers except those taxpayers who are excluded under 15-1-407.

(3) The taxes that are being challenged under this section must be paid when due as a condition of continuing the action."

Section 4. Section 15-1-705, MCA, is amended to read:

"**15-1-705. ~~Hearing~~ *Review.*** (1) Except as provided in 15-1-707, a taxpayer has the right ~~to request a hearing on~~ *a review of* the ~~matter of~~ tax liability *pursuant to [section 1]* prior to execution on a filed warrant for distraint.

(2) The department must provide notice of the right to ~~hearing~~ *review* to the taxpayer. ~~A request for a hearing must be made in writing within 30 days of the date of the notice.~~ This notice may be given prior to the notice referred to in 15-1-702. If ~~a written request for a hearing is received~~ *the taxpayer notified the department that he disagrees with an assessment as provided in [section 1],* the warrant may not be executed upon until after the ~~date the hearing is held or, if the taxpayer fails to attend a scheduled hearing, the date the hearing is scheduled~~ *review process and any appeals are completed.*

~~(3) The hearing is subject to the contested case provisions of the Montana Administrative Procedure Act. Before a decision may be appealed to the district court, an appeal must first be taken to the state tax appeal board. A request for a hearing must be in writing in order to postpone execution on a warrant.~~"

Section 5. Section 15-8-601, MCA, is amended to read:

"**15-8-601. Assessment revision — conference for review.** (1) Whenever the department of revenue discovers that any taxable property of any person has in any year escaped assessment, been erroneously assessed, or been omitted from taxation, the department may assess the same provided the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All such revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

(2) Whenever the department or its agent proposes to increase the valuation of locally assessed property above the value reported by the taxpayer under 15-8-301, the action of the department is subject to the notice and conference provisions of this section. *Revised assessments of centrally assessed property are subject to review pursuant to [section 1].*

(3) (a) Notice of revised assessment pursuant to this section shall be made by the department or its agent by postpaid letter addressed to the person interested within 10 days after the revised assessment has been

made. ~~The~~ *If the property is locally assessed, the* notice shall include opportunity for a conference on the matter, at the request of the person interested, not less than 15 or more than 30 days after notice is given.

(b) An assessment revision review conference is not a contested case as defined in the Montana Administrative Procedure Act. The department shall keep minutes in writing of each assessment review conference, which are public records.

(c) Following an assessment review conference or expiration of opportunity therefor, the department shall order such assessment as it considers proper. Any party to the conference aggrieved by the action of the department ~~may appeal directly to the state tax appeal board within 30 days or, if the property is locally assessed,~~ may appeal to the county tax appeal board at its next meeting.

(4) The department must record in a book to be kept for that purpose all changes, corrections, and orders made by it and must direct its agent to enter upon the assessment book all changes and corrections made by it.

(5) Immediately upon receipt of a revised assessment, the county official possessing the assessment roll book shall enter the revised assessment. If the revised assessment corrects an original assessment, the previous entry shall be canceled upon order of the department."

Section 6. Section 15-23-104, MCA, is amended to read:

"**15-23-104. Failure to file — estimate by department — penalty.** If any person fails to file a report or return within the time established in 15-23-103 or by such later date as the department may approve, the department shall estimate the value of the property to have been reported on the basis of the best available information. In estimating the value of the net proceeds of mines, the department shall proceed under 15-23-506, and in estimating the value of the gross proceeds of coal mines, the department shall proceed under 15-35-107. In estimating the value of all other property subject to assessment under parts 2 through 4 of this chapter, the department shall proceed under 15-1-303. In estimating value under this section, the department may subpoena a person or his agent as specified in 15-1-302. An assessment pursuant to parts 5 through 8 of this chapter based on estimated value or imputed value is subject to review under ~~15-8-601~~ *[section 1]*. Each month or part of a month a report is delinquent, the department shall impose and collect a $25 penalty, the total not to exceed $200, and shall deposit such penalty to the credit of the general fund. The department will also inform its agents in the counties of the delinquency, and the agents shall assess a penalty of 1% of the tax due for each month or part of a month the report is delinquent."

Section 7. Section 15-25-114, MCA, is amended to read:

"**15-25-114. Tax ~~appeal~~ *review*.** A person aggrieved by an assessment pursuant to 15-25-111 or an exemption decision pursuant to 15-25-112 may ~~appeal~~ *seek a review of* the assessment or exemption decision pursuant to ~~Title 15, chapter 2, part 3~~ *[section 1]*."

Section 8. Section 15-30-148, MCA, is amended to read:

"**15-30-148. Judicial review.** (1) The determination of the state tax appeal board may be reviewed in the district court for Lewis and Clark County or the county in which the taxpayer resides or has his principal office or place of business by a complaint filed by the taxpayer or the department within ~~6 months~~ *30 days* after the receipt of notice of the ~~decision of the state tax appeal board~~ *determination*. Proceedings for review shall be otherwise as specified under the Montana Administrative Procedure Act.

(2) The remedies provided by this chapter for the collection of the tax shall be stayed, and no assessment, distraint, or proceedings in court for collection of the taxes may be made, begun, or prosecuted until 90 days after such court action is finally determined. From any determination of such court, an appeal to the supreme court may be taken by either party."

Section 9. Section 15-30-149, MCA, is amended to read:

"**15-30-149. Credits and refunds — period of limitations.** (1) If the department discovers from the examination of a return or upon claim duly filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment shall be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of such excess shall be refunded to the taxpayer.

(2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-145 and by 15-30-146 during which the department may determine tax liability, the taxpayer files a claim or the department determines there has been an overpayment.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the taxable year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back.

(3) Within 6 months after a claim for refund is filed, the department shall examine ~~said~~ *the* claim and either approve or disapprove it. If ~~said~~ *the* claim is approved, the credit or refund ~~shall~~ *must* be made to the taxpayer within 60 days after the claim is approved~~;~~. ~~if~~ *If* the claim is disallowed, the department shall so notify the taxpayer and ~~shall grant a hearing thereon upon proper application by the taxpayer. If the department disapproves a claim for refund,~~ review of the determination of the department may be ~~had~~ *pursued* as ~~otherwise~~ provided in ~~this chapter~~ *[section 1]*.

(4) ~~Except as hereinafter provided for, interest shall be~~ *Interest is* allowed on overpayments at the same rate as ~~is~~ charged on delinquent taxes. ~~due~~ *Interest is payable* from the due date of the return or from the

date of the overpayment, ~~(~~whichever date is later~~)~~, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment ~~shall be deemed to be~~ *is* the date on which the return for the taxable year was due. ~~No interest shall~~ *Interest does not* accrue on an overpayment if the taxpayer elects to have it applied to his estimated tax for the succeeding taxable year~~, nor shall interest~~. *Interest does not* accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. ~~No interest shall be~~ *Interest is not* allowed if:

(a) the overpayment is refunded within 6 months from the date the return is due or the date the return is filed, whichever date is later;

(b) the overpayment results from the carryback of a net operating loss; or

(c) the amount of interest is less than $1.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law ~~shall~~ *is* not ~~be~~ considered an overpayment with respect to which interest is allowable."

Section 10. Section 15-31-503, MCA, is amended to read:

"**15-31-503. Deficiency assessment — ~~hearing~~ *notice* — interest.** (1) If the department of revenue determines that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice, *pursuant to [section 1],* of the additional tax proposed to be assessed. *The taxpayer may seek review of the determination pursuant to [section 1].* ~~Within 30 days after the mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If such protest is filed, the department shall reconsider the proposed assessment and, if the taxpayer has so requested, shall grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented in the event of an oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.~~

(2) ~~When a deficiency is determined and the tax becomes final, the department shall mail notice and demand to the taxpayer for the payment thereof, and the tax shall be due and payable at the expiration of 10 days from the date of such notice and demand.~~ Interest on any deficiency assessment shall bear interest from the date specified in 15-31-502 for payment of the tax. A certificate by the department of the mailing of the notices specified in this subsection shall be prima facie evidence of the computation and levy of the deficiency in tax and of the giving of the notices."

Section 11. Section 15-31-532, MCA, is amended to read:

"**15-31-532. Application for refund — appeal from denial.** If the department of revenue disallows any claim for refund, it shall notify the taxpayer ~~accordingly. At the expiration of 30 days from the mailing of the notice, the department's action shall become final unless within the 30-day period the taxpayer appeals in writing from the action of said department to the state tax appeal board. If such appeal is made, the board shall grant the taxpayer an oral hearing. After consideration of the appeal and evidence presented, the board shall forthwith mail notice to the taxpayer of its determination. The board's determination is final when it mails notice of its action to the taxpayer~~ *as provided in [section 1]. The taxpayer may seek review of the decision pursuant to [section 1].*"

Section 12. Section 15-31-701, MCA, is amended to read:

"**15-31-701. Department of revenue — special duties for transmitting corporation license tax revenues collected from banks or savings and loan associations to counties.** (1) Within 30 days after receiving corporation license tax returns and payments from banks or savings and loan associations, the department of revenue shall transmit to the county treasurer of the county in which the business is located the revenues calculated under 15-31-702(1)(b).

(2) If the department of revenue determines, under the provisions of 15-31-503 and 15-31-531, that a bank or savings and loan association owes more taxes than shown on the original return or has paid more than the tax, penalty, or interest due in any year, it shall notify the bank or savings and loan association *pursuant to [section 1].* ~~Additional payment is due within 10 days after receipt of the final determination of taxes due.~~ *Review may be sought pursuant to [section 1].* County treasurers shall issue warrants for their portion of the overpayment received and interest, as provided in 15-31-531.

(3) The department shall continue to exercise all its duties and powers outlined in this title with respect to auditing returns and enforcing payment of the corporation license taxes owed by banks and savings and loan associations. Any delinquent taxes collected from the sale of property of a bank or savings and loan association under the provisions of 15-31-525 shall be transmitted to the county in which the corporation owing the delinquent taxes is located. The only duties of the county treasurers in this regard are issuing refunds and distributing the taxes to local taxing jurisdictions."

Section 13. Section 15-35-112, MCA, is amended to read:

"**15-35-112. Deficiency assessment — ~~hearing~~ *review* — interest.** (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, *pursuant to [section 1],* of the additional tax proposed to be assessed. ~~Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present addi-~~

~~tional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer~~ *The taxpayer may seek review of the determination pursuant to [section 1].*

(2) ~~When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand.~~ Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return."

Section 14. Section 15-36-105, MCA, is amended to read:

"**15-36-105. Statement to accompany payment — records — collection of tax — refunds.** (1) Each person shall, within 60 days after the end of each following quarter, complete on forms prescribed by the department of revenue a statement showing the total number of barrels of merchantable or marketable petroleum and other mineral or crude oil or cubic feet of natural gas produced or extracted by the person in the state during each month of the quarter and during the whole quarter, the average value of the production during each month, and the total value of the production for the whole quarter, together with the total amount due to the state as severance taxes and local government severance taxes for the quarter, and shall within such 60 days deliver the statement and, except as provided in 15-36-102(2) and 15-36-121, pay to the department the amount of the taxes shown by the statement to be due to the state for the quarter for which the statement is made. The statement must be signed by the individual or the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company, or syndicate making the statement. Any person engaged in carrying on business at more than one place in this state or owning, leasing, controlling, or operating more than one oil or gas well in this state may include all operations in one statement. The department shall receive and file all statements and collect and receive from the person making and filing a statement the amount of tax payable by the person, if any, as appears in the statement.

(2) It is the duty of the department to examine each of the statements and compute the taxes thereon, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer making the statement for the quarter for which the statement is filed. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department ~~within 10 days~~ after written notice of the amount of the deficiency is mailed by the department to the taxpayer *pursuant to [section 1]. The taxpayer may seek review of the department's determination pursuant to [section 1].* If the tax imposed is less than the amount paid, the difference must be applied as a credit against

tax liability for subsequent quarters or refunded if there is no subsequent tax liability.

(3) If the tax is not paid on or before the due date, there must be assessed a penalty of 10% of the amount of the tax, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax under this chapter is not paid when due, interest must be added to the tax at the rate of 1% a month or fraction thereof, computed on the total amount of severance tax and penalty from the due date until paid."

Section 15. Section 15-36-113, MCA, is amended to read:

"**15-36-113. Deficiency assessment — ~~hearing~~ *review* — interest.** (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, *pursuant to [section 1],* of the additional tax proposed to be assessed. ~~Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer~~ *The taxpayer may seek review of the determination pursuant to [section 1].*

(2) ~~When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand.~~ Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return."

Section 16. Section 15-37-110, MCA, is amended to read:

"**15-37-110. ~~Hearing on~~ *Review of* determination of gross value of product or amount of tax.** Every person whose license tax has been determined and assessed by the department of revenue under any of the provisions of this part who feels aggrieved by the determination and assessment of the department as to the amount of gross value of product or as to the amount of the license tax may *seek review pursuant to [section 1].*~~;~~ ~~at any time within 10 days after the receipt of the required notice of such determination and assessment, file with the state tax appeal board a petition for a hearing, in which petition must be stated the grounds and reasons therefor and the manner in which the amount of the gross value of product or the amount of the license tax, or both, should be changed or corrected. Upon the filing of such petition, if it appears to the satisfaction of the state tax appeal board therefrom that the department has erred in any manner in ascertaining and determining the amount of the gross value~~

~~of product or the amount of the license tax, or both, the board shall immediately correct such error or errors; and if such correction is in conformity with the request contained in the petition for a hearing, the board shall take no further steps in connection with such petition other than to notify the department of the correct amount of the license tax due from such person after the making of such correction and notifying such person thereof. If from such examination it does not appear to the satisfaction of the state tax appeal board that the department has erred in any manner, the board shall grant the hearing, fix a day when the board will take up and hear such matter, and give notice to such person of such date of hearing as the board considers reasonable. At the hearing of such petition, any taxpayer interested and the department may introduce witnesses and present testimony on any material matters connected with such return and license tax, and after considering such evidence the board shall fix and determine the gross value of product and reassess the amount of the license tax to be paid by such person and give notice thereof to such person and the department.~~"

Section 17. Section 15-37-114, MCA, is amended to read:

"**15-37-114. Deficiency assessment — ~~hearing~~ *review* — interest.** (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, *pursuant to [section 1],* of the additional tax proposed to be assessed. ~~Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer~~ *The taxpayer may seek review of the determination pursuant to [section 1].*

(2) ~~When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand.~~ Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return."

Section 18. Section 15-37-210, MCA, is amended to read:

"**15-37-210. Deficiency assessment — ~~hearing~~ *review* — interest.** (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, *pursuant to [section 1],* of the additional tax proposed to be assessed. ~~Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional~~

~~tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer~~ *The taxpayer may seek review of the determination pursuant to [section 1].*

(2) ~~When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand.~~ Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return."

Section 19. Section 15-38-110, MCA, is amended to read:

"**15-38-110. Deficiency assessment — ~~hearing~~ *review* — interest.** (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, *pursuant to [section 1],* of the additional tax proposed to be assessed. ~~Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer~~ *The taxpayer may seek review of the determination pursuant to [section 1].*

(2) ~~When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand.~~ Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return."

Section 20. Section 15-51-109, MCA, is amended to read:

"**15-51-109. Deficiency assessment — ~~hearing~~ *review* — interest.** (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, *pursuant to [section 1],* of the additional tax proposed to be assessed. ~~Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional~~

~~tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer~~ *The taxpayer may seek review of the determination pursuant to [section 1].*

(2) ~~When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand.~~ Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return."

Section 21. Section 15-53-105, MCA, is amended to read:

"**15-53-105. Deficiency assessment — ~~hearing~~ *review* — interest.** (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, *pursuant to [section 1],* of the additional tax proposed to be assessed. ~~Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer~~ *The taxpayer may seek review of the determination pursuant to [section 1].*

(2) ~~When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand.~~ Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return."

Section 22. Section 15-55-106, MCA, is amended to read:

"**15-55-106. ~~Appeals~~ *Review* ~~and refunds~~.** (1) ~~Any such~~ *A* freight line company or railroad company, on or before June 1 of the year in which the tax ~~herein imposed~~ has been paid, may ~~file written complaint with the state tax appeal board~~ *seek review pursuant to [section 1]* concerning the correctness of the rate used or the correctness of the amount of the tax imposed or any other matter affecting the complainant under the provisions of this chapter.

~~(2) Upon filing such complaint, the state tax appeal board shall set the same for hearing and shall give written notice thereof to the complainant at least 10 days before the date set for hearing thereon. Upon the hearing of any such complaint, the state tax appeal board shall take testimony to determine whether the amount of the tax, as computed and determined by the department of revenue, is greater than the general ad valorem tax for all purposes would be on the cars of such freight line company subject to taxation in Montana if assessed and taxed on an ad valorem basis. In such cases the state tax appeal board shall have the power and it shall be its duty to lower or raise the rates herein specified to conform to the facts disclosed at such hearing and to make the amount of the tax due equivalent to such ad valorem tax. If the state tax appeal board shall then determine that the amount of the tax imposed and collected was excessive, the claimant shall be entitled to a refund to the extent of such excess.~~

~~(3) Within 6 months after such determination, the claimant may present to the department a sworn claim for such refund, setting forth the amount thereof. The state auditor shall draw his warrant upon the state treasurer for the amount of such claim, and the same shall be paid in the same manner as other claims against the state are paid.~~

~~(4)~~*(2)* In order to determine the amount of tax ~~such~~ *a* freight line company would pay, the department may value all cars of ~~any such~~ *the* company as a unit and allocate to Montana that proportion of the total value which the Montana car mileage bears to the total car mileage of the cars of ~~any such~~ *the* freight line company during the 12-month period ending December 31 of the preceding year and may then apply to ~~such~~ *that* value the average total rate of all general property taxes levied for the preceding year by the taxing authorities of the state, counties, school districts, municipalities, and other taxing subdivisions for state, county, school and municipal, and other purposes."

Section 23. Section 15-58-110, MCA, is amended to read:

"15-58-110. Deficiency assessment — ~~hearing~~ *review* — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, *pursuant to [section 1],* of the additional tax proposed to be assessed. ~~Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action~~

~~upon the protest is final when it mails notice of its action to the taxpayer~~ *The taxpayer may seek review of the determination pursuant to [section 1].*

(2) ~~When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand.~~ Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return."

Section 24. Section 15-59-112, MCA, is amended to read:

"**15-59-112. Deficiency assessment — ~~hearing~~ *review* — interest.** (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, *as provided in [section 1],* of the additional tax proposed to be assessed. ~~Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer~~ *The taxpayer may seek review of the determination pursuant to [section 1].*

(2) ~~When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand.~~ Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return."

Section 25. Section 15-59-212, MCA, is amended to read:

"**15-59-212. Deficiency assessment — ~~hearing~~ *review* — interest.** (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, *pursuant to [section 1],* of the additional tax proposed to be assessed. ~~Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action~~

~~upon the protest is final when it mails notice of its action to the taxpayer~~ *The taxpayer may seek review of the determination pursuant to [section 1].*

(2) ~~When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand.~~ Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return."

Section 26. Section 15-65-115, MCA, is amended to read:

"**15-65-115. Failure to pay or file — penalty — *review* — interest.** (1) An owner or operator of a facility who fails to file the report as required by 15-65-112 must be assessed a penalty of 2% of the tax that should have been collected during the calendar quarter. Upon a showing of good cause, the department of revenue may waive the penalty.

(2) An owner or operator of a facility who fails to make payment or fails to report and make payment as required by 15-65-112 must be assessed a penalty of 2% of the amount that was not paid. Upon a showing of good cause, the department may waive the penalty.

(3) If an owner or operator of a facility fails to file the report required by 15-65-112 or if the department of revenue determines that the report understates the amount of tax due, the department may determine the amount of the tax due and assess that amount against the owner or operator. *The provisions of [section 1] apply to any assessment by the department of revenue. The taxpayer may seek review of the assessment pursuant to [section 1].*

(4) The amount required to be paid under 15-65-112 accrues interest at the rate of 1% a month or part thereof from delinquency until paid."

Section 27. Section 69-1-225, MCA, is amended to read:

"**69-1-225. Computation and collection of fee in absence of statement — penalty and interest.** (1) If a regulated company or an officer or employee of a regulated company fails, neglects, or refuses to file the statement required by 69-1-223(2), the department of revenue may after the time for filing has expired proceed to inform itself, as best it may, regarding the regulated company's gross operating revenue from all activities regulated by the commission within the state for the calendar quarter, quarters, or portion thereof and may determine and fix the amount of the consumer counsel fee due.

(2) The department may add to the amount of the fee computed under subsection (1), in addition to any other penalty provided by law, a penalty of 10% thereof plus interest at the rate of 1% per month or fraction of month computed on the total amount of fee and penalty. Interest is computed from the date the fee is due to the date of payment.

(3) The department of revenue shall mail to the regulated company a ~~letter~~ *notice, pursuant to [section 1],* setting forth the amount of the fee, penalty, and interest ~~and notifying the company that payment of the full amount of the fee, penalty, and interest must be remitted within 15 days of the regulated company's receipt of the letter; otherwise a lien may be filed.~~ *The taxpayer may seek review of the department's action pursuant to [section 1].*

(4) The 10% penalty may be waived by the department of revenue if reasonable cause for failure and neglect to file the statement is provided to the department."

Section 28. Section 69-1-226, MCA, is amended to read:

"69-1-226. **Failure to pay fee — penalty and interest — collection of fee.** (1) If a regulated company or an officer or employee of a regulated company files the statement required by 69-1-223(2) but fails, neglects, or refuses to pay the fee due within the time required, the department of revenue may after the time for payment has expired add to the fee due, in addition to any other penalty provided by law, a penalty of 10% thereof plus interest at the rate of 1% per month or fraction of month computed on the total amount of the fee and penalty. Interest is computed from the date the fee is due to the date of payment.

(2) The department of revenue shall mail to the regulated company a ~~letter~~ *notice, pursuant to [section 1],* setting forth the amount of the fee, penalty, and interest ~~and notifying the company that payment of the full amount of the fee, penalty, and interest must be remitted within 15 days of the regulated company's receipt of the letter; otherwise a warrant for distraint may be filed.~~ *The taxpayer may seek review of the department's action pursuant to [section 1].*

(3) The 10% penalty may be waived by the department of revenue if reasonable cause for failure and neglect to make payment is provided to the department."

Section 29. **Repealer.** Section 15-55-107, MCA, is repealed.

Section 30. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [section 1].

Section 31. **Applicability.** [This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] after December 31, 1991.

Section 32. **Effective dates.** (1) For the purposes of promulgating administrative rules to administer [this act], [section 1] is effective on passage and approval.

(2) The remainder of [this act] is effective October 1, 1991.

Approved May 17, 1991.

CHAPTER NO. 812

[SB 472]

AN ACT TO RATIFY THE COMPACT ENTERED INTO BY THE STATE OF MONTANA AND THE NORTHERN CHEYENNE TRIBE OF THE NORTHERN CHEYENNE RESERVATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Northern Cheyenne-Montana compact ratified.** The compact entered into by the state of Montana and the Northern Cheyenne tribe of the Northern Cheyenne Indian reservation and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on [date of filing] is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

NORTHERN CHEYENNE TRIBE

UNITED STATES OF AMERICA

This Compact is entered into by and among the Northern Cheyenne Tribe of the Northern Cheyenne Reservation, the State of Montana, and the United States of America to settle, for all time, any and all existing claims of or on behalf of the Northern Cheyenne Tribe to water within the State of Montana.

RECITALS

WHEREAS, in 1975, the Northern Cheyenne Tribe and the United States, on behalf of the Tribe, brought suits in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights;

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Northern Cheyenne water rights;

WHEREAS, the federal district court suits were stayed in 1983 pending the outcome of Montana State court water adjudication proceedings;

WHEREAS, the adjudication of Northern Cheyenne water rights under state law has been suspended while negotiations have proceeded to conclude a compact resolving all reserved water rights claims of the Northern Cheyenne Tribe;

WHEREAS, the Northern Cheyenne Tribe and the United States agree that the Tribal Water Right described in this Compact shall be in satisfaction of the Tribe's reserved water rights claims and any claims to water rights made on behalf of the Tribe by the United States;

WHEREAS, it is in the best interest of all parties that the reserved water rights claims of the Northern Cheyenne Tribe be settled through a Water Rights Compact;

WHEREAS, the parties agree that settlement of the reserved water rights claims of the Northern Cheyenne Tribe is dependent on the repair and enlargement of the Tongue River Reservoir;

NOW THEREFORE, the parties agree as follows:

Article I

Definitions

The following definitions shall apply for purposes of this Compact:

1. "Acre-foot" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet.

2. "Alluvial groundwater" means water located below the land surface within the Quaternary hydrostratigraphic unit that borders or underlies major perennial and intermittent streams in the Tongue River and Rosebud Creek basins. This unit is composed of unconsolidated alluvial deposits of clay, silt, sand, and gravel. For the purposes of this Compact, all other water below the land surface will be deemed nonalluvial groundwater.

3. "Annual" or "per year" means during one year as defined by this Compact.

4. "Board" means the Northern Cheyenne-Montana Compact Board established by Article IV of this Compact.

5. "Completion date" means the date of completion of a project to repair and enlarge the Tongue River Dam to a degree sufficient to provide the storage component of the Tribal Water Right subject to the conditions provided in this Compact.

6. "Depletion" means, for any diversion of water, the difference between the quantity of water diverted and the quantity of return flows within the basin.

7. "Direct flow of the Tongue River" means the water in the Tongue River and its tributaries that has not been stored in the Tongue River Reservoir.

8. "Domestic use" means the diversion of water by one or more individuals, family units or households for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

9. "Excess water" means increases in the Tongue River basin water supply resulting from conditions different from those assumed in the Tongue River Water Model.

10. "Exchange water" means water available to the Tribe from the Tongue River direct flow or from the Tongue River Reservoir storage in exchange for Tribal return flows made available to other Tongue River water users.

11. "Indian" means any person who: a) is an enrolled member of the Northern Cheyenne Tribe; or b) is a member of a tribe that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or c) holds, or is recognized by the Secretary of the Interior as eligible to hold, trust and restricted property on the Northern Cheyenne Reservation.

12. "Manifolded well system" means a water distribution or conveyance facility that is supplied by two or more wells.

13. "Miles City Decree water right" means a water right, finally decreed in any general adjudication of the Tongue River, or recognized under state law until such final adjudication, which is based on the decree entered in Miles City Canal & Irrigating Co. v. Lee, et al., Montana Seventh Judicial District, No. 2809, May 20, 1914, and which has a priority date of March 24, 1909, or earlier.

14. "Parties" means the Tribe, the State of Montana, and the United States.

15. "Person" means an individual or any other entity, public or private, including the State, the Tribe, and the government of the United States and all officers, agents, and departments thereof.

16. "Ratification date" means the date this Compact has been approved by the Northern Cheyenne Tribal Council and the Legislature of the State of Montana.

17. "Reservation" means the Northern Cheyenne Reservation as established by Executive Orders of November 26, 1884 and March 19, 1900.

18. "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the State Department of Natural Resources and Conservation or its successor agency.

19. "State contract right" means a right to receive stored water from the Tongue River Reservoir, not to exceed a cumulative total of 40,000 acre-feet per year, pursuant to a contract that allocates the storage rights of the Montana Department of Natural Resources and Conservation or its successor agency.

20. "Tongue River Water Model" means the Tongue River Reservoir Operations computer model that is documented in: Tongue River

Modeling Study, Final Report, submitted on July 20, 1990, to the Engineering Bureau of the Water Resources Division of the Montana Department of Natural Resources and Conservation, or any revision agreed to by the parties. The Final Report and any agreed revisions are incorporated herein by reference as though set forth in full.

21. "Transfer" means any authorization for the delivery or use of water from the Tribe or any person authorized by the Tribe to any other person by a service contract, lease, sale, exchange or other similar agreement.

22. "Tribal Water Right" means the right to divert or use water as described by Articles II and III of this Compact.

23. "Tribe" means the Northern Cheyenne Tribe of the Northern Cheyenne Reservation and all officers, agents and departments thereof. Unless otherwise indicated, for purposes of notification or consent, "Tribe" means the Tribal President or the Chief Executive Official of the Tribe.

24. "United States" means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "United States" means the Secretary of the Department of the Interior.

25. "Year" means the twelve-month period beginning April 1st and ending March 31st.

Article II

Tribal Water Right

A. Quantification of Water Right.

The water rights of the Northern Cheyenne Tribe are as follows:

1. Existing Non-Agricultural Uses.
   Tribal and individual Indian stockwater, domestic and municipal water uses on the Reservation and in existence as of the ratification date are hereby recognized and protected as part of the Tribal Water Right, and are in addition to the water rights set forth in Sections A.2., A.3., and A.4. of this Article. All such existing uses shall be governed by the terms of this Compact.

2. Tongue River.
   Subject to the terms of this Compact, the Tribal Water Right in the Tongue River basin consists of the right to divert or use or to permit the diversion or use of up to 32,500 acre-feet per year, from a combination of direct flow, storage, and exchange water. Tribal and individual Indian irrigation uses in existence on the Reservation in the Tongue River basin as of the ratification date are recognized and protected, and shall be counted as a use of the 32,500 acre-feet per year right described in Section A.2. of this Article.

a. Direct Flow Right. The Tribe has a right to divert or use or permit the diversion or use of up to 12,500 acre-feet of water per year from direct flow of the Tongue River and its tributaries with a priority date of October 1, 1881; provided, that:

   i. The Tribe's annual depletion of its direct flow water right in the Tongue River and its tributaries shall not exceed 75 percent of the amount diverted, or 9,375 acre-feet per year; and

   ii. The Tribe's direct flow water right in the Tongue River and its tributaries may not be used in a manner that adversely affects:

      A. Miles City Decree water rights, or

      B. Water rights from off-Reservation tributaries of the Tongue River, which are finally decreed in any general adjudication of the Tongue River, or are recognized under state law until such final adjudication, and which have a priority date of June 30, 1973 or earlier and are based on the use of an irrigation system in place and not abandoned as of June 30, 1973.

b. Storage and Exchange Water. The Tribe has a right to divert or deplete, or permit the diversion or depletion of, up to 20,000 acre-feet per year from a combination of water stored in the Tongue River Reservoir and exchange water. The availability of the 20,000 acre-feet per year depends, as provided in the Tongue River Water Model, upon the annual schedule utilized by the Tribe for diversions of Tongue River direct flows. Except as provided in paragraph A.2.c.ii. of this Article, any reduction in Tongue River Reservoir stored water resulting from Tribal diversions of Tongue River direct flows shall not affect State contract rights, as defined in this Compact, but shall be satisfied exclusively from the right described in this paragraph. Tribal use of stored water from the Tongue River Reservoir shall be measured at the Reservoir.

c. Shortages.

   i. The Tribal Water Right in the Tongue River basin shall be subject to shortages due to natural low flows that are consistent with the period of record used in the Tongue River Water Model in diversion amounts not to exceed 50% in any one year and 100% cumulative in any ten-year period.

   ii. Decreases in the amount of water stored in the Tongue River Reservoir that are caused by: (i) sedimentation;

(ii) Reservoir inflows lower than those assumed in the Tongue River Water Model; (iii) normal and expected maintenance of the Tongue River Dam and associated structures; or (iv) normal and expected deterioration of the Tongue River Dam and associated structures shall not be considered a failure of the Tongue River Dam as that term is utilized in paragraph A.2.f. of this Article. All such decreases in water availability shall be shared pro rata among all users of stored water including the Tribe.

d. Excess Water. The Tribe shall, as part of the Tribal Water Right, have the first right to use excess water, as defined in this Compact; provided, that total use of the Tongue River Tribal Water Right shall not exceed 32,500 acre-feet per year diverted from direct flow, storage, and exchange water. Tribal nonuse of excess water in any one year shall not affect the right of the Tribe to use excess water in any subsequent year.

e. Contract Water. Nothing in this Compact shall affect the water, and any rights therein, secured to the Tribe by Water Purchase Contract No. 232 for 7,500 acre-feet per year, dated March 15, 1938, between the Tongue River Water Users Association, the Water Conservation Board of the State of Montana and the United States, through the Secretary of the Interior. Any water entitlement pursuant to the Contract shall be in addition to and not a part of the 32,500 acre-feet per year Tribal Water Right set forth above.

f. Failure of Tongue River Dam. In the event of a failure of the Tongue River Dam which causes a substantial diminution of the Tribe's storage right set forth in paragraph A.2.b. of this Article, and notwithstanding the provisions of Article V.A. of this Compact, any party may within 180 days of said failure request the others to renegotiate this Compact. The parties shall have three years from the date of the request to reach a new agreement, during which time all of the provisions in this Compact shall remain in full force and effect. If no party requests renegotiation, or if a new agreement is not reached within three years of the request, the provisions of paragraph A.2.a.ii. of this Article concerning the subordination of the Tongue River direct flow Tribal Water Right to other specified water rights, shall become null and void; provided, that all other provisions of this Compact shall remain in full force and effect. The Tribe shall not be entitled to void or terminate this Compact, or to assert that the State is in breach of the Compact, for a failure of the Tongue River Dam; provided, that any and all other rights of the Tribe arising from such event shall not be affected by this paragraph.

3. Rosebud Creek.

a. Water Right. The Tribe has a right to divert or use or to permit the diversion or use from Rosebud Creek and its tributaries, for agricultural purposes only, of 1,800 acre-feet of water per year, or enough water to irrigate 600 acres of land per year, whichever is less, with a priority date of October 1, 1881. Tribal and individual Indian irrigation uses in existence as of the ratification date on-Reservation in the Rosebud Creek basin are recognized and protected, and shall be considered a use of the 1,800 acre-feet per year right described in this paragraph.

b. Implementation. The Tribe agrees that in the period between May 1, 1991 and July 1, 1993, the Tribe, or persons authorized by it, will develop no more than 200 acres of land in addition to irrigation uses in existence as of May 1, 1991, through irrigation methods involving pumping of alluvial groundwater, except that the Tribe, or persons authorized by it, may develop up to the full 600 acres of land, or any portion thereof, by any other method. During this period, the Tribe and the State agree to share any hydrologic data available for use in connection with any test which the State undertakes to evaluate impacts, if any, of development of on-Reservation lands on off-Reservation lands. After July 1, 1993, the Tribe, or persons authorized by it, may develop the full 600 acres of land by any irrigation method.

c. Additional Water Right. In addition to the water right described in paragraph A.3.a. of this Article, the Tribe has a right to divert or use or permit the diversion or use from Rosebud Creek and its tributaries, for any purpose, of up to 19,530 acre-feet of water per year, or enough water to irrigate 6,510 acres of land per year, whichever is less, with a priority date of October 1, 1881. The Tribe may not exercise the water right set forth in this paragraph in a manner that adversely affects a water right finally decreed in any general adjudication of the Rosebud Creek basin or, until such final decree is issued, a water right recognized under state law, which 1) has a priority date of June 30, 1973 or earlier, and 2) is based on the use of an irrigation system in place and not abandoned as of June 30, 1973; provided, that the state law water rights protected in this paragraph shall not exceed:

i. North of the Reservation, 8,100 acre-feet of water per year or enough water to irrigate 2,700 acres of land per year, whichever is less; and

ii. South of the Reservation, 540 acre-feet of water per year or enough water to irrigate 180 acres of land per year, whichever is less.

d. Dams and Impoundments. The Tribe shall not construct, within the Rosebud Creek basin, any dams or impoundments to store water naturally arising in Rosebud Creek and its tributaries; provided, that the Tribe may construct stockwater impoundments pursuant to paragraph A.5. of this Article, and, subject to other applicable provisions of this Compact, may construct dams or impoundments within the Rosebud Creek basin to store water from sources outside the basin, including non-alluvial groundwater.

e. Moratorium on Permits. The Montana Department of Natural Resources and Conservation shall order a moratorium on the issuance of permits in the Rosebud Creek basin concurrent with the ratification date of this Compact. The moratorium shall not apply to applications for permits by persons who have entered into deferral agreements with the Tribe for Rosebud Creek basin water as provided in Section G. of this Article. The Department may order the moratorium lifted if it determines that water is available over and above the amount necessary to fulfill the Tribal Water Right described in paragraph A.3.a. and Section A.3.c. of this Article. The Tribe may challenge the Department's determination to lift the moratorium under the procedure set forth in Article IV of this Compact.

4. Groundwater.

a. Alluvial Groundwater. The Tribe has a right to withdraw and use, or permit the withdrawal and use of, alluvial groundwater in lieu of surface water diversions of the Tongue River and Rosebud Creek Tribal Water Right, subject to the same terms and conditions of this Compact that apply to such surface water diversions. Alluvial water withdrawn from wells or manifolded well systems with a capacity of 100 gallons per minute or less shall not be deducted from the Tribal Water Right. For wells or manifolded well systems with a capacity of withdrawing greater than 100 gallons per minute of alluvial water, the entire amount withdrawn shall be deducted from the Tribal Water Right.

b. Non-alluvial Groundwater. Except where a Tribal right to non-alluvial groundwater is established pursuant to Article VII.B. of this Compact, Tribal use or authorization of use of non-alluvial groundwater shall, at the election of the Tribe, comply with state law in effect at the time of the use or with the alluvial groundwater provisions of paragraph A.4.a. of this Article.

5. Stockwater Impoundments. The Tribe may construct, or permit the construction of, stockwater impoundments on the Reservation, where the capacity of the impoundment is less than 15 acre-feet and the impoundment is constructed on a source other than a perennial flowing stream. The amount of water so impounded shall not be deducted from the Tribal Water Right.

6. Subirrigation. The Tribe shall be entitled to take advantage of any natural subirrigation occurring on the Reservation. Where otherwise consistent with state law, persons outside the Reservation shall also be entitled to take advantage of natural subirrigation.

7. Big Horn Reservoir (Yellowtail) Storage.

    a. Tribal Allocation. As a part of the Tribal Water Right, the Secretary of the Interior shall allocate 30,000 acre-feet per year of stored water in Big Horn Reservoir, Yellowtail Unit, Lower Bighorn Division, Pick-Sloan Missouri Program, Montana, measured at the dam, for use or disposition by the Tribe for any beneficial purpose, either on or off the Reservation, pursuant to the terms of this Compact. This allocation is subject to the prior reserved water rights, if any, of any Indian tribe, or of persons claiming water through that tribe, to that water. Any use or disposition of water from Big Horn Reservoir off the Reservation by the Tribe is subject to the specific provisions relating to such use or disposition in any act of Congress ratifying this Compact.

    b. Payment for Tribal Allocation. The Tribe shall not be required to make payments to the United States for any portion of the Tribal Water Right stored in Yellowtail Reservoir unless and until the water is used or sold by the Tribe in which case the Tribe shall make annual payments to the United States as hereinafter provided.

        i. Use or Sale for Municipal and Industrial (M&I) Purposes. For each acre-foot of stored water used or sold for M&I purposes, the Tribe shall pay annually to the United States an amount to cover the proportionate share of the annual operation, maintenance and replacement (OM&R) costs, and the proportionate share of the capital costs with appropriate interest for the Yellowtail Unit allocable to the Tribe's stored water. Upon full payment of the capital costs allocable to the Tribe's stored water supply, the annual payments shall include only a proportionate share of the annual OM&R costs. Such annual payments shall be reviewed and adjusted, as appropriate, to reflect the actual capital and OM&R costs for the Yellowtail Unit.

ii. Agricultural, Domestic, Livestock, and Other Uses. For each acre-foot of stored water used or sold for other than M&I purposes, the Tribe shall pay annually to the United States an amount to cover the OM&R cost for the Yellowtail Unit allocable to the Tribe's stored water, which amount shall be reviewed and adjusted, as appropriate, to reflect the actual OM&R costs for the Yellowtail Unit. The Bureau of Indian Affairs shall transfer sufficient funds on a nonreimbursable basis to the Bureau of Reclamation to cover allocable OM&R costs under this paragraph.

c. Rates and Revenues. Except for payments required to be made to the United States as set forth above, the Tribe shall set such rates as it deems proper for its use or sale of stored water and shall retain all revenues from its use or sale of said stored water; provided, that the United States reserves the right to use any and all water stored in Yellowtail Reservoir for hydropower generation.

d. Agreement. Following ratification of this Compact, and upon development of a demand for the water under Section A.7. of this Article, the United States and the Tribe shall enter into an appropriate agreement, if required, setting forth the terms and conditions under which water will be made available to the Tribe, and for the collection and disposition of revenues in connection therewith.

B. Persons Entitled to Use the Tribal Water Right.
The Tribal Water Right may be used by the Tribe, or persons authorized to use water by the Tribe pursuant to Article III; provided, that:

1. Such use is in accordance with the terms of this Compact;

2. That the Tribe shall give preference to Tribal members to use the Tribal Water Right; and

3. Such water right may be transferred from one Tribal member to another Tribal member for agricultural purposes only upon the transfer of land on the Reservation from one Tribal member to another Tribal member.

C. Place of Use of the Tribal Water Right.
Pursuant to a Tribal water code adopted as prescribed in Article III of this Compact, and subject to all other provisions of this Compact, the Tribe shall have the right to use or permit use of the Tribal Water Right with any point of diversion or any place of use on or off the Reservation; provided, that any use of the Tribal Water Right off the Reservation shall not be deemed to convert the Tribal Water Right to a state water right, and subsequent nonuse of the Tribal Water Right

off the Reservation shall not constitute a relinquishment, forfeiture, or abandonment of the Right.

D. Purposes of the Tribal Water Right.

Except as provided in paragraph A.3.a. of this Article, the Tribe may authorize use of the Tribal Water Right on the Reservation for any purpose without regard to whether such use is beneficial as defined by state law. Off the Reservation, any use of the Tribal Water Right shall comply with Article III.B.

E. Conditions Upon Uses of the Tribal Water Right.

The Tribe shall adopt appropriate regulations to ensure that use of the Tribal Water Right is not wasteful and does not degrade water quality.

F. Transfer of Tribal Water Right.

The Tribe shall not transfer water naturally arising in Rosebud Creek or its tributaries for use off the Reservation. The Tribe may transfer any other part of the Tribal Water Right for use on or off the Reservation pursuant to the terms of this Compact. This paragraph shall not affect the right of the Tribe to enter into a deferral agreement regarding Rosebud Creek water pursuant to Section G. of this Article.

G. Deferral Agreements.

After the ratification date, the Tribe may enter into an agreement with any person who is exercising or proposing to exercise a right under state law to use surface water off the Reservation, which agreement protects the person's right from any exercise of the Tribal Water Right; provided, that:

1. Before use of such water, the person shall have complied with all applicable state laws concerning the acquisition of a water right;
2. Subsequent to acquisition of the state water right, regulation of its use shall be subject to state law;
3. The amount of water subject to the agreement shall be deducted from the amount of water available for depletion by the Tribe in the basin from which the water is being diverted; and
4. The agreement shall not permanently alienate the Tribal Water Right or any part thereof.

H. Effect of Non-Use of Tribal Water Right.

Non-use of any part of the Tribal Water Right shall not constitute a relinquishment, forfeiture or abandonment of the Right.

I. Tribal Water Right to be Held in Trust.

The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribe.

Article III

Administration of Water Rights

A. Tribal Administration.

1. Except as otherwise provided in this Compact, the use of the Tribal Water Right shall be administered by the Tribe, and the Tribe has the final and exclusive jurisdiction to resolve all disputes between users of the Tribal Water Right. Administration and enforcement of the Tribal Water Right shall be pursuant to a water code, which shall be developed and adopted by the Tribe and submitted for approval to the Secretary of the Interior within one year after ratification of this Compact. Pending the adoption and approval of the Tribal water code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior.

2. Within six months after the Tribal water code takes effect, the Tribe shall provide the State with notice of each use of the Tribal Water Right, including uses in existence as of the ratification date of this Compact and those established since that time, which shall show:

   a. The person authorized to make the diversion;

   b. The amount of water authorized to be diverted annually;

   c. The amount of water authorized for annual consumption;

   d. The point of diversion;

   e. The period of use;

   f. The place of use;

   g. The uses for which the water may be diverted; and

   h. The relative priority of the use as against other uses of the Tribal Water Right.

3. The Tribe shall thereafter notify the State within sixty days after the end of each quarter year of all new uses of surface and groundwater authorized by the Tribe during the preceding quarter year and of all new uses of the Tribal Water Right actually commenced during that quarter year. The notice shall be in the same format as that prescribed in Section A.2. of this Article.

4. The Tribe shall provide the State with not less than 180-days written notice prior to the start of construction of any project to divert any portion of the Tribal Water Right from the Big Horn River or the Big Horn Reservoir for use on the Reservation, or from the Tongue River or the Tongue River Reservoir for use on the Reservation in the Rosebud Creek basin. The notice shall

describe: any diversion, conveyance and storage facilities; the amounts of water to be diverted and consumed; and the purpose, place, and period of the proposed use. Diversion or use of water from such project may be made only after all permits, certificates, variances or other authorizations described in paragraph B.3. of this Article have been obtained. With respect to any such project or diversion, the State or any affected person may seek such remedies as may be available under federal, state, or tribal law, and nothing in this Compact shall be construed to affect the rights of any party under such law.

B. Off-Reservation Uses of the Tribal Water Right.

1. Off-Reservation Uses. Any use of the Tribal Water Right involving a point of diversion or place of use located off the Reservation shall be considered an off-Reservation use; provided, that releases or diversions from Big Horn Reservoir or Tongue River Reservoir for use on the Reservation shall not be considered off-Reservation uses.

2. Subsequent Federal or State Law. All off-Reservation uses of the Tribal Water Right shall comply with the requirements set forth in Section B. of this Article until such time as the statutory or common law of the United States or the State of Montana establishes that off-Reservation uses of Indian water rights may occur without regard to state law.

3. Diversion Facilities. With respect to diversion or transportation facilities located off the Reservation, the Tribe or persons using the Tribal Water Right shall apply for all permits, certificates, variances and other authorizations required by state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. A diversion or use of water in the exercise of the Tribal Water Right may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained.

4. Off-Reservation Uses in Tongue and Rosebud Basins.

   a. The Tribe shall provide the State with not less than 180-days advance written notice of any off-Reservation use, transfer, or change of use of the Tribal Water Right:

      i. Within the Tongue River basin, or

      ii. Utilizing Tongue River water off-Reservation in the Rosebud Creek basin.

   b. The notice shall include sufficient documentation to demonstrate that:

i. The proposed use of water is a beneficial use as defined by Montana law in effect at that time;

ii. The proposed means of diversion, and the construction and operation of the diversion works are adequate;

iii. The proposed use, transfer, or change of use will not adversely affect, except with the consent of the owner of such right:

A. Any water right arising under the laws of the United States, or

B. Any right to the use of water established pursuant to the laws of the State; except that, if the portion of the Tribal Water Right that is the subject of the proposed off-Reservation use, transfer or change of use is the storage and exchange right set forth in Article II.A.2.b. of this Compact, the Tribe need only demonstrate that Miles City Decree rights will not be adversely affected by such use, transfer, or change of use.

iv. The proposed use, transfer, or change of use does not cause any unreasonable significant adverse environmental impact; and

v. Proposed uses, transfers, or changes in use in excess of 4,000 acre-feet per year and 5.5 cubic feet per second of water will not:

A. Substantially impair the quality of water for existing uses in the source of water from which the diversion is made;

B. Be made where low quality water which can economically be used is legally and physically available to the Tribe for the proposed use;

C. Create or substantially contribute to saline seep; or

D. Substantially injure fish or wildlife populations in the source of water from which the diversion is made.

c. A proposed use, transfer or change of use of the Tribal Water Right pursuant to Section B.4. of this Article may be challenged:

i. Within 30 days after the expiration of the notice period provided in Section B.4.a. of this Article;

ii. In a court of competent jurisdiction; and

iii. By the State or by a person whose rights are adversely affected by the proposed use, transfer, or change of use.

In any such case, the Tribe shall have the burden of proving by a preponderance of the evidence that it has satisfied the requirements of Section B.4.b. of this Article. A Tribal notice that conforms to the requirements of Section B.4.b. of this Article shall be prima facie evidence of its contents.

5. Off-Reservation Uses Outside Tongue and Rosebud Basins. Except as provided in Section B.4. of this Article, no person may initiate an off-Reservation use, transfer, or change of use of the Tribal Water Right without first applying for and receiving authorization for the use, transfer, or change of use pursuant to Montana law in effect at the time of the application.

C. State Administration.

1. The State shall administer all rights to the use of surface water and groundwater within the Reservation which are not a part of the Tribal Water Right. The State shall have the final and exclusive jurisdiction to resolve all disputes between users of rights established under state law.

2. Within one year after ratification of this Compact, the State shall notify the Tribe of all existing uses of surface and groundwater for which a permit has been issued by the State in the Tongue River or Rosebud Creek basins. The notice shall state:

   a. The person authorized to make the diversion;

   b. The amount of water authorized to be diverted annually;

   c. The amount of water authorized for annual consumption;

   d. The point of diversion;

   e. The period of use;

   f. The place of use;

   g. The uses for which the water may be diverted; and

   h. The priority date of the use.

3. The State shall notify the Tribe within sixty days after the end of each quarter year of all new uses of surface and groundwater for which a permit has been issued by the State in the Tongue River or Rosebud Creek basins during the preceding quarter year and of all new uses of water actually commenced pursuant to the laws of the State during that quarter year on each of these sources. The notice shall be in the same format as that prescribed in Section C.2. of this Article.

D. Operation of Tongue River Reservoir.

1. To provide for Tongue River Reservoir operation procedures that are consistent with the purposes of this Compact, a reservoir operation plan shall be developed by a five-member advisory committee. The committee shall have representatives from the State of Montana, the Tongue River Water Users Association, the Northern Cheyenne Tribe, the United States, and a fifth member to be selected by the other four. The advisory committee shall annually agree upon a reservoir operation schedule setting forth proposed uses of storage and direct flow for the year. The Department of Natural Resources and Conservation or its successor shall thereupon be responsible, consistent with the terms of this Compact and other applicable law, for the daily operation of the Reservoir and for implementation of the reservoir operation plan.

2. The reservoir operation plan shall provide for the operation of the project for fish and wildlife purposes depending on the availability of water on an annual basis. This provision shall not create an operational preference for fish and wildlife purposes relative to other project purposes.

3. The Secretary of the Interior shall pay annually to the State an amount to cover the proportionate share of the annual operation, maintenance and replacement (OM&R) costs for the Tongue River Dam allocable to the Tribe's stored water in the Reservoir.

Article IV

Northern Cheyenne-Montana Compact Board

A. Establishment of Board.
There is hereby established the Northern Cheyenne-Montana Compact Board. The Board shall consist of three members: one member appointed by the Governor of the State of Montana; one member appointed by the Northern Cheyenne Tribal Council; and one member selected by the other two members. All members shall be appointed within six months of the ratification date of this Compact and within thirty days of the date any vacancy occurs. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.

B. Membership.
Should the two appointed members fail to agree on the selection of a third member within sixty days of the ratification date of this Compact

or within thirty days after any vacancy occurs, the following procedure shall be utilized:

1. Within five days each member shall nominate three persons to serve as a member of the Board;

2. Within fifteen days thereafter each member shall reject two of the persons nominated by the other member;

3. The chief judge of the United States District Court for the District of Montana shall select the third member of the Board from the remaining two nominees. If the chief judge declines for any reason to select the third member, the chief justice of the Montana Supreme Court shall make the selection from the remaining two nominees.

C. Quorum and Vote Required.
Two members of the Board shall constitute a quorum if reasonable notice has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board, and on the parties to this Compact.

D. Jurisdiction of the Board.
The Northern Cheyenne-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water between users of the Tribal Water Right on the one hand and users of state water rights on the other hand. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact, and disputes concerning the operation of the Tongue River Reservoir as it affects the Tribal Water Right.

E. Powers and Duties.
The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence. The Tribe, the State, and the United States shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe, the State, or the United States for enforcing a subpoena issued by its courts in a civil action. The parties to the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy based on the evidence, and grant any appropriate relief, except money damages. All decisions of the Board shall be by majority and in writing. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six months after its first meeting. All records of the Board shall be open to public inspection except for privileged information.

F. Review and Enforcement of Board Decisions.

1. Decisions by the Board shall be effective immediately, unless stayed for a period of time prescribed by the Board. Any party before the Board may appeal any final decision by the Board to

a court of competent jurisdiction within thirty days of such decision. The notice of appeal shall be filed with the Board and served personally or by registered mail upon the Tribe, the State, the United States and all parties to the proceeding before the Board, and all such persons shall thereafter have the right to participate in the appeal.

2. In any appeal, the Board's decision shall be presumed to be valid, and may be vacated by the court only on one of the following grounds:

   a. The decision is not supported by substantial evidence;

   b. The decision was procured by corruption, fraud or undue means;

   c. There was evident partiality or corruption by the Board or by any member;

   d. The Board was guilty of misconduct in refusing to hear the dispute, or in refusing to hear evidence pertinent and material to the controversy, or any other clear misbehavior by which the rights of any party have been substantially prejudiced;

   e. The Board exceeded its authority under the terms of this Compact; or

   f. The decision is contrary to law.

3. Unless an appeal is timely filed as provided in paragraph F.1. of this Article, any decision of the Board shall be confirmed or enforced by any court of competent jurisdiction on petition of the Board, the Tribe, the State, the United States, or any party before the Board in the proceeding in which the decision was made.

4. A court of competent jurisdiction in which a timely appeal is filed pursuant to paragraph F.1. of this Article, or in which a petition to confirm or enforce is filed pursuant to paragraph F.3. of this Article, may order such temporary or permanent relief as it considers just and proper.

5. Any appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to paragraph F.1. of this Article, or in which a petition to confirm or enforce is filed pursuant to paragraph F.3. of this Article, in the manner and to the same extent as from orders or judgments of the court in a civil action.

6. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board.

G. Waiver of Immunity.

The Tribe, the United States and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Northern Cheyenne-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe, the United States, or the State shall not extend to any action for money damages including costs and attorneys' fees.

Article V

Finality and Effectiveness of Compact

A. Ratification and Effectiveness of Compact.

1. Upon ratification by the Northern Cheyenne Tribal Council and the Legislature of the State of Montana, the terms of this Compact may not be altered, voided, or modified in any respect without the consent of the parties; provided, that except as set forth in Section A.2. of this Article, this Compact shall not become effective until ratification by the United States Congress and the completion date occurs, notwithstanding the provisions of Section 85-2-702(2), MCA. If the completion date does not occur on or before December 31, 1997, or any later date agreed to in writing by the parties, this Compact, including all provisions that become effective on the ratification date, shall become null and void without further action by any party. Notwithstanding the provisions of Section 85-2-702(3), MCA, this Compact shall not be included in any preliminary decree or final decree in any State water court proceeding unless and until this Compact becomes effective as set forth in this Article.

2. As between the State and the Tribe, all of the provisions of this Compact shall become effective upon the ratification date except insofar as they:

   a. Quantify or provide for the administration of the Tongue River Tribal Water Right;

   b. Provide for the management or operation of the Tongue River Reservoir; or

   c. Require Congressional authorization.

   All of the provisions that do not become effective upon the ratification date shall become effective on the completion date, unless Congress provides otherwise.

B. Incorporation Into Decrees and Disposition of Federal Suits.
Within sixty days after the completion date, the parties shall petition for incorporation of this Compact into a decree in any appropriate State court proceeding commenced in accordance with 43 U.S.C. §666. Upon the issuance of a final decree by the State water court, or its

successor, and the completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall within thirty days execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe, in Northern Cheyenne Tribe of the Northern Cheyenne Reservation v. Adsit, et al., No. 75-6-BLG (D. Mont.); United States v. Big Horn Low Line Canal Company, et al., No. 75-34-BLG (D. Mont.); and United States v. Tongue River Water Users Association, et al., No. 75-20-BLG (D. Mont.), (hereinafter collectively referred to as "the federal suits"), with prejudice. This Compact shall be filed as a consent decree in the federal suits only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgment binding upon the State of Montana that the State courts lack jurisdiction over, or that the State court proceedings are inadequate to adjudicate, some or all of the water rights asserted in the federal suits.

Article VI

General Provisions

A. Nothing in this Compact shall be so construed or interpreted:

1. To establish the nature, extent, or manner of administration of water rights of any Indian reservation or other federal reservation other than the Northern Cheyenne Reservation;

2. To preclude the acquisition or exercise of a right to the use of water by the Tribe or any individual Indian outside the Reservation by purchase of such right or by acquisition of land, or by application to the State;

3. To preclude the acquisition or exercise of an appropriative right to the use of water under state law by the Tribe or any individual Indian within the Reservation:

   a. By purchase of such right or by purchase of land; provided, that water rights acquired by such purchase after the ratification date of this Compact shall be in addition to and shall become part of the Tribal Water Right and shall be governed by this Compact; or

   b. By application to the State. Except for applications for non-alluvial groundwater pursuant to Article II.A.4.b., and applications for storage appropriations authorized by paragraph A.8. of this Article, any such application shall not be granted by the State until the Tribal Water Right in the basin where the diversion that is the subject of the application is located has been fully utilized;

4. To determine the relative rights inter sese of persons using water under the authority of the State or the Tribe;

5. To limit in any way the rights of the parties or any other person to litigate any issues or questions not resolved by this Compact;

6. To authorize the taking of a water right which is vested under state or federal law;

7. To create or deny substantive rights through headings or captions used in this Compact;

8. To preclude or to discourage the Tribe from establishing the right to, or contracting for, water from any further enlargements of the Tongue River Dam, or from any future storage facilities that may be built within the Tongue River or Rosebud Creek basins, or in any other water basins;

9. To address or prejudge whether, in any interstate apportionment, the Tribe's water right shall be counted as part of the waters apportioned to the State; or

10. To alter or amend any provisions of the Yellowstone River Compact, Act of October 30, 1951, ch. 629, 65 Stat. 663 (1951).

11. To prohibit the Tribe or the United States from challenging any claims to water in any general adjudication of the Tongue River or Rosebud Creek basins.

B. The parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

C. The Secretary of the Interior shall comply with all aspects of the National Environmental Policy Act, 42 U.S.C. §§4331-4335, and the Endangered Species Act, 16 U.S.C. §1531, et seq., and other applicable environmental acts and regulations in implementing this Compact.

Article VII

Tribal Relinquishment of Other Water Claims

A. With the exception of the Tribe's claim to non-alluvial groundwater in paragraph B. of this Article and any rights to water which may exist with respect to land held by the Tribe or a Tribal member outside the present Reservation, the Tribe and the United States as trustee for the Tribe hereby relinquish forever any and all claims, in existence on the ratification date of this Compact, to water within the State of Montana. The relinquishment includes, but is not limited to, any claim for water derived from aboriginal use of land or water, any Indian treaties, any Act of Congress, and any executive act of the United States.

B. The parties intend that the water right as confirmed to the Tribe in Article II is in full satisfaction of its federal reserved water right based on Winters v. United States, 207 U.S. 564 (1908). Notwithstanding the provisions of paragraph A. of this Article, the Tribe retains the right to assert a claim that it has a right, not based on the federal reserved water rights doctrine, to the use of any non-alluvial groundwater underlying the Reservation. In any such action, the Tribe shall be estopped to assert that its right to non-alluvial groundwater is a federal reserved water right, that the Tribal Water Right confirmed in Article II is inadequate to satisfy the purposes for which the Reservation was created, or from collaterally attacking this Compact in any manner. Any right to non-alluvial groundwater established by the Tribe under this paragraph is not subject to this Compact. Nothing in this Compact shall be construed to waive any defenses of the State or any water user to a Tribal claim for non-alluvial groundwater.

Article VIII

Binding Effect

Upon the effectiveness of any provision of this Compact, its terms will be binding:

A. Upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana; provided, that for purposes of consent, ratification, or authorization, the validity of consent, ratification, or authorization is to be determined by Montana law;

B. Upon the Tribe and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribe's water right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe, or any right arising under tribal law; provided, that for purposes of consent, ratification, or authorization, the validity of consent, ratification or authorization is to be determined by tribal law; and

C. Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of Montana; provided, that for purposes of consent, ratification, or authorization, the validity of consent, ratification or authorization is to be determined by federal law, and further provided that nothing contained in this Compact affects any claim of any Indian tribe, or of persons claiming water through that tribe, or the right of any Indian tribe, or persons claiming water through that tribe, to pursue a claim to any water from any source based on any theory of right or entitlement.

Article IX

Contributions to Settlement

A. The United States agrees to provide $31,500,000 to repair the Tongue River Dam and spillway and to raise the Tongue River Dam spillway crest to secure the Tribe's existing contract water under Article

II.A.2.e. and to provide additional storage capacity to secure the Tribe's storage and exchange water right under Article II.A.2.b.

B. The State agrees to provide $16,500,000 to repair the Tongue River Dam and spillway with the understanding that the State's portion will be paid through a combination of cash and federal loans, in proportions to be agreed upon by the parties.

C. The Provisions of this Article are subject to the separate Letter of Agreement dated April 17, 1991, between the State and the United States explaining in detail the allocation of the costs of the project. The State and the United States will enter into a further agreement providing for the expenditure of the contributions and loans of the United States hereunder.

D. The United States agrees to provide $10,000,000 for a Tribal Development Fund payable in equal amounts of $2,000,000 each fiscal year for five years. These funds shall not be distributed on a per capita basis to members of the Tribe and shall only be used for land and natural resources administration, planning and development within the Northern Cheyenne Reservation or for land acquisition by the Tribe within the Northern Cheyenne Reservation.

E. Federal financial contributions to paragraph A of this Article will be budgeted for, subject to the availability of funds, by October 1 of the year following the ratification of this Compact by Congress and the authorization by Congress of the Tongue River Dam project. Federal financial contributions to paragraph D of this Article will be budgeted for, subject to the availability of funds, by October 1 of the second year following the ratification of this Compact by Congress and the authorization by Congress of the Tongue River Dam project.

F. The Tribe and the United States agree to pursue through the normal Bureau of Indian Affairs and Department of the Interior budget process such additional sums as are necessary to implement the terms of this Compact, to develop a Tribal water code, and to provide increased agricultural development on the Reservation. The State agrees to support the efforts of the Tribe and the United States in this regard.

Article X

Legislation

The Parties agree to seek enactment of any legislation necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks; provided, that no provision of the Compact shall be modified as to substance except as may be provided herein.

IN WITNESS WHEREOF the representatives of the State of Montana, the Northern Cheyenne Tribe, and the United States have signed this Compact on the _____ day of _______________, 19___.

FOR THE STATE OF MONTANA

MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION

Jack E. Galt, Chairman

Gene J. Etchart

Chris D. Tweeten, Vice Chairman

Dennis Iverson

Carl M. Davis

Senator Joseph P. Mazurek

Everett C. Elliott

Gordon McOmber

Gary L. Spaeth

FOR THE NORTHERN CHEYENNE TRIBE

FOR THE SECRETARY OF THE INTERIOR

FOR THE UNITED STATES ATTORNEY GENERAL

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved May 17, 1991.

CHAPTER NO. 813

[SB 473]

AN ACT REVISING THE WORKERS' COMPENSATION ACT TO INCLUDE IN THE DEFINITION OF "EMPLOYER" AN ORGANIZATION PLACING A PERSON WHO PERFORMS COMMUNITY SERVICE AND TO INCLUDE IN THE DEFINITION OF "EMPLOYEE" A PERSON WHO PERFORMS COMMUNITY SERVICE; PROVIDING FOR WORKERS' COMPENSATION BENEFITS TO COMMUNITY SERVICE WORKERS; PROVIDING THE BASIS FOR PAYMENT OF PREMIUMS BY THE EMPLOYER; AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-117, MCA, is amended to read:

"39-71-117. Employer defined. "Employer" means:

(1) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof; ~~and~~

(2) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter*; and*

(3) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities."

Section 2. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, and workman defined.** (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers; ~~or~~

(e) an airman or other person employed as a volunteer under 67-2-105; *or*

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(2) (a) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (2)(d). A partner or sole proprietor is not considered an employee within this chapter until such notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter."

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved May 17, 1991.

CHAPTER NO. 814

[HB 233]

AN ACT PROVIDING A FIRST RIGHT OF PURCHASE OF OR THE RIGHT TO MATCH A COMPETING LEASE OFFER FOR LEASED LAND TO LEASEHOLDERS OF THE LAND WITHIN 300 FEET OF A RAILROAD RIGHT-OF-WAY; REQUIRING COMPENSATION TO THE LESSEE IF THE LEASE IS TERMINATED; AMENDING SECTION 69-14-553, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 and 2], the following definitions apply:

(1) "Fair market value" means:

(a) the price negotiated between the parties under [section 2]; or

(b) the appraised value as determined by a certified appraisal under [section 2].

(2) "Leaseholder" means a person who holds a lease or permit with respect to land adjacent to a railroad right-of-way and who has constructed or owns buildings on the land that have an appraised value of $5,000 or more.

(3) "Right-of-way" means land upon which a railroad has or has had tracks.

Section 2. **First right to purchase or match offer — lease preference — negotiation process — exception.** (1) A person or entity that has a leasehold site between a point 8.5 feet from the centerline of the track nearest the edge of the right-of-way and 300 feet of the track centerline and that uses the leasehold for transporting grain, seed, or related agricultural input commodities, regardless of the status of train operations, has a right of first refusal to purchase the land in the event the owner seeks to sell the land or transfer the leasehold estate.

(2) The leaseholder of a leasehold site described in subsection (1) must be given the opportunity to match a competing lease offer upon expiration of an existing lease. If the leaseholder matches the new lease offer, the lease must be given to the leaseholder. When a person other than the current leaseholder becomes the lessee of a leasehold site described in subsection (1) or the lease is terminated by the lessor for reasons other than nonpayment or other material breach of the lease, the lessor or new lessee shall compensate the former leaseholder for the fair market value of improvements made by the former leaseholder.

(3) The owner of the land may not sell or offer for sale an interest in the leased land or dispossess the leaseholder for reasons other than non-

payment or other material breach of the lease unless he first extends to the leaseholder a written offer to sell the leased land to the leaseholder at fair market value. The leaseholder shall respond to the offer within 60 days of receipt of the offer.

(4) The owner shall negotiate in good faith with the leaseholder for a period not to exceed 90 days following the leaseholder's response to the written offer provided for in subsection (3). The land may not be sold or transferred during the response and negotiation periods.

(5) (a) If the owner and the leaseholder cannot agree on the fair market value, they shall appoint a certified appraiser to establish the fair market value.

(b) In the event that the owner and leaseholder cannot agree on an appraiser, each shall appoint a certified appraiser who shall make an independent appraisal. If the appraisals are within 5% of each other, the average of the two appraisals must constitute the fair market value.

(c) If the two appraisals differ by more than 5%, the two appraisers must appoint a third certified appraiser whose appraisal must establish the fair market value.

(d) If the leaseholder fails to close the purchase of the leasehold estate for any reason within 45 days after the fair market value of the land has been established by the appraisal process provided for in this section, the right of first refusal is extinguished and the owner is free to transfer the property to a person or entity other than the leaseholder.

(e) The owner may transfer a title under this section by quitclaim deed rather than warranty deed.

(6) This section does not apply to the sale of an entire operating railroad line by one operating railroad to another entity for the purpose of operating a railroad.

Section 3. Section 69-14-553, MCA, is amended to read:

"**69-14-553. Acquisition and transfer of real estate.** ~~Any such~~ *A railroad* corporation may acquire by purchase or gift any ~~lands~~ *land* in the vicinity of its road or through which the ~~same~~ *road* may pass~~, so far as may be~~ *if the land is* convenient or necessary to secure the right-of-way or ~~such as may be~~ *if the land is* granted to aid in the construction of ~~such~~ *the* road and*, except as provided in [sections 1 and 2], may* convey the ~~same~~ *land* in ~~such~~ *any* manner ~~as~~ the directors may prescribe. All deeds and conveyances made by ~~such~~ *the* corporation ~~shall~~ *must* be signed by the president, under the seal of the corporation."

Section 4. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 69, chapter 14, and the provisions of Title 69, chapter 14, apply to [sections 1 and 2].

Section 5. **Coordination instruction.** If [this act] is passed and approved and House Bill No. 924 fails to be passed and approved, then this bill is void.

Section 6. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved May 17, 1991.

CHAPTER NO. 815

[HB 2]

THE GENERAL APPROPRIATIONS ACT OF 1991 FOR THE APPROPRIATION OF MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1993.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as "The General Appropriations Act of 1991".

Section 2. **Limit on personal services transfer — exceptions.** (1) Funds appropriated for personal services or indicated in legislative intent as having been appropriated for personal services may not be expended under any other category unless the approving authority approves a specific agency request for the 1993 biennium only, which request is justified either on the basis of documented cost savings or as specified in subsection (2). The approving authority shall submit its analysis of the cost savings to the legislative auditor, with wages and fringe benefits separately documented from other cost savings. The legislative audit committee shall review the approving authority's analysis and report to the 53rd legislature on the savings realized.

(2) If an agency is unable to recruit and hire professional positions funded in the appropriation, funds appropriated for personal services may be used to fund an agreement or contract to provide services that are identical to those services performed by an authorized position. The amount used for the agreement or contract may not be more than the amount authorized for the position less any personal services reduction. The agency director shall certify to the approving authority, as defined in House Bill No. 454, or his designated representative that the agency is unable to fill the position and that the services performed by that position are necessary.

Section 3. **First level expenditures.** The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this bill, showing first level expenditures and funding for the 1993 biennium, are adopted as legislative intent.

Section 4. **Reorganization.** If any agency reorganizes during the 1993 biennium, the agency shall present for fiscal 1992 and fiscal 1993 by program:

(1) a restatement of the FTE records and financial records consistent with the reorganized structure; and

(2) a comparison of the original operating budget to the revised operating budget that reflects the reorganization. Reorganization means transfer of functions or five or more FTE from one program to another.

Section 5. **Natural resources damage assessment repayment.** In the natural resource damage assessment and litigation against the atlantic richfield company, the state shall seek repayment of any funds appropriated in [this act] that are expended by a state agency for the purpose of conducting the assessment and/or litigation. This repayment must include interest on the funds at a rate commensurate with rates earned in the short-term investment pool.

Section 6. **Personal services reduction.** The line item for "personal services reduction" reduces the agency's total personal services appropriations. Before [this act] is enrolled, the legislative fiscal analyst is directed to allocate the personal services reduction among programs within the agency. This allocation must be:

(1) made after all other amendments contained in this conference committee report have been made; and

(2) based upon the funding for all control variables within each program, excluding control variables that do not contain personal services.

Section 7. **Budget reduction.** The line item for "budget reduction" reduces the agency's total general fund appropriation. The agency, with the approval of the approving authority as defined in House Bill No. 454, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

Section 8. **Vacant positions.** If a budgeted position remains unfilled for more than 6 months, the position may be filled only after approval by the approving authority. The approving authority shall document in writing the justification and approval for filling each position that was vacant for more than 6 months and shall provide the documentation to the office of budget and program planning and to the office of the legislative fiscal analyst if requested. If a budgeted position remains unfilled for more than 1 year, the approving authority may not include the position in the budget request base for the executive budget request that will be presented to the 53rd legislature. The budget request presented to the 53rd legislature must include an analysis of vacant positions subject to the approval requirement in this section and must specifically identify those positions that remained unfilled for more than 1 year and are included in the budget request as modifications.

Section 9. **Employee training documentation.** All agencies shall identify on the statewide budgeting and accounting system the costs of providing training to employees, including travel but not including the personal services costs for the employees being trained. In addition, agencies shall maintain statistics and information that disclose the days of training provided to employees, the number of employees who received training, and the type of training provided.

Section 10. **Severability.** If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, such decision does not affect the validity of the remaining portions of [this act].

Section 11. **Audit cost.** Amounts appropriated for audits may be transferred between fiscal years. Agencies shall reserve enough cash in each fund to pay for audit costs and shall, to the maximum extent allowable under federal regulations, charge audit costs to federal funds. The budget director shall increase the agency line item appropriations for legislative audits by amounts that total the amount appropriated for the 1993 biennium from the legislative auditor's special revenue fund for the purpose of state pay plan funding. The budget director shall allocate the amounts on the same basis that current line items for legislative audits in agency budgets are allocated in [this act].

Section 12. **Technical allocation costs.** For agencies with internal cost allocation plans funded with proprietary revenues, the budget director shall adjust agency appropriations by amounts necessary to increase the budgets for indirect costs attributable to pay increases in an agency's indirect cost pool appropriated in the state pay plan bill. Funding for this appropriation consists of general fund money and other funds in an amount proportionate to the funding allocated for budgeting indirect cost assessments in [this act].

Section 13. **Account analysis.** All agencies shall reexamine their proprietary accounts and designated subfunds and report to the legislative auditor's office after fiscal year 1992 the specific plans for spending the accounts, the monthly or daily account balances, and whether the accounts have adequate amounts of revenue and fund balances and the plans to reduce or add monies to the accounts.

Section 14. **Totals not appropriations.** The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 15. **Effective date.** [This act] is effective July 1, 1991.

Section 16. **Appropriations.** The following money is appropriated for the respective fiscal years:

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
A. GENERAL GOVERNMENT AND HIGHWAYS												
LEGISLATIVE AUDITOR (1101)												
1. Audit and Examination Program (01)												
	1,154,114	1,108,855				2,262,969	1,149,898	1,104,805				2,254,703
a. Additional Audit Staff (Line Item)												
		117,831				117,831		117,376				117,376
b. Legislative Automation Plan (Line Item)												
	6,401	6,151				12,552	12,706	12,208				24,914
c. Adjusted Cost Estimates (Line Item)												
	12,476	11,987				24,463	4,040	3,883				7,923
d. Sunrise Application Evaluations (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
								5,000				5,000
e. SB 264 — Actuarial Evaluation (Line Item)												
		20,000				20,000						
f. Audits of School-Related Organizations (Line Item)												
		4,000				4,000						
g. Privatization Alternatives — Additional Audit Staff (Line Item)												
	24,837					24,837	24,778					24,778
h. New Audit Work — Additional Audit Staff (Line Item)												
	24,837					24,837	24,778					24,778
i. State Compensation Mutual Insurance Fund (Line Item)												
		24,837				24,837		24,778				24,778
2. Budget Reduction (Line Item)												
	5,668					5,668	5,637					5,637
Total												
	1,216,997	1,293,481				2,510,458	1,210,563	1,268,050				2,478,613
LEGISLATIVE FISCAL ANALYST (1102)												
1. Analysis and Review (01)												
	828,738					828,738	877,121					877,121
a. Legislative Contingencies (Line Item)												
	20,000					20,000						
b. Legislative Requests (Line Item)												
	20,000					20,000						
2. Budget Reduction (Line Item)												
	4,221					4,221	4,260					4,260
Total												
	864,517					864,517	872,861					872,861

Items 1a and 1b are biennial appropriations.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
LEGISLATIVE COUNCIL (1104)												
1. Interim Studies and Conferences (05)												
	469,407	12,000				481,407						
2. Reimbursable Activities Program (07)												
		593,470				593,470		251,120				251,120
3. Legislative Council Operations (10)												
	1,342,917	458,726				1,801,643	1,876,200	254,363				2,130,563
a. 1991 Base Pay Adjustment (Line Item)												
	34,161					34,161	30,340					30,340
b. One Added FTE (Line Item)												
	23,865					23,865	27,179					27,179
c. Reapportionment Technical Support (Line Item)												
	138,486					138,486	11,213					11,213
d. Legislative Computer Network (Line Item)												
	94,530					94,530	84,166					84,166
4. Budget Reduction (Line Item)												
	10,918					10,918	9,852					9,852

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total	2,092,448	1,064,196				3,156,644	2,019,255	505,483				2,524,738

Item 1 is a biennial appropriation. Individual activities are budgeted as follows:

Joint Interim Committees	$ 82,470
Statewide Issues	25,000
Districting and Apportionment Commission	43,000
Revenue Oversight Committee	37,983
Administrative Code Committee	14,048
Select Committee on Indian Affairs	7,200
Commission on Uniform State Laws	30,000
National Conference of State Legislatures	189,706
Northwest Economic Region Conference	20,000
Regional Conferences	32,000

Expenditure of funds for item 3d is contingent on approval by the joint legislative administration committee.

The legislative council may allocate money appropriated in item 1 among the individual activities listed above in order to complete work assigned by the legislature.

Contingent on passage and approval of House Joint Resolution No. 50, a biennial appropriation not to exceed $30,000 from pension trust funds is made to the legislative council for the purpose of conducting an interim study on retirement systems. Of the total appropriation, 12.5% must be made from the teachers' retirement pension fund. The remaining 87.5% must be made from the various pension trust funds administered by the public employees' retirement board in proportion to the membership of each system.

The revenue oversight committee may use part of the appropriation provided in item 1 for the support of the activities of the coal tax oversight subcommittee.

ENVIRONMENTAL QUALITY COUNCIL (1111)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Environmental Quality Program (01)	271,083					271,083	268,865					268,865
a. Additional Staff (Line Item)	15,800					15,800	15,800					15,800
2. Water Policy Committee (02)		26,451				26,451						
3. Budget Reduction (Line Item)	1,410					1,410	1,390					1,390
Total	285,473	26,451				311,924	283,275					283,275

Item 2 is a biennial appropriation.

CONSUMER COUNSEL (1112)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Administration Program (01)		806,775				806,775		828,517				828,517
a. Contract Services (Line Item)		100,000				100,000		100,000				100,000
b. Increased Travel (Line Item)		6,607				6,607		6,591				6,591
Total												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		912,362				912,362		936,108				936,108
Item 1a is for expert witness fees for unanticipated cases.												
JUDICIARY (2110)												
1. Supreme Court Operations (01)	1,358,807					1,358,807	1,358,914					1,358,914
a. Audit (Line Item)	15,626					15,626						
b. Court Automation (HB 320) (Line Item)	101,646					101,646	101,647					101,647
c. Law Clerk Parity (Line Item)	13,767					13,767	13,749					13,749
d. Clerk of Court Training (Line Item)	4,000					4,000	4,000					4,000
e. SB 228 — Judicial Salary Increase (Line Item)	25,106					25,105	56,203					56,203
2. Boards and Commissions (02)	243,391					243,391	243,526					243,526
a. Judicial Standards (Line Item)	2,445					2,445	2,445					2,445
3. Law Library (03)	551,730					551,730	551,801					551,801
a. Automated Legal Data Bases (Line Item)	192,050					192,050	202,773					202,773
b. Law Book Inflation (Line Item)	10,556					10,556	9,266					9,266
4. District Court Operations (04)	2,534,319					2,534,319	2,527,692					2,527,692
a. SB 228 — Judicial Salary Increase (Line Item)	125,346					125,346	260,212					260,212
b. 21st Judicial District Salary, Training, Travel (Line Item)							32,770					32,770
c. SB 228 — Judicial Salary Increase (Line Item)							4,166					4,166
5. Water Courts Supervision (05)		489,161				489,161		475,064				475,064
a. Audit (Line Item)		1,736				1,736						
b. SB 228 — Judicial Salary Increase (Line Item)		3,440				3,440		8,004				8,004
6. Clerk of Court (06)	168,061					168,061	167,757					167,757
a. Salary Increase — Deputy Clerk of Supreme Court (Line Item)	3,323					3,323	3,323					3,323
7. District Court Criminal Reimbursement Program (07)	2,662,579					2,662,579	2,806,573					2,806,573

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Audit (Line Item)	1,848					1,848						
8. Budget Reduction (Line Item)	25,858					25,858	25,781					25,781
Total	8,008,765	494,337				8,503,102	8,348,037	483,088				8,831,126

Except for $16,000 for law library use, expenditures in item 3a are limited to the amount of revenue collected from reimbursable automated legal data base usage by other entities.

Items 1e, 4a, and 5b are appropriated if Senate Bill No. 228 is passed and approved.

Item 4b is contingent on passage and approval of House Bill No. 934 and item 4c is contingent on passage and approval of both House Bill No. 934 and Senate Bill No. 228.

If revenue deposited to the general fund under the provisions of 61-3-509 is less than the appropriation for district court reimbursement, the supreme court administrator shall reduce the reimbursement to an amount equal to the revenue collected.

GOVERNOR'S OFFICE (3101)

	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Executive Office Program (01)	1,016,303	78,221	1			1,094,525	1,017,335	78,186				1,095,521
a. Audit (Line Item)	18,152					18,152						
2. Mansion Maintenance Program (02)	59,098					59,098	59,851					59,851
3. Air Transportation Program (03)	317,390					317,390	159,019					159,019
4. Office of Budget and Program Planning (04)	798,110					798,110	829,424					829,424
a. Audit (Line Item)	17,362					17,362						
b. NASBO 1992 National Meeting (Line Item)	5,000					5,000	5,000					5,000
c. Equipment Replacement (Line Item)	4,000					4,000						
5. Northwest Regional Power Act (09)			403,124			403,124			402,853			402,853
6. Lieutenant Governor (12)	170,798					170,798	170,604					170,604
7. Citizens' Advocate Office (16)	68,452					68,452	69,136					69,136
8. Mental Disabilities Board of Visitors (20)	134,685		47,037			181,722	134,743		47,037			181,780
9. Budget Reduction (Line Item)	13,029					13,029	12,256					12,256
Total	2,596,321	78,221	450,162			3,124,704	2,432,856	78,186	449,890			2,960,932

Public funds may not be used to support the governor's radio newsline, a telephone service providing recorded news briefs.

SECRETARY OF STATE'S OFFICE (3201)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Records Management Program (01)	876,288					876,288	876,789					876,789
a. Audit (Line Item)	13,416					13,416						
b. Printing Costs (Line Item)	19,924					19,924	58,962					58,962
c. Microfilming Project (Line Item)	25,000					25,000	25,000					25,000
d. Fireproof Document Storage (Line Item)	45,000					45,000						
e. SB 384 — Primary Election for 2-Mill Levy (Line Item)	52,500					52,500						
2. Administrative Code Program (03)		174,064				174,064		175,298				175,298
a. Audit (Line Item)		2,368				2,368						
3. State Agency Record Management (05)				331,332		331,332				332,856		332,856
4. Budget Reduction (Line Item)	4,845					4,845	4,751					4,751
Total	1,027,283	176,432		331,332		1,535,047	956,000	175,298		332,856		1,464,154

If House Bill No. 897 is not enacted, the appropriation in item 3 is transferred to the department of administration.

COMMISSIONER OF POLITICAL PRACTICES (3202)

	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Administration (01)	111,249					111,249	113,562					113,562
a. Audit (Line Item)	2,526					2,526						
b. Part-Time Assistant (Line Item)	10,406					10,406						
c. Staff Termination Pay (Line Item)	1,150					1,150	550					550
d. Legal Fees and Court Costs (Line Item)	45,000					45,000						
2. Budget Reduction (Line Item)	627					627	591					591
Total	169,704					169,704	113,521					113,521

Items 1b and 1d are biennial appropriations.

The commissioner of political practices is to charge a fee for the Campaign Finance Report book that is sufficient to recover the costs of printing and distribution of the book. Public libraries are exempt from the charge for the book. The proceeds from the sale of the book, as well as the fees collected for reimbursement of copier charges, must be deposited in the general fund.

STATE AUDITOR'S OFFICE (3401)

1. Central Management (01)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	237,083					237,083	237,103					237,103
a. Audit (Line Item)												
	5,048					5,048						
b. Computer System Replacement (Line Item)												
	97,930					97,930	52,070					52,070
2. State Payroll (02)												
	199,363	194,227				393,590	184,690	209,540				394,230
a. Audit (Line Item)												
	33,481					33,481						
b. Payroll System Data Processing — ISD (Line Item)												
		160,218				160,218		144,394				144,394
3. Insurance Program (03)												
	963,525					963,525	963,351					963,351
a. Audit (Line Item)												
	5,050					5,050						
b. Medicare Compliance Specialist (Line Item)												
	29,354					29,354	27,304					27,304
c. Office Equipment (Line Item)												
	5,420					5,420	1,495					1,495
4. Securities Program (04)												
	288,501					288,501	288,318					288,318
a. Audit (Line Item)												
	5,050					5,050						
b. Office Equipment (Line Item)												
	4,300					4,300						
5. Fiscal Control and Management Program (10)												
	308,393	146,999		149,562		604,954	308,050	146,832		136,588		591,470
a. Audit (Line Item)												
	33,467					33,467						
b. Warrant System Data Processing — ISD (Line Item)												
	99,268					99,268	89,464					89,464
6. Budget Reduction (Line Item)												
	11,779					11,779	10,759					10,759
Total												
	2,303,414	501,444		149,562		2,954,420	2,141,084	500,766		136,588		2,778,438

The appropriation in item 1b is for a computer system. The agency shall follow the system design recommendations approved by the information services division of the department of administration.

The state auditor shall implement a fee system for the purpose of recovering the operational cost of issuing warrants from all user agencies on an equitable basis. It is intended that, beginning in fiscal 1994, the general fund must be reimbursed for services provided to user agencies that are not funded entirely by the general fund. Revenues collected as reimbursement fees from user agencies for costs of issuing state warrants must be deposited in a state special revenue account. The state auditor shall submit the cost recovery plan and the 1995 biennium fee schedule by agency to the office of budget and program planning and to the legislative fiscal analyst by June 1, 1992.

CRIME CONTROL DIVISION (4107)

1. Justice System Support Service (01)												
	442,801	58,665	166,462			667,928	442,958	58,665	156,462			658,085
a. Audit (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	5,178					5,178						
b. Crime Victims' Compensation Pass-Through Grants (Line Item)		379,920				379,920		379,920				379,920
c. Juvenile Justice Pass-Through Grants (Line Item)			221,500			221,500			221,500			221,500
d. Victims' Assistance Pass-Through Grants (Line Item)			224,000			224,000			224,000			224,000
e. Drug Education Pass-Through Grants (Line Item)			427,000			427,000			427,000			427,000
f. Drug Enforcement Pass-Through Grants (Line Item)			1,240,000			1,240,000			1,250,000			1,250,000
g. Narcotics Control — Grant Administration (Line Item)	27,000		18,101			45,101	54,000		1,102			55,102
h. Drug Enforcement Pass-Through Grants (Modified) (Line Item)			904,000			904,000			921,000			921,000
i. Juvenile Justice — Support Services (Line Item)	7,500					7,500	7,500					7,500
j. Victims' Assistance — Grant Administration (Line Item)		29,118				29,118		25,965				25,965
k. Victims' Assistance Pass-Through Grants (Modified) (Line Item)			109,000			109,000			109,000			109,000
l. Drug Education — Grant Administration (Line Item)			11,720			11,720			11,720			11,720
m. Drug Education Pass-Through Grants (Modified) (Line Item)			115,218			115,218			115,218			115,218
n. SB 321 — Victim of DUI Offenders (Line Item)		73,038				73,038		72,538				72,538
o. SB 370 — D.A.R.E. Program (Line Item)		18,200				18,200		18,200				18,200
p. SB 379 — Probation and Parole Officer Standards (Line Item)	6,579					6,579	100					100
2. Budget Reduction (Line Item)	2,412					2,412	2,522					2,522
Total	486,644	556,939	3,437,001			4,480,584	502,036	553,308	3,437,002			4,492,346

Items 1b through 1f, 1h, 1k, and 1m are biennial appropriations.

Item 1o is contingent on passage and approval of Senate Bill No. 370.

Item 1p is contingent on passage and approval of Senate Bill No. 379.

All remaining federal pass-through grant appropriation authority for the 1991 biennium is authorized to continue into fiscal 1992 and fiscal 1993.

The board of crime control shall charge tuition and fees sufficient to reimburse the general fund for costs associated with the juvenile justice training program and for technical assistance provided to local law enforcement agencies. The tuition and fees collected must be deposited in the general fund.

HIGHWAY TRAFFIC SAFETY (4108)

1. Highway Traffic Safety Division (36)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	200,000	74,087	904,614			1,178,701	200,000	74,686	903,504			1,178,190
a. Audit (Line Item)		1,013	1,013			2,026						
2. Budget Reduction (Line Item)	1,000					1,000	1,000					1,000
Total	199,000	75,100	905,627			1,179,727	199,000	74,686	903,504			1,177,190
DEPARTMENT OF JUSTICE (4110)												
1. Legal Services Division (01)	845,681	311,771				1,157,452	938,193	212,972				1,151,165
a. Case-Related Travel (Line Item)	9,500					9,500	9,500					9,500
b. Legal Fees and Expert Witnesses (Line Item)	100,000					100,000						
c. Attorney-Indian Legal Jurisdiction (Line Item)	47,837					47,837	43,239					43,239
d. Litigation Costs (Line Item)	400,000					400,000						
2. Agency Legal Services (06)				571,894		571,894				571,855		571,855
3. Gambling Control Division (07)		1,387,007				1,387,007		1,366,606				1,366,606
a. Gambling Control Expansion (Line Item)		305,785				305,785		207,001				207,001
4. Motor Vehicle Division (12)	4,619,289	124,254	48,537			4,792,080	4,641,381	85,419	48,534			4,775,334
a. HB 646 — Additional Handicap Parking Display Cards (Line Item)	15,000					15,000	2,500					2,500
b. HB 568 — Driver's License Express Stations (Line Item)	708,000					708,000	710,000					710,000
5. Highway Patrol Division (13)		10,800,052	486,937			11,286,989		10,658,603	485,011			11,143,614
a. Additional Patrol Officers and Dispatchers (Line Item)		302,290				302,290		211,109				211,109
b. Handheld Radios (Line Item)		51,000				51,000						
6. Law Enforcement Services Division (18)	902,303	348,539	21,196			1,272,038	881,303	327,085	31,044			1,239,432
a. Special Investigation — West (Line Item)	121,327		336,898			458,225	458,199					458,199
b. Fire Prevention Grant (Line Item)			9,978			9,978						
c. Identification Bureau Federal Grant (Line Item)			88,636			88,636			88,643			88,643
d. HB 809 — Fire Marshal Bureau Expansion (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	159,667					159,667	163,000					163,000
7. County Attorney Payroll (19)	1,014,148					1,014,148	1,015,435					1,015,435
a. HB 155 — County Attorney Salary Increase (Line Item)	136,000					136,000	333,000					333,000
8. Law Enforcement Academy Division (22)	607,208					607,208	606,858					606,858
9. Central Services Division (28)	167,823	196,198		9,334		373,355	169,654	196,952		9,401		376,007
a. Audit (Line Item)	16,628	18,440		925		35,993						
10. Data Processing Division (29)	651,393	240,969				892,362	645,373	246,847				892,220
a. Data Processing Air Conditioner (Line Item)	45,000					45,000	4,400					4,400
11. Extradition and Transportation of Prisoners (30)	193,648					193,648	193,640					193,640
12. Forensic Science Division (32)	930,630	243,667				1,174,297	864,061	226,237				1,090,298
13. Budget Reduction (Line Item)	55,436					55,436	54,015					54,015
Total	11,635,646	14,330,972	992,180	582,153		27,540,951	11,625,721	13,758,831	853,232	581,256		26,819,040

Items 1b and 1d are biennial appropriations.

The legislature recognizes that costs associated with the Crow coal case, water rights, and tribal litigation may exceed the appropriation in item 1, and in that event, the department will need to request a supplemental appropriation from the 1993 legislature to adequately represent the state.

Item 4b is contingent on passage and approval of House Bill No. 568.

If federal or other funds can be obtained for item 6a in fiscal 1993, the federal or other funds must replace the general fund appropriation in item 6a and the general fund appropriation must be reduced by the amount of federal or other funds received. The total appropriation contained in item 6a may not be increased.

Item 6d is contingent on passage and approval of House Bill No. 809.

Item 7a is contingent on passage and approval of House Bill No. 155. In the event that a pay plan bill is passed and approved that includes salary increases for county attorneys, item 7a must be reduced by the amount included in the pay plan bill for county attorney salaries.

DEPARTMENT OF HIGHWAYS (5401)

1. General Operations Program (01)		6,534,444	1,988,234			8,522,678		6,311,681	1,986,861			8,298,542
a. Audit (Line Item)		71,026				71,026						
b. Road Reporting System (Line Item)		12,750				12,750		13,630				13,630
c. Map Digitizing (Line Item)		120,000				120 000		120,000				120,000
d. Kalispell Bypass Study (Line Item)			150,000			150,000						

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
e. SB 164 — Department of Transportation Organization Costs (Line Item)		106,128				106,128		30,081				30,081
2. Construction Program (02)		63,254,325	142,709,034			205,963,359		66,640,533	144,241,767			210,882,300
a. City Park Rest Areas (Line Item)		200,000				200,000		200,000				200,000
3. Maintenance Program (03)		46,944,095				46,944,095		46,728,864				46,728,864
a. Monitoring/Upgrading Underground Fuel Tanks (Line Item)		1,109,800				1,109,800		1,109,800				1,109,800
4. State Motor Pool (07)				748,341		748,341				594,078		594,078
5. Equipment Program (08)				13,390,277		13,390,277				13,249,710		13,249,710
6. Interfund Transfers Program (11)		14,208,404				14,208,404		17,149,771				17,149,771
7. Stores Inventory (12)		15,460,726				15,460,726		14,901,886				14,901,886
8. Gross Vehicle Weight Division (22)		3,540,044				3,540,044		3,637,081				3,637,081
a. Automated Weigh Stations (Line Item)		243,820				243,820		68,700				68,700
b. Gross Vehicle Weight Officer Training (Line Item)		30,165				30,165		25,165				25,165
Total		151,834,729	144,847,266	14,138,618		310,820,615		156,937,352	146,228,428	13,843,788		317,009,568

The department is directed to submit to the 1993 legislature a construction work plan for the 1995 biennium that is detailed by year and project. This work plan must specify, by road system or project area, proposed projects on which $1 million or more would be spent during the 1995 biennium and an aggregate cost for projects with anticipated expenditures of less than $1 million. Costs must be detailed by year and project.

The department may adjust appropriations and FTE in the construction, interfund transfers, and maintenance programs between fiscal years to reflect actual expenditures related to the construction work plan and maintenance activities.

The department may adjust appropriations in the construction program between fund types, provided that the adjustment does not exceed 10% of the total appropriation established by the legislature for the construction program. All transfers between fund types must be fully explained and justified on budget documents submitted to the office of budget and program planning, and all fund transfers of over $1 million in any 30-day period must be communicated to the legislative finance committee in a written report.

The department is directed to conduct a cost responsibility study to determine the appropriate ratio of highway user fees based on road wear caused by each type of user. The department shall provide a report of study results and a recommended fee structure to the legislative finance committee by June 1, 1992.

DEPARTMENT OF REVENUE (5801)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Director's Office (01)	809,347		168,644	428,424		1,406,415	815,409		168,425	428,716		1,412,550
a. Audit (Line Item)	32,474	1,563		89,079		123,116						
2. Centralized Services Division (02)	778,656	8,607				787,263	775,416	8,589				784,005
3. Data Processing Division (03)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	960,322	43,526		460,445		1,464,293	955,910	43,428		451,108		1,450,446
a. Workers' Compensation Payroll Tax (Line Item)		38,867				38,867		34,186				34,186
4. Liquor Division (05)												
a. Liquor Licensing Bureau (Line Item)				240,743		240,743				240,858		240,858
5. Income Tax (06)	3,348,123	286,506				3,634,629	3,289,224	293,880				3,583,104
a. Workers' Compensation Payroll Tax (Line Item)		81,992				81,992		75,074				75,074
b. Accounts Receivable (Line Item)	81,831					81,831	78,141					78,141
c. Equipment Replacement (Line Item)	68,369					68,369	27,814					27,814
d. Computer Processing Costs (Line Item)	98,384					98,384	72,417					72,417
e. Revenue Collection (Line Item)	81,713					81,713	78,723					78,723
6. Corporation Tax (07)	1,122,194	63,186	129,145			1,314,525	1,124,159	63,193	129,156			1,316,508
7. Property Tax Division (08)												
a. Elected and Deputy Assessors	1,849,862					1,849,862	1,861,923					1,861,923
b. Appraisers and Other Assessors	6,558,578					6,558,578	6,557,512					6,557,512
c. Property Assessment Program	2,958,963					2,958,963	2,966,862					2,966,862
d. Cyclical Reappraisal Costs (Line Item)	22,000					22,000	240,000					240,000
e. Computer-Assisted Mass Appraisal System (CAMAS) Costs (Line Item)	333,281					333,281	278,281					278,281
8. Motor Fuel Tax (10)		620,119				620,119		617,297				617,297
9. Budget Reduction (Line Item)	94,136					94,136	94,195					94,195
Total	18,835,880	1,155,365	297,789	1,217,891		21,506,745	18,834,416	1,135,616	297,581	1,129,460		21,397,093

Liquor division proprietary funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor operation are appropriated. During the 1993 biennium, the division shall attempt to return at least 10% of net sales. Net sales are gross sales less discounts and all taxes collected. The division shall limit operational expenses of the liquor merchandising system to not more than 15% of the net sales. Operational expenses may not include product costs, freight charges, expenses allocable to other divisions, or licensing bureau expenses.

Funds appropriated in item 7e may be used only for consulting contracts to support CAMAS or to support appraisers' use of CAMAS, for debt service costs to fund equipment acquisition, and for computer maintenance contracts.

DEPARTMENT OF ADMINISTRATION (6101)

1. Director's Office (01)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	232,354			61,572		293,926	229,139			60,818		289,957
2. Accounting Program (03)												
	1,020,986			29,350		1,050,336	1,005,187			29,297		1,034,484
a. Audit (Line Item)												
	38,771					38,771						
3. Architecture and Engineering Program (04)												
		672,096			664,008	1,336,104		682,019			672,552	1,354,571
a. Audit (Line Item)												
		1,370				1,370						
b. Capitol Restoration Commission (Line Item)												
		11,834				11,834		11,834				11,834
c. Expanded Long-Range Building Plan (Line Item)												
		51,242			51,242	102,484		53,670			53,670	107,340
4. Procurement and Printing Division (06)												
	420,824			8,111,843		8,532,667	421,136			6,380,692		6,801,828
a. Audit (Line Item)												
				19,788		19,788						
b. Pass-Through Printing (Line Item)												
				3,412,515		3,412,515				3,543,765		3,543,765
c. Federal Surplus Property (Line Item)												
				87,000		87,000				87,000		87,000
5. Information Services Division (07)												
a. Audit (Line Item)												
				58,140		58,140						
b. Contracted Systems Development (Line Item)												
				200,000		200,000						
c. Computer Services												
				7,982,061		7,982,061				8,193,261		8,193,261
d. Telecommunications												
				8,385,973		8,385,973				7,924,899		7,924,899
e. Emergency 911												
				75,567		75,567				78,712		78,712
f. Armory Computer Upgrade (Line Item)												
				75,000		75,000				75,000		75,000
g. Public Safety Communication (Line Item)												
				82,000		82,000				57,000		57,000
h. ISD — Growth in Workload (Line Item)												
				500,000		500,000				500,000		500,000
i. ISD — Networks (Line Item)												
				796,499		796,499				796,504		796,504
j. Mainframe Disaster Backup (Line Item)												
				179,000		179,000				144,000		144,000
k. Student Long Distance (Line Item)												
				323,768		323,768				323,771		323,771
l. Telephone System Upgrades (Line Item)												
				229,000		229,000				229,000		229,000

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
m. Family Services Computer System (Line Item)				78,200		78,200				93,200		93,200
6. General Services Program (08)	241,750			2,275,260	58,419	2,575,429	250,164			2,347,743	58,426	2,656,333
a. Audit (Line Item)				7,872		7,872						
b. Utilities Cost (Line Item)	141,083			1,034,807		1,175,890	143,409			1,051,670		1,195,079
7. Mail and Distribution Bureau (13)				1,839,886		1,839,886				1,842,234		1,842,234
a. Audit (Line Item)				3,528		2,528						
b. Postage Machines (Line Item)				8,500		8,500				8,500		8,500
c. Expanded Mail Services (Line Item)				174,087		174,087				174,087		174,087
8. State Personnel Division (23)	922,039			500,037		1,422,076	917,491			502,944		1,420,435
a. Audit (Line Item)				1,178		1,178						
b. Group Insurance Benefits System (Line Item)				36,500		36,500				21,500		21,500
c. State Employee Combined Campaign (Line Item)		10,000				10,000		10,000				10,000
d. Professional Development Center Growth in Workload (Line Item)				9,112		9,112				21,180		21,180
e. Communications for Group Insurance Requirements (Line Item)				8,000		8,000				8,000		8,000
f. Genetics Program (Line Item)				20,252		20,252				20,252		20,252
9. Tort Claims Division (24)				2,101,132		2,101,132				2,153,202		2,153,202
a. Audit (Line Item)				7,036		7,036						
b. Tort Claims — Contracts (Line Item)				500,000		500,000				500,000		500,000
10. State Tax Appeal Board (37)	427,807					427,807	427,361					427,361
11. Budget Reduction (Line Item)	17,277					17,277	17,043					17,043
Total	3,428,337	746,344		37,011,859	773,667	41,960,207	3,376,874	757,323		36,964,001	784,648	41,882,846

The deletion of the personal services reduction in state special revenue is contingent on passage and approval of House Bill No. 5.

Item 3b is contingent on passage and approval of House Bill No. 500.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 3c is contingent on passage and approval of House Bill No. 5.

Item 5b is a biennial appropriation.

The governor-elect program is appropriated all necessary expenses, up to $50,000 from the general fund in fiscal 1993, to implement the provisions of 2-15-221.

Item 5m is contingent on passage and approval of House Bill No. 569.

The department shall develop and submit a cost recovery plan for each of its proprietary operations to the office of budget and program planning and the legislative fiscal analyst by August 1, 1992.

Funds remaining in the capitol land grant account of the capital projects fund, after the appropriations are met for the general services division of the department of administration and any projects provided for in House Bill No. 5, are appropriated to the long-range building debt service fund for the payment of principal and interest on bond issues for public buildings at the capitol for executive, legislative, and judicial purposes, as outlined in section 12 of The Enabling Act. This appropriation is for the biennium ending June 30, 1993, and is not to exceed the annual debt service required on these bonds.

The appropriation in item 6 in the other column includes $58,801 in fiscal 1992 and $58,801 in fiscal 1993 from the capital projects fund.

In item 6, the department may charge a maximum of $3.28 a square foot in fiscal 1992 and $3.34 a square foot in fiscal 1993 for office space in state-owned buildings.

Item 6b may be used only to pay utilities costs.

The department may charge a maximum overhead rate of 6% each year in item 7.

Item 8f is contingent on passage and approval of House Bill No. 696.

The department is appropriated funds to pay the deductible portion of each claim incurred and covered by a deductible insurance plan from the deductible reserve fund authorized in 2-9-202(2).

By July 15, 1992, the tort claims division shall present to the legislative finance committee proposed changes in the method or methods of determining and allocating insurance premiums to state agencies. The division shall review with the legislative finance committee the proposal and potential fiscal impacts before the rate methodology is adopted and before premiums are included in agency budget requests by the office of budget and program planning.

In item 9b, the department is authorized to hire 0.5 clerical FTE.

The public service commission is considering a proposal allowing large state natural gas customers to purchase their own supplies of gas directly from gas producers. Recognizing the likelihood of a changing natural gas procurement environment, the governor is authorized, if the proposal is approved by the commission, to designate a lead agency to implement a coordinated natural gas procurement program for affected state agencies and the university system.

STATE COMPENSATION MUTUAL INSURANCE FUND (6103)

1. State Compensation Mutual Insurance Fund (01)		25,082		121,856,189		121,881,271				128,877,379		128,877,379
a. Audit (Line Item)				83,655		83,655						
b. Claims Management Program (Line Item)				912,563		912,563				910,494		910,494
c. Audit Bureau (Line Item)				304,304		304,304				303,899		303,899
d. HB 187 — Construction Premiums (Line Item)				228,829		228,829				194,830		194,830
Total		25,082		123,385,340		123,410,422				130,286,402		130,286,402

Item 1d is contingent on passage and approval of House Bill No. 187.

PUBLIC EMPLOYEES' RETIREMENT BOARD (6104)

1. Public Employees' Retirement Program (35)					837,589	837,589					816,990	816,990
a. Audit (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
					36,303	36,303						
b. Public Employees' Retirement Division — Rewrite Data Processing System (Line Item)					301,299	301,299					79,224	79,224
c. Program Improvements (Line Item)					60,387	60,387					56,952	56,952
Total					1,225,568	1,225,568					953,166	953,166

The amounts listed in items 1, 1a, 1b, and 1c are appropriated from the pension trust fund.

Contingent on passage and approval of House Bill No. 595, the board is appropriated $3,860 from pension trust funds in fiscal 1992 and $2,360 from pension trust funds in fiscal 1993.

Contingent on passage and approval of House Bill No. 711, the board is appropriated $5,000 from pension trust funds in fiscal 1992 and $5,000 from pension trust funds in fiscal 1993.

Contingent on passage and approval of Senate Bill No. 226, the board is appropriated $25,000 from pension trust funds in fiscal 1992 and $5,000 from pension trust funds in fiscal 1993.

TEACHERS' RETIREMENT BOARD (6105)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Teachers' Retirement Program (01)					469,647	469,647					461,222	461,222
a. Audit (Line Item)					23,676	23,676						
b. Data Processing and Service Upgrades (Line Item)					147,380	147,380					108,380	108,380
c. System Enhancements for Legislated Changes (Line Item)					25,000	25,000						
Total					665,703	665,703					569,602	569,602

The amounts listed in items 1, 1a, 1b, and 1c are appropriated from the pension trust fund.

Item 1c is contingent on passage and approval of Senate Bill No. 226.

DEPARTMENT OF MILITARY AFFAIRS (6701)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Administration Program (01)	217,838					217,838	217,991					217,991
a. Audit (Line Item)	5,920					5,920						
2. Army National Guard Program (12)	900,880		1,108,021			2,008,901	906,451		1,118,411			2,024,862
a. Repair and Maintenance (Line Item)	186,000					186,000						
b. Environmental Program (Line Item)	9,275		41,099			50,374	9,228		40,833			50,061
3. Air National Guard Program (13)	180,429		1,402,315			1,582,744	182,313		1,411,460			1,593,773
a. Repair and Maintenance (Line Item)	14,000		42,000			56,000						
4. Disaster Coordination Response (21)	218,140		235,000			453,140	217,697		234,558			452,255

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Audit (Line Item)	4,262		4,262			8,524						
5. Emergency Management Development (24)			263,904			263,904			263,572			263,572
a. Audit (Line Item)			3,314			3,314						
b. Earthquake Program (Line Item)			46,187			46,187			46,190			46,190
6. Local Reimbursement — DES (29)			564,000			564,000			540,000			540,000
7. Veterans' Affairs Program (31)	468,438	9,872	35,557			513,867	468,162	9,669	35,456			513,287
a. Audit (Line Item)	5,918					5,918						
b. Veterans' Cemetery Construction (Line Item)		22,500				22,500		31,500	45,000			76,500
8. Budget Reduction (Line Item)	11,055					11,055	10,019					10,019
Total	2,200,045	32,172	3,745,668			5,977,885	1,993,823	41,169	3,733,480			5,768,472

Items 2a and 3a are biennial appropriations.

In item 3, up to two firefighter FTE may be added if the current contract is modified or becomes unnecessary.

In item 5b, the department shall direct the earthquake program to local schools to the maximum extent possible.

Item 7b is contingent on passage and approval of House Bill No. 723.

	Fiscal 1992						Fiscal 1993					
TOTAL SECTION A	55,350,474	173,303,647	154,675,695	178,818,555	2,664,938	562,811,309	54,909,322	177,204,264	155,703,117	183,274,369	2,307,416	573,398,488

B. HUMAN SERVICES

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES (5301)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Director's Office (01)	136,421		43,874	386,783		567,078	133,586		43,844	384,008		11,438
a. Personnel Specialist (Line Item)				25,529		25,529				25,472		15,472
b. Legal Services Charge System (Line Item)	82,897					82,897	82,897					12,897
2. Central Services (02)	675,412	825,063	213,254	785,266		2,398,995	582,668	779,045	211,795	786,845		0,353
a. Audit (Line Item)				53,666		53,666						
b. Laboratory Contingency (Line Item)		100,000				100,000						
c. Support Staff (Line Item)				46,922		46,922				46,818		46,818

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
d. Newborn Pku Screening (Line Item)		78,562				78,562		28,772				28,772
e. Safe Drinking Water — Laboratory Certification (Line Item)		40,479				40,479		39,863				39,863
f. Safe Drinking Water — Public Health Laboratory (Line Item)		39,847				39,847		39,308				39,308
3. Environmental Sciences (03)	899,129	1,341,088	728,237	145,550		3,113,994	891,306	1,340,240	715,549	142,903		3,089,998
a. Air Quality (Line Item)		84,972	248,386			333,358		80,771	247,976			328,747
b. Asbestos Control (Line Item)		92,919				92,919		92,239				92,239
c. Natural Resources Lawsuit (Line Item)		4,908,046				4,908,046						
d. Air Quality — Permits (Line Item)		301,338				301,338		297,979				297,979
e. Pay Exceptions — Environmental Specialist (Line Item)		24,128	58,799			82,927		23,715	57,825			81,540
f. HB 987 — Regulation of Public Accommodations (Line Item)		10,125				10,125		10,125				10,125
g. HB 988 — Regulation of Campgrounds, Trailer Courts, Etc. (Line Item)		15,750				15,750		15,750				15,750
h. HB 989 — Regulation of Food Establishments (Line Item)		165,000				165,000		165,000				165,000
i. HB 994 — Regulation of Swimming Pools (Line Item)		78,500				78,500		78,500				78,500
4. Solid and Hazardous Waste (04)	185,149	2,253,395	7,504,734			9,943,278	183,227	2,264,333	7,483,177			9,930,737
a. Hazardous Waste (Line Item)		48,626	147,308			195,934		47,823	144,889			192,712
b. Landfill Management (Line Item)		138,367				138,367		138,501				138,501
c. Landfill Management — EQC (Line Item)		297,066				297,066		298,378				298,378
d. BN/ARCO Special Projects (Line Item)		312,346				312,346		308,898				308,898
e. Pay Exceptions — Environmental Specialist (Line Item)	13,725	125,490	99,973			239,188	13,491	124,583	98,317			236,391
f. Exemption for Noncommercial Waste — HB 660 (Line Item)		95,008				95,008		95,008				95,008
5. Water Quality (05)	169,562	521,550	2,079,210			2,770,322	167,493	516,550	2,057,121			2,741,164
a. Agriculture Monitoring (Line Item)		15,000				15,000		15,000				15,000
b. Ground Water Pollution (Line Item)			112,373			112,373			111,203			111,203

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. Wastewater Operators (Line Item)		10,787				10,787		8,901				8,901
d. Subdivisions (Line Item)	44,388					44,388	40,213					40,213
e. Safe Drinking Water (Line Item)		625,017	303,823			928,840		622,756	302,363			925,119
f. Nonpoint Source Pollution (Line Item)			1,423,271			1,423,271			1,422,186			1,422,186
g. Ground Water — EQC (Line Item)		101,494				101,494		99,903				99,903
h. Ground Water — EQC Lawyer (Line Item)			46,378			46,378			45,560			45,560
i. Pay Exceptions — Environmental Specialist (Line Item)	7,647	42,983	75,215			125,845	7,516	45,023	73,969			126,508
j. SB 136 — Water Quality Districts (Line Item)		18,539				18,539		18,504				18,504
6. Health Services and Medical Facilities (06)	476,282	45,753	230,678			752,713	469,155	45,455	231,110			745,720
a. HB 445 — Health Planning Specialist (Line Item)	18,289					18,289	18,251					18,251
7. Family/Maternal and Child Health Bureau (07)	101,985		15,082,316			15,184,301	101,272		14,859,001			14,960,273
a. Child Nutrition (Line Item)			1,634,000			1,634,000			2,642,000			2,642,000
b. WIC (Line Item)			1,122,486			1,122,486			1,122,486			1,122,486
c. MIAMI Program (Line Item)	171,468					171,468	169,808					169,808
8. Preventive Health Bureau (08)	217,576	60,020	1,120,301			1,397,897	216,795	65,874	1,111,683			1,394,352
a. Chronic Disease Prevention (Line Item)			40,064			40,064			39,850			39,850
b. AIDS Education (Line Item)			20,000			20,000			20,000			20,000
c. Sexually Transmitted Diseases (Line Item)			79,556			79,556			78,656			78,656
d. AIDS (Line Item)			33,583			33,583			32,751			32,751
e. Vaccine (Line Item)			103,540			103,540			101,774			101,774
9. Licensing and Certification (09)	450,780		912,361			1,363,141	466,089		876,281			1,342,370
a. OBRA (Line Item)	47,681		802,065			849,746	64,101		724,616			788,717
b. Hearings — OBRA (Line Item)	10,275		126,727			137,002	13,700		123,302			137,002

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total												
	3,806,644	12,813,238	34,292,520	1,443,725		52,256,125	3,599,368	7,702,783	34,979,318	1,386,046		47,667,513

Item 3c is a biennial appropriation.

The total appropriation for the department includes $2,204,426 in fiscal 1992 and $2,204,426 in fiscal 1993 from the maternal and child health block grant. To the extent revenue from the grant exceeds these amounts, it must be distributed to the counties, based upon identifiable needs. To the extent revenue from the grant is less than these amounts, allocations must be reduced proportionately among state programs and grants to counties.

The total appropriation for the department includes $644,771 in fiscal 1992 and $644,771 in fiscal 1993 from the preventive health block grant. To the extent revenue from the grant exceeds these amounts, it must be distributed at the discretion of the director of the department, based upon identifiable health care needs. To the extent revenue from the grant is less than these amounts, the director of the department shall make program reductions.

Funds appropriated to the department for indirect cost recovery may be expended only for that purpose.

The director's office includes $82,897 of general fund money each year within the legal unit that may be used only to pay legal services billed to programs funded by the general fund within the department. None of this appropriation may be transferred to other programs.

Item 2 includes a total of $25,000 of general fund each year that must be used to perform tests as needed on behalf of the food and consumer safety and occupational health bureaus within the department. If these funds are not needed for testing in the food and consumer safety and occupational health bureaus, they may be expended for other services within the laboratories.

It is the intent of the legislature that the department determine the feasibility of funding the public health and chemistry laboratories through proprietary and special revenue accounts with little or no use of general fund money, except as specified to support testing for the food and consumer safety and occupational health bureaus. If the department determines that such accounting is feasible and saves general fund money, then on or after July 1, 1991, the department may request that the approving authority authorize a proprietary account and reduce the general fund appropriation by a like amount. If this occurs, the general fund appropriation must remain at $25,000 to provide necessary testing for the food and consumer safety and occupational health bureaus.

Item 2b is a biennial appropriation that may be used only if the demand for reimbursable services requires expenditures for supplies, materials, and communications in excess of the appropriated levels of $184,820 in fiscal 1992 and $184,697 in fiscal 1993.

The department is authorized to receive an interentity loan from the general fund for no more than $4,928,894 for the purpose of conducting the Clark Fork natural resources damage assessment and litigation against the atlantic richfield company (ARCO). Repayment of this loan is extended through the end of the 1993 biennium in accordance with 17-2-107. The repayment must include interest on the amount loaned at a rate commensurate with rates earned in the short-term investment pool.

The natural resource damage litigation program policy committee is formed to ensure cooperation and unity among the state's natural resource agencies in carrying out their responsibilities as representatives of the governor, who is the trustee of the state's natural resources. The policy committee shall guide and make natural resource damage litigation program policy recommendations. The appropriation of $4,928,894 to continue the natural resources lawsuit against ARCO must be overseen by the policy committee, which consists of the following individuals or their designated representatives: the governor's energy and environmental policy advisor; the directors of the departments of health and environmental sciences and fish, wildlife, and parks; and the commissioner of the department of state lands. The attorney general or his designated representative may act in an advisory capacity to the natural resource damage litigation program policy committee.

None of the appropriation for the licensing, certification, and construction bureau may be transferred to any other program in the department.

The legislative fiscal analyst is directed to recalculate the indirect cost assessments to department programs, using the following rates applied to 100% of personal services:

	FY 92	FY 93
General Rate	14.00%	12.00%
Environmental Sciences Division	3.00%	3.00%
Statewide Cost Allocation	3.75%	3.75%

Items 3e, 4e, and 5i may be used only to pay for the blanket "pay exception — environmental specialist" class series and associated indirect costs, authorized by the department of administration on April 11, 1991.

Items 3f, 3g, 3h, and 3i are contingent on passage and approval of House Bill Nos. 987, 988, 989, and 994 respectively.

Item 4f is contingent on passage and approval of House Bill No. 660.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF LABOR AND INDUSTRY (6602)												
1. Job Service Division (01)		88,244	11,386,520			11,474,764		88,236	11,336,977			11,425,213
a. Federal Economic Dislocated Worker Adjustment and Assistance/Trade Adjustment Assistance Program (Line Item)			247,869			247,869			247,534			247,534
b. Jobs for Montana Graduates (Line Item)			126,517			126,517			124,485			124,485
2. Unemployment Insurance (02)			3,741,488			3,741,488			3,701,445			3,701,445
a. Unemployment Insurance Accounts Receivable (Line Item)			126,312			126,312			102,208			102,208
3. Commissioner/Centralized Services (03)				2,711,023		2,711,023				2,664,153		2,664,153
a. Audit (Line Item)				66,293		66,293						
4. Employment Relations (04)	434,423	1,359,095	680,030	389,277		2,862,825	405,167	1,317,950	684,365	389,094		2,796,576
a. Consideration of Investment Income — HB 187 (Line Item)		44,438				44,438		38,485				38,485
b. HB 342 — Implementation (Line Item)		45,400				45,400		39,445				39,445
5. Legal Services Division (06)		243,463	459,877	133,095		836,435		244,610	461,562	132,946		839,118
6. Research, Safety, and Training (07)		727,437	2,027,353			2,754,790		728,061	1,995,263			2,723,324
7. Human Rights Commission (08)	283,436		101,470			384,906	288,063		101,463			389,526
a. Human Rights Backlog (Line Item)	44,267					44,267	37,322					37,322
8. Workers' Compensation Judge (09)		356,165				356,165		355,643				355,643
9. Job Training Grants (50)			13,940,510			13,940,510			14,158,765			14,158,765
a. Project Work Program Contracts (Line Item)			298,145			298,145			298,145			298,145
b. Federal Economic Dislocated Worker Adjustment and Assistance/Trade Adjustment Assistance Grants (Line Item)			596,435			596,435			664,793			664,793
c. Job Training Partnership Act Funding (Line Item)			1,287,750			1,287,750			1,732,241			1,732,241
Total	762,128	2,864,242	34,987,285	3,299,688		41,913,343	730,552	2,812,430	35,597,246	3,186,193		42,326,421

All unappropriated revenue to and fund balance in the unemployment insurance administrative tax account is appropriated to a reserve fund for job service administrative costs, except amounts, up to $100,000 per fiscal year, necessary to comply with federal requirements that a cost allocation plan for nonunemployment insurance tax collections be established. The amount of unappropriated funds for deposit into the reserve must be determined after all other unemployment insurance administrative tax appropriations are funded. The job service reserve fund must be maintained within the unemployment insurance administrative tax account. Interest earned on the job service reserve must be deposited into the job service reserve fund. Sufficient funds from the job service reserve are appropriated to the department to fund the job service federal fund appropriation in fiscal 1992 and fiscal 1993, contingent upon receipt of federal funds for the support of job service functions that are less than the level received in fiscal 1991. Funds in the job service reserve may not be transferred to the unemployment insurance trust fund until January 30, 1993, except in the case that an amount is necessary to reduce the employer contribution schedule for the coming year. Any transfer prior to January 30, 1993, must be reviewed by the legislative finance committee.

The department, in concert with other interested parties, shall prepare formal guidelines for use of the unemployment insurance administrative tax funds and present these guidelines to the 53rd legislature. At a minimum, the guidelines must include a prioritization of programs and activities to be funded. The criteria for prioritization must include the following considerations:

(1) loss of federal funding, impact on rural communities, and employer/employee-related functions; and

(2) the establishment and maintenance of a reserve fund to ensure that employment security services continue in the event of federal fund reductions.

The department shall provide information to the 53rd legislature regarding the actual amount collected by the 3 FTE added to collect unemployment insurance accounts receivable.

The department is appropriated up to $1 million each year from funds referred to in 39-71-502 and 39-71-901 to pay uninsured employer and subsequent injury benefits as required by 39-71-503 and 39-71-907.

Funds appropriated in item 1b must be distributed to the office of public instruction for administration of the jobs for Montana's graduates program.

Item 4 is increased by $68,916 in fiscal 1992 and by $70,143 in fiscal 1993 (state special revenue) if House Bill No. 837 is not passed into law.

Item 4a is contingent on passage and approval of House Bill No. 187.

Item 4b is contingent on passage and approval of House Bill No. 342.

Contingent on passage and approval of Senate Bill No. 228, the budget director shall increase item 8 by the amount necessary to bring the salary and benefits of the workers' compensation judge to the levels authorized by Senate Bill No. 228 less any increase provided for in the pay plan bill.

Funds appropriated in item 9c to replace federal fund reductions in Job Training Partnership Act (JTPA) programs statewide are one-time only funds and may be used only if and to the extent federal JTPA funds allocated to the state are less than the amount allocated in state fiscal year 1991. Unspent funds revert to the job service reserve fund in the unemployment insurance administrative tax account.

The amount of unemployment insurance administrative tax funding for the jobs for Montana's graduates program may not be increased.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES (6901)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Family Assistance (01)	14,664,197	724,364	44,743,522			60,132,083	14,542,550	721,346	44,703,905			59,967,801
a. Food Stamp Employment and Training (Line Item)			96,000			96,000			96,000			96,000
b. Day-Care Rate Increase (Line Item)	33,404		84,673			118,077	57,550		147,256			204,806
c. Food Stamp Job Search Support (Line Item)	43,750					43,750	43,750					43,750
d. Statewide Jobs Program (Line Item)	709,367		1,931,001			2,640,368	709,367		1,931,001			2,640,368
e. AFDC/General Assistance at 42% of Federal Poverty Index (Line Item)	537,529	29,142	1,135,730			1,702,401	1,199,824	67,125	2,622,980			3,889,929
2. Eligibility Determination Program (03)	2,463,835	2,436,980	4,523,828			9,424,643	2,461,200	2,434,448	4,519,060			9,414,708
3. Administrative and Support Services (04)	616,796	307,237	1,517,426	1		2,441,460	616,875	308,621	1,522,310	1		2,447,807
a. Audit (Line Item)	68,690	6,284	74,974			149,948						

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
b. Grant Writing (Line Item)	11,250	11,250	22,500			45,000	11,250	11,250	22,500			45,000
4. Child Support Enforcement (05)		1,225,772	2,443,455			3,669,227		1,215,076	2,441,553			3,656,629
a. Contracted Employees (Line Item)		126,991	246,512			373,503		129,124	250,652			379,776
b. Collection of Parental Contribution to Out-of-Home Care — HB 993 (Line Item)		10,145	19,692			29,837		10,294	19,981			30,275
5. State-Assumed County Administration (06)	606,151		500,578			1,106,729	606,639		500,752			1,107,391
6. Medical Assistance (07)	53,809,220	7,580,929	169,846,054			231,236,203	54,611,324	7,375,464	174,077,091			236,063,879
a. OBRA-90 (Line Item)	438,298		1,025,486			1,463,784	1,477,222		3,257,934			4,735,156
b. Hospital Rate Study/Cost Containment (Line Item)	292,080		142,080			434,160	191,300		41,300			232,600
c. Baby Your Baby (Line Item)		134,000	134,000			268,000						
d. Nurses' Aide Testing (Line Item)	86,400		86,400			172,800	86,400		86,400			172,800
e. Nursing Home Rate Rebase (Line Item)	1,110,746		2,815,539			3,926,285	2,644,514		6,766,569			9,411,083
f. Elderly Waiver Expansion (Line Item)	74,888		189,827			264,715	100,134		258,216			358,350
g. Residential Psychiatric (Line Item)			4,400,086			4,400,086			4,518,295			4,518,295
h. Increase Ob/Gyn/Ped Physicians' Rates (Line Item)	1,027,510		2,804,553			3,832,063	1,360,813		3,481,937			4,842,750
i. Health Clinics Expansion (Line Item)	18,388		46,612			65,000	18,265		46,735			65,000
j. Hospital Rate Rebase (Line Item)							920,613		2,355,590			3,276,203
k. Ambulance Provider Increase (Line Item)	138,729		355,189			493,918	138,791		355,127			493,918
l. Pregnant Women Targeted Case Management (Line Item)	139,484		353,566			493,050	138,574		354,572			493,146
m. Provider Rate Increase (Line Item)	3,181		8,068			11,249	6,354		16,258			22,612
n. Operating Cost Implementation of SB 391 (Line Item)	62,298		119,299			181,597	86,551		90,752			177,303
o. Managed Care Benefit Costs of SB 391 (Line Item)							143,566		367,346			510,912
p. Targeted Case Management Benefits Costs for the Mentally Ill — SB 391 (Line Item)			1,510,752			1,510,752			1,524,996			1,524,996
q. Federal Medicaid Reimbursement for State Institutions — HB 93 (Line Item)			104,334			104,334			109,288			109,288

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
7. Audit and Program Compliance Division (08)	578,770	7,446	809,479			1,395,694	578,628	7,430	809,185			1,395,243
8. Office of Management, Analysis, and Systems (09)	1,860,054	534,238	3,083,450	1		5,477,743	2,074,546	578,011	3,474,121			6,126,678
a. TDD Project Implementation (Line Item)		67,072				67,072		70,890				70,890
b. TEAMS Operations (Line Item)	438,795					438,795	485,182					485,182
c. SEARCHS Operations (Line Item)		396,337	3,567,031			3,963,368		226,975	1,322,777			1,549,752
9. Vocational Rehabilitation Program (10)	970,616	668,058	6,416,932			8,075,606	969,566	687,966	6,278,353			7,935,905
a. JTPA Administration (Line Item)			15,000			15,000			15,000			15,000
b. Provider Rate Increase (Line Item)	51,952		199,957			251,909	104,422		401,908			506,330
c. JTPA Additional Training (Line Item)			25,000			25,000			25,000			25,000
d. Program Expansion (Line Item)	155,455					155,455	155,455					155,455
10. Disability Determination Program (11)			2,655,318			2,655,318			2,654,349			2,654,349
11. Visual Services Program (13)	281,856		968,318			1,250,174	281,653		967,493			1,249,146
a. Provider Rate Increase (Line Item)	7,204		21,654			28,858	14,476		43,520			57,996
12. Developmental Disabilities Program (14)	9,213,088		16,042,689			25,255,777	9,277,332		15,975,818			25,253,150
a. Provider Rate Increase (Line Item)	931,226		328,892			1,260,118	1,916,428		676,848			2,593,276
b. Program Expansion (Line Item)	181,779		467,431			649,210	181,779		467,431			649,210
c. DD System Phase IV Implementation (Line Item)	725,745		568,430			1,294,175	1,213,331		1,517,728			2,731,059
d. DD System Phase I and II Implementation (Line Item)	391,794		762,564			1,154,358	389,156		761,753			1,150,909
e. DD Part H Expansion (Line Item)	597,059		244,627			841,686	897,059		244,627			1,141,686
f. Increased Title XIX Funding (Line Item)			500,000			500,000			500,000			500,000
g. Montana Youth Initiative (Line Item)			86,000			86,000			86,000			86,000
h. Chapter I OPI DD Treatment (Line Item)			90,000			90,000			90,000			90,000
i. OBRA-87 (Line Item)							296,516		762,470			1,058,986

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
13. Developmental Disabilities Advisory Council (15)												
			304,698			304,698			304,672			304,672
a. DDPAC Grant Increased Administration (Line Item)												
			9,877			9,877			10,004			10,004
b. DDPAC Grant Increased Benefits (Line Item)												
			32,500			32,500			32,500			32,500
Total												
	93,232,386	14,296,244	278,470,880	2		385,999,512	101,008,976	14,444,060	293,903,863	1		409,356,900

The department is authorized to retain 7.5% of the federal community services block grant and pass through the remaining 92.5% to the human resource development councils (HRDC). If, during fiscal 1992 or fiscal 1993, the block grant falls below the federal fiscal year 1990 grant level, the department shall retain only 5% and pass through the remaining 95% to the HRDCs.

Item 1b is funding for rate increases to day-care providers. Beginning October 1, 1991, the department shall increase day-care provider rates up to 75% of the "local market rate" (the maximum allowed under federal regulations). If federal regulations permit the use of funds from the new "child care and development block grant" for these increases, the department shall decrease the general fund appropriations by the amount of block grant funds available.

Item 1e is additional funding to set AFDC and general assistance payment levels at 42% of the federal poverty index.

The department may, beginning October 1, 1991, pay AFDC recipients a transition-to-work allowance. The allowance may be used for travel and relocation expenses of the recipient and family to another county or state. AFDC recipients are eligible to receive this allowance under rules adopted by the department. The rules may establish limitations on the amount to be paid and require that the recipient have verification of employment, an employment interview, or acceptance into an approved educational or training program. Expenses for a transition-to-work allowance may be paid from the appropriation for AFDC benefits.

The state share of the AFDC-related support collections and all AFDC and non-AFDC federal incentive payments must be deposited in a state special revenue account from which the state's share of the administrative and operational costs of the child support enforcement program must be paid. The legislature intends that, during the 1993 biennium, the department collect $1.25 for each $1 expended for administrative and operational costs from the account. Expenditures made from the account for state medicaid match or development of the SEARCHS computer project are not considered administrative or operational expenditures for purposes of this requirement. Any cash fund balance in excess of $500,000 in the state special revenue account at the end of each fiscal year must be deposited in the state general fund.

The department is authorized to transfer funds among appropriations for medicaid primary care, medicaid nursing care, medicare buy-in, state medical, and the home and community-based waiver program. Except as provided below, funds transferred to the medicaid waiver program may not be used to increase the number of recipients receiving waiver services but must be used solely for covering cost increases above the appropriated level.

The department may utilize funds appropriated for medicaid nursing care to increase the number of recipients in the home and community-based waiver program during the 1993 biennium under the following conditions:

(1) During the 1993 biennium, no more than 25 nursing residents who are appropriate for waiver services may be transferred from nursing facilities to the waiver program.

(2) Per diem waiver costs for residents moved from nursing facilities may not exceed the statewide average medicaid per diem cost of intermediate nursing care.

(3) The department shall keep records of each resident transferred under this provision and submit to the 53rd legislature a report on the number of residents transferred and any cost savings achieved as a result of the transfers.

The legislature intends that expenditures for all executive budget modifications for provider rate increases approved by the legislature be limited to dollar amounts appropriated rather than percentage increases on which the original estimates may have been based. The department will be in compliance with this provision if:

(1) it estimates total costs for each medicaid service category in June, prior to the beginning of each fiscal year of the 1993 biennium; and

(2) the percentage increases or base adjustments approved by the department are limited to the dollar amount appropriated for each budget modification.

The department may not expand or reduce the amount, scope, or duration of benefits provided to recipients under the medicaid primary care or nursing care programs during the 1993 biennium unless Title XIX of the federal Social Security Act is amended to require expansion or reduction of benefits as a condition of the state receiving federal financial participation. This provision may not be construed to prohibit the department from implementing coverage provided in 53-6-101(3)(l).

The appropriation in item 6q is contingent on passage and approval of House Bill No. 93.

The rate increases in items 6e and 6h are funded beginning October 1, 1991. The rate increase in item 6j is funded beginning October 1, 1992.

Upon final determination of all general fund money in the department's unreconciled special revenue fund balance (in the approximate total amount of $2,530,153) and the deposit of these funds in the general fund, $438,795 in fiscal 1992 and $485,182 in fiscal 1993 are appropriated to fund the additional general fund costs of the TEAMS project in item 8b. Any funds remaining in the special revenue fund to which the state is entitled must be deposited in the general fund.

However, if a subsequent reconciliation concludes that funds transferred from the unreconciled account to the general fund belong to the federal government, the department may request a general fund supplemental appropriation to repay the federal funds.

House Bill No. 903 requires the department to transfer all money in the federal special revenue account (number 03143) associated with the former department of community affairs grant closeouts reported in the April 1990 legislative audit report. If House Bill No. 903 is passed and approved and a subsequent reconciliation of this account concludes that any of the funds transferred from the account to the general fund belong to the federal government, the department may request a general fund supplemental appropriation to repay the federal funds.

It is the intent of the legislature that annualized expenses for operation of SEARCHS not exceed $1,500,000. This amount includes expenses for any facilities management contracting that may be utilized for system operations, computer processing costs directly associated with operation of the system, and other personal services and nonpersonal services costs directly charged to the management and operation of the system. The department may not proceed with development of SEARCHS until it has demonstrated to the satisfaction of the governor's office of budget and program planning and to the legislative finance committee that the projected annualized operational costs of the system will not exceed the limit imposed in this statement of intent.

Item 9b is funding for a 4.5% rate increase each year of the 1993 biennium to providers of vocational rehabilitation services.

Item 11a is funding for a 4.5% rate increase each year of the 1993 biennium to providers of visual services.

The department is authorized to transfer funds between appropriations for the vocational rehabilitation and visual services programs.

Item 12a is funding for a 4.5% rate increase each year of the 1993 biennium to providers of developmental disabilities services.

The department may pursue funding under the federal ICF/MR program for additional intensive service slots funded by the 1991 legislature if the federal government fails to approve adequate medicaid waiver funding under the home and community-based waiver program.

DEPARTMENT OF FAMILY SERVICES (6911)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Management Support (01)	1,671,245	14,806	535,741			2,221,792	1,670,776	14,784	527,236			2,212,796
a. Audit (Line Item)	62,036		38,982			101,018						
b. Management Information System (Line Item)	80,037		8,893			88,930						
c. Management Increases (Line Item)	109,849		81,583			191,432	102,829		75,227			178,056
d. Division Directors (Line Item)	40,082		7,073			47,155	37,789		6,669			44,458
2. Community Services (02)	19,705,863	2,607,131	12,097,033			34,410,027	20,227,881	2,614,818	12,178,127			35,020,826
a. Child Care and Development Block Grant (Line Item)			2,373,287			2,373,287			2,641,718			2,641,718
b. Staff Increases (Line Item)	233,293		41,169			274,462	224,499		39,853			264,352
c. Montana Developmental Center Phases I and II SSI (Line Item)	27,072					27,072	27,072					27,072
d. Montana Developmental Center Phase IV Child Placement (Line Item)	42,435		107,565			150,000	84,300		215,700			300,000

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
e. Montana Developmental Center Phase IV Case Management (Line Item)	29,664		51,546			81,210	29,665		51,535			81,200
f. Montana Developmental Center Phase IV SSI (Line Item)	18,740					18,740	53,580					53,580
g. Youth Treatment Services (Line Item)	1,770,856					1,770,856	1,764,354					1,764,354
h. Field Equipment (Line Item)	20,000					20,000	20,000					20,000
i. Native American Services (Line Item)	280,863		711,937			992,800	278,977		713,823			992,800
j. SB 37 — Aftercare Services (Line Item)	5,106					5,106	33,813					33,813
3. Mountain View (03)	1,964,895	3,134	103,807			2,071,836	1,961,694	3,135	103,877			2,068,706
a. Staff Increases (Line Item)	34,902					34,902	33,876					33,876
4. Pine Hills School (04)	3,205,244	314,045	303,489			3,822,778	3,220,172	320,180	303,344			3,843,696
a. Industries Program (Line Item)		6,000				6,000		6,000				6,000
b. Staff Increases (Line Item)	61,757					61,757	61,707					61,707
Total	29,364,538	2,945,116	16,462,105			48,771,759	29,852,783	2,958,917	16,856,907			49,668,607

Item 1b is a biennial appropriation.

The department shall submit to the 53rd legislature a report detailing the numbers of developmentally disabled (DD) clients served by the department in fiscal 1992 and the actual fiscal 1992 general fund and federal fund expenditures for that service.

The department may provide DD targeted case management through increases in staff, or it may contract for the targeted case management services. The department may transfer the targeted case management program for the developmentally disabled to the department of social and rehabilitation services during the 1993 biennium.

Included in item 2 is a general fund appropriation of $38,708 in fiscal 1992 and $58,083 in fiscal 1993 for increases to day-care providers. Beginning October 1, 1991, the department shall increase day-care provider rates up to 75% of the "local market rate" (the maximum allowed under federal regulations). If federal regulations permit the use of funds from the new "child care and development block grant" for these increases, the department shall decrease the general fund appropriations by the amount of block grant funds available.

In item 2a, the department is appropriated federal funds of $2,373,287 in fiscal 1992 and $2,641,716 in fiscal 1993 for improving the availability and quality of day care. The department shall issue a report to the 53rd legislature detailing the numbers and types of services provided and the actual fiscal 1992 expenditures for those services.

In item 2g, at least $1.3 million for the biennium must be reserved for residential treatment services.

In item 2i, the department may use the funds to contract for direct services on reservations or pay for placement services.

The continuum of service plan is to be presented to the legislative finance committee during calendar 1991 for its review and comment. After review by the committee and consideration of recommendations and upon implementation of the plan, all funds are to be spent in accordance with the plan. The goal of the plan is to develop a comprehensive child welfare service system by July 1, 1993. The system must include but not be limited to family-based services, foster care, therapeutic foster care, group care, residential treatment, and psychiatric hospitalization for youth. Funds appropriated for the youth foster care program may not be transferred to the medicaid program administered by the department.

The personal services reduction may not be applied to social workers in the community services program of the department.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
TOTAL SECTION B	126,965,896	32,918,838	364,312,500	4,743,416		528,940,730	135,191,878	27,918,180	381,337,362	4,572,240		549,018,460
C. NATURAL RESOURCES												
PUBLIC SERVICE REGULATION (4201)												
1. Public Service Regulation Program (01)	1,791,853		25,137	19,397		1,836,387	1,806,581		25,113	19,380		1,851,074
a. Audit (Line Item)	15,784					15,784						
b. Consultants (Line Item)	50,000					50,000						
c. Travel and Registration (Line Item)	25,000					25,000						
d. Exempt Positions Salaries (Line Item)	14,400					14,400	14,400					14,400
e. Public Service Commission Relocation — SB 164 (Line Item)	176,310					176,310	108,120					108,120
f. Regulation of Log Hauling — HB 192 (Line Item)	23,639					23,639	20,027					20,027
Total	2,096,986		25,137	19,397		2,141,520	1,949,128		25,113	19,380		1,993,621

Items 1b and 1c are biennial appropriations.

	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)												
1. Management Services Division (01)		1,184,123	471,048	1,845,483		3,500,654		1,231,525	469,542	1,839,404		3,540,471
a. Audit (Line Item)		53,666				53,666						
b. Legislative Contract Authority (Line Item)			65,000			65,000			65,000			65,000
c. Fiscal Management Position (Line Item)		33,801				33,801		32,426				32,426
d. Vehicle Account (Line Item)				163,000		163,000				169,000		169,000
2. Field Services Division (02)		2,139,230	451,282	106,137		2,696,649		2,158,078	457,296	101,115		2,716,489
a. Block Management (Line Item)		170,581				170,581		170,469				170,469
b. Fishing and Motorboat Access (Line Item)		9,880	29,642			39,522		9,863	29,591			39,454
c. Microcomputer Support (Line Item)		30,731				30,731		30,665				30,665
d. Block Management — Executive Planning Process (Line Item)		234,494				234,494		234,496				234,496
e. Game Damage (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		60,000				60,000		75,000				75,000
f. Sporting Information (Line Item)												
		17,000				17,000		17,000				17,000
g. License Agent Commissions (Line Item)												
		10,300				10,300		97,300				97,300
h. Development and Maintenance of Department Property (Line Item)												
		60,000				60,000		60,000				60,000
i. Computerize Land Records (Line Item)												
		36,000				36,000		36,000				36,000
j. Cherry Creek Reservoir (Line Item)												
		100,000	50,000			150,000						
k. License Drawings — HB 91 (Line Item)												
		9,864				9,864		7,297				7,297
3. Fisheries Division (03)												
		2,507,264	2,162,190		18,600	4,688,054		2,367,417	2,130,525			4,497,942
a. Water Leasing Study (Line Item)												
			60,000			60,000						
b. Legislative Contract Authority (Line Item)												
			1,245,000			1,245,000			1,505,000			1,505,000
c. Missouri Basin Reservations (Line Item)												
		41,706	125,120			166,826						
d. Streambank Projects (Line Item)												
		10,000	31,000			41,000		10,000	31,000			41,000
e. USFS Fisheries Data Project (Line Item)												
		13,958	41,873			55,831		14,233	42,700			56,933
f. Evaluate Fish Population (Line Item)												
		27,060	81,180			108,240		27,051	81,152			108,203
g. Fishing and Motorboat Access (Line Item)												
		8,006	24,017			32,023		8,099	24,264			32,363
h. Flathead Lake Fishery (Line Item)												
		5,766	17,364			23,130		5,971	17,911			23,882
i. Clark Fork River Investigation (Line Item)												
		12,318	36,953			49,271		12,317	36,952			49,269
j. Fish Hatchery Operations (Line Item)												
		13,750	41,250			55,000		13,750	41,250			55,000
k. Evaluation of Fish Introductions — HB 576 (Line Item)												
		18,750	56,250			75,000						
l. Paddlefish Roe — HB 115 (Line Item)												
		28,000				28,000		28,000				28,000
m. Water Measuring Devices — HB 908 (Line Item)												
		7,250				7,250		21,750				21,750
4. Law Enforcement Division (04)												
		3,958,780	190,862			4,149,642		3,991,839	190,713			4,182,552
a. Legislative Contract Authority (Line Item)												
			40,000			40,000			40,000			40,000
b. Special Investigations (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		110,580				110,580		110,547				110,547
c. Enforcement Relocation (Line Item)												
		27,000				27,000		27,000				27,000
5. Wildlife Division (05)												
		2,500,661	2,288,629			4,789,290		2,519,720	2,308,357			4,828,077
a. Upland Game Birds (Line Item)												
		1,853,386				1,853,386						
b. Legislative Contract Authority (Line Item)												
			1,404,500			1,404,500			1,331,500			1,331,500
c. Sun River Game Management Area (Line Item)												
		35,000				35,000						
d. Habitat/Timber Sales Plans (Line Item)												
		18,250				18,250		18,250				18,250
e. Canyon Ferry Wildlife Management Area (Line Item)												
		7,404				7,404		7,398				7,398
f. Helicopter Rental (Line Item)												
		45,300	45,300			90,600		45,300	45,300			90,600
g. Upland Game Bird Increase (Line Item)												
		125,000				125,000						
h. Development and Maintenance of Real Property — SB 252 (Line Item)												
		532,026				532,026						
6. Parks Division (06)												
	54,699	3,378,402	289,215	256,913		3,979,229	54,700	3,405,876	289,122	271,732		4,021,430
a. Land and Water Conservation Fund (Line Item)												
			700,000			700,000						
b. Legislative Contract Authority (Line Item)												
			25,000			25,000			25,000			25,000
c. Park Futures Committee (Line Item)												
	368,356					368,356	368,364					368,364
d. Fishing Access Maintenance (Line Item)												
		49,549				49,549		49,550				49,550
e. Capitol Grounds Maintenance (Line Item)												
				27,265		27,265				27,258		27,258
f. Off-Highway Vehicles — HB 309 (Line Item)												
		98,580				98,580		98,580				98,580
7. Conservation Education Division (08)												
		1,237,193	149,842			1,387,035		1,241,942	156,244			1,398,186
a. Shooting Ranges (Line Item)												
		150,049				150,049						
b. Legislative Contract Authority (Line Item)												
			30,000			30,000			30,000			30,000
c. Watchable Wildlife (Line Item)												
		29,333				29,333		29,334				29,334
d. Aquatic Education (Line Item)												
		2,748	8,244			10,992		2,748	8,244			10,992
e. Update Hunter Education (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		8,250	18,750			25,000		8,250	18,750			25,000
f. Off-Highway Vehicles — HB 309 (Line Item)		10,900				10,900		10,900				10,900
8. Administration (09)		1,608,450	552,491			2,160,941		1,597,936	550,990			2,148,926
a. Legislative Contract Authority (Line Item)			100,000			100,000			100,000			100,000
b. Legal Services — Executive Planning Process (Line Item)		33,798				33,798		33,801				33,801
c. Tribal Relations (Line Item)		40,000				40,000		40,000				40,000
d. Interagency Support (Line Item)		25,000				25,000		25,000				25,000
e. Geographic Information System (Line Item)		50,000				50,000		40,000				40,000
f. Regional Offices Support (Line Item)		75,000				75,000		75,000				75,000
g. Sikes Act (Line Item)		150,000	20,000			170,000						
h. Predator Control (Line Item)		20,000				20,000		20,000				20,000
i. Legal Services (Line Item)		12,300				12,300		12,300				12,300
Total	423,055	23,019,436	10,852,012	2,398,798	18,800	36,711,901	423,084	20,072,969	10,024,403	2,408,509		32,928,945

Items 2j, 3a, 3c, 3k, 5a, 5c, 5g, 5h, 6a, 7a, and 8g are biennial appropriations.

If the department receives private funds, it may increase its state special revenue appropriation and decrease its federal revenue appropriation by like amounts.

The appropriation for the legislative contract authority in items 1b, 3b, 4a, 5b, 6b, 7b, and 8a is subject to the following provisions:

(1) Legislative contract authority applies only to federal and private funds.

(2) Legislative contract authority expenditures must be reported on state accounting records. The records must be separate from current level operations.

(3) A report must be submitted by the department to the legislative fiscal analyst following the end of each fiscal year of the biennium. The report must include a listing of projects, with the related amount of expenditures for each project.

The department shall conduct a study of the options and methods available for allocating administrative costs to the various state special revenue funds managed by the agency. The department shall present the findings of its study to the legislative finance committee by July 1, 1992, along with its recommendation, affected accounts, and any required statute changes.

Item 2f contains $17,000 a year to develop informational displays for use by license agents, and item 2g contains $10,300 in fiscal 1992 and $97,300 in fiscal 1993 for increases in license agents' commissions. The expenditures of these appropriations are contingent on the enactment of Senate Bill No. 171. Senate Bill No. 171 increases certain fishing and hunting license fees.

Item 2h contains $60,000 a year from the general license account for development and maintenance of wildlife management areas, waterfowl projects, parks, and fishing access sites. This appropriation is reduced by the amount of funds Senate Bill No. 252, if enacted, provides the general license account for the management of wildlife management areas. Senate Bill No. 252 revises allocation of funds for development and maintenance of wildlife habitat.

Item 3 contains $18,600 in fiscal 1992 to contract with the U.S. fish and wildlife service to raise Kokanee salmon fingerlings at the Creston national fish hatchery. If a second raceway shelter at the Creston national fish hatchery is not purchased, this appropriation is reduced by $8,220.

Item 3i contains $50,042 in fiscal 1992 and $50,040 in fiscal 1993, appropriated for aquatic resource data collection on the Upper Clark Fork River in connection with the state's resource damage assessment suit against ARCO. The department shall present to the 53rd legislature the results of this project. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base. In the litigation, the state shall seek reimbursement for all expenses incurred by the department associated with the assessment and litigation. Reimbursement must include interest on the amount commensurate with rates earned in the short-term investment pool.

Item 4c contains $27,000 a year for employee relocation expenses. The department shall present the 53rd legislature with a report on historical expenditures for employee relocation. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 6 contains $246,266 from federal funds and $55,000 from the general fund in fiscal 1992 and $246,173 from federal funds and $55,000 from the general fund in fiscal 1993 for the Montana conservation corps. It is the intent of the legislature that the department provide a liaison position to coordinate this program with the human resource development council.

Item 8 contains $5,500 in fiscal 1992 to print the department's 5-year strategic plan. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 8c contains $50,000 in fiscal 1992 and $40,000 in fiscal 1993 for a pilot project to evaluate potential uses of a geographic information system within the department. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF STATE LANDS (5501)												
1. Central Management Program (01)	1,435,854	97,827	112,854	188,024		1,834,159	1,436,785	95,037	112,596	185,611		1,830,029
a. Audit (Line Item)	41,038					41,038						
b. Trust Land Access (Line Item)	300,000					300,000						
c. Helena Office Support Staff (Line Item)	16,451	31,796				48,247	16,350	31,796				48,146
d. Royalty Auditor Travel Expense (Line Item)		10,469				10,469		10,469				10,469
e. Revised Lease for Office Space (Line Item)	82,992					82,992	82,992					82,992
2. Reclamation Program (03)	299,465	626,141	8,589,719			9,515,325	296,430	630,754	8,589,223			9,516,407
a. Opencut Bond Forfeiture (Line Item)		100,000				100,000						
b. Hard-Rock Reclamation (Line Item)		100,000				100,000						
c. Hard-Rock Bond Forfeiture (Line Item)		100,000				100,000						
d. Environmental Analysis (Line Item)		3,000,000				3,000,000						
e. Coal Bureau Workload (Line Item)		47,176	97,199			144,375		51,039	104,828			155,867
f. Abandoned Mine Rent (Line Item)			17,784			17,784			17,784			17,784
g. Hard-Rock Workload (Line Item)		123,609				123,609		118,747				118,747
h. Coal and Uranium Rent (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		5,336	12,448			17,784		5,336	12,448			17,784
i. Hard-Rock Increase (Line Item)		100,000				100,000		100,000				100,000
j. Environmental Compliance (Line Item)		129,299				129,299		108,190				108,190
k. SB 253 — Opencut Reclamation (Line Item)		15,500				15,500		15,500				15,500
3. Land Administration Program (04)	703,122	255,640				958,762	702,278	255,818				958,096
a. Trust Land Management (Line Item)	90,829					90,829	115,923					115,923
b. Cabinsite Sales (Line Item)		70,000				70,000						
4. Forestry (25)	5,712,977	2,983,314	365,005			9,061,296	5,708,882	2,982,595	366,266			9,058,743
a. Federal Fire Reimbursement (Line Item)			100,000			100,000			100,000			100,000
b. State/County Cooperative Fire (Line Item)	43,040	21,517				64,557	42,670	21,333				64,003
c. Slash Increase (Line Item)		31,384				31,384		31,385				31,385
d. Urban Forestry Assistance (Line Item)			158,759			158,759			158,764			158,764
e. Forest Resource Management Program (Line Item)			338,974			338,974			250,465			250,465
f. Best Management Practices Audit (Line Item)	10,000					10,000						
g. Block 5 and Philipsburg Fire (Line Item)	67,425	33,712				101,137	68,454	34,228				102,682
h. Best Management Practices Work (Line Item)	23,436					23,436	23,437					23,437
i. Forestry Capital Equipment (Line Item)	100,383	42,117				142,500	100,383	42,117				142,500
j. HB 731 — Streamside Management Zones (Line Item)	52,463					52,463	37,018					37,018
Total	8,979,274	7,904,828	9,808,543	188,024		26,880,467	8,831,804	4,510,344	9,738,175	185,811		23,085,734

The $300,000 general fund appropriation in item 1b is to be used for an economic study ($250,000) of the surface uses of state lands, with emphasis on recreation uses, and for startup costs ($50,000) of the recreational access program mandated in House Bill No. 778. The study of recreational uses must be performed by an economist with experience in analysis of the economic value of recreation.

Items 2a through 2d, 3b, and 4f are biennial appropriations.

The department shall conduct a study of the options and methods available for allocating administrative costs to the various state special revenue funds managed by the agency. The department shall present the findings of its study to the legislative finance committee by July 1, 1992, along with its recommendation, affected accounts, and any required statute changes.

Item 2i contains $100,000 a year for the hard-rock increase modification. This appropriation is contingent on enactment of House Bill No. 448.

The legislature recommends that the board of land commissioners amend its cabinsite rules to require lessees who apply for sale of their cabinsites to reimburse the department for all expenses it incurs in processing the sale applications.

Item 2k grants spending authority to implement Senate Bill No. 253 and is contingent on passage and approval of Senate Bill No. 253.

Item 4 contains $24,400 a year from the general fund to provide training and materials on best management practices to loggers and forest landowners. If federal funds are received for this purpose, the general fund appropriation must be reduced by a like amount.

Item 4d contains $173,100 a year of federal funds for the urban forestry assistance program. The department shall emphasize replacing dead, diseased, and infected trees in Montana communities. Replacement trees that are adapted to and will survive in Montana must be used.

Item 4f contains $10,000 in fiscal 1992 as a biennial appropriation to coordinate and conduct, in consultation with the environmental quality council, audits of the application and effectiveness of voluntary best management practices for timber sales.

Item 4j is contingent on passage and approval of House Bill No. 731.

Federal fire reimbursement funds are those funds received for expenses incurred from loaning department personnel to federal agencies to assist in fire suppression activities. Only those federal funds received as reimbursement of expenses credited against the department's state forestry operational budget are considered federal fire reimbursement funds. All other federal funds received must be deposited into the general fund. The department shall report federal fire reimbursement expenditures on state accounting records, and the records must be separate from current level operations.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF LIVESTOCK (5603)												
1. Centralized Services Program (01)	82,794	352,967	18,170			453,931	82,714	352,623	18,135			453,472
a. Audit (Line Item)	3,899	16,620				20,519						
2. Diagnostic Laboratory Program (03)	314,947	453,215				768,162	314,978	453,263				768,241
3. Disease Control Program (04)		482,783				482,783		483,794				483,794
4. Milk and Egg Program (05)	150,313		30,707			181,020	149,680		31,268			180,948
5. Inspection and Control Program (06)		2,095,424				2,095,424		1,981,982				1,981,982
a. Livestock Workload Increase (Line Item)		53,861				53,861		53,794				53,794
6. Predator Control Program (08)		374,162				374,162		272,266				272,266
a. Section 8 (Line Item)		20,000				20,000		20,000				20,000
7. Rabies Control (09)		15,000				15,000		15,000				15,000
8. Meat and Poultry Inspection Program (10)	225,720		225,721			451,441	225,510		225,510			451,020
Total	777,673	3,864,032	274,598			4,916,303	772,882	3,832,722	274,913			4,880,517
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)												
1. Centralized Services (21)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	1,236,840	300,301	4,301			1,831,422	1,240,148	300,121	4,364			1,834,630
a. Audit (Line Item)												
	42,617					42,617						
b. State of Montana, et al. v. United States Army Corps of Engineers, et al. (Line Item)												
	25,000					25,000						
2. Oil and Gas Regulation (22)												
		1,151,230				1,151,230		1,136,578				1,136,578
a. Oil and Gas Environmental Impact Statement — Montana Environmental Policy Act Compliance (Line Item)												
		50,000				50,000		50,000				50,000
3. Conservation and Resource Development Division (23)												
	75,936	985,671	54,766			1,116,371	76,343	987,190	54,782			1,118,315
a. Statewide Resource Conservation and Development Coordinator (Line Item)												
	14,470		14,471			28,941	14,438		14,438			28,876
b. Statewide Resource Conservation and Development Operating Expenses (Line Item)												
	19,887		19,887			39,774						
c. HB 795 — Montana Community Infrastructure Program (Line Item)												
	20,000					20,000	20,000					20,000
d. HB 701 — Implementation of Clean Coal Technology Project (Line Item)												
		20,000				20,000						
e. Pay Exceptions (Line Item)												
		8,361				8,361		8,106				8,106
4. Water Resources and Planning (24)												
	2,555,844	2,011,436	51,316			4,618,596	2,548,521	2,011,112	51,022			4,610,655
a. Broadwater Equipment (Line Item)												
		336,000				336,000						
b. Rehabilitation of State-Owned Water Projects (Line Item)												
		991,000				991,000						
c. Poplar River Monitoring (Line Item)												
		33,050				33,050		33,750				33,750
d. Middle Creek Dam (Line Item)												
			3,896,925			3,896,925						
e. Smith River (Line Item)												
			1,600,000			1,600,000						
f. Tongue River (Line Item)												
		400,000	1,600,000			2,000,000						
g. Missouri Basin Reservation (Line Item)												
		82,506				82,506		82,317				82,317
h. Missouri River Operating Expenses (Line Item)												
		375,743				375,743						
i. Hydrologist Pay Exceptions (Line Item)												
		71,113				71,113		71,113				71,113
j. Pay Exceptions (Line Item)												
	27,374	90,736				118,110	27,374	90,736				118,110
5. Reserved Water Rights Compact Commission (25)												
	150,717	283,447				434,164	150,119	282,652				432,771
a. Pay Exceptions (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	3,948	7,331				11,279	3,936	7,311				11,247
b. Hydrologist Pay Exceptions (Line Item)		11,440				11,440		11,410				11,410
6. Energy Planning (26)	486,387	1,248,725	1,093,701			2,828,813	488,280	1,248,920	1,095,275			2,832,475
a. Rock Creek Mitigation (Line Item)		400,000				400,000						
b. Lake Broadview (Line Item)		30,000				30,000						
c. Energy Conservation (Line Item)			107,000			107,000			334,500			334,500
d. Pay Exceptions (Line Item)	10,349	1,150				11,499	10,042	1,117				11,159
Total	4,668,968	8,979,329	8,442,456			22,090,753	4,579,198	6,412,433	1,554,381			12,546,012

Items 1b, 3b, 3d, 4a, 4b, 4d through 4f, 4h, 6a, and 6b are biennial appropriations.

All indirect charges collected on oil overcharge funds are appropriated for transfer to the general fund.

Included in centralized services funding is $10,000 a year of indirect funds from major facility siting fees. If major facility siting activities generate more than $20,000 of indirect funds over the biennium, the additional major facility siting fee indirect funds must be used to fund centralized service operations and an equal amount of centralized service division general fund money must be reverted.

The board of oil and gas conservation is appropriated $110,000 a year from federal special revenue, contingent upon receiving federal funds from the environmental protection agency for the underground injection control program.

The department is authorized up to $700,000 from the account established in 76-14-112 for rangeland loans during the 1993 biennium.

The department is appropriated up to $1 million over the biennium from the account established in 85-1-604 for purchase of prior liens on property held as loan security as required by 85-1-618.

All funds deposited into the state special revenue account established in 76-15-530 are appropriated to the department for distribution as grants to conservation districts.

The general fund appropriation in items 3a and 3b may be expended only as a match for an equal amount of federal funds.

Item 3c is contingent on passage and approval of House Bill No. 795.

Item 3d is contingent on passage and approval of House Bill No. 701.

Funds appropriated in item 4a must be used to repair and replace equipment at the Broadwater hydropower project and to service the Broadwater hydropower project bond debt if revenue deposited in the debt service account is insufficient for this purpose.

Funds received under the provisions of 85-1-514(4) are appropriated to the department for the purpose of performing duties required under 85-1-514.

Any revenue collected in the state water project hydroelectric power generation special revenue account established in House Bill No. 586 is appropriated to the department for the rehabilitation of the Tongue River dam. The revenue will be used only if federal authorization for the project rehabilitation is secured.

Any fines collected under the provisions of Title 85, chapter 2, and deposited in the water right appropriation account in accordance with 85-2-318 are appropriated to the department to carry out the enforcement functions required under 85-2-114.

Funds received from bonds required by 37-43-306 are appropriated to the department for the purpose of performing remedial action on water wells, providing compensation for damages caused by water well violations, or paying administrative costs incurred by the board of water well contractors.

In spending eligible federal energy funds appropriated in item 6, the department shall give priority to developing a self-sustaining program for retrofitting school buildings with energy conservation measures that is similar to the state building energy conservation program established by Title 90, chapter 4, part 6, for state buildings. The department shall submit to the 53rd legislature proposed legislation necessary to implement the school building energy conservation program.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The department is appropriated up to $700,000 from the Rock Creek mitigation special account in addition to the $400,000 appropriated in item 6a. The total appropriation for item 6a may not exceed $1,100,000 over the biennium.

DEPARTMENT OF AGRICULTURE (6201)

1. Centralized Services Division (15)	175,911	188,091	24,504		33,509	422,015	177,241	188,060	24,448		33,443	423,192
a. Audit (Line Item)	26,733					26,733						
2. State Grain Laboratory (25)		458,676				458,676		460,209				460,209
a. Grain Laboratory Increase (Line Item)		61,804				61,804		41,772				41,772
3. Environmental Management Division (30)	304,796	1,863,365	257,774			2,425,935	181,644	1,986,743	257,776			2,426,163
a. Pesticide Program Workload (Line Item)		57,088				57,088		58,962				58,962
b. Ground Water Program Workload (Line Item)		224,295	68,515			292,810		220,278	68,437			288,715
4. Plant Industry Division (40)	448,926	143,851	9,144	11,198		613,119	443,564	146,083	9,189	11,251		610,087
5. Agricultural Development (50)	235,430	1,751,048	82,696		251,536	2,320,710	230,803	1,755,791	83,491		252,580	2,322,665
Total	1,191,796	4,748,218	442,633	11,198	285,045	6,678,890	1,033,252	4,857,878	443,341	11,251	286,023	6,631,745

If House Bill No. 964 is not passed and approved, the general fund appropriation in item 3 is increased by $388,254 in fiscal 1992 and state special revenue is decreased by $388,254 in fiscal 1992, and general fund is increased by $515,919 in fiscal 1993 and state special revenue is decreased by $515,919 in fiscal 1993.

Item 3a contains $58,361 in fiscal 1992 and $60,281 in fiscal 1993 for an increase in the pesticide program. Item 3b contains $294,883 in fiscal 1992 and $291,090 in fiscal 1993 for an increase in the ground water program. These appropriations are contingent on enactment of House Bill No. 964.

The department is authorized to make grants to state agencies from the growth through agriculture account, as approved by the Montana agriculture development council in accordance with Title 90, chapter 9. The state agency that receives a grant from the Montana agriculture development council is authorized additional appropriation authority equal to the grant amount.

The department shall report to the legislative finance committee during fiscal 1992 on the feasibility of the department selling its portfolio of rural assistance program loans to the board of investments, thus enabling it to increase its loan capability.

DEPARTMENT OF COMMERCE (6501)

1. Public Safety Division (01)		70,842		65,338		136,180		70,841		65,250		136,091
a. Audit (Line Item)				464		464						
2. Weights and Measures Bureau (02)	431,469					431,469	406,977					406,977
a. Audit (Line Item)	1,394					1,394						
b. Equipment Replacement (Line Item)	59,366					59,366	24,353					24,353
3. Financial Division (30)		821,173				821,173		821,241				821,241

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Audit (Line Item)		2,434				2,434						
b. Bank Analysis Computers (Line Item)		27,773				27,773		4,450				4,450
4. Milk Control Bureau (37)		283,503				283,503		284,272				284,272
a. Audit (Line Item)		835				835						
5. Professional and Occupational Licensing Bureau (39)		2,047,292		859,146		2,906,438		2,028,181		858,739		2,886,920
a. Audit (Line Item)				7,703		7,703						
b. Impairment Program — Dentists (Line Item)		25,000				25,000		25,000				25,000
c. Miscellaneous Legislation (Line Item)		191,641		73,818		265,459		160,482		62,845		223,327
6. Aeronautics Division (40)		599,341	73,599	63,713		736,653		600,391	73,592	63,853		737,836
a. Audit (Line Item)		1,912		144		2,056						
b. West Yellowstone Airport (Line Item)				17,000		17,000						
7. Transportation Division (50)	404,058	62,102	879,734			1,345,894	372,427	71,250	850,835			1,294,512
a. Audit (Line Item)	1,466		978			2,444						
b. McCarty Farms (Line Item)	180,000					180,000						
c. Local Rail Assistance Grant (Line Item)			500,000			500,000						
d. Construction Loan Fund (Line Item)		1,800,000				1,800,000						
8. Business Development Division (51)	761,908	347,062	2,192,329			3,301,299	763,281	347,065	2,192,326			3,302,672
a. Audit (Line Item)	2,633		1,316			3,949						
b. Business Development Division (Line Item)		35,000				35,000		35,000				35,000
c. Defense Logistics Agency Contract (Line Item)		48,839	110,760			159,599		48,841	110,768			159,609
d. EDA/CDBG Revolving Fund (Line Item)			168,922			168,922			169,926			169,926
e. Canadian Trade Office (Line Item)	14,818	55,000				69,818	14,741	55,000				69,741
f. International Affairs Coordinator (Line Item)	38,959	14,581				53,540	38,962	14,582				53,544

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
g. Small Business Development Centers Expansion (Line Item)												
			75,000			75,000			100,000			100,000
h. General Revision of Montana Capital Company Act — HB 901 (Line Item)												
		42,365				42,365		39,365				39,365
9. Montana Promotion Division (52)												
		4,752,177				4,752,177		4,757,953				4,757,953
a. Audit (Line Item)												
		11,283				11,283						
b. Montana Promotional Division (Line Item)												
		1,034,028				1,034,028		1,352,234				1,352,234
10. Community Development Bureau (60)												
	220,058	2,795,493	20,099,524			23,115,075	219,837	2,798,279	20,110,416			23,128,532
a. Audit (Line Item)												
	1,881	2,794	12,748			17,423						
b. Section 8 Grant Increase (Line Item)												
			1,000,390			1,000,390			1,000,390			1,000,390
11. Office of Research and Information Services (61)												
	296,192					296,192	294,278					294,278
a. Audit (Line Item)												
	874					874						
b. Automation of Census (Line Item)												
	63,081					63,081	52,206					52,206
12. Local Government Services — Audit (62)												
	89,770			1,101,410		1,191,180	89,737			1,101,007		1,190,744
a. Audit (Line Item)												
				3,244		3,244						
b. Local Government Services Peer Review (Line Item)												
				10,000		10,000						
c. Single Audit Act — HB 328 (Line Item)												
				143,137		143,137				144,859		144,859
13. Local Government Services — Systems (63)												
	52,741			185,588		238,329	52,605			186,329		238,934
a. Audit (Line Item)												
				618		618						
14. Local Government Assistance — Administration (64)												
				115,468		115,468				115,810		115,810
a. Audit (Line Item)												
				302		302						
15. Building Codes Bureau (65)												
	30,058	1,220,487				1,250,545	30,018	1,220,958				1,250,976
a. Audit (Line Item)												
	125	3,625				3,750						
b. Vehicle Replacement (Line Item)												
		191,424				191,424						
16. Indian Affairs Coordinator (70)												
	100,398					100,398	100,457					100,457

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Audit (Line Item)	278					278						
b. EEO Grant — Indian Affairs (Line Item)			97,536			97,536			98,992			98,992
17. Health Facilities Authority (71)				118,141		118,141				118,093		118,093
a. Audit (Line Item)				6,100		6,100						
18. Montana Science and Technology Alliance (73)	478,350					478,350	484,420					484,420
a. Audit (Line Item)	10,858					10,858						
b. R & D Loans — SB 242 (Line Item)	50,000					50,000	50,000					50,000
19. Board of Housing (74)				1,872,226		1,872,226				1,965,745		1,965,745
a. Audit (Line Item)				57,095		57,095						
20. Investments Division (75)				1,544,840		1,544,840				1,544,184		1,544,184
a. Audit (Line Item)				104,059		104,059						
b. Additional FTE BOI/HFA Bond (Line Item)				21,858		21,858				21,809		21,809
c. Investment Portfolio Managers (Line Item)				48,179		48,179				92,367		92,367
21. Montana State Lottery (77)				3,004,658		3,004,658				3,007,793		3,007,793
a. Audit (Line Item)				132,861		132,861						
b. Montana Lottery (Line Item)				3,466,783		3,466,783				3,275,782		3,275,782
c. Lottery Vehicles (Line Item)										55,500		55,500
22. Board of Horseracing (78)		302,171				302,171		302,820				302,820
a. Audit (Line Item)		944				944						
23. Director/Management Services (81)	103,705			749,470		853,175	103,820			748,881		852,701
a. Audit (Line Item)	299			78,920		79,219						
Total	3,392,537	16,791,141	25,212,836	13,949,081		59,345,595	3,100,175	15,036,226	24,705,245	13,426,426		56,268,072

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

Item 5 contains $3,000 in fiscal 1992 and $2,000 in fiscal 1993 for the board of dentistry to implement mandatory continuing professional education requirements for dentists and dental hygienists.

Item 6 contains $33,176 in fiscal 1992 and $33,226 in fiscal 1993. These amounts are not to be used for moving costs associated with the department of transportation if Senate Bill No. 164 is enacted.

If Senate Bill No. 164 is enacted, item 7 contains $31,081 from the general fund and $20,721 from federal funds in fiscal 1992 for moving costs associated with the department of transportation.

Item 7b is for litigation costs associated with the McCarty Farms case. The department shall seek to recover all general fund expenditures plus interest at a rate of 10% from any settlement in this case.

Items 7b through 7d are biennial appropriations.

Item 8c contains $114,000 a year of federal funds to provide assistance for small businesses in contracting with the federal government. General fund money may not be used in place of these federal funds.

Item 8h is contingent on passage and approval of House Bill No. 901.

Item 11b contains $64,264 in fiscal 1992 and $53,466 in fiscal 1993 for automation of census data. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 18b is contingent on passage and approval of Senate Bill No. 242.

All revenue deposited in the science and technology development special revenue account, as established in 90-3-305, is appropriated to the Montana board of science and technology development.

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
TOTAL SECTION C	21,530,290	65,308,780	56,058,215	16,566,496	303,645	159,765,427	20,480,303	64,522,572	46,705,571	18,061,177	296,023	150,114,846

D. INSTITUTIONS AND CULTURAL EDUCATION

MONTANA ARTS COUNCIL (5114)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Promotion of the Arts (01)	123,729	116,778	198,277			438,784	121,921	116,771	198,253			436,945
a. Audit (Line Item)	15,784					15,784						
b. Federal Grants — Biennial (Line Item)			307,470			307,470						
c. Federal Grants — Biennial (Line Item)			35,000			35,000						
d. Federal Grants (Line Item)			11,535			11,535			11,535			11,535
e. Federal Grants — Biennial (Line Item)			231,130			231,130						
Total	139,513	116,778	783,412			1,039,703	121,921	116,771	209,788			448,480

Items 1b, 1c, and 1e (federal grants awarded to local communities and schools) are biennial appropriations.

LIBRARY COMMISSION (5115)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. State Library Operations (01)	956,620	157,431	363,927			1,477,978	970,939	153,905	368,406			1,493,250
a. Audit (Line Item)	15,784					15,784						
b. Federal Grants — Biennial (Line Item)			1,298,478			1,298,478						

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. Blind and Physically Handicapped — FTE and Associated Equipment (Line Item)	22,319					22,319	19,097					19,097
d. Library of Congress Dues (Line Item)	1,500					1,500	3,000					3,000
e. Local Library Assistance — Biennial (Line Item)	258,821					258,821						
f. Western Library Network Equipment (Line Item)		10,000				10,000						
2. Natural Resource Information Services (07)		236,442	14,871			251,313		236,440	14,871			251,311
a. Contract Authority — Biennial (Line Item)			650,000			650,000						
Total	1,254,844	403,873	2,315,274			3,973,991	963,036	390,345	383,277			1,736,658

Item 1b (federal grants for local libraries) is a biennial appropriation.

Item 1d (appropriation for library of congress dues) may not be included in the current level base in the agency budget request for the 1995 biennium.

Item 1e (general fund state aid to local libraries) is a biennial appropriation.

In the event coal severance tax allocated to the state library under 15-35-108(3)(f) exceeds the amounts appropriated to the state library for fiscal 1992 and fiscal 1993, the additional funds are appropriated to the state library commission for pass-through to the library federations.

The biennial appropriation for the legislative contract authority in item 2a is subject to the following provisions:

(1) Legislative contract authority applies only to federal and private funds.

(2) Legislative contract authority expenditures must be reported on state accounting records. The records must be separate from current level operations.

(3) A report must be submitted by the library commission to the legislative fiscal analyst following the end of each fiscal year of the biennium. The report must include a listing of projects with the related amount of expenditures for each project.

HISTORICAL SOCIETY (5117)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Administration Program (01)	462,516	82,762	33,392			578,670	465,061	82,233	33,383			580,677
a. Audit (Line Item)	16,707					16,707						
b. Trustees' Reimbursement (Line Item)	7,854					7,854	7,854					7,854
c. Capitol Tour Guides (Line Item)	25,829					25,829	25,836					25,836
2. Library Program (02)	398,270	29,736				428,006	398,625	29,875				428,500
3. Museum Program (03)	210,130	23,606				233,736	210,124	23,608				233,732
a. Electronic Security (Line Item)	30,000					30,000						
4. Publication Program (04)	48,135			472,778		520,913	48,134			475,867		524,001
a. Audit (Line Item)				1,374		1,374						

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Merchandise Authority (Line Item)				30,000		30,000				30,000		30,000
c. Milwaukee Mitigation (Line Item)			13,500			13,500						
5. Historical Sites Preservation (06)	72,069		565,233			637,302	72,211		565,717			637,928
a. Audit (Line Item)	768		4,038			4,806						
b. Computers — Federal (Line Item)			11,400			11,400						
Total	1,272,078	136,108	627,563	504,152		2,539,899	1,227,647	135,718	599,100	505,867		2,468,330

The Montana historical society has submitted for review plans for up to $95,000 in private funds for the 1993 biennium. The Montana historical society is to present a summary report to its appropriations subcommittee during the 1993 legislature that lists the projects funded with these private funds and the expenditures for each project. These funds are not subject to appropriation and are not included in the above totals. This language is contingent upon passage of House Bill No. 45.

The proprietary authority for a statutorily required transfer of general fund money in the magazine program must be increased by the same amount as the pay plan increase for FTEs supported by the general fund.

Item 1c is contingent on the failure of Senate Bill No. 411.

The amendment made to item 3 that struck $219,191 and $219,078 is contingent on the failure of Senate Bill No. 411.

DEPARTMENT OF INSTITUTIONS (6401)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Central Operations Division (10)	1,563,284					1,563,284	1,562,953					1,562,953
a. Audit (Line Item)	123,438	41,150	8,512	6,836		179,936						
b. Special Services (Line Item)	32,500					32,500	32,500					32,500
c. Board of Pardons Staff (Line Item)	30,995					30,995	28,910					28,910
d. Information System Enhancement (Line Item)	130,866					130,866	128,024					128,024
2. Corrections Division (20)	21,046,761	1,302,851	155,023	3,077,232		25,581,867	21,180,633	1,303,227	155,056	3,080,854		25,719,770
a. Corrections Medical (Line Item)	1,869,975					1,869,975						
b. Staffing for Additional Capacity (Line Item)	560,823					560,823	759,892					759,892
c. Jail Payments — Parole Violators (Line Item)	66,120					66,120	66,120					66,120
d. Operating Cost Increases (Line Item)	80,863					80,863	80,863					80,863
e. SRFC Chemical Dependency (Line Item)		38,350				38,350		38,282				38,282
f. Female Population Increase (Line Item)	77,058					77,058	99,214					99,214
g. WCC Additional Staff (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	43,306					43,306	43,034					43,034
h. Local Jurisdiction Sentencing (Line Item)	17,312	17,264				34,576	17,301	17,265				34,566
i. Prerelease Expansion (Line Item)	336,395					336,395	358,145					358,145
j. House Arrest (Line Item)	45,000					45,000	45,000					45,000
k. Great Falls ISP (Line Item)	127,739					127,739	70,800					70,800
l. Probation and Parole Officer Increase (Line Item)	131,201					131,201	134,526					134,526
m. Jail — Graduated Sanctions (Line Item)	66,120					66,120	66,120					66,120
n. Targeted Case Managers (Line Item)	54,244					54,244	54,128					54,128
o. BLSC Operating Increases (Line Item)	3,110					3,110	3,110					3,110
p. New Women's Prerelease Center (Line Item)	278,119					278,119	237,043					237,043
q. Community Prerelease Provider Increases (Line Item)	27,132					27,132	54,807					54,807
r. Peace Officer Training (Line Item)	12,200					12,200	6,200					6,200
3. Mental Health Division (30)	29,395,013	725,403	1,021,946			31,142,362	29,638,062	736,589	1,021,947			31,396,598
a. Child and Adolescent Service System Program (Line Item)			13,405			13,405						
b. Federal Data Grant (Line Item)			107,100			107,100			26,775			26,775
c. Service Provider Increases (Line Item)	106,381					106,381	214,889					214,889
d. CFA Additional Staff (Line Item)	36,100					36,100	36,100					36,100
e. Homeless Block Grants (Line Item)			275,000			275,000			275,000			275,000
f. HB 93 — Utilization Fee on Nursing Facilities (Line Item)	32,370					32,370	64,740					64,740
4. Chemical Dependency Division (40)	230,329	1,556,082	2,032,317			3,818,728	230,329	1,544,395	2,032,298			3,807,022
a. Alternative Chemical Dependency Services (Line Item)			20,817			20,817			41,666			41,666
b. Community Youth Activity-2 (Line Item)			507,278			507,278			15,810			15,810
c. Chemical Dependency Data Grant (Line Item)			65,788			65,788			16,447			16,447
d. HB 93 — Utilization Fee on Nursing Facilities (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	16,612					16,612	33,224					33,224
5. Developmental Disability Division (50)												
	13,460,957	30,227	13,356			13,504,540	12,487,800	30,251	2,440			12,520,491
a. MDC ICF/MR Certification (Line Item)												
	89,278					89,278	45,833					45,833
b. Eastmont ICF/MR Certification (Line Item)												
	136,720					136,720	137,102					137,102
6. Veterans' Nursing Home Division (60)												
	801,883	1,106,550	761,043			2,669,476	794,537	1,144,715	761,129			2,700,381
a. HB 93 — Utilization Fee on Nursing Facilities (Line Item)												
	30,200					30,200	60,400					60,400
Total												
	71,080,011	4,817,677	4,961,583	3,084,070		83,943,341	68,768,739	4,814,724	4,348,368	3,080,854		81,012,685

Contracts negotiated or renegotiated by the department may not extend beyond the end of the 1993 biennium unless they contain the clause "subject to legislative appropriation of funds for this contract".

If the department is unable to recruit and hire professional positions funded in the appropriation and required for patient treatment and/or certification, it may transfer up to 100% of the aggregate personal services cost of each class of vacant position or the cost of the required contract, whichever is less, to operating expenses for the purpose of contracting for services that would have been provided if that position were filled. The department shall certify to the governor or his designated representative that:

(1) the department is unable to fill the position or positions; and

(2) the services that would be provided by that position if filled and by the proposed contract are necessary for either federal medicaid certification or the treatment requirements of its correctional institutions.

Within the industries operations in item 2, the department may submit budget amendments to hire 1 FTE marketing representative, 2 FTE shop supervisors, and 1 FTE prison industries procurement coordinator if funding is available.

Within the industries training program in item 2, the department may submit budget amendments to hire 1 FTE vehicle maintenance shop supervisor if funding is available.

The department is authorized to maintain a cash balance of not more than $16,000 at the end of each fiscal year in the prison industries training proprietary account. Any funds in excess of $16,000 in the proprietary account are to offset the general fund appropriation.

Item 2a, the corrections medical budget, is a biennial appropriation.

The department shall submit budget amendments for the local jurisdiction sentencing option program in item 2h if federal funding becomes available. The total general fund and state special fund share of the program may not exceed 50% and must revert to the respective funds to the extent that federal funding is less than $35,000.

Item 2n contains $55,276 in fiscal 1992 and $55,158 in fiscal 1993 for two targeted case managers at the prison. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from the above items in the current level base.

Item 2r contains $12,200 in fiscal 1992 and $5,200 in fiscal 1993 from the general fund for peace officer training for probation and parole officers. This appropriation is contingent on passage and approval of Senate Bill No. 379.

Transfers may be made between line items within the mental health division and the alcohol and drug abuse division (chemical dependency) for the purpose of accurately allocating operating expenses associated with the alcohol and drug programs on the Galen campus upon approval of the governor or his designated representative.

Included in item 3 are $22,492,426 in fiscal 1992 and $22,717,860 in fiscal 1993 for the operation of Montana state hospital. Except for approved transfers to the chemical dependency division for the purpose of accurately allocating operating expenses associated with the alcohol and drug programs on the Galen campus, no more than 5% of those funds may be transferred.

In item 3, the department may transfer appropriation authority from the personal services category to the operating expense category of the mental health division budget upon approval by the governor or his designated representative for costs associated with the Ihler lawsuit and the pilot projects in Kalispell, Missoula, and Butte.

Items 3f, 4d, and 6a are contingent on passage and approval of House Bill No. 93.

Included in the appropriation for the Montana state hospital chemical dependency program within item 4 are $1,408,733 in fiscal 1992 and $1,413,201 in fiscal 1993 for the operation of the Galen chemical dependency program. No more than 5% of these funds may be transferred.

The department shall continue to provide acute hospital care, intermediate nursing care, and chemical dependency services at the Montana state hospital at Warm Springs and Galen without significant changes in the program at either campus.

In item 5, the department may transfer appropriation authority from the personal services category to the operating expense category of the Montana developmental center budget upon approval of the governor or his designated representative if the downsizing does not take place on schedule.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
TOTAL SECTION D	73,726,446	5,474,434	8,707,832	3,588,222		91,496,934	71,111,343	5,467,566	6,540,533	3,586,721		86,706,163

E. EDUCATION

University units are defined in [section 5 of House Bill No. 454]. For all university units, except the office of the commissioner of higher education, all funds, other than plant funds appropriated in House Bill No. 5, relating to long-range building, and current unrestricted operating funds, are appropriated contingent upon approval of the comprehensive program budget by the board of regents by October 1 of each year. The budget must contain detailed revenue and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. All movement of funds between the current unrestricted subfund and the designated subfund account entities must be clearly identified in the state budgeting and accounting system.

Programs for the university units' budgets, except the office of the commissioner of higher education, include instruction, organized research, public service, academic support, student services, institutional support, operation and maintenance of plant, and scholarships and fellowships.

All university units, except the office of the commissioner of higher education, shall account for expenditures consistently within programs and funds across all units and shall use the national center for higher education management systems program classification structure, along with the college and university business administration (CUBA) system, as a minimum standard for achieving consistency.

OFFICE OF PUBLIC INSTRUCTION (3501)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Administration (06)	3,169,983	367,521	2,719,428	832,959		7,089,891	3,149,504	367,773	2,717,888	827,733		7,062,898
a. Audit (Line Item)				52,087		52,087						
b. GAAP Accounting Standards (Line Item)	177,824					177,824	178,558					178,558
c. Financial Management (Line Item)	214,355			71,769		286,124	172,357			59,727		232,084
d. Resource Center Funds (Line Item)		8,000				8,000						
e. Distribution of Migrant Grants (Line Item)			320,000			320,000			320,000			320,000
f. Indian Education (Line Item)	24,071					24,071	23,997					23,997
g. Audiology — Biennial (Line Item)	136,000	82,000				218,000						
h. Other Federal Funds (Line Item)			291,302			291,302			93,709			93,709
i. Education of the Handicapped — Part B Administration Set-Aside (Line Item)			300,000			300,000			342,000			342,000
j. Race Equity (Line Item)			25,000			25,000			25,000			25,000
k. Nutrition Education and Training Grant (Line Item)			12,500			12,500			12,500			12,500
l. AIDS Education (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
			96,107			96,107			96,109			96,109
m. Drug Free Schools and Communities (Line Item)			131,512			131,512			131,514			131,514
n. Chapter 1 Program Improvements (Line Item)			50,000			50,000			50,000			50,000
o. ESEA Chapter 2 Program (Line Item)			141,843			141,843			141,843			141,843
p. Expanded Co-op Food Purchase (Line Item)		12,500				12,500		13,532				13,532
q. Bilingual Grant (Line Item)			24,873			24,873			24,874			24,874
r. National Bicentennial Compact (Line Item)			7,500			7,500			7,500			7,500
s. Court-Ordered Attorney Fees — Ridgeway (Line Item)	11,000					11,000						
t. Jobs for Montana Graduates (Line Item)			126,517			126,517			124,485			124,485
2. Distribution to Schools (09)												
a. Special Education (Line Item)	32,845,797					32,845,797	32,845,797					32,845,797
b. Special Education Contingency — Biennial (Line Item)	2,031,699					2,031,699						
c. Transportation (Line Item)	6,483,120	3,908,166				10,391,286	6,493,548	3,914,467				10,408,015
d. School Lunch (Line Item)	599,397					599,397	599,397					599,397
e. Gifted and Talented (Line Item)	300,000					300,000	300,000					300,000
f. Secondary Vocational Education — Biennial (Line Item)	1,800,000					1,800,000						
g. Adult Education (Line Item)	250,000					250,000	250,000					250,000
h. Impact Aid (Line Item)	5,000					5,000	5,000					5,000
i. Education of the Handicapped — Part B Biennial (Line Item)			1,356,000			1,356,000						
j. Job Training Partnership Act — Biennial (Line Item)			1,017,200			1,017,200						
k. Adult Basic Education — Biennial (Line Item)			1,198,000			1,198,000						
l. McKinney Homeless Act — Biennial (Line Item)			140,400			140,400						
m. Preschool Incentive — Biennial (Line Item)			230,000			230,000						
n. Vocational Education — Biennial (Line Item)			5,000,000			5,000,000						

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
o. English Literacy — Biennial (Line Item)												
			25,000			25,000						
p. Education of the Handicapped — Part D Biennial (Line Item)												
			45,000			45,000						
q. Chapter 1 — Biennial (Line Item)												
			180,000			180,000						
Total												
	48,046,246	4,378,187	13,430,982	966,815		66,823,230	44,018,168	4,296,762	4,086,022	887,460		53,290,412

Item 1 includes $81,564 in fiscal 1992 and $81,810 in fiscal 1993 in the state special revenue fund from the traffic safety account for motorcycle safety. This appropriation is contingent upon the passage and approval of House Bill No. 703.

The legislature approved the addition of 0.5 FTE from the federal national origins grant and 0.5 FTE from the federal school foods grant. These funds are in item 1.

Item 1g is a biennial appropriation.

Item 2b is a biennial appropriation. This appropriation is for unforeseen expenses that may arise in special education programs in local districts. A district board of trustees may apply for an allocation from these funds by presenting to the superintendent of public instruction, for each child, a child-study (CST) report and an individual education plan (IEP) relating to this unforeseen expense or, if the need for additional personnel is due to caseload excess, a board of trustees' verification of completed IEPs and CSTs. In addition, a current listing of programs, caseloads, and related costs must be submitted. Contingency funds may be awarded for positions that have gone unfilled for an entire school year and for which regular state special education funds were not awarded. The agency may transfer any unused balance in this appropriation into the special education appropriation in item 2a.

Item 2f is a biennial appropriation.

Items 2i through 2q are biennial appropriations.

All revenue received in the state traffic education account under the provisions of 20-7-504, is appropriated as provided in Title 20, chapter 7, part 5.

BILLINGS VOCATIONAL-TECHNICAL CENTER (3511)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. General Operations (01,07,44)												
	1,213,990				682,388	1,896,378	1,198,920				688,861	1,887,781
a. Audit (Line Item)												
	25,570					25,570						
Total												
	1,239,560				682,388	1,921,948	1,198,920				688,861	1,887,781

Total audit costs are estimated to be $28,412 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

BUTTE VOCATIONAL-TECHNICAL CENTER (3512)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. General Operations (01,07,44)												
	1,432,620				351,978	1,784,598	1,463,460				353,473	1,816,933
a. Audit (Line Item)												
	26,992					26,992						
Total												
	1,459,612				351,978	1,811,590	1,463,460				353,473	1,816,933

Total audit costs are estimated to be $29,990 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

GREAT FALLS VOCATIONAL-TECHNICAL CENTER (3513)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. General Operations (01,07,44)												
	1,552,944				631,385	2,184,329	1,586,011				634,024	2,220,035

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
a. Audit (Line Item)												
	25,570					25,570						
Total												
	1,578,514				631,385	2,209,899	1,586,011				634,024	2,220,035

Total audit costs are estimated to be $28,412 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

HELENA VOCATIONAL-TECHNICAL CENTER (3514)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. General Operations (01,07,44)												
	1,998,352				549,089	2,547,441	1,948,771				551,207	2,499,978
a. Audit (Line Item)												
	26,992					26,992						
Total												
	2,025,344				549,089	2,574,433	1,948,771				551,207	2,499,978

Total audit costs are estimated to be $29,990 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

MISSOULA VOCATIONAL-TECHNICAL CENTER (3516)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. General Operations (01,07,44)												
	2,031,178				666,617	2,697,795	1,952,924				670,365	2,623,289
a. Audit (Line Item)												
	22,728					22,728						
Total												
	2,053,906				666,617	2,720,523	1,952,924				670,365	2,623,289

Total audit costs are estimated to be $25,254 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

The commissioner of higher education may transfer county millage collections among the centers. Total revenue received from the 1.5-mill levy that exceeds $965,005 in fiscal 1992 and $981,480 in fiscal 1993 is appropriated to the office of the commissioner of higher education for distribution to the vocational-technical centers and must result in a general fund reversion of a like amount.

It is the intent of the legislature that the board of regents have additional appropriation flexibility to operate the vocational-technical centers during the 1993 biennium. Therefore, the legislature has approved for each vocational-technical center a single appropriation for its general operations. The appropriation for each postsecondary vocational-technical center listed above is for the following programs: instruction, academic support, student services, institutional support, and operation and maintenance of plant. The vocational-technical centers are exempt from [section 2], which requires personal services line items.

It is further the intent of the legislature that all fiscal matters pertaining to the postsecondary vocational-technical centers during the 1993 biennium and the 1995 biennium budget request be recorded, maintained, and submitted, using the college and university business administration (CUBA) fund structure and functional expenditure classifications.

BOARD OF PUBLIC EDUCATION (5101)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Administration (01)												
	114,186					114,186	114,001					114,001
a. Audit (Line Item)												
	1,264					1,264						
b. Board Hearing — HB 28 — Biennial (Line Item)												
	3,252					3,252						
2. Advisory Council (03)												
		71,865				71,865		71,527				71,527
a. Audit (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		1,282				1,282						
Total												
	118,702	72,927				191,629	114,001	71,527				185,528
Item 1b is a biennial appropriation.												
COMMISSIONER OF HIGHER EDUCATION (5102)												
1. Administration Program (01)												
	664,771					664,771	653,079					653,079
a. Audit (Line Item)												
	20,519					20,519						
b. Regents Employee Reporting System (Line Item)												
	121,053					121,053	107,424					107,424
2. Student Assistance Program (02)												
	4,788,611		280,000			5,068,611	4,854,262		280,000			5,134,262
a. Increased Supplemental Educational Opportunity Grant Match (Line Item)												
	63,590					63,590	63,590					63,590
b. Increased Perkins Loan Match (Line Item)												
	36,270					36,270	36,270					36,270
c. State Work Study — Minimum Wage Increase (Line Item)												
	105,203					105,203	105,203					105,203
3. Dwight D. Eisenhower Mathematics and Science Education Act (03)												
			249,842			249,842			249,842			249,842
4. Community College Assistance (04)												
	3,785,966					3,785,966	4,215,246					4,215,246
a. Audit (Line Item)												
	29,800					29,800						
5. Montana University System Group Insurance Program (05)												
				13,780,131		13,780,131				16,044,208		16,044,208
a. Group Insurance Additional Costs (Line Item)												
				139,801		139,801				140,249		140,249
6. Talent Search (06)												
			188,829			188,829			188,315			188,315
a. Talent Search Additional Federal Funds (Line Item)												
			48,703			48,703			48,702			48,702
7. Carl D. Perkins Administration (08)												
	92,966		5,115,331			5,208,297	76,970		5,098,843			5,175,813
8. Guaranteed Student Loan Program (12)												
			1,409,410			1,409,410			1,408,834			1,408,834
a. Audit (Line Item)												
			6,830			6,830						
b. Guaranteed Student Loan Additional Workload (Line Item)												
			232,904			232,904			232,901			232,901
c. Supplemental Preclaims Unit (Line Item)												
			43,446			43,446			43,348			43,348
9. Board of Regents — Administration (13)												
	32,854					32,854	32,863					32,863

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
10. Board of Regents Bond Payments (14)												
	708,255					708,255	898,153					898,153
11. Vocational-Technical Center Administration (15)												
	96,575					96,575	96,338					96,338
a. Vocational-Technical Center Contingency (Line Item)												
	150,000					150,000						
Total												
	10,894,523	7,574,975	13,899,932			32,369,430	11,139,398	7,550,465	16,184,457			34,874,320

Item 2 includes $68,400 general fund in fiscal 1992 and $114,000 general fund in fiscal 1993 for three new medical student WICHE slots in fiscal 1992 and three continuing medical student WICHE slots and 2 new medical student WICHE slots in fiscal 1993. If House Bill No. 1007 is enacted, the general fund appropriation in item 2 must be reduced by $68,400 in fiscal 1992 and $114,000 in fiscal 1993.

The appropriation in item 4 provides 51% and 55% of the total unrestricted budgets for the community colleges in fiscal 1992 and fiscal 1993, respectively. The total unrestricted budgets for the community colleges must be approved by the board of regents.

The general fund appropriation for each community college includes 49% of the total audit cost. The remaining 51% of these costs are to be paid from funds other than those appropriated in items 4 and 4a. Audit costs may not exceed $18,000 each for Dawson and Miles community colleges and $25,000 for Flathead Valley community college for the biennium.

Item 11a is a biennial appropriation.

UNIVERSITY OF MONTANA (5103)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Instruction (01)												
	15,528,473				9,107,802	24,636,275	15,504,308				9,148,531	24,652,839
2. Organized Research (02)												
	631,517					631,517	632,053					632,053
a. Bureau of Business and Economic Research (Line Item)												
	30,000					30,000						
3. Public Service (03)												
	306,560					306,560	426,596					426,596
4. Operation and Maintenance of Plant (07)												
	5,476,334					5,476,334	5,524,124					5,524,124
5. Scholarships and Fellowships (08)												
					1,228,074	1,228,074					1,228,074	1,228,074
6. Support (44)												
	6,762,601				5,342,998	12,105,599	6,777,328				5,384,625	12,161,953
a. Audit (Line Item)												
	55,244					55,244						
b. Minimum Wage (Line Item)												
	73,740					73,740	73,740					73,740
c. Library Books (Line Item)												
	281,715					281,715						
d. Regents' Employee Reporting System (Line Item)												
	25,766					25,766	25,766					25,766
Total												
	29,171,950				15,678,874	44,850,824	28,963,915				15,761,230	44,725,145

Total audit costs are estimated to be $110,488 for the biennium. Fifty percent of these costs must be paid from funds other than those appropriated in items 1 through 6.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 1 contains $130,000 from the general fund in fiscal 1992 and $130,000 from the general fund in fiscal 1993 for the university of Montana pharmacy school over and above the amount generated by the funding formula for the school of pharmacy. Any grant and donation made to the university of Montana for the express purpose of maintaining accreditation at the school of pharmacy may not reduce funds otherwise allocated from the current unrestricted fund. It is the intent of the legislature that the current unrestricted budget allocation by the university of Montana to the school of pharmacy not be reduced. It is the further intent of the legislature that these additional funds become part of the current level base budget for the university of Montana and be included in the 1995 biennium current level budget analysis prepared by the office of the legislative fiscal analyst and presented to the 53rd legislature.

Items 2a and 6c are biennial appropriations.

MONTANA STATE UNIVERSITY (5104)

	Fiscal 1992 General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	Fiscal 1993 General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Instruction (01)	20,084,648				9,687,288	29,771,936	20,608,791				9,731,683	30,340,474
a. Nursing	313,388					313,388	584,443					584,443
b. NSF Mathematics Grant Match — Biennial (Line Item)	1,000,000					1,000,000						
2. Organized Research (02)	504,926					504,926	504,947					504,947
3. Public Service (03)	280,382					280,382	380,382					380,382
4. Operation and Maintenance of Plant (07)	5,978,306					5,978,306	6,042,058					6,042,058
5. Scholarships and Fellowships (08)					1,327,730	1,327,730					1,327,730	1,327,730
6. Support (44)	8,034,029				5,668,827	13,702,856	8,047,841				5,715,957	13,763,798
a. Audit (Line Item)	55,244					55,244						
b. Minimum Wage (Line Item)	75,232					75,232	75,232					75,232
c. Library Books (Line Item)	321,683					321,683						
d. Regents' Employee Reporting System (Line Item)	28,580					28,580	28,580					28,580
Total	36,746,398				16,683,845	53,430,243	36,342,254				16,775,370	53,117,824

Total audit costs are estimated to be $110,488 for the biennium. Fifty percent of these costs must be paid from funds other than those appropriated in items 1 through 6.

Item 1b is a biennial appropriation and is contingent on the receipt of the national science foundation mathematics grant being awarded to Montana.

Item 6c is a biennial appropriation.

MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY (5105)

	Fiscal 1992 General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	Fiscal 1993 General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Instruction (01)	3,417,769				2,035,482	5,453,251	3,411,274				2,043,500	5,454,774
2. Organized Research (02)	41,300					41,300	41,415					41,415
3. Operation and Maintenance of Plant (07)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	1,545,483					1,545,483	1,557,023					1,557,023
4. Scholarships and Fellowships (08)												
					201,581	201,581					201,581	201,581
5. Support (44)												
	2,279,062				468,393	2,747,455	2,282,457				474,752	2,757,209
a. Audit (Line Item)												
	40,721					40,721						
b. Minimum Wage (Line Item)												
	35,041					35,041	35,041					35,041
c. Library Books (Line Item)												
	51,806					51,806						
d. Regents' Employee Reporting System (Line Item)												
	8,993					8,993	8,993					8,993
Total												
	7,429,174				2,705,436	10,134,610	7,336,203				2,719,813	10,056,016

Total audit costs are estimated to be $66,294 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1 through 5.

Item 5c is a biennial appropriation.

EASTERN MONTANA COLLEGE (5100)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Instruction (01)												
	3,232,816				4,979,980	8,212,796	3,095,181				5,004,703	8,099,884
2. Public Service (03)												
	253,236					253,236	254,033					254,033
3. Operation and Maintenance of Plant (07)												
	2,184,824					2,184,824	2,204,427					2,204,427
a. Apsaruke Hall Utilities (Line Item)												
	10,000					10,000	10,000					10,000
b. Billings SID (Line Item)												
	10,503					10,503	6,024					6,024
4. Scholarships and Fellowships (08)												
					382,715	382,715					382,715	382,715
5. Support (44)												
	5,027,976				117,382	5,145,358	5,025,779				124,827	5,150,606
a. Audit (Line Item)												
	52,088					52,088						
b. Minimum Wage (Line Item)												
	35,563					35,563	35,563					35,563
c. Library Books (Line Item)												
	112,965					112,965						
d. Regents' Employee Reporting System (Line Item)												
	14,608					14,608	14,608					14,608
Total												
	10,934,381				5,480,077	16,414,458	10,645,615				5,512,245	16,157,860

Total audit costs are estimated to be $69,450 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1 through 5.

Item 3a is for utilities expense at Apsaruke hall only. Any unused funds revert to the general fund at the end of each fiscal year.

Item 5c is a biennial appropriation.

NORTHERN MONTANA COLLEGE (5107)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Instruction (01)	2,506,437				2,011,170	4,518,607	2,764,317				1,752,290	4,518,607
2. Public Service (03)					8,891	8,891					8,891	8,891
3. Operation and Maintenance of Plant (07)	1,166,298					1,166,298	1,177,153					1,177,153
4. Scholarships and Fellowships (08)					278,375	278,375					278,375	278,375
5. Support (44)	2,312,971				193,409	2,506,380	2,046,279				467,452	2,513,731
a. Audit (Line Item)	42,617					42,617						
b. Minimum Wage (Line Item)	39,730					39,730	39,730					39,730
c. Library Books (Line Item)	53,234					53,234						
d. Regents' Employee Reporting System (Line Item)	9,060					9,060	9,060					9,060
Total	6,129,327				2,491,845	8,621,172	6,036,529				2,507,008	8,543,537

Total audit costs are estimated to be $56,823 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1 through 5.

Item 5c is a biennial appropriation.

WESTERN MONTANA COLLEGE OF THE UNIVERSITY OF MONTANA (5108)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Instruction (01)	1,531,128				1,027,650	2,558,778	1,526,361				1,033,343	2,559,704
2. Operation and Maintenance of Plant (07)	738,270					738,270	743,101					743,101
3. Scholarships and Fellowships (08)					89,683	89,683					89,683	89,683
4. Support (44)	1,119,120				353,405	1,472,525	1,119,456				356,123	1,475,579
a. Audit (Line Item)	43,802					43,802						
b. Minimum Wage (Line Item)	38,507					38,507	38,507					38,507
c. Library Books (Line Item)	31,158					31,158						
d. Regents' Employee Reporting System (Line Item)	8,865					8,865	8,865					8,865

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
Total												
	3,510,850				1,470,736	4,981,586	3,436,280				1,479,149	4,915,429

Total audit costs are estimated to be $58,402 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1 through 4.

Item 4c is a biennial appropriation.

Included within current unrestricted funds (contained in the "other" fund column) to the six university units is the sum of $11,887,000 in fiscal 1992 and $12,131,000 in fiscal 1993 from revenue generated under the provisions of 20-25-423. The department of revenue shall levy the full 6 mills as authorized in 20-25-423. Revenue received by the university system under the provisions of 20-25-423 that exceeds $11,887,000 in fiscal 1992 and $12,131,000 in fiscal 1993 is appropriated to the office of the commissioner of higher education for distribution to the university system and must cause a general fund reversion of a like amount.

It is understood by the 52nd legislature that the appropriations contained in [this act] for the six university units may result in the board of regents electing to limit or reduce enrollment during fiscal 1992 and fiscal 1993. It is the intent of the 52nd legislature that if actual enrollments during the 1993 biennium are fewer than the budgeted number of student full-time equivalents for the 1993 biennium, systemwide or by unit, the legislative fiscal analyst shall present to the 53rd legislature a current level budget for the six units, systemwide and by unit, no lower than the budgeted amount for the 1993 biennium.

It is further understood by the 52nd legislature that shortfalls in student tuition due to enrollment declines may be presented to the 53rd legislature for a supplemental appropriation. These tuition shortfalls are not expected to be made up by per-student full-time equivalent tuition increases.

The 52nd legislature intends for the Montana university system to be subject to the personal services line item requirements contained in [section 2]. The dollar amount of the personal services line item is equal to the following:

(1) For the research, public service, and plant programs, the line item amount is equal to the personal services amount contained in table 3 of the Montana university system budget narrative accompanying [this act].

(2) For the instruction program, the line item amount is equal to the personal services amount identified on the original regents'-approved operating budget each fiscal year, but may be no less than the faculty compensation amount contained in table 3 of the Montana university system budget narrative accompanying [this act].

(3) For the support program, the line item amount is equal to the personal services amount identified on the original regents'-approved operating budget each fiscal year.

It is further the intent of the 52nd legislature that the original budgeted personal services by program on the regents' employee reporting system each fiscal year equal the original regents'-approved operating budget by program.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
AGRICULTURAL EXPERIMENT STATION (5109)												
1. Organized Research (02)												
	7,278,082				2,127,376	9,405,458	7,278,043				2,127,056	9,405,099
a. Biological Weed Control (Line Item)												
	60,000					60,000	60,572					60,572
2. Livestock and Range Research Station (15)												
					389,344	389,344					374,295	374,295
Total												
	7,338,082				2,516,720	9,854,802	7,338,615				2,501,351	9,839,966
COOPERATIVE EXTENSION SERVICE (5110)												
1. Public Service (03)												
	2,778,004				1,987,347	4,765,351	2,769,940				1,987,404	4,757,344
Total												
	2,778,004				1,987,347	4,765,351	2,769,940				1,987,404	4,757,344
FORESTRY AND CONSERVATION EXPERIMENT STATION (5111)												
1. Research (02)												
	711,138					711,138	711,940					711,940
Total												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	711,138					711,138	711,940					711,940
BUREAU OF MINES (5112)												
1. Bureau of Mines (11)	1,288,493				46,410	1,334,903	1,288,384				48,411	1,336,795
Total	1,288,493				46,410	1,334,903	1,288,384				48,411	1,336,795
SCHOOL FOR THE DEAF AND BLIND (5113)												
1. Administration Program (01)	197,896					197,896	198,322					198,322
a. Audit (Line Item)	20,519					20,519						
2. General Services Program (02)	251,213					251,213	253,044					253,044
3. Student Services (03)	799,974		34,282			834,256	781,842		34,247			816,089
4. Education (04)	1,317,179	170,000	131,200			1,618,379	1,315,205	170,000	131,200			1,616,405
a. Supervising Teacher (Line Item)	33,248					33,248	33,256					33,256
Total	2,620,029	170,000	165,482			2,955,511	2,581,669	170,000	165,447			2,917,116
MONTANA COUNCIL ON VOCATIONAL EDUCATION (5116)												
1. Administration Program (01)			135,578			135,578			135,850			135,850
a. Audit (Line Item)			4,104			4,104						
b. Increased Federal Funding (Line Item)			30,000			30,000			30,000			30,000
Total			169,682			169,682			165,850			165,850
FIRE SERVICES TRAINING SCHOOL (5119)												
1. Fire Services Training School (01)	236,279					236,279	219,084					219,084
a. Audit (Line Item)	2,525					2,525						
Total	238,804					238,804	219,084					219,084

The fire services training school must be provided office, classroom, and storage space in the Great Falls vocational-technical center at no charge.

	Fiscal 1992						Fiscal 1993					
TOTAL SECTION E	176,315,037	4,621,114	21,350,121	14,856,747	51,942,747	269,085,766	171,113,061	4,537,289	11,970,584	17,071,917	52,187,911	256,880,762

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
TOTAL STATE FUNDING	453,688,142	281,824,813	604,104,453	216,571,437	54,911,330	1,611,100,175	452,814,707	269,639,861	601,317,157	224,556,424	54,781,350	1,603,109,499

Approved May 23, 1991.

CHAPTER NO. 816

[HB 77]

AN ACT INCREASING THE RETIREMENT BENEFITS PAYABLE IN THE HIGHWAY PATROL RETIREMENT SYSTEM; APPROPRIATING GENERAL FUND MONEY AND INCREASING THE ALLOCATION OF DEPARTMENT OF HIGHWAY FUNDS TO FUND THE BENEFIT INCREASE; INCREASING MEMBER CONTRIBUTIONS; PROVIDING CONTINGENT STATE RETIREMENT CONTRIBUTION CREDITS; AMENDING SECTIONS 19-6-401, 19-6-402, 19-6-404, AND 19-6-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-6-401, MCA, is amended to read:

"**19-6-401. Payments into retirement fund.** All appropriations made by the state, all contributions by members of the Montana highway patrol, in the amount ~~hereinafter~~ specified, all interest on and increase of the investments and ~~moneys~~ *money* under this account, and a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121 must be paid to the account."

Section 2. Section 19-6-402, MCA, is amended to read:

"**19-6-402. Member's contribution.** (1) Every member shall be required to contribute into the account a sum equal to ~~7.59%~~ *9%* of his monthly salary, which sum shall be deposited to his credit in the account.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions which would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and his compensation as used to define his final salary in 19-6-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 3. Section 19-6-404, MCA, is amended to read:

"19-6-404. **State's contribution.** The state of Montana shall annually contribute to the account an amount equal to ~~26.75%~~ *36.28%* of the salaries paid to the highway patrol officers who are covered by this account from the following sources:

(1) an amount equal to ~~16.57%~~ *26.10%* of salaries is payable from the same source that is used to pay compensation to the members; and

(2) an amount equal to 10.18% of salaries is payable from a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121."

Section 4. Section 19-6-502, MCA, is amended to read:

"19-6-502. **Service retirement allowance.** (1) Upon retirement from service, a member shall receive a service retirement allowance ~~which shall consist~~ *consisting* of the state annuity plus the member's annuity.

(2) The amount of the service retirement allowance ~~shall~~ *must* equal ~~2%~~ *2.5%* of his final salary for each year of creditable service."

Section 5. **General fund appropriation.** The department of highways is appropriated $345,000 from the general fund in fiscal 1992 and $233,000 from the general fund in fiscal 1993 to pay a portion of the state retirement contribution for the Montana highway patrol.

Section 6. **Coordination instruction.** If Senate Bill No. 192 is passed and approved, the amount allocated to the Montana highway patrol officers' retirement system in Senate Bill No. 192 must be used as a credit against the state retirement contribution as provided in 19-6-404(1).

Section 7. **Effective date.** [This act] is effective July 1, 1991.

Approved May 23, 1991.

CHAPTER NO. 817

[HB 518]

AN ACT GOVERNING THE BUDGET OF PROPERTY TAX REVENUES THAT EXCEED A LOCAL TAXING AUTHORITY'S PROPERTY TAX

REVENUES OF THE PREVIOUS FISCAL YEAR; REQUIRING THE ADOPTION OF A RESOLUTION TO BUDGET THE ADDITIONAL REVENUE FOLLOWING AN ADVERTISED PUBLIC HEARING; AMENDING SECTION 15-10-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-10-203, MCA, is amended to read:

"**15-10-203. Increase of tax revenue — ~~notice~~ *advertisement* of intention *and public hearing* required.** *(1)* No *local* taxing authority may budget an increased amount of ad valorem tax revenue *in excess of the property tax revenue it received the previous fiscal year* exclusive of revenue from ad valorem taxation on properties appearing for the first time on the assessment roll unless it *adopts a resolution to budget additional property tax revenues. Prior to adoption of the resolution, the taxing authority shall hold a public hearing for the purpose of receiving comments on its intention to budget increased property tax revenues. The taxing authority shall advertise notice of the public hearing as specified in subsection (2). The public hearing may be held in conjunction with the tentative budget hearing or any other budget hearing that may be required by law.* ~~gives notice of its intention to do so at the same time and in the same manner that it gives notice of its hearing on its preliminary or proposed budget for the forthcoming fiscal year.~~

(2) The taxing authority shall advertise its intent to budget an increase in property tax revenues in a newspaper meeting the requirements of 7-1-4127, except the newspaper may not be primarily in the business of publishing legal advertisements. If there is no newspaper in the county, in addition to being posted as required in 7-1-4127, the advertisement must be published in one or more newspapers of general circulation widely subscribed to by the residents of the county. The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement must meet the notice requirements of 7-1-4128. The advertisement must be published with at least the following information:

NOTICE OF BUDGET INCREASE FROM PROPERTY TAXES

The (name of the taxing authority) intends to budget an increase in revenue from property taxation by (percentage of increase in property tax revenues from previous fiscal year) percent.

All concerned persons are invited to attend a public hearing on budgeting the increased property tax revenue to be held on (date and time) at (meeting place).

A decision on budgeting the increased property tax revenue will be made after considering comments made at this hearing.

For further information please contact: (name, address, and phone number of person who can be contacted for further information)."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved May 23, 1991.

CHAPTER NO. 818

[HB 691]

AN ACT REMOVING GOVERNMENTAL ENTITY IMMUNITY FOR ACTIONS RESULTING IN SURFACE WATER OR GROUND WATER DAMAGE; AMENDING SECTION 2-9-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-111, MCA, is amended to read:

"2-9-111. Immunity from suit for legislative acts and omissions. (1) As used in this section:

(a) the term "governmental entity" includes the state, counties, municipalities, and school districts;

(b) the term "legislative body" includes the legislature vested with legislative power by Article V of The Constitution of the State of Montana and any local governmental entity given legislative powers by statute, including school boards.

(2) A governmental entity is immune from suit for an act or omission of its legislative body or a member, officer, or agent thereof.

(3) A member, officer, or agent of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with the introduction or consideration of legislation or action by the legislative body.

(4) The immunity provided for in this section does not extend to*:*

(a) any tort committed by the use of a motor vehicle, aircraft, or other means of transportation*; or*

(b) any act or omission that results in or contributes to personal injury or property damage caused by contamination or other alteration of the physical, chemical, or biological properties of surface water or ground water, for which a cause of action exists in statutory or common law or at equity. This subsection (b) does not create a separate or new cause of action."

Section 2. **Coordination instruction.** If House Bill No. 653 is passed and approved and if it repeals 2-9-111, then [section 1(4) of House Bill No. 653] is amended to read:

"(4) The immunity provided for in this section does not extend to:

(a) nonlegislative actions taken by a legislative body; or

(b) any act or omission that results in or contributes to personal injury or property damage caused by contamination or other alteration of the physical, chemical, or biological properties of surface water or ground water, for which a cause of action exists in statutory or common law or at equity. This subsection (b) does not create a separate or new cause of action."

Section 3. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to causes of action that have not been reduced to final judgment on or before [the effective date of this act].

Approved May 24, 1991.

CHAPTER NO. 819

[HB 963]

AN ACT AUTHORIZING THE DEPARTMENT OF INSTITUTIONS TO ENTER INTO A LOAN AGREEMENT WITH THE MONTANA HEALTH FACILITY AUTHORITY FOR THE PURPOSE OF FINANCING THE COSTS OF ACQUIRING, CONSTRUCTING, AND EQUIPPING FACILITIES FOR THE DEVELOPMENTALLY DISABLED AT THE MONTANA DEVELOPMENTAL CENTER IN BOULDER, INCLUDING THE ESTABLISHMENT OF RESERVES AND THE PAYMENT COSTS OF THE FINANCING; AUTHORIZING THE CREATION OF A SPECIAL LIMITED OBLIGATION OF THE DEPARTMENT; APPROPRIATING THE LOAN PROCEEDS; PROVIDING A STATUTORY APPROPRIATION; AUTHORIZING THE PAYMENT OF THE SPECIAL LIMITED OBLIGATION FROM FACILITY REVENUES; AMENDING SECTIONS 17-7-502 AND 53-1-413, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authorization of bonds.** (1) The department of institutions may enter into a loan agreement with the Montana health facility authority for the purpose of financing the costs of acquiring, constructing, and equipping facilities for the developmentally disabled at the Montana developmental center in Boulder, including the establishment of reserves and the payment of costs of the financing. The maximum principal amount of the loan may not exceed $8,665,000 for construction and related costs, plus the necessary amounts for capitalized interest, debt service reserves, and financing costs, and the loan must be payable over a term of not to exceed 30 years and must bear interest and contain other terms and provisions with respect to prepayment or otherwise as are not inconsistent with this section and as the department approves.

(2) The loan may be secured by a mortgage on the Montana developmental center facility, including the land on which it is located. The loan constitutes a special limited obligation of the department, and the principal and interest payments required by that agreement are payable solely from the facility revenues obtained by the department from the ownership and operation of and the provision of services at the Montana developmental center, including payments or reimbursements from private users, insurers, and the federal government. All facility revenues obtained from services provided by the Montana developmental center must be deposited in a special revenue fund and must be applied to the payment of the principal and interest payments as due under the loan agreement. Principal and interest payments constitute a statutory appropriation within the meaning of 17-7-502. Whenever the foregoing facility revenues exceed the amount and terms specified and required to repay the loan and maintain required reserves, the excess must be deposited to the general fund. As long as the loan remains outstanding and the department provides services for the developmentally disabled, the department shall use the Montana developmental center for those purposes or for other purposes as permitted by the loan agreement and state law, except when foreclosure occurs under the agreement or the mortgage. Notwithstanding 77-2-302(1) and upon foreclosure of a mortgage given to secure the loan agreement, there must be paid to the board of land commissioners as a first and prior claim against the mortgaged land an amount equal to the full market value of the land as determined by the board prior to the execution of the mortgage and after appraisal by a qualified land appraiser. The loan agreement may contain other provisions or agreements that the department determines are necessary and that are not inconsistent with the provisions of Title 90, chapter 7.

(3) The obligations of the department under the agreement are special limited obligations payable solely from the facility revenues and do not constitute a debt of the state or obligate the state to appropriate or apply any funds or revenues of the state, except the facility revenues as provided in this section.

Section 2. **Appropriation of bond proceeds.** The proceeds of the bonds authorized in [section 1] are appropriated to the department of administration to be used for the construction of new facilities at the Montana developmental center.

Section 3. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; *[section 1];* 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 4. Section 53-1-413, MCA, is amended to read:

"**53-1-413. Deposit of payments.** (1) Except as provided in *[section 1] and* subsection (2) *of this section*, the department shall deposit payments of per diem and ancillary charges in the state treasury to the credit of the general fund.

(2) Payments from the Montana veterans' home shall be deposited in the federal special revenue fund for the benefit of the home, and payments from the Montana state hospital alcohol program shall be deposited to an alcohol state special revenue account."

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved May 24, 1991.

CHAPTER NO. 820

[HB 990]

AN ACT APPROPRIATING $700,000 FROM THE GENERAL FUND TO THE DEPARTMENT OF COMMERCE, TO BE USED AS MATCHING FUNDS FOR THE DEVELOPMENT AND CONSTRUCTION OF A LEWIS AND CLARK NATIONAL HISTORIC TRAIL INTERPRETIVE CENTER; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general fund $700,000 to the department of commerce for the Lewis and Clark national historic trail interpretive center for the biennium ending June 30, 1993. The money, along with the $300,000 of other funds specified in [section 2], is to be used to match federally appropriated funds on an 8-to-1 basis. The department of commerce shall administer the appropriation to add another tourism destination attraction in Montana. The department of commerce shall distribute the money for planning, design, and all phases of construction for a Lewis and Clark national historic trail interpretive center, as authorized in Public Law 100-552.

Section 2. **Matching requirement — contingent reversion.** (1) The general fund appropriation in [section 1] must be matched by other funds of $300,000.

(2) If federal matching funds for the Lewis and Clark national historic trail interpretive center are not received by January 1, 1993, the appropriation in [section 1] reverts to the general fund.

(3) If other funds totaling $300,000 are not donated to the Lewis and Clark national historic trail interpretive center by January 1, 1993, the appropriation in [section 1] reverts to the general fund.

Section 3. **Effective date.** [This act] is effective July 1, 1991.

Approved May 24, 1991.

CHAPTER NO. 821

[SB 154]

AN ACT CLARIFYING THAT STATUTORY LEGISLATIVE IMMUNITY EXTENDS ONLY TO LEGISLATIVE BODIES OF GOVERNMENTAL ENTITIES AND ONLY TO LEGISLATIVE ACTIONS TAKEN BY THOSE BODIES; CLARIFYING THAT GOVERNMENTAL ENTITIES ARE NOT IMMUNE UNDER THE LEGISLATIVE IMMUNITY STATUTE FOR NONLEGISLATIVE ACTIONS; CLARIFYING THAT THE ACQUISITION OF INSURANCE DOES NOT WAIVE IMMUNITY; AMENDING SECTION 2-9-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-111, MCA, is amended to read:

"**2-9-111. Immunity from suit for legislative acts and omissions.** (1) As used in this section:

(a) the term "governmental entity" ~~includes~~ *means only* the state, counties, municipalities, ~~and~~ school districts, *and any other local government entity or local political subdivision vested with legislative power by statute*;

(b) the term "legislative body" ~~includes~~ *means only* the legislature vested with legislative power by Article V of The Constitution of the State of Montana and ~~any local governmental entity given legislative powers by statute, including school boards.~~ *that branch or portion of any other local governmental entity or local political subdivision empowered by law to consider and enact statutes, charters, ordinances, orders, rules, policies, resolutions, or resolves;*

(c) (i) the term "legislative act" means:

(A) actions by a legislative body that result in creation of law or declaration of public policy;

(B) other actions of the legislature authorized by Article V of The Constitution of the State of Montana; or

(C) actions by a school board that result in adoption of school board policies pursuant to 20-3-323(1);

(ii) the term legislative act does not include administrative actions undertaken in the execution of a law or public policy.

(2) A governmental entity is immune from suit for ~~an~~ *a legislative* act or omission ~~of~~ *by* its legislative body, or ~~a~~ *any* member~~, officer, or agent thereof~~ *or staff of the legislative body, engaged in legislative acts.*

(3) ~~A~~ *Any* member~~, officer,~~ or ~~agent~~ *staff* of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with ~~the introduction or consideration of legislation or action by~~ *legislative acts of* the legislative body.

(4) The acquisition of insurance coverage, including self-insurance or group self-insurance, by a governmental entity does not waive the immunity provided by this section.

~~(4)~~*(5)* The immunity provided for in this section does not extend to any tort committed by the use of a motor vehicle, aircraft, or other means of transportation."

Section 2. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to causes of action that have not been reduced to final judgment on or before [the effective date of this act].

Approved May 24, 1991.

CHAPTER NO. 822

[SB 222]

AN ACT CHANGING THE ELIGIBILITY REQUIREMENTS FOR RETIREMENT UNDER THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; PROVIDING THAT MEMBERS WHO TERMINATE COVERED EMPLOYMENT AFTER 10 YEARS AND WHO REMAIN MEMBERS MAY BECOME ELIGIBLE TO DRAW A RETIREMENT BENEFIT UPON REACHING THE AGE OF 50; AMENDING SECTIONS 19-9-104, 19-9-801, 19-9-802, 19-9-804, 19-9-902, 19-9-903, 19-9-911, AND 19-9-1011, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-104, MCA, is amended to read:

"**19-9-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Administrator" means the public employees' retirement division of the department of administration.

(2) "Base salary" means the sum of the monthly compensations for each month in a given calendar year.

(3) "Board" means the retirement board described in 2-15-1009.

(4) "Credited service" means the aggregate of a member's prior service and membership service.

(5) "Death benefit" means a monthly annuity paid to a surviving spouse or dependent child or a lump-sum payment made to a beneficiary on behalf of a member who dies before retirement.

(6) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(7) "Employer" means any city which participated in a prior plan or which elects to join this plan under 19-9-107.

(8) "Employer annuity" means monthly payments for life derived from employer and state contributions.

(9) "Final average salary" means the monthly compensation of a member, averaged over the last 36 months of his active service or, in the event he has not been a member that long, over the period of his membership.

(10) "Fund" means the pension trust fund in the treasury system designated for the use of the plan.

(11) "Member" means a person who is employed by an employer as a police officer or who is entitled to a retirement allowance by virtue of his service to an employer as a police officer.

(12) "Member contributions" means the total of the deductions from the compensation of a member, either made during a period of active membership hereunder or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(13) "Member's annuity" means monthly payments for life derived from member contributions.

(14) "Membership service" means a period of employment with an employer occurring after June 30, 1977, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(15) "Minimum retirement date" ~~or "normal retirement date"~~ means:

(a) for a member employed by an employer as a police officer on July 1, 1975, the first day of the month coinciding with or, if none coincides, immediately following the date on which a member completes at least 20 years of qualified service and terminates employment as a police officer; or

(b) for a member first employed by an employer as a police officer after July 1, 1975, the first day of the month coinciding with or, *if none coincides,* immediately following~~, if none coincides,~~ the date on which a member becomes ~~both~~ age 50 or older, ~~and completes 20~~ *has completed 10* or more years of ~~credited~~ *qualified* service, *and has terminated employment as a police officer.*

(16) "Monthly compensation" means the wage, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, a member receives as an active police officer.

(17) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(18) "Plan" means the municipal police officers' retirement system created by this chapter.

(19) "Police officer" means a law enforcement officer employed by an employer.

(20) "Prior plan" means the local police reserve or retirement fund of a city which elects to join the plan under 19-9-107 or the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974.

(21) "Prior service" means a period of employment as a police officer for which credit was granted to a member under a prior plan and has been transferred to this plan.

(22) "Qualified service" means credited service plus any service purchased under the provisions of part 4 of this chapter.

~~(22)~~*(23)* "Retirement allowance" means the employer annuity plus the member's annuity.

~~(23)~~*(24)* "Retirement date" means the date on which the first payment of the retirement, disability, or survivor benefits of a member or a beneficiary is payable.

~~(24)~~*(25)* "Surviving spouse" means the spouse married to a member at the time of the member's death.

~~(25)~~*(26)* "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a police officer."

Section 2. Section 19-9-801, MCA, is amended to read:

"**19-9-801. Eligibility for service retirement — commencement of allowance.** Members are eligible for retirement and shall retire as provided in this section:

(1) A member who was employed by an employer as a police officer on July 1, 1975, is eligible to receive a service retirement allowance when he has completed 20 years or more ~~in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank,~~ *of qualified service* and has terminated covered employment.

(2) A member who was or is first employed by an employer as a police officer after July 1, 1975, is eligible to receive a service retirement allowance when he has reached the age of 50, has completed ~~20~~ *10* years or more ~~in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank~~ *of qualified service,* and has terminated covered employment.

(3) (a) Except as provided in subsection (3)(b), the retirement allowance may commence on the first day of the month following the member's ~~last day of membership service~~ *minimum retirement date* or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application.

(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 55th birthday."

Section 3. Section 19-9-802, MCA, is amended to read:

"**19-9-802. Election to serve additional years.** ~~(1)~~ A police officer who is eligible for service retirement under 19-9-801(1) or (2) may retire as of the time he becomes eligible or may elect to serve ~~an~~ additional ~~1 to 10~~ years as an active police officer.

~~(2) A police officer whose eligibility depends on 19-9-801(2) and who completes 20 years of service before reaching the age of 50 is considered to have elected to serve an additional year for each year between the completion of his 20th year of service and his 50th birthday and shall be paid the additional 1%, as prescribed in 19-9-804(2), for each such year.~~"

Section 4. Section 19-9-804, MCA, is amended to read:

"**19-9-804. Amount of service retirement allowance — continuation of allowance after death of member.** (1) A police officer *with 20 years of qualified service* who is eligible under subsection (1) or (2) of 19-9-801 and does not elect to serve any additional years as an active police officer shall receive a service retirement allowance equal to one-half his final average salary.

(2) A police officer who is eligible for service retirement *under subsection (1) or (2) of 19-9-801* after 20 years of *qualified* service and who elects to serve additional years shall receive the allowance provided for in subsection (1) plus an additional 1% of his final average salary for each year of additional *qualified* service, up to a maximum of 60% of his final average salary.

(3) *A member who is eligible for service retirement under subsection (2) of 19-9-801 with less than 20 years of qualified service shall receive a retirement allowance equal to 2.5% of his final average salary for each year of qualified service.*

(4) (a) Upon the death of a police officer receiving a service retirement allowance under *subsection (1) or (2)* ~~this section~~, his surviving spouse, if there is one, shall receive from the fund a sum equal to one-half of the officer's final average salary.

(b) Upon the death of a member receiving a service retirement allowance under subsection (3), his surviving spouse, if there is one, shall receive from the fund a sum equal to the amount of the officer's allowance at the time of his death.

(c) If the officer leaves one or more dependent children, then upon his death, if he leaves no surviving spouse or upon the death of the surviving spouse, the officer's surviving dependent child, or children collectively if there are more than one, shall receive the same monthly payments a surviving spouse would receive for as long as the child or one of the children remains dependent as defined in 19-9-104. The payments must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata payments to that child must cease and be made to the remaining children until all the children are no longer dependent."

Section 5. Section 19-9-902, MCA, is amended to read:

"**19-9-902. Eligibility for disability retirement.** If a ~~member~~ *police officer* is determined by the board to be totally and permanently disabled, he is entitled to a disability retirement allowance, regardless of the length of his service, commencing on the day following the ~~member's~~ *police officer's* last day of membership service."

Section 6. Section 19-9-903, MCA, is amended to read:

"**19-9-903. Amount of disability retirement allowance — continuation of allowance after death of member.** (1) A police officer who is eligible under 19-9-902 before completing 20 years of *qualified* service shall receive a disability retirement allowance equal to one-half his average final salary.

(2) A police officer who is retired under 19-9-902 and who, at the time of his injury or disability, was eligible at his option to be retired under subsection (1) or (2) of 19-9-801 but had elected to serve ~~additional~~ years *in excess of 20 years of qualified service* and was then serving such additional

years shall be paid for the additional years at the rate prescribed in 19-9-804(2).

(3) Upon the death of a police officer receiving a disability allowance under this section, his surviving spouse or dependent child is eligible for benefits as provided in 19-9-804~~(3)~~*(4)*."

Section 7. Section 19-9-911, MCA, is amended to read:

"**19-9-911. Death benefits.** *(1)* Upon the death of a police officer before retirement, his surviving spouse or dependent child is eligible for benefits as provided in 19-9-804~~(3)~~*(4)*.

(2) Upon the death of a member who is no longer employed as a police officer and who did not attain the minimum retirement eligibility at the age of 50, his surviving spouse or dependent child is eligible for a refund of the member's contributions and accumulated interest on account with the retirement system on the date that the refund is made to the survivors."

Section 8. Section 19-9-1011, MCA, is amended to read:

"**19-9-1011. Allowance adjustment.** (1) A monthly allowance paid under section 31(3), Chapter 456, Laws of 1977 (formerly section 11-1890(3), R.C.M. 1947), 19-9-804*(1) or (2)*, 19-9-903, or 19-9-911 to a member retired on or after July 1, 1975, or to his surviving spouse or dependent child may not be less than one-half the monthly compensation paid to a newly confirmed, active police officer of the city that last employed the member as a police officer, as provided each year in the budget of that city.

(2) At the beginning of each fiscal year, the administrator shall request and the state auditor shall pay to the administrator from the premium tax collected from insurance sold in this state to insure against the risks enumerated in 19-11-512(3) an amount sufficient to fund the allowance adjustment provided for in subsection (1)."

Section 9. **Coordination instruction.** If House Bill No. 595 and [this act] are passed and approved, then the following amendments apply:

(1) The definition of "minimum retirement date" or "normal retirement date" under the provisions of 19-9-104 is amended to read as follows:

"(15) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member both becomes age 50 and completes 10 years of qualified service."

(2) Section 19-9-104 is amended to include a new definition to read as follows and subsequent subsections are renumbered:

"(18) "Normal retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member completes 20 or more years of qualified service and has terminated employment as a police officer."

(3) Section 19-9-801, MCA, is amended to read:

"19-9-801. Eligibility for service retirement — commencement of allowance. Members are eligible for retirement and shall retire as provided in this section:

(1) A member employed by an employer as a police officer is eligible to receive a service retirement allowance when he has completed 20 years or more of qualified service and has terminated covered employment.

(2) A member who terminates employment as a police officer with an employer after completing at least 10 years of qualified service but prior to completing 20 years of qualified service is eligible to receive a service retirement allowance when he has reached 50 years of age.

(3) (a) Except as provided in subsection (3)(b), the retirement allowance may commence on the first day of the month following the member's minimum retirement date or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application.

(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 55th birthday."

(4) All references to subsections of 19-9-801 must be stricken from sections 19-9-802, 19-9-804, and 19-9-903.

Section 10. **Effective date.** [This act] is effective July 1, 1991.

Approved May 24, 1991.

CHAPTER NO. 823

[SB 226]

AN ACT TO RESTRUCTURE THE INCOME TAX ON PENSION BENEFITS BY EQUALIZING THE TAXATION OF ALL PENSION BENEFITS; TO PROVIDE AN EXEMPTION OF $3,600 FROM TAXATION OF BENEFITS FROM FEDERAL, STATE, AND PRIVATE RETIREMENT, ANNUITY, PENSION, AND ENDOWMENT PLANS OR SYSTEMS; TO PROVIDE THAT THE AMOUNT OF THE EXEMPTION BE REDUCED BY $2 FOR EVERY $1 OF FEDERAL ADJUSTED GROSS INCOME RECEIVED BY THE TAXPAYER IN EXCESS OF $30,000; TO PROVIDE FOR AN ADJUSTMENT PAYMENT TO RETIREES OF STATE, LOCAL, AND TEACHER RETIREMENT SYSTEMS WHO ARE MONTANA RESIDENTS; TO DIRECT A STUDY OF THE TAXATION OF RETIREMENT BENEFITS; TO PROVIDE A STATUTORY APPROPRIATION FOR ADJUSTMENT PAYMENTS; AMENDING SECTIONS 15-30-101, 15-30-111, 15-30-136, 17-7-502, 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1005, 19-10-504, 19-11-612, 19-12-407, 19-13-1003, AND 19-21-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana.

STATEMENT OF INTENT

A statement of intent is required for this bill because the public employees' retirement board and the teachers' retirement board must establish a percentage rate to provide a uniform adjustment payment rate to all members of public retirement systems as provided in [section 4].

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-101, MCA, is amended to read:

"**15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by subsection (2) of 15-30-103, in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by subsections (7) and (8) of 15-30-112, in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by subsection (2) of 15-30-122, in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Department" means the department of revenue.

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June, 1980.

(9) "Information agents" includes all individuals, corporations, associations, and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(10) "Knowingly" is as defined in 45-2-101.

(11) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profitsharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts after cessation of regular employment received from fully matured, privately purchased annuity contracts.

~~(13)~~*(14)* "Purposely" is as defined in 45-2-101.

~~(14)~~*(15)* "Received", for the purpose of computation of taxable income under this chapter, means received or accrued and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(15)~~*(16)* "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

~~(16)~~*(17)* "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(17)~~*(18)* "Taxable year" means the taxpayer's taxable year for federal income tax purposes.

~~(18)~~*(19)* "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations."

Section 2. Section 15-30-111, MCA, is amended to read:

"**15-30-111. Adjusted gross income.** (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) *(i)* ~~all benefits, not in excess of $3,600, received:~~

~~(i) under the Federal Employees' Retirement Act;~~

~~(ii) under the public employee retirement laws of~~ a state ~~other than Montana; or~~

~~(iii) as an annuity, pension, or endowment under any private or corporate retirement plan or system~~ *except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;*

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

~~(d) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;~~

~~(e) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;~~

~~(f) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;~~

~~(g)~~*(d)* all Montana income tax refunds or *tax refund* credits ~~thereof~~;

~~(h) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans or specified as exempt from taxation by 19-13-1003;~~

~~(i) all benefits paid under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005;~~

~~(j)~~*(e)* gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

~~(k)~~*(f)* all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

~~(l)~~*(g)* all benefits received under the workers' compensation laws;

~~(m)~~*(h)* all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law; *and*

~~(n) all benefits paid under an optional retirement program that are specified as exempt from taxation by 19-21-212; and~~

~~(o)~~*(i)* all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

(4) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(5) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(6) Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(7) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

~~(8) A person receiving benefits described in subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not exclude benefits described in subsection (2)(c) from adjusted gross income unless the benefits received under subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are less than $3,600, in which case the person may combine benefits to exclude up to a total of $3,600 from adjusted gross income.~~ ~~*(Subsection (2)(k) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)*~~"

Section 3. Section 15-30-136, MCA, is amended to read:

"**15-30-136. Computation of income of estates or trusts — exemption.** (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the taxable year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision thereof, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954, as amended;

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code of 1954, as amended;

(b) taxes paid or accrued within the taxable year, including but not limited to federal income tax, but excluding Montana income tax;

(c) that fiduciary's portion of depreciation or depletion which is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code of 1954, as amended;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code of 1954, as amended;

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code of 1954, as amended, if such expenses were not claimed as a deduction in the determination of Montana inheritance tax;

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code of 1954, as amended;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code of 1954, as amended, except estates may not claim losses that are deductible on the decedent's final return;

~~(h) all benefits, not in excess of $3,600, received:~~

~~(i) as federal employees' retirement;~~

~~(ii) as retirement from public employment in a state other than Montana; or~~

~~(iii) as an annuity, pension, or endowment under private or corporate retirement plans or systems;~~

~~(i) all benefits paid under the Montana teachers' retirement system that are specified as exempt from taxation by 19-4-706;~~

~~(j) all benefits paid under the Montana Public Employees' Retirement System Act that are specified as exempt from taxation by 19-3-105;~~

~~(k) all benefits paid under the Montana highway patrol officers' retirement system that are specified as exempt from taxation by 19-6-705;~~

~~(l)~~*(h)* Montana income tax refunds or *tax refund* credits ~~thereof;~~

~~(m) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firemen or their surviving spouses or children;~~

~~(n) all benefits paid under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005~~.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202 is not in effect, net income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S. election were not in effect.

(4) The following additional deductions shall be allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the taxable year currently required to be distributed to beneficiaries for such year;

(b) any other amounts properly paid or credited or required to be distributed for the taxable year;

(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year.

(5) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and 15-30-112(8).

~~(6) A trust or estate excluding benefits under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) may not exclude benefits described in subsection (2)(h) from net income unless the benefits received under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) are less than $3,600, in which case the trust~~

~~or estate may combine benefits to exclude up to a total of $3,600 from net income.~~"

Section 4. **Retirement adjustment — annual deposit — statutory appropriation.** (1) There is statutorily appropriated, as provided in 17-7-502, from the general fund to the public employees' retirement board and the teachers' retirement board the amounts provided in subsection (2) for distribution to members of retirement systems as provided in [section 5].

(2) On or before May 1 of each year, the state treasurer shall pay to the public employees' retirement board and the teachers' retirement board an amount equal to 2 1/2% of the total benefits paid by both systems during the prior calendar year. In distributing the appropriations to the boards, the treasurer shall consult with the boards to determine the amounts necessary for uniform payments to members. The amount of the benefits must be certified to the treasurer by the public employees' retirement board and the teachers' retirement board no later than April 1 of each year. For the purpose of this section, the public employees' retirement board shall collect information and certify the amount of benefits paid pursuant to Title 19, chapters 10 and 11. Not later than February 15 of each year, the boards of trustees of local police retirement funds, provided in 19-10-201, and boards of trustees of local fire department relief associations, provided in 19-11-104, shall submit reports on benefit payments containing information requested by the public employees' retirement board.

Section 5. **Montana retirement adjustment payments — public employees' retirement board.** (1) Not later than June 1 of each year, the public employees' retirement board and the teachers' retirement board shall fix and pay to those members entitled to it an annual adjustment payment. The adjustment payment is determined for each system based upon the benefits paid by the system in the prior calendar year and on the annual benefit to which each Montana resident member of the system is entitled.

(2) (a) The public employees' retirement board shall allocate money appropriated for retirement adjustment to the public retirement systems in Title 19, chapters 3 and 5 through 13. The allocation to each system must be made based upon the annual amount each system's benefits payments bears to the amount paid by all of the systems specified in this subsection.

(b) The teachers' retirement board shall administer the money appropriated for retirement adjustment to the teachers' retirement system in Title 19, chapter 4.

(3) (a) Each member of a system listed in subsection (2) who is a resident of the state and who is entitled to an annual benefit is entitled to a retirement adjustment payment. Each retirement system specified in subsection (2), through the public employees' retirement board, the teachers' retirement board, or a local retirement board of trustees, as appropriate, shall distribute its allocation of the money appropriated for retirement adjustment to its members entitled to adjustment payments.

The governing board of each system set forth in subsection (2) shall provide an annual adjustment payment that is a percentage of annual benefits.

(b) The methodology that the public employees' retirement board and the teachers' retirement board use to calculate adjustments for systems administered by them must be adopted by rule pursuant to Title 2, chapter 4.

(c) For the purposes of this section, a "Montana resident" means a person domiciled in the state and any person who maintains a permanent place of abode within the state.

Section 6. Section 19-3-105, MCA, is amended to read:

"**19-3-105. Exemption from taxes and legal process.** The right of a person to a retirement allowance or any other benefit under this chapter and the ~~moneys~~ *money* in the fund created under this chapter ~~is~~ *are* not:

(1) subject to execution, garnishment, attachment, or any other process;

(2) subject to state, county, or municipal taxes except for*:*

(a) a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a refund paid under 19-3-703 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-3-701; or

(3) assignable except as in this chapter specifically provided."

Section 7. Section 19-4-706, MCA, is amended to read:

"**19-4-706. Exemption from taxation and legal process.** The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1) exempted from any state, county, or municipal tax of the state of Montana except for*:*

(a) a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a withdrawal paid under 19-4-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-4-602;

(2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

(3) unassignable except as specifically provided in this chapter."

Section 8. Section 19-5-704, MCA, is amended to read:

"**19-5-704. Exemption from taxes and legal process.** *(1)* ~~Any money~~ *Money* received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these ~~shall be~~ *is* exempt from ~~any state or municipal tax and from~~ levy, sale, garnishment, attachment, or any other process ~~whatsoever~~ and ~~shall be~~ *is* unassignable except as specifically provided in 19-5-705.

(2) The first $3,600 or the amount as determined pursuant to 15-30-111(2)(c)(ii) received under this chapter is exempt from state, county, or municipal taxation."

Section 9. Section 19-6-705, MCA, is amended to read:

"**19-6-705. Exemption from taxes and legal process.** Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these is:

(1) exempt from any state, county, or municipal tax except for*:*

(a) a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a refund paid under 19-6-403 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-6-402;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

(3) unassignable except as specifically provided in 19-6-706."

Section 10. Section 19-7-705, MCA, is amended to read:

"**19-7-705. Exemption from taxes and legal process.** Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these is:

(1) exempt from any state, county, or municipal tax except for*:*

(a) a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a refund paid under 19-7-304(1) of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-7-403;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

(3) unassignable except as specifically provided in 19-7-706."

Section 11. Section 19-8-805, MCA, is amended to read:

"**19-8-805. Exemption from taxes and legal process.** Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these is:

(1) exempt from any state, county, or municipal tax except for*:*

(a) a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a refund paid under 19-8-503 of the member's contributions picked up by an employer after June 30, 1985, as provided in 19-8-502;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

(3) unassignable except as specifically provided in 19-8-806."

Section 12. Section 19-9-1005, MCA, is amended to read:

"**19-9-1005. Exemption from taxes.** Any money paid in accordance with the provisions of this chapter is exempt from any state, county, or municipal tax except *for:*

(1) a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(2) a refund paid under 19-9-304 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-9-601."

Section 13. Section 19-10-504, MCA, is amended to read:

"**19-10-504. Protection of benefits from legal process *and taxation.*** *(1)* The benefits provided for in this part are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are unassignable except as specifically provided in 19-10-505.

(2) The first $3,600 or the amount as determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part are exempt from state, county, and municipal taxation."

Section 14. Section 19-11-612, MCA, is amended to read:

"**19-11-612. Protection of benefits from legal process *and taxation* — nonassignability.** *(1)* Any payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum so assigned.

(2) The first $3,600 or the amount as determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part are exempt from state, county, and municipal taxation."

Section 15. Section 19-12-407, MCA, is amended to read:

"**19-12-407. Payment of pension benefits — *exemption from taxation.*** *(1)* All payments under the volunteer firefighters' pension plan must be approved by the board and paid by warrants drawn upon the pension trust fund, payable to the order of the individual qualified volunteer firefighter or the beneficiary as provided in 19-12-405(1).

(2) The first $3,600 or the amount as determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part are exempt from state, county, and municipal taxation."

Section 16. Section 19-13-1003, MCA, is amended to read:

"**19-13-1003. Exemption from taxes.** Any money paid in accordance with the provisions of this chapter is exempt from any state, county, or municipal tax except *for:*

(1) the retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(2) refunds paid under 19-13-602 of the member's contributions picked up by an employer after June 30, 1987, as provided in 19-13-601."

Section 17. Section 19-21-212, MCA, is amended to read:

"**19-21-212. Exemption from taxation, legal process, and assessments.** All contracts, benefits, and contributions under the optional retirement program and the earnings thereon are:

(1) *except for a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii),* exempt from any state, county, or municipal tax;

(2) not subject to execution, garnishment, attachment, or other process;

(3) not covered or assessable by an insurance guaranty association; and

(4) unassignable except as specifically provided in the contracts."

Section 18. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604;

20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; *[section 3]*; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. *(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)* "

Section 19. **Study of taxation of retirement benefits.** The revenue oversight committee is requested to study the taxation of retirement benefits, including all relevant permutations of income sources and age criteria. The revenue oversight committee is also to keep abreast of legal developments involving the taxation of retirement benefits. The revenue oversight committee is to report its findings and recommendations to the 53rd legislature.

Section 20. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. **Codification instruction.** [Sections 4 and 5] are intended to be codified as an integral part of Title 19, and the provisions of Title 19 apply to [sections 4 and 5].

Section 22. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Approved May 24, 1991.

CHAPTER NO. 824

[HB 982]

AN ACT INCREASING THE SCHOOL MAXIMUM BUDGET SCHEDULES BY 2 PERCENT EACH FISCAL YEAR; APPROPRIATING FUNDING FOR THE SCHEDULE INCREASES; AMENDING SECTIONS

20-9-316, 20-9-317, 20-9-318, AND 20-9-319, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-316, MCA, is amended to read:

"**20-9-316. Elementary school maximum budget schedule for ~~1989-90~~ *fiscal year 1992*.** (1) For each elementary school having an ANB of nine or fewer pupils, the maximum is ~~$20,763~~ *$24,119* if the school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum is ~~$20,763~~ *$24,119* plus ~~$868~~ *$1,008* per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of at least 14 pupils but less than 18 pupils that qualify for instructional aide funding under 20-9-322, the maximum is ~~$34,033~~ *$39,534* plus ~~$868~~ *$1,008* per pupil on the basis of the average number belonging over 14.

(4) For schools with an ANB of 18 pupils and employing one teacher, the maximum is ~~$28,573~~ *$33,192* plus ~~$868~~ *$1,008* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(5) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum is ~~$45,619~~ *$52,992* plus ~~$543~~ *$631* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(6) For schools having an ANB in excess of 40, the maximum, on the basis of the total pupils (ANB) in the district, for elementary pupils is as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of ~~$2,016~~ *$2,342* must be decreased at the rate of ~~$1.96~~ *$2.27* for each additional pupil until the total number (ANB) reaches 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of ~~$1,898~~ *$2,205* must be decreased at the rate of ~~$1.79~~ *$1.24* for each additional pupil until the ANB reaches 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum may not exceed ~~$1,541~~ *$1,951* for each pupil.

(7) The maximum per pupil for all pupils (ANB) and for all elementary schools must be computed on the basis of the amount allowed in this section on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town must be treated as one school for the purpose of this schedule."

Section 2. Section 20-9-317, MCA, is amended to read:

"**20-9-317. High school maximum budget schedule for ~~1989-90~~ *fiscal year 1992.*** (1) For each high school having an ANB of 24 or fewer pupils, the maximum is ~~$118,290~~ *$146,669.*

(2) For a high school having an ANB of more than 24 pupils, the maximum of ~~$4,929~~ *$6,111* must be decreased at the rate of ~~$26.88~~ *$33.33* for each additional pupil until the ANB reaches 40 pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of ~~$4,499~~ *$5,578* must be decreased at the rate of ~~$26.88~~ *$33.33* for each additional pupil until the ANB reaches 100 pupils.

(4) For a school having an ANB of more than 100 pupils, the maximum of ~~$2,886~~ *$3,578* must be decreased at the rate of ~~$4.50~~ *$5.58* for each additional pupil until the ANB reaches 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of ~~$2,436~~ *$3,020* must be decreased by ~~$2.47~~ *$3.06* for each additional pupil until the ANB reaches 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of ~~$2,189~~ *$2,713* must be decreased at the rate of ~~45~~ *56* cents for each additional pupil until the ANB reaches 600 pupils.

(7) For a school having an ANB of more than 600 pupils, the maximum may not exceed ~~$2,053~~ *$2,545* per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools must be computed on the basis of the amount allowed in this section on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, must be treated as one school for the purpose of this schedule."

Section 3. Section 20-9-318, MCA, is amended to read:

"**20-9-318. Elementary school foundation program schedule for school fiscal year ~~1991~~ *1993* and succeeding years.** For the school fiscal year ending June 30, ~~1991~~ *1993,* and succeeding school years, the elementary school foundation program schedule is as follows:

(1) For each elementary school having an ANB of nine or fewer pupils, the maximum is ~~$23,646~~ *$24,601* if the school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum is ~~$23,646~~ *$24,601* plus ~~$988~~ *$1,028* per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of at least 14 pupils but less than 18 pupils that qualify for instructional aide funding under 20-9-322, the maximum is ~~$38,759~~ *$40,325* plus ~~$988~~ *$1,028* per pupil on the basis of the average number belonging over 14.

(4) For schools with an ANB of 18 pupils and employing one teacher, the maximum is ~~$32,541~~ *$33,856* plus ~~$988~~ *$1,028* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(5) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum is ~~$51,953~~ *$54,052* plus ~~$619~~ *$644* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(6) For schools having an ANB in excess of 40, the maximum, on the basis of the total pupils (ANB) in the district, is as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of ~~$2,296~~ *$2,389* is decreased at the rate of ~~$2.23~~ *$2.32* for each additional pupil until the total number (ANB) reaches a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of ~~$2,162~~ *$2,249* is decreased at the rate of ~~$1.22~~ *$1.27* for each additional pupil until the ANB reaches 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum may not exceed ~~$1,913~~ *$1,990* for each pupil.

(7) The maximum per pupil for all pupils (ANB) and for all elementary schools must be computed on the basis of the amount allowed in this section on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town must be treated as one school for the purpose of this schedule."

Section 4. Section 20-9-319, MCA, is amended to read:

"**20-9-319. High school foundation program schedule for school fiscal year ~~1991~~ *1993* and succeeding years.** For the school fiscal year ending June 30, ~~1991~~ *1993*, and succeeding school years, the high school foundation program schedule is as follows:

(1) For each high school having an ANB of 24 or fewer pupils, the maximum is ~~$143,793~~ *$149,602.*

(2) For a high school having an ANB of more than 24 pupils, the maximum of ~~$5,991~~ *$6,233* is decreased at the rate of ~~$32.68~~ *$34* for each additional pupil until the ANB reaches a total of 40 pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of ~~$5,469~~ *$5,690* is decreased at the rate of ~~$32.68~~ *$34* for each additional pupil until the ANB reaches 100 pupils.

(4) For a school having an ANB of more than 100 pupils, the maximum of ~~$3,508~~ *$3,650* is decreased at the rate of ~~$5.47~~ *$5.69* for each additional pupil until the ANB reaches 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of ~~$2,961~~ *$3,081* is decreased by ~~$3.00~~ *$3.12* for each additional pupil until the ANB reaches 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of ~~$2,660~~ *$2,767* is decreased at the rate of ~~55~~ *57* cents for each additional pupil until the ANB reaches 600 pupils.

(7) For a school having an ANB of more than 600 pupils, the maximum may not exceed ~~$2,495~~ *$2,596* per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools must be computed on the basis of the amount allowed in this section on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, must be treated as one school for the purpose of this schedule."

Section 5. **Appropriation.** There is appropriated $255 million from the general fund for school equalization aid for the biennium ending June 30, 1993.

Section 6. **Coordination instruction.** If Senate Bill No. 17 is passed and approved and if it includes a section that amends 15-1-501, the appropriation in [section 5] is reduced from $255 million to $25 million.

Section 7. **Contingent voidness.** If House Bill No. 1007 is not passed and approved, then [this act] is void.

Section 8. **Effective date.** [This act] is effective July 1, 1991.

Approved May 24, 1991.

RESOLUTIONS

Enacted by the

FIFTY-SECOND LEGISLATURE

IN REGULAR SESSION

Held at Helena, the Seat of Government

January 7, 1991 to April 29, 1991

COMPILED BY MONTANA LEGISLATIVE COUNCIL

SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING THE 100TH ANNIVERSARY OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

WHEREAS, it is appropriate to celebrate the 100th Anniversary of the National Conference of Commissioners on Uniform State Laws in recognition of the achievements of the Conference in creating uniformity in the laws of the states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands; and

WHEREAS, the first formal action to encourage the development of uniform laws was taken at the 12th annual meeting of the American Bar Association in 1889, the year Montana became a state; and

WHEREAS, the first meeting of a Conference of State Boards of Commissioners on Promoting Uniformity of Law in the United States was held in 1892 and the first business of the seven original members was to urge all states and territories to adopt acts on the Acknowledgment of Written Instruments, the Validation of Wills Executed Outside the State, and the Recognition of Wills Probated in Another State; and

WHEREAS, by 1912, every state had joined the conference, appointed commissioners, and developed uniform laws on issues ranging from partnerships to child labor; and

WHEREAS, in 1915, the organization officially became the National Conference of Commissioners on Uniform State Laws; and

WHEREAS, the Conference has drafted and promoted legislation in such divergent areas as commercial law, family law, health care law, estate and probate law, and procedural law; and

WHEREAS, the Conference also drafts model legislation to provide states with a concisely structured legislative framework, adaptable to each state's particular needs; and

WHEREAS, the Conference continues to focus on the emerging legal issues of the day, considering areas such as anatomical gifts, determination of death, and surrogate parenting; and

WHEREAS, Montana is among the most active states in enacting uniform laws; and

WHEREAS, there are more than 300 commissioners representing lawyers, judges, law professors, and government officials, who dedicate hundreds of hours of their time to the Conference while receiving no salaries or fees for their work; and

WHEREAS, Montana commissioners have served with great distinction and dedication to the Conference.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the National Conference of Commissioners on Uniform State Laws be commended as it celebrates its 100th Anniversary and be applauded as a genuine confederation of state interests and for its leadership in effecting uniformity of law while providing the states with legislation adaptable to their particular needs and concerns.

BE IT FURTHER RESOLVED, that sincere appreciation be extended to those individuals who have given of their time and expertise as commissioners.

Approved February 5, 1991.

SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE BOARD OF CRIME CONTROL TO ALLOCATE FORMULA GRANT FUNDS RECEIVED UNDER THE FEDERAL JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT FOR PROGRAMS TO ACHIEVE COMPLIANCE WITH SECTION 223(A)(14) OF THE ACT, WHICH PROHIBITS THE DETENTION OF JUVENILES IN ADULT JAILS.

WHEREAS, the Juvenile Justice and Delinquency Prevention Act was enacted by Congress in 1974; and

WHEREAS, section 223(a)(14) of the Juvenile Justice and Delinquency Prevention Act prohibits the detention of juveniles in adult jails; and

WHEREAS, the Juvenile Justice and Delinquency Prevention Act provides formula grant funds to assist states in planning, establishing, and operating programs to improve the juvenile justice system and to prevent juvenile delinquency and juvenile crime; and

WHEREAS, the Juvenile Justice and Delinquency Prevention Act also provides formula grant funds to assist states in establishing programs to achieve compliance with section 223(a)(14) of the Act; and

WHEREAS, the Board of Crime Control administers formula grant funds received under the Juvenile Justice and Delinquency Prevention Act; and

WHEREAS, the Board of Crime Control administers these funds to support a variety of programs in the area of juvenile justice and delinquency prevention; and

WHEREAS, the State of Montana is not in full compliance with section 223(a)(14) of the Juvenile Justice and Delinquency Prevention Act; and

WHEREAS, in order to achieve compliance with section 223(a)(14), local governments will require funding for programs to provide alternatives to the detention of juveniles in adult jails; and

WHEREAS, formula grant funds that are available for programs needed to achieve compliance with section 223(a)(14) should be used first before state or local dollars are committed for the same purpose; and

WHEREAS, the use of formula grant funds would reduce the need for new or additional funding for programs that are necessary in order to comply with section 223(a)(14); and

WHEREAS, the Juvenile Justice and Delinquency Prevention Act requires that at least two-thirds of formula grant funds received by the state, other than funds reserved for youth advisory groups, must be spent as grants to local governments; and

WHEREAS, the failure of the State of Montana to achieve compliance with section 223(a)(14) will result in the loss of formula grant funds received under the Juvenile Justice and Delinquency Prevention Act.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Board of Crime Control allocate at least two-thirds of all available formula grant funds received under the Juvenile Justice and Delinquency Prevention Act, other than funds reserved for youth advisory groups, for direct programs to achieve compliance with section 223(a)(14) of the Act.

Approved February 16, 1991.

SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT JOINT RULES TO GOVERN THEIR PROCEEDINGS.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following joint rules be adopted:

CHAPTER 10

ADMINISTRATION

10-10. Time of meeting. Each house may order its time of meeting.

10-20. Legislative day — duration. (1) If either house is in session on a given day, that day constitutes a legislative day.

(2) A legislative day for a house ends either 24 hours after that house convenes for the day or at the time the house convenes for the following legislative day, whichever is earlier.

10-30. Schedules. The presiding officer of each house shall coordinate its schedule to accommodate the workload of the other house.

10-40. Adjournment — recess — meeting place. A house may not, without the consent of the other, adjourn or recess for more than 3 days or to any place other than that in which the two houses are sitting (Montana Constitution, Art. V, Sec. 10(5)).

10-50. Access of press. Subject to the presiding officer's discretion on issues of decorum and order, an accredited press representative may not be prohibited from photographing, televising, or recording a legislative meeting or hearing.

10-60. Conflict of interest. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house of which he is a member.

10-70. Telephone calls. (1) Long distance telephone calls made by a member while the Legislature is in session or the member is in travel status are considered official legislative business. These include, but are not limited to, calls made to constituencies, places of business, and family members.

(2) Session staff, including aides and interns, may use telephones for long distance calls only if specifically authorized to do so by their legislative sponsor or supervisor. Sponsoring members and supervisors are accountable for use of state telephones by their staff, including aides and interns, and may not authorize others to use state phones.

(3) Permanent staff of the Legislature shall comply with executive branch rules applying to the use of state telephones.

10-80. Joint employees. The presiding officers of each house, acting together, shall:

(1) hire joint employees; and

(2) review a dispute or complaint involving the competency or decorum of a joint employee, and dismiss, suspend, or retain the employee.

10-90. Legislative interns. Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

10-100. Legislative Council. (1) The staff of the Legislative Council shall serve both houses as required.

(2) Staff members shall:

(a) maintain personnel files for legislative employees; and

(b) prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report.

10-110. Compensation of legislative employees. The Legislature by joint resolution shall prescribe the compensation of the employees of each house.

10-120. Engrossing and enrolling staff — duties. (1) The Legislative Council shall hire all engrossing and enrolling staff.

(2) The duties of the engrossing and enrolling staff are:

(a) to engross or enroll any bill or resolution delivered to them within 48 hours after it has been received, unless further time is granted in writing by the presiding officer of the house in which the bill originated; and

(b) to correct clerical errors, absent the objection of the sponsor of a bill, resolution, or amendment and the Secretary of the Senate or the Chief Clerk of the House of Representatives in any bill or amendment originating in the house by which the Clerk or Secretary is employed. The following kinds of clerical errors may be corrected:

(i) errors in spelling;

(ii) errors in numbering sections;

(iii) additions or deletions of underlining or lines through matter to be stricken;

(iv) material copied incorrectly from the Montana Code Annotated;

(v) errors in outlining or in internal references;

(vi) an error in a title caused by an amendment;

(vii) an error in a catchline caused by an amendment;

(viii) errors in references to the Montana Code Annotated; and

(ix) other nonconformities of an amendment with Bill Drafting Manual form.

(3) The engrossing and enrolling staff shall give notice in writing of the clerical correction to the Secretary of the Senate or the Chief Clerk of the House and to the sponsor of the bill or amendment. Any of these may register an objection to the correction by filing the objection in writing within 24 hours after receipt of the notice.

(4) If a committee is the sponsor of a bill or resolution, any committee member designated by the chairman may be the principal sponsor for the purpose of this section. If a committee has proposed an amendment, the chairman is the principal sponsor for the purpose of this section.

10-130. Bills. (1) A bill draft request must be sponsored by a member of the Legislature.

(2) A bill must be:

(a) printed on paper with numbered lines;

(b) numbered at the foot of each page (except page 1);

(c) introduced in duplicate, with an additional title page; and

(d) for the original copy, covered with a cover page of a substantial material.

(3) In a section amending an existing statute, matter to be stricken out must be indicated with a line through the words or part to be deleted, and new matter must be underlined.

(4) Sections of the Montana Code Annotated repealed or amended in a bill must be stated in the title, except in general appropriation bills and bills for the codification and general revision of the laws.

(5) Introduced bills must be reproduced on white paper and distributed to members.

10-140. Voting. (1) A bill may not become a law except by vote of the constitutionally required majority of all the members present and voting in each house (Montana Constitution, Art. V, Sec. 11(1)). On final passage, the vote must be taken by ayes and noes and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(2)).

(2) Any vote in one house on a bill proposing an amendment to The Constitution of the State of Montana under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

10-150. Recording and publication of voting. (1) Every vote of each member on each substantive question in the Legislature, in any committee, or in Committee of the Whole must be recorded and made public. On final passage of any bill or joint resolution, the vote must be taken by ayes and noes and the names entered on the journal.

(2) Roll call votes must be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence; or

(d) indefinitely postpone.

(3) A roll call vote must be taken on nonsubstantive questions on the request of two members who may, on any vote, request that the ayes and noes be spread upon the journal.

(4) Roll call votes and other votes that are to be made public but are not specifically required to be spread upon the journal must be entered in the minutes of the appropriate committee or of the appropriate house (Montana Constitution, Art. V, Sec. 11(2)). A copy of the minutes must be filed with the Montana Historical Society.

10-160. Journal. Each house shall:

(1) supply the Legislative Council with the contents of the daily journal to be stored on an automated system;

(2) examine its journal and order correction of any errors; and

(3) distribute a daily journal to all members.

10-170. Journals — authentication — distribution. (1) The journal of the Senate must be authenticated by the signature of the President and the journal of the House of Representatives by the signature of the Speaker.

(2) The Legislative Council shall distribute the completed journals (sections 5-11-201 through 5-11-203, MCA).

CHAPTER 30

COMMITTEES

30-10. Committee chairman. Except as provided in Joint Rule 30-50, the chairman of the Senate committee is the chairman of all joint committees.

30-20. Voting in joint committees. (1) Except for Rules Committees and conference committees, a member of a joint committee votes individually and not by the house of which he or she is a member.

(2) Because the Rules Committees and conference committees are joint meetings of separate committees, in those committees the committees from each house vote separately. A majority of each committee must agree before any action may be taken, unless otherwise specified by individual house rules.

30-30. Conference committees. (1) If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the two houses cannot agree, the other house shall appoint a committee for the same purpose. The time and place of all conference committee meetings must be agreed upon by their chairmen and announced from the rostrum. This announcement is in order at any time. Failure to make this announcement does not affect the validity of the legislation being considered.

(2) A conference committee, having conferred, shall report to the respective houses the result of its conference. A conference committee shall confine itself to consideration of the disputed amendment. The committee may recommend:

(a) acceptance or rejection of each disputed amendment in its entirety; or

(b) further amendment of the disputed amendment.

(3) If either house requests a free conference committee and the other house concurs, appointments must be made in the same manner as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

30-40. Conference committee — enrolling. A conference committee report shall give clerical instructions for a corrected reference bill and for enrolling by referring to the reference bill version.

30-50. Committee consideration of appropriation bills. (1) All bills providing for an appropriation of public money may first be considered by a joint committee composed of the members of the Senate Committee on Finance and Claims and the House Committee on Appropriations, and then by each separately.

(2) Meetings of the joint committee must be held upon call of the chairman of the House Committee on Appropriations, who is chairman of the joint committee.

30-60. Estimation of revenue. (1) The Revenue Oversight Committee shall introduce a House joint resolution for the purpose of estimating revenue that may be available for appropriation by the Legislature.

(2) Meetings of the Revenue Oversight Committee for purposes of estimating revenue must be held upon the call of the chairman. The Revenue Oversight Committee shall issue periodic reports to each of the houses, indicating the committee's current revenue projections.

30-70. Oversight of joint legislative agencies and committees. The President of the Senate, the Speaker of the House, and the minority leaders of the Senate and the House comprise a legislative management committee which shall meet from time to time at the request of one of its members to review and oversee the activities of joint agencies and committees of the legislative branch established by law or resolution. The committee may consider, without limitation, matters concerning jurisdictional disputes between joint agencies and committees, agency salary schedules and employment policies, and any other matter bearing upon the efficient operation of the legislative branch. The committee may make such recommendations as it chooses to the appropriate authority or the Legislature.

CHAPTER 40

LEGISLATION

40-10. Amendment to state constitution. A bill must be used to propose an amendment to The Constitution of the State of Montana. The bill is not subject to the veto of the Governor (Montana Constitution, Art. VI, Sec. 10(1)).

40-20. Appropriation bills. (1) All appropriation bills must originate in the House of Representatives.

(2) Appropriation bills for the operation of the Legislature must be introduced by the chairman of the House Committee on Appropriations.

40-30. Effective dates. (1) Every statute, except one that provides for appropriation by the Legislature of public funds for a public purpose, takes effect on October 1 following its passage and approval, unless a different time is prescribed therein.

(2) A law appropriating public funds for a public purpose takes effect on July 1 following its passage and approval, unless a different time is prescribed therein.

(3) A joint resolution takes effect on its passage unless a different time is prescribed therein (sections 1-2-201 and 1-2-202, MCA).

40-40. Bill requests and introduction — limits and procedures. (1) Prior to a regular session, a person entitled to serve in that session, hereafter referred to as a "member", is entitled to request bill drafting services from the Legislative Council, subject to the following limits:

(a) Prior to 5 p.m. on December 5 preceding a regular session of the Legislature, a member may request an unlimited number of bills and resolutions to be prepared by the Legislative Council for introduction in the regular session.

(b) After 5 p.m. on December 5, a member may request no more than seven bills or resolutions to be prepared by the Legislative Council. At least two of the seven bills or resolutions must be requested before the regular session convenes.

(c) After December 5, a member, in the member's discretion, may grant to any other member any of the remaining bill or resolution requests the granting member has not used.

(d) These limitations on bill and resolution requests do not apply to:

(i) Code Commissioner bills;

(ii) a bill or resolution requested by a standing committee; and

(iii) a bill or resolution requested by a member at the request of a newly elected state official if so designated.

(2) Bills and resolutions must be reviewed by the staff of the Legislative Council prior to introduction for proper format, style, and legal form. The staff of the Legislative Council shall store bills on the automated bill drafting equipment and shall print and deliver them in triplicate to the requesting members. The original bill cover must be signed to indicate review by the Legislative Council. A bill may not be introduced unless it is so signed.

(3) During a session, a bill may be introduced by endorsing it with the name of a member and presenting it in triplicate to the Chief Clerk of the House of Representatives or the Secretary of the Senate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill must be introduced in the house in which the member whose name appears first on the bill is a member. The chief joint sponsor's name must appear immediately to the right of the first sponsor's name. In each session of the Legislature, bills, joint resolutions, and simple resolutions must be numbered consecutively in separate series in the order of their receipt.

(4) Any bill proposed by a legislative committee or introduced by request of an administrative or executive agency or department must be so indicated by placing after the names of the sponsors the phrase "By Request of the .... (Name of committee or agency)".

(5) Bills may be preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Council. Actual signatures of persons entitled to serve as members in the ensuing session may appear on the face of the preintroduced bill, or signatures may be obtained on a consent form from the Legislative Council and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Council to be included on the face of the bill following standing committee approval.

(6) All preintroduced bills must be made available to the public.

40-50. Schedules for drafting requests and bill introduction. The following schedules must be followed for submission of drafting requests and introduction of bills and resolutions.

	Request Deadline 5:00 P.M. Legislative Day	Introduction Deadline 5:00 P.M. Legislative Day
General Bills and Resolutions	10	14
Revenue Bills	17	21
Committee Bills and Resolutions	36	40

Committee Revenue Bills	62	66
Committee Bills implementing provisions of a general appropriation act	75	78

Bills and Resolutions delivered after the applicable introduction deadline must be introduced within 2 legislative days after delivery.

Appropriation Bills	No Deadline	No Deadline
Interim study resolutions	No Deadline	No Deadline
Resolutions to express confirmation of appointments	No Deadline	No Deadline
Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules	No Deadline	No Deadline

40-60. Joint resolutions. (1) A joint resolution must be adopted by both houses and is not approved by the Governor. It may be used to:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request an interim study by a legislative subcommittee;

(c) adopt, amend, or repeal the joint rules;

(d) set salaries and other terms of employment for legislative employees;

(e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(g) submit a negotiated settlement under section 39-31-305(3), MCA;

(h) declare or terminate an energy emergency under section 90-4-310, MCA;

(i) ratify or propose amendments to the United States Constitution; or

(j) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana.

(2) Except as otherwise provided in these rules or The Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

(3) A copy of every joint resolution must be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

40-70. Bills with same purpose — vetoes. (1) A bill may not be introduced or received in a house after that house, during that session, has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in which the bill is offered for introduction or reception.

(2) Failure to override a veto does not constitute final rejection.

40-80. Reproduction of full statute required. A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length.

40-90. Bills — original purpose. A law may not be passed except by bill. A bill may not be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

40-100. Fiscal notes. (1) As provided in Title 5, chapter 4, part 2, MCA, all bills reported out of a committee of the Legislature having an effect on the revenues, expenditures, or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the fiscal effect. The Legislative Council staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes must be requested by the presiding officer of either house, who, at the time of introduction, shall determine the need for the note, based on the Legislative Council staff recommendation.

(2) Unless the requesting member directs otherwise, the Legislative Council shall deliver three copies of any bill for which it has been determined a fiscal note may be necessary to the state Budget Director immediately after the bill has been prepared for introduction and delivered to the requesting member. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request.

(3) The Budget Director, in cooperation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note. He shall return the fiscal note within 6 days unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the note.

(4) A completed fiscal note must be submitted by the Budget Director to the presiding officer who requested it. The presiding officer shall refer it to the committee considering the bill. All fiscal notes must be reproduced and placed on the members' desks.

(5) A fiscal note must, if possible, show in dollar amounts:

(a) the estimated increase or decrease in revenues or expenditures;

(b) costs that may be absorbed without additional funds; and

(c) long-range financial implications.

(6) The fiscal note may not include any comment or opinion relative to merits of the bill. However, technical or mechanical defects in the bill may be noted.

(7) A fiscal note also may be requested on a bill and on an amendment by:

(a) a committee considering the bill;

(b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(c) the chief sponsor, through the presiding officer.

(8) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note.

40-110. Sponsor's fiscal note. (1) If a sponsor elects to request the preparation of a sponsor's fiscal note pursuant to section 5-4-204, MCA, he shall make the election as provided and return the completed sponsor's fiscal note to the presiding officer within 4 days of the election.

(2) The presiding officer may grant additional time to the sponsor for preparation of the sponsor's fiscal note.

(3) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks.

(4) The Legislative Council shall provide forms for preparation of sponsors' fiscal notes and shall print the completed sponsors' fiscal notes on a different color paper than the fiscal notes prepared by the Budget Director.

40-120. Substitute bills. (1) A committee may recommend that every clause in a bill be changed and that entirely new material be substituted so long as the new material is relevant to the title and subject of the original bill. The substitute bill is considered an amendment and not a new bill.

(2) The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the material following the enacting clause, to substitute the new material, and to recommend any necessary changes in the title of the bill.

(3) If a committee report is adopted that recommends a substitute for a bill originating in the other house, the substitute bill must be printed and reproduced.

40-130. Reading of bills. Prior to passage a bill must be read three times in the house in which it is under consideration. It may be read either by title or by summary of title.

40-140. Second reading — bill reproduction. (1) If the majority of a house adopts a recommendation for the passage of a bill originating in that house after the bill has been returned from a committee with amendments, the bill must be reproduced on yellow paper with all amendments incorporated into the copies.

(2) If a bill has been returned from a committee without amendments, only the first sheet must be reproduced on yellow paper, and the remainder of the text may be incorporated by reference to the preceding version of the entire bill.

40-150. Engrossing. (1) When a bill has been reported favorably by Committee of the Whole of the house in which it originated and the report has been adopted, the bill must be engrossed. Committee of the Whole amendments must be included in the engrossed bill. The bill must be placed on the calendar for third reading on the succeeding legislative day.

(2) Copies of the engrossed bill to be distributed to members are reproduced on blue paper. If a bill is unamended by the Committee of the Whole and contains no clerical errors, it may be engrossed without reprinting. Only the first sheet must be reproduced on blue paper, with the remainder of the text incorporated by reference to the preceding version of the entire bill.

(3) If a bill is amended by a standing committee or Committee of the Whole in the second house, the amendments must be included in a salmon-colored reference bill and distributed in the second house for third reading consideration. The amendments also must be reproduced and attached to the reference bill. If the bill passes on third reading, copies of the reference bill and second house amendments must be distributed in the original house.

40-160. Enrolling. (1) When a bill has passed both houses, it must be enrolled. An original and two duplicate printed copies of the bill must be enrolled, free from all errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter must be underlined and deleted matter must be shown as stricken. The history of the bill also must be enrolled and placed with the bill in a white manuscript cover, upon which is written the number of the bill and the title. The Legislative Council staff shall file a copy of the history with the law library.

(2) When the enrolling is completed, the bill must be examined by the sponsor.

(3) The correctly enrolled bill must be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill delivered to him not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which case he shall sign it that day. The fact of signing must be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies his desire to examine the bill, he must be permitted to do so. The bill then must be transmitted to the other house where the same procedure must be followed.

(4) A bill that has passed both houses of the Legislature by the 90th day may be:

(a) enrolled;

(b) clerically corrected by the presiding officers, if necessary;

(c) signed by the presiding officers; and

(d) delivered to the Governor or, in the case of a bill proposing a referendum, to the Secretary of State, not later than 5 working days after the 90th legislative day.

(5) All journal entries authorized under this rule must be entered on the journal for the 90th day.

(6) The original and two copies signed by the presiding officer of each house must be presented to the Governor or the Secretary of State, as applicable, in return for a receipt. A report then must be made to the house of the day of the presentation, which must be entered on the journal.

(7) The original must be filed with the Secretary of State. Signed copies with chapter numbers assigned pursuant to section 5-11-204, MCA, must be filed with the Clerk of the Supreme Court and the Legislative Council.

40-170. Amendment by second house. (1) Amendments to a bill by the second house may not be further amended by the house in which the bill originated, but must be either accepted or rejected. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill again must be placed on third reading in the house of origin.

(2) The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

40-180. Final action on a bill. When a bill being heard by the second house has received its third reading or has been rejected, the second house must transmit it as soon as possible to the original house with notice of the second house's action.

40-190. Transmittal of bills between houses. (1) Each house shall transmit to the other with any bill all relevant papers.

(2) When a House bill is transmitted to the Senate, the Secretary of the Senate shall give a dated receipt for the bill to the Chief Clerk of the House. When a Senate bill is transmitted to the House of Representatives, the Chief Clerk of the House shall give a dated receipt to the Secretary of the Senate.

40-200. Transmittal deadlines. (1) (a) A bill or amendment transmitted after the deadline established in this subsection (1) may be considered by the receiving house only upon approval of two-thirds of its members present and voting. If the receiving house does not so vote, the bill or amendment must be held pending in the house to which it was transmitted.

(b) (i) A bill, except for an appropriation bill, a revenue bill, or amendments considered by joint committee, must be transmitted from one house to the other on or before the 45th legislative day.

(ii) Amendments, except to appropriation bills and revenue bills, must be transmitted from one house to the other on or before the 73rd legislative day.

(c) (i) Revenue bills originating in the Senate must be transmitted to the House on or before the 71st legislative day.

(ii) House amendments to Senate revenue bills must be transmitted by the House to the Senate on or before the 82nd legislative day.

(iii) Revenue bills originating in the House must be transmitted to the Senate on or before the 71st legislative day.

(iv) Senate amendments to House revenue bills must be transmitted by the Senate to the House on or before the 82nd legislative day.

(v) A revenue bill is one that either increases or decreases revenue.

(d) (i) Appropriation bills and any bill implementing provisions of a general appropriation bill must be transmitted to the Senate on or before the 67th legislative day.

(ii) Senate amendments to appropriation bills must be transmitted by the Senate to the House on or before the 80th legislative day.

(2) (a) A joint resolution introduced for the purpose of estimating revenue available for appropriation by the Legislature must be transmitted no later than the 60th legislative day.

(b) Amendments to the resolutions must be transmitted to the house of origin no later than the 82nd legislative day.

(3) Interim study resolutions, bills repealing or directing the amendment or adoption of administrative rules, and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may be transmitted at any time during a session.

40-210. Governor's veto. (1) Each bill passed by the Legislature must be submitted to the Governor for his signature. This does not apply to:

(a) bills proposing amendments to The Constitution of the State of Montana;

(b) bills ratifying proposed amendments to the United States Constitution;

(c) resolutions; and

(d) referendum measures of the Legislature.

(2) If the Governor does not sign or veto the bill within 5 days after its delivery to him if the Legislature is in session or within 25 days if the Legislature is adjourned, the bill becomes law.

(3) The Governor shall return a vetoed bill to the Legislature with a statement of his reasons for the veto.

(4) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it becomes law.

(5) If the Legislature is not in session when the Governor vetoes a bill, he shall return the bill with his reasons for the veto to the Legislature as provided by law. The Legislature may be polled on a bill that it approved by two-thirds of the members present or it may be reconvened to reconsider any bill so vetoed (Montana Constitution, Art. VI, Sec. 10).

(6) The Governor may veto items in appropriation bills, and in these instances the procedure must be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

40-220. Response to Governor's veto. (1) When the presiding officer receives a veto message, he shall read it to the members over the rostrum. After the reading, a member may move that the Governor's veto be overridden.

(2) A vote on the motion is determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

40-230. Governor's recommendations for amendment. (1) The Governor may return any bill to the Legislature with his recommendations for amendment.

(2) If the Legislature passes the bill in accordance with the Governor's recommendations, it shall return the bill to the Governor for his reconsideration. The Governor may not return a bill to the Legislature a second time for amendment.

(3) If the Governor returns a bill to the originating house with his recommendations for amendment, the house shall reconsider the bill under its rules relating to amendments offered in Committee of the Whole.

(4) The bill then is subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the Governor's recommendations.

(b) If both houses approve the Governor's recommendations, the bill must be returned to the Governor for his reconsideration.

(c) If both houses disapprove the Governor's recommendations, the bill must be returned to the Governor for his reconsideration.

(d) If one house disapproves the Governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report must be returned to the Governor for his reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the Governor's recommendations must be considered not approved and the bill must be returned to the Governor for further consideration.

CHAPTER 60

RULES

60-10. Suspension of joint rule — change in rules. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any Rules Committee report recommending a change in the joint rules must be referred to the other house. Any new rule or any change in the rules of either house must be transmitted to the other house for informational purposes.

(4) Upon adoption of any change, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall provide the office of the Legislative Council:

(a) one copy of all motions or resolutions amending Senate, House, or joint rules; and

(b) copies of all minutes and reports of the Rules Committees.

60-20. Reference to Mason's Manual. Mason's Manual of Legislative Procedure (1989) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

60-30. Publication and distribution of joint rules. (1) The Legislative Council shall codify and publish in one volume:

(a) the rules of the Senate;

(b) the rules of the House of Representatives; and

(c) the joint rules of the Senate and the House of Representatives.

(2) After the rules have been published, the Legislative Council shall distribute copies as directed by the Senate and the House of Representatives.

CHAPTER 70

STATEMENT OF LEGISLATIVE INTENT

70-10. Definition. (1) For the purpose of compliance with the Legislative History Act (Title 5, chapter 4, part 4, MCA), a statement of legislative intent regarding a bill must express the common understanding of those components of the Legislature voting on the bill.

(2) This statement differs from a purpose clause, which is used in general to describe the broad overall objectives of a bill. A statement of intent is used to guide the details of interpretation by those charged with implementation of the bill and is phrased in terms of contingencies, examples, or other matter inappropriate for expression as statutory language.

70-20. Limitation. A statement of intent may not accompany any bill that does not statutorily require one unless a committee (standing committee, Committee of the Whole or conference committee) agrees by a two-thirds vote to attach the statement.

70-30. Statement of intent to accompany bill — when — how. A statement of intent must accompany a bill as follows:

(1) A statement of intent is required for a bill delegating new rulemaking or licensing authority.

(2) A statement of intent must be included with the introduced bill for a bill requiring one. If a bill is found to require a statement of intent at any time in the legislative process, a statement of intent may be added under the procedure for amending a bill.

(3) A statement of intent must be included as a part of the bill between the title and the enacting clause under the heading "Statement of Intent".

70-40. Modification. Any committee considering a bill may recommend amendment of a previous statement of intent or recommend inclusion of a statement of intent. The statement of intent must be reflected in the history of the bill.

70-50. Conference committee on statement of intent only. (1) If the second house concurs in a bill without amendments but amends or supersedes a previous statement of intent, the bill may not be enrolled until both houses have agreed on a statement of intent. If the statement of intent is attached to a bill that does not statutorily require one, the conference committee can delete the statement in its entirety.

(2) A new statement of intent written by the second house must be processed in the same manner as a second house amendment.

(3) A regular conference committee may be appointed solely to resolve differences of intent if the second house's statement of intent is not so accepted.

Approved January 18, 1991.

SENATE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING MONTANA'S MEN AND WOMEN IN THE ARMED FORCES SERVING IN OPERATION DESERT SHIELD.

WHEREAS, more than 1,000 servicemen and servicewomen from the State of Montana are presently in the Persian Gulf region as part of Operation Desert Shield; and

WHEREAS, Montanans in the Persian Gulf region are represented in the Army, Navy, Air Force, Marine Corps, and reserve and national guard components and are serving in a wide variety of duty assignments in each branch of the armed services; and

WHEREAS, Montanans have a long and distinguished heritage of service to our nation in times of military conflict; and

WHEREAS, the brave men and women from our state are continuing the Montana tradition of commitment and sacrifice at their duty stations in the Persian Gulf region.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That this Legislature express the deep feelings of all Montanans in this affirmation of support and gratitude to the courageous men and women from our state now assigned to Operation Desert Shield.

(2) That it is the hope of the people of Montana that the mission of the multinational force in the Persian Gulf region be accomplished quickly and

that Montanans and all other servicemen and servicewomen serving in Operation Desert Shield will soon arrive safely home.

(3) That the Secretary of State send copies of this resolution to Montana servicemen and servicewomen in the Persian Gulf region, informing them that:

The hearts of all Montanans are with you; we are proud of you; you have our prayers and deepest best wishes for a safe return.

Approved January 11, 1991.

SENATE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS AND THE UNITED STATES DEPARTMENT OF AGRICULTURE, ANIMAL AND PLANT HEALTH INSPECTION SERVICE (USDA/APHIS), TO SUPPORT, THROUGH APPROPRIATE FUNDING, MONTANA'S AND OTHER WESTERN STATES' RESEARCH EFFORTS TO PROVIDE REQUIRED DATA TO THE ENVIRONMENTAL PROTECTION AGENCY (EPA) TO MAINTAIN CERTAIN RODENTICIDE REGISTRATIONS; URGING EPA SUPPORT FOR THE MONTANA DEPARTMENT OF AGRICULTURE MANAGEMENT PLAN FOR THE USE OF STRYCHNINE WITHIN ACCEPTABLE FEDERAL STANDARDS; AND URGING COOPERATION BETWEEN THE EPA, THE CHEMICAL PRODUCERS, AND THE STATES TO REGISTER RODENTICIDES.

WHEREAS, the 1989 Montana Legislature, through the adoption of Senate Joint Resolution No. 11, urged the Montana Congressional Delegation and the USDA/APHIS to support funding for the Denver Wildlife Research Center to conduct research to provide the necessary data to the EPA to maintain the registrations of strychnine and Compound 1080 for rodenticide purposes; and

WHEREAS, despite the Legislature's urging, the required research was not completed, resulting in the suspension of registrations of strychnine and Compound 1080 by the EPA; and

WHEREAS, these suspensions have left Montana and other Western states without effective rodenticides to control agriculturally damaging rodent species; and

WHEREAS, the Denver Wildlife Research Center still has the resources necessary to provide the required data but lacks necessary funding; and

WHEREAS, the costs to pursue data collection are beyond the means of most states; and

WHEREAS, the Montana Department of Agriculture has developed a management plan for the use of strychnine within the present context of the Endangered Species Act of 1973 but needs EPA approval of the plan; and

WHEREAS, cooperation is necessary between the EPA, chemical producers, and the states in order to provide the effective control tools necessary to curtail the estimated $400 million in annual damage caused by rodents in the United States.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That Montana's Congressional Delegation and USDA/APHIS again be urged to support funding for the Denver Wildlife Research Center to conduct research to provide the necessary data to the EPA to maintain the registrations of strychnine and Compound 1080 for rodenticide purposes.

(2) That the Montana Congressional Delegation encourage the EPA to support the Montana Department of Agriculture management plan to use strychnine within the present context of the Endangered Species Act of 1973.

(3) That the Montana Congressional Delegation facilitate the necessary cooperation between the EPA, chemical producers, and the states to register strychnine and Compound 1080 for rodenticide purposes.

(4) That the Secretary of State send copies of this resolution to each member of Montana's Congressional Delegation, the Secretary of the United States Department of Agriculture, and the Director of the United States Environmental Protection Agency.

Approved February 16, 1991.

SENATE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS OF THE UNITED STATES TO BROADEN THE BASE OF BANK DEPOSITS ASSESSED FOR FEDERAL DEPOSIT INSURANCE PREMIUMS.

WHEREAS, the United States Congress has, in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, increased the Federal Deposit Insurance Corporation (FDIC) premium from 0.08% to 0.195% of insured deposits and has authorized a further premium increase to 0.23%; and

WHEREAS, the FDIC has extended the benefits of deposit insurance to deposits in overseas branches of the larger American banks that have overseas branches, although those banks pay no premiums on foreign deposits; and

WHEREAS, the largest United States banks operate foreign branches and accept uninsured deposits of various types to an extent that they pay FDIC premiums on approximately 40% of the funds their customers entrust to them, although their customers are assured that all funds in those large banks are protected by the FDIC; and

WHEREAS, the reason the umbrella of federal deposit insurance is extended to those funds is that the federal government bank regulators have decided that certain banks are too big to be allowed to fail; and

WHEREAS, the largest United States banks operate foreign branches and accept nondeposit liabilities to such an extent that less than 40% of the funds their customers entrust to them are assessed FDIC premiums, while 100% of those funds enjoy the benefit of insurance coverage from the FDIC; and

WHEREAS, community banks, which do not operate foreign branches have nearly 90% of the funds their customers entrust to them assessed for FDIC premiums; and

WHEREAS, the result is that community banks pay for deposit insurance at twice the effective rate paid by large international banks, which is unfair and discriminatory and causes community banks to subsidize the national "too big to fail" policy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That Congress be urged to amend the Federal Deposit Insurance Act to extend the assessment for FDIC premiums to deposits held in foreign branches of American banks.

(2) That the Secretary of State forward copies of this resolution, under the great seal of the State of Montana, to the United States Senate and the United States House of Representatives and to each member of the Montana Congressional Delegation.

Approved February 9, 1991.

SENATE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO ENACT LEGISLATION TO PROVIDE A NATIONAL HEALTH CARE PROGRAM FOR ALL CITIZENS OF THE UNITED STATES.

WHEREAS, 37 million Americans are without health insurance coverage of any kind; and

WHEREAS, costs of medical care are raising twice as fast as the rate of inflation; and

WHEREAS, per capita health care costs in Montana are expected to increase from $2,059 in 1990 to $4,686 in 2000; and

WHEREAS, 20% of all people in Montana have no health insurance, and an even larger percentage are underinsured; and

WHEREAS, our current health care system in this country is a patchwork of private and government programs that are both expensive and inefficient, with 23 cents of every health care dollar spent for administration and bureaucracy; and

WHEREAS, as health care costs raise, employers are less and less able to pay for health insurance for employees, resulting in negotiation deadlocks, strikes, and further restrictions on access to health insurance for America's working class citizens; and

WHEREAS, the cost of employer health care raised by 18.6% in 1988 and by 20.4% in 1989; and

WHEREAS, families are becoming impoverished paying for the costs of long-term care; and

WHEREAS, prescription drug costs in the last decade have increased at more than triple the general rate of inflation; and

WHEREAS, infant mortality rates are climbing in the United States, especially among poor people; and

WHEREAS, poor people are being turned away from health care; and

WHEREAS, preventable disease is on the rise in the United States, especially among the poor; and

WHEREAS, preventable diseases, such as measles, mumps, rubella, whooping cough, and polio, are increasing among children because they lack access to medical care; and

WHEREAS, the death rate from preventable causes is on the rise in the United States; and

WHEREAS, a national health care program would provide quality, comprehensive health care to all citizens of the United States; and

WHEREAS, all medically necessary services would be paid under a national health care program, eliminating the patchwork of existing private and government health care programs; and

WHEREAS, under a national health care program, health care practitioners would maintain their private practice and patients would have the freedom to choose their own physician or hospital.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana urge the United States Congress to enact legislation to provide a national health care program for all citizens of the United States.

BE IT FURTHER RESOLVED, that Congress include in a national health care program:

(1) a single-payer system for the payment of health care; and

(2) coverage for basic health care, including long-term care.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and each member of the Montana Congressional Delegation.

Approved March 9, 1991.

SENATE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO ADOPT LEGISLATION AUTHORIZING THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION TO ENTER INTO WATER AGREEMENTS FOR THE DELIVERY, USE, OR TRANSFER OF WATER WITHIN OR OUTSIDE THE RESERVATION.

WHEREAS, in establishing the system of Indian reservations and in negotiating treaties with the various tribes, the federal government impliedly reserved the waters on the reservations for use by the Indians; and

WHEREAS, in 1985, the State of Montana and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation entered into a compact quantifying the reserved water rights of the Tribes; and

WHEREAS, as a condition to the Fort Peck-Montana Compact, the State of Montana agreed to petition Congress, urging the enactment of legislation authorizing the Assiniboine and Sioux Tribes to enter water agreements; and

WHEREAS, Senate Joint Resolution No. 41, approved by the Senate and the House of Representatives of the State of Montana on April 23, 1985, petitioned Congress to enact such legislation; and

WHEREAS, the Assiniboine and Sioux Tribes have requested that the Montana Reserved Water Rights Compact Commission join in an effort to seek introduction and enactment of legislation in the current session of Congress; and

WHEREAS, the Assiniboine and Sioux Tribes and the Compact Commission have requested that the Senate and the House of Representatives of the State of Montana reaffirm the commitment of the state to the implementation of these provisions of the Fort Peck-Montana Compact; and

WHEREAS, it is the intention of the Senate and the House of Representatives of the State of Montana to reaffirm the commitment of the state to the implementation of the Fort Peck-Montana Compact.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress enact legislation in substantially the following form:

"Sec. 2. For purposes of this Act, the term:

(a) "Fort Peck-Montana Compact" means that Compact pertaining to the reserved water rights of the Assiniboine and Sioux Tribes of the Fort Peck Reservation ratified by the Forty-Ninth Legislature of the State of Montana on April 23, 1985 and by the Fort Peck Tribal Executive Board on April 29, 1985.

(b) "Reservation" means the Fort Peck Indian Reservation as defined in the agreement of December 28 and December 31, 1886, and confirmed by the Act of May 1, 1888, 25 Stat. 113.

(c) "Secretary" means the Secretary of the Interior.

(d) "Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.

Sec. 3.

(a) The Tribes, subject to the approval of the Secretary, may enter into any joint venture, service contract, lease, exchange or other agreement, or any amendment, supplement or other modification of such agreement (hereinafter referred to as a "Water Agreement") authorizing the delivery, use or transfer of any part of the water right confirmed in the Tribes by the Fort Peck-Montana Compact for a specified term, not to exceed fifty years, inclusive of all renewal periods. A Water Agreement may authorize the diversion or use of water within or outside the Reservation subject to all terms of the Fort Peck-Montana Compact.

(b) The Secretary shall approve or disapprove any Water Agreement within (1) one hundred and eighty days after submission or (2) sixty days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and any other requirement of federal law, whichever is later. Any party to such an agreement may enforce the provisions of this subsection pursuant to 28 U.S.C. 1361.

Notwithstanding any other law, all projections, studies, data or other information possessed by the Department of the Interior regarding the terms and conditions of the Water Agreement or the financial return to the Tribes, shall be held by the Department of the Interior as privileged proprietary information of the Tribes."

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of Montana's Congressional Delegation, the Committee on Indian Affairs of the United States Senate, and the Committee on Interior and Insular Affairs of the United States House of Representatives.

Approved March 8, 1991.

SENATE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE MONTANA DEPARTMENT OF AGRICULTURE TO STUDY AND DEVELOP A PLAN AND RECOMMENDATIONS ON A WEED SEED-FREE AGRONOMIC CROPS AND FARM PRODUCTS PROGRAM; AND REQUESTING A REPORT OF FINDINGS AND RECOMMENDATIONS OF THE STUDY TO THE 53RD LEGISLATURE.

WHEREAS, the State of Montana has identified noxious and other weeds of statewide concern; and

WHEREAS, the movement of weed seeds with agronomic crops and farm products may result in the establishment of new weed infestations on private land; and

WHEREAS, the movement of agricultural products and crops contaminated with weed seeds between counties or in interstate commerce may create new weed infestations; and

WHEREAS, weed infestations create economic and environmental problems; and

WHEREAS, a significant contributing factor in the spread of noxious weeds is the transportation of weed seed by vehicles; and

WHEREAS, local, state, and federal government agencies involved with weed and land resource management, the Montana Cooperative Extension Service, farmers, and citizens all have an interest in preventing the introduction or establishment of weeds; and

WHEREAS, a coordinated study of this problem, associated programs, and potential solutions involving certification of crops and agricultural products, embargoes, quarantines, education, and promotion of Montana agricultural products should be made.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Department of Agriculture:

(1) be requested to conduct a study and develop a plan addressing:

(a) the movement and use of agronomic crops and agricultural products contaminated with weed seeds that may create new weed infestations;

(b) the parameters of a certification program of weed seed-free agronomic crops and farm products;

(c) the types and extent of educational programs for farmers and citizens involving weed management and agronomic crops and farm products;

(d) the promotion of agronomic crops and farm products free of weed seeds;

(e) the spread of noxious weeds through the transportation of weed seed by vehicles;

(f) coordination and responsibilities of local and state government units, other state governments, and federal agencies; and

(g) the economic impacts and benefits of implementing these programs on local and state governments and the Montana University System;

(2) establish a committee to conduct this study, prepare a plan, and make recommendations. Representatives on the committee should include:

(a) the Director of the Department of Agriculture or his designee;

(b) a member of the Montana Cooperative Extension Service;

(c) three county weed district representatives, one each from western, central, and eastern Montana;

(d) a conservation district representative;

(e) a representative of the Montana Weed Control Association;

(f) a representative of the Montana Seed Growers Association;

(g) a representative of the Montana Seed Trade Association;

(h) two representatives from statewide agriculture and livestock commodity groups;

(i) a representative of a wildlife or sportsman group; and

(j) two members of the Montana Legislature; and

(3) report the findings of the study and plan and any recommendations to the 53rd Legislature.

Approved March 12, 1991.

SENATE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO AMEND THE NEZ PERCE NATIONAL HISTORICAL PARKS LEGISLATION TO EXTEND DESIGNATION OF SITES TO INCLUDE THE BEAR PAW BATTLEFIELD, THE BIG HOLE BATTLEFIELD, FORT FIZZLE, AND CANYON CREEK SITES IN MONTANA.

WHEREAS, the State of Montana recognizes the historic and national significance of the Bear Paw Battlefield, the Big Hole Battlefield, Fort Fizzle, and Canyon Creek sites in Montana as the final chapters in the famous Nez Perce War of 1877; and

WHEREAS, the State of Montana and its Indian and non-Indian citizens wish to see these historic sites preserved and interpreted by the United States National Park Service in a manner appropriate to the important role they played in our nation's history; and

WHEREAS, the United States National Park Service conducted an additions study that in its 1989 draft report recommended that 13 sites, including three sites in Montana, be added to the existing Nez Perce National Historical Park system; and

WHEREAS, the existing legislation that established the Nez Perce National Historical Parks in 1965 limits the designation of sites under that park system to sites within the State of Idaho; and

WHEREAS, an amendment to the Nez Perce National Historical Parks legislation is required to include other historically significant sites, such as Chief Joseph's grave site in Nespelem, Washington, and the Bear Paw Battlefield, the Big Hole Battlefield, Fort Fizzle, and Canyon Creek sites in Montana; and

WHEREAS, the citizens of Montana wholeheartedly support the enactment of legislation extending the eligibility of sites designated under the Nez Perce National Historical Parks to other states, including the State of Montana; and

WHEREAS, the Bear Paw Battlefield, as the site of the final battle of the Nez Perce Indians and the now historic surrender speech of Chief Joseph, deserves protection, recognition, and historic interpretation for the citizens of Montana and for all people traveling through our state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature urge our Congressional Delegation to support amending the Nez Perce National Historical Parks legislation to extend designation of sites to include the Bear Paw Battlefield, the Big Hole Battlefield, Fort Fizzle, and Canyon Creek sites in the State of Montana.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each member of the Montana Congressional Delegation.

Approved March 12, 1991.

SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE CONCENTRATION IN THE LIVESTOCK FEEDING AND PACKING INDUSTRIES; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 53RD LEGISLATURE.

WHEREAS, the market share of the top four beef packing companies was just 25% in 1977 and rose to 74% of the market in 1987; and

WHEREAS, concentration among packing companies that slaughter sheep and lambs has increased from four firms controlling 57% in 1977 to three firms controlling at least 76% in 1987; and

WHEREAS, trends toward concentration and vertical integration of the livestock industry threaten free enterprise and the independence of Montana's livestock producers, as well as the economic vitality of our communities that are dependent on the livestock industry; and

WHEREAS, continued concentration and vertical integration of the livestock industry may also have serious adverse implications for the health and safety of both workers and consumers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to examine:

(1) the economic impact of concentration and vertical integration by the dominant meatpackers on Montana's livestock producers;

(2) the relationship between the economic impact of the concentration on producers and other aspects of the state's present and future economy, such as the tax base, population, and viability of our rural communities; and

(3) legal remedies and other appropriate actions available to the State of Montana to counteract any adverse problems posed by increased concentration or to prevent further concentration.

BE IT FURTHER RESOLVED, that the interim committee report the findings of the study to the 53rd Legislature and present options for legislative consideration if the committee determines that options are necessary.

Approved March 12, 1991.

SENATE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOMMENDING THAT SOCIAL SECURITY FUNDS BE USED ONLY FOR SOCIAL SECURITY BENEFITS.

WHEREAS, falsely reduced accounting figures illegally permit budgetary expenditures in excess of those permitted under provisions of the Gramm-Rudman-Hollings Act; and

WHEREAS, social security was established to provide for security at the age of retirement for those contributing; and

WHEREAS, social security assessments have regularly increased; and

WHEREAS, the fund has a substantial balance to pay out to current social security retirement recipients and to secure future retirements; and

WHEREAS, this fund should be established and protected in such a way as to ensure that the funds will be available for future retirees.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That this Legislature recommend that the social security fund be transferred into a social security trust fund to be used strictly for the benefit of those presently drawing social security and for those who will be entitled to it in the future.

(2) That the fund not be used falsely for any reason.

(3) That copies of this resolution be sent by the Secretary of State to each member of Montana's Congressional Delegation.

Approved April 11, 1991.

SENATE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE USE OF ALL AVAILABLE METHODS TO ENSURE THE MAINTENANCE OF ADEQUATE WATER LEVELS IN THE FORT PECK RESERVOIR.

WHEREAS, Montana is the state of origin for all water that flows into the Fort Peck Reservoir; and

WHEREAS, the citizens of Montana have used and have a right to continue to use the waters of this state for recreational purposes; and

WHEREAS, the citizens of Montana have enjoyed and have a right to continue to enjoy economic benefits from the recreational use of waters of this state; and

WHEREAS, the federal authorization for the Fort Peck Reservoir, found in Public Law No. 99-662, section 861, 100 Stat. 4181 (1986), specifically includes recreation as a project purpose; and

WHEREAS, the United States Army Corps of Engineers has not maintained adequate reservoir water levels to promote and protect the valuable recreational resource and economic benefits of an adequately filled Fort Peck Reservoir; and

WHEREAS, the Montana Legislature's interim Water Policy Committee examined the issue of inadequate reservoir water levels during the 1989-91 interim and endorsed "the continued use of all available methods, including negotiation and litigation, to ensure the maintenance of adequate water levels in the Fort Peck Reservoir".

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the 52nd Legislature endorse Montana's current negotiation efforts with the United States Army Corps of Engineers to obtain adequate water levels in the Fort Peck Reservoir and recommend that these efforts continue.

(2) That the 52nd Legislature recommend that the state pursue discussions and negotiations with Indian tribes, water users, and other Missouri Basin states to promote and protect our common interests.

(3) That the 52nd Legislature endorse all efforts, including but not limited to litigation, to ensure adequate water levels in the Fort Peck Reservoir.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of Montana's Congressional Delegation, the United States Army Corps of Engineers, the United States Department of the Interior—Bureau of Reclamation, the Governors of the Missouri River Basin states, and representatives of affected Indian tribes.

Approved April 6, 1991.

SENATE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DESIGNATING THE SQUARE DANCE AS THE MONTANA FOLK DANCE.

WHEREAS, square dancing has been a popular tradition in America since colonial days and has attained a revered status as part of the folklore of this country; and

WHEREAS, square dancing is a joyful expression of the vibrant spirit of people of the United States, and the American people value the display of the etiquette among men and women, which is a major element of square dancing; and

WHEREAS, square dancing is a traditional form of family recreation that symbolizes a basic strength of this country, namely the unity of the family, which epitomizes democracy because it dissolves arbitrary social distinctions; and

WHEREAS, square dancing is the American folk dance that is called, cued, or prompted to the dancers; includes squares, rounds, contra, clogging, line, and heritage dances; and is a fitting symbol of our national character and pride.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the square dance is designated the Montana folk dance.

Approved April 6, 1991.

SENATE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO ESTABLISH THE NATIONAL MINE WASTE TESTING AND EVALUATION CENTER AS PART OF THE WATER, AIR, SOILS TESTING AND EVALUATION CENTER (WASTEC) AND TO AUTHORIZE ADEQUATE FUNDING TO OPERATE THE CENTER IN BUTTE.

WHEREAS, the nation, and Montana in particular, has been affected by environmental damage resulting from past mining practices; and

WHEREAS, the area of Montana within Butte and downstream from Butte on the Clark Fork River has received extensive environmental damage because of its historic contribution to the state's and the nation's economy through exploitation of its mineral resources; and

WHEREAS, the area of Montana within Butte and downstream from Butte on the Clark Fork River constitutes an excellent natural laboratory for the testing and evaluation of environmental restoration technologies related to historic and present mining activity; and

WHEREAS, significant economic development for all of Montana can be expected from the establishment in Butte of an internationally significant research and development center for testing, evaluating, and developing environmental technologies relating to mining; and

WHEREAS, the United States Congress has allocated an initial sum of $3.5 million for the establishment of a National Mine Waste Treatment and Evaluation Center in Butte; and

WHEREAS, federal agencies have been asked to assist in establishing a larger Water, Air, Soils Testing and Evaluation Center (WASTEC) within which the National Mine Waste Treatment and Evaluation Center would be located; and

WHEREAS, the Montana Department of Natural Resources and Conservation has designated matching funds for WASTEC as its number one ranked recipient of a grant of $300,000 from the Reclamation and Development Grants Program, funded through Resource Indemnity Trust (RIT) interest income and presented for approval by the 52nd Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress is urged to establish and provide adequate continuing funding for the National Mine Waste Testing and Evaluation Center in Butte and that federal agencies, such as the United States Environmental Protection Agency and the United States Department of Energy, continue their commitment to development of WASTEC in Butte.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the members of Montana's Congressional Delegation.

Approved April 6, 1991.

SENATE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA PETITIONING THE UNITED STATES CONGRESS TO CONSIDER A CONSTITUTIONAL AMENDMENT, FOR RATIFICATION BY THE STATES, THAT WOULD PROHIBIT THE DESECRATION OF THE AMERICAN FLAG.

WHEREAS, although the right of free expression is part of the foundation of the United States Constitution, very carefully drawn limits on the expression in specific instances have long been recognized as a legitimate means of maintaining public safety and decency, as well as orderliness and the productive value of public debate; and

WHEREAS, certain actions, although arguably related to one person's free expression, nevertheless raise issues concerning public decency, public peace, the rights of expression, and the sacred values of others; and

WHEREAS, there are symbols of our national soul, such as the Washington Monument, the United States Capitol, and memorials to our greatest leaders, that are the property of every American and are therefore worthy of protection from desecration and dishonor; and

WHEREAS, the American flag, to this day, is the most honorable and worthy banner of a nation that is thankful for its strengths and committed to curing its faults and that remains the destination of millions of immigrants attracted by the universal power of American ideals; and

WHEREAS, the law, as interpreted by the United States Supreme Court, no longer accords to the Stars and Stripes that reverence, respect, and dignity befitting the banner of the most noble experiment of a nation-state; and

WHEREAS, it is only fitting that people everywhere should lend their voices to a forceful call for restoration to the Stars and Stripes of a proper station under law and decency.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana respectfully petition the Congress of the United States to consider an amendment to the United States Constitution, for ratification by the states, specifying that Congress and the states have the power to prohibit the physical desecration of the flag of the United States.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Speaker of the United States House of Representatives, the President of the Senate, and each member of Montana's Congressional Delegation.

Approved March 21, 1991.

SENATE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA CONGRESSIONAL DELEGATION TO SUPPORT LEGISLATION ESTABLISHING A MEMORIAL AT CUSTER BATTLEFIELD NATIONAL MONUMENT TO HONOR THE NATIVE AMERICAN PEOPLES WHO FOUGHT AT THE BATTLE OF THE LITTLE BIG HORN AND REDESIGNATING THE AREA AS THE LITTLE BIG HORN NATIONAL MONUMENT.

WHEREAS, in 1881, a monument was placed on a mass gravesite at Last Stand Hill to commemorate the soldiers, scouts, and civilians attached to the Seventh United States Cavalry who fell at the Battle of the Little Big Horn; and

WHEREAS, although many members of the Cheyenne, Sioux, and other Indian nations gave their lives defending their families, traditional lifestyles, and livelihoods, no permanent memorial commemorates the sacrifices or the victory of the Native American peoples in this battle; and

WHEREAS, while Indian activists have noted the need to recognize Native American perspectives and participants in the battle since the 1970s, demonstrations and discussions have resulted only in the placement of a memorial plaque in the battlefield visitor center to honor Native American sacrifices; and

WHEREAS, Custer Battlefield, which was carved out of the Crow Indian Reservation, stands today as an anomaly, not only as the only battlefield unit in the entire National Park System honoring an individual but in its emphasis in the role of the Seventh Cavalry and in its failure to properly recognize Native American perspectives and the participants who were victorious over General Custer and the Seventh Cavalry in the Battle of the Little Big Horn; and

WHEREAS, the time has come to end ethnocentric designations and to begin recognizing impartially the significant historical events of the battlefield area.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Montana Congressional Delegation be urged to support legislation establishing a memorial at Custer Battlefield National Monument to honor the Native American peoples who fought at the Battle of the Little Big Horn.

(2) That the Montana Congressional Delegation also be urged to support legislation redesignating the area as the Little Big Horn National Monument.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of the Montana Congressional Delegation, to the tribal chairmen of the seven Montana reservations, and to the tribal chairman of the Little Shell Band of Chippewa Indians.

Approved April 6, 1991.

SENATE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO FULLY FUND COMPLETION OF THE LEWIS AND CLARK NATIONAL TRAIL INTERPRETIVE CENTER AND URGING CONGRESS TO CONSIDER A HISTORICALLY APPROPRIATE PERMANENT NAME FOR THE NATIONAL HISTORIC TRAIL INTERPRETIVE CENTER.

WHEREAS, the United States Congress enacted Public Law 100-552, authorizing the Secretary of Agriculture to establish the Lewis and Clark National Trail Interpretive Center in the vicinity of Giant Springs Heritage State Park near Great Falls, Montana; and

WHEREAS, development of the Center will provide the State of Montana and the United States a unique interpretation of the Lewis and Clark Expedition and its encounters in Indian Country and will establish a logical and essential link between the Center at St. Louis, Missouri, the beginning of the Expedition, and the Center at Fort Clatsop, Oregon, the ending point of the Lewis and Clark Trail; and

WHEREAS, development of the Center will allow historians to preserve and protect the very spirit of discovery in a location where one is still able to experience the physical, mental, and emotional challenges encountered by the Corps of Discovery and will provide all Americans an opportunity to fully examine and interpret the real challenges of the Westward Expansion; and

WHEREAS, the Center will emphasize the critical contributions, essential to the success of the Expedition, of the many Native American tribes and cultures encountered on the Upper Missouri, including the symbolic role of Sacagawea, a Shoshoni Indian woman who accompanied the Corps of Discovery; and

WHEREAS, completion of the Center will provide a valuable economic contribution to the area through increased tourism and expanded educational resources; and

WHEREAS, the State of Montana has committed to the donation of up to 50 acres of land to the federal government for the Center site, and numerous private citizens have invested both time and resources to achieve the designation of the Center in Montana; and

WHEREAS, the required conceptual plan for the development of the Center has been completed in a timely manner, and the design package has been submitted to the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources according to the prescribed timetable; and

WHEREAS, the timetable of the planning process having been met, Congress must now appropriate the funds necessary to complete construction of the Center.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the United States Congress be urged to maintain the construction timetable established by the United States Forest Service Planning Team and the Citizen Steering Committee by fully funding completion of the Lewis and Clark National Trail Interpretive Center near Great Falls, Montana.

(2) That the United States Congress also be urged to consider the contributions of Sacagawea and other Native Americans to the success of the Corps of Discovery in selecting a permanent name for the Lewis and Clark National Historic Trail Interpretive Center near Great Falls, Montana.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of the Montana Congressional Delegation, the members of the United States House Committee on Interior and Insular Affairs, the members of the United States Senate Committee on Energy and Natural Resources, the President of the United States, and the United States Secretary of Agriculture.

Approved April 25, 1991.

SENATE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA CONGRESSIONAL DELEGATION TO CALL ON THE U.S. CONGRESS TO RECONSIDER CERTAIN SECTIONS OF THE FEDERAL FOOD, AGRICULTURE, CONSERVATION AND TRADE ACT OF 1990 FOR PURPOSES OF IMPROVING NET FARM INCOME.

WHEREAS, agriculture is Montana's largest industry; and

WHEREAS, agriculture provides a reliable tax base from which to generate needed state and local revenues; and

WHEREAS, a healthy agricultural economy provides economic stability for our rural communities; and

WHEREAS, Montana's agricultural economy has been distressed by drought and drastic declines in commodity prices, reducing net farm income to below the cost of production; and

WHEREAS, based on a Congressional Budget Office report, the continuation of current farm policy will reduce net farm income by at least 25% this coming year, causing further economic and social decline in rural and urban communities; and

WHEREAS, each member of the Montana Congressional Delegation spoke and voted in opposition to the federal Food, Agriculture, Conservation and Trade Act of 1990.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the members of the Montana Congressional Delegation be urged to call for the immediate revisiting of the federal Food, Agriculture, Conservation and Trade Act of 1990 for the purpose of strengthening legislation that will improve net farm income, thereby promoting development of Montana's rural and urban economies.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each member of the Montana Congressional Delegation.

Approved April 6, 1991.

SENATE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENDORSING THE STRATEGIES DETAILED IN THE MONTANA PICK-SLOAN INITIATIVE DEVELOPED BY THE MONTANA PICK-SLOAN ADVISORY COMMITTEE AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION.

WHEREAS, the Pick-Sloan Missouri Basin Plan in the federal Flood Control Act of 1944 was intended to provide to all the Missouri Basin states multiple benefits, including irrigation, hydropower, flood control, navigation, recreation, fish and wildlife protection, and sediment abatement; and

WHEREAS, while Lower Missouri Basin states have received most of the benefits intended for them, Upper Missouri Basin states have received less than 10% of the irrigation benefits promised, despite the flooding by mainstem dams of over 1.7 million acres of land in Montana, North Dakota, and South Dakota; and

WHEREAS, the 51st Legislature adopted House Joint Resolution No. 22 (HJR 22), which called for the United States Congress to authorize the use of Pick-Sloan Missouri Basin funds for the rehabilitation of irrigation project facilities and inexpensive Pick-Sloan Missouri Basin power for irrigation pumping for irrigation projects in the Upper Missouri Basin states; and

WHEREAS, since adoption of HJR 22 in 1989, the urgency for realizing the benefits sought for Upper Missouri Basin states has increased significantly because of a deteriorating water supply infrastructure, severe drought, increasing demands from irrigation and recreational interests, complex federally reserved water rights questions, and limited funding to meet increased demands for Missouri River water; and

WHEREAS, to better coordinate and facilitate the goals expressed in HJR 22, a broad-based Montana Pick-Sloan Advisory Committee was formed by the Department of Natural Resources and Conservation; and

WHEREAS, the Montana Pick-Sloan Advisory Committee has adopted "The Montana Pick-Sloan Initiative: A Water Management Agenda for Tomorrow", which seeks benefits that are commensurate with the costs incurred by Montana as a result of the Pick-Sloan Missouri Basin Plan's development to date and which outlines strategies for solving the state's water management problems that are consistent with the plan's original aim of maximizing the multiple-use benefits of the Missouri River and its tributaries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature endorse the strategies embodied in the Montana Pick-Sloan Initiative, including to:

(1) seek congressional authorizations and appropriations;

(2) create long-term sources of revenue to fund water projects;

(3) revise the operation of the Missouri River by the United States Army Corps of Engineers; and

(4) develop cost-sharing arrangements.

BE IT FURTHER RESOLVED, that copies of this resolution and copies of the Montana Pick-Sloan Initiative be sent to each member of Montana's Congressional Delegation, the President of the United States Senate, the United States Department of Interior—Bureau of Reclamation, and the United States Army Corps of Engineers.

Approved April 6, 1991.

SENATE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING

THE WATER POLICY COMMITTEE TO CONDUCT AN INTERIM STUDY OF THE NEED FOR AND FEASIBILITY OF STATE REGULATION OF MONTANA'S GEOTHERMAL RESOURCES.

WHEREAS, Montana has substantial water resources with temperatures sufficient to allow extraction of energy from the natural heat of those water resources, commonly referred to as geothermal resources; and

WHEREAS, under current Montana water law, the quantity of a geothermal resource may be protected, but the quality, that is, the heat content and any byproducts associated with the geothermal resource, is not; and

WHEREAS, the impact of continued development of Montana's water resources on Montana's geothermal resources is unknown; and

WHEREAS, a comprehensive analysis of the need to regulate or protect Montana's geothermal resources has not been conducted; and

WHEREAS, Montana should promote the wise development of both its water resources and geothermal resources.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Water Policy Committee be requested to conduct a study to determine:

(1) the need for and feasibility of state regulations to control the development of geothermal resources, including the development of energy that may be extracted from the natural heat of the water and the development of any geothermal byproduct;

(2) if regulation of geothermal resources exists in other states with substantial geothermal resources and, if so, the experience of those states; and

(3) if water users and entities with an interest in geothermal resources in Montana need and want state regulation of geothermal resources.

BE IT FURTHER RESOLVED, that the Water Policy Committee report the findings and recommendations of its study, including any desirable or necessary legislation, to the 53rd Legislature by November 1, 1992.

Approved April 6, 1991.

SENATE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN INTERIM COMMITTEE BE ESTABLISHED TO STUDY

MANDATED HEALTH INSURANCE BENEFITS; AND REQUIRING A REPORT TO THE 53RD LEGISLATURE.

WHEREAS, the cost of health insurance continues to rise; and

WHEREAS, a growing number of Montana citizens are unable to afford health insurance and, thus, do not have insurance; and

WHEREAS, many small business owners cannot afford health insurance for themselves or their employees because the cost is prohibitive; and

WHEREAS, legislation is proposed each session to mandate that health insurers provide additional health care benefits in their policies of insurance; and

WHEREAS, proponents of mandated health insurance benefits argue that mandated benefits decrease the cost of health insurance or improve access to needed health care coverage or services; and

WHEREAS, opponents of mandated health insurance benefits argue that mandated benefits increase the cost of health insurance and limit access to needed coverage and services; and

WHEREAS, the Legislature should review the effects of mandated health insurance benefits and the need for mandated benefits.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an interim committee be established to study mandated health insurance benefits.

BE IT FURTHER RESOLVED, that as part of its study, the committee:

(1) review existing mandated health insurance benefits and proposed new benefits;

(2) evaluate the costs and benefits of mandated health insurance benefits, including proposed new benefits;

(3) determine the extent to which existing and proposed mandated benefits are available and desired by the people of Montana;

(4) prioritize, to the extent possible, the need for existing mandated benefits and proposed new benefits; and

(5) consider alternatives to the present system of mandated health insurance benefits.

BE IT FURTHER RESOLVED, that the committee report its findings and recommendations to the 53rd Legislature and, if appropriate, prepare legislation to implement its recommendations.

Approved April 11, 1991.

SENATE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF REMAINING SCHOOL FUNDING EQUITY ISSUES; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 53RD LEGISLATURE.

WHEREAS, House Bill No. 28, the school funding reform legislation of the June 1989 Special Session, established the Legislative Oversight Committee on School Funding Implementation to monitor the implementation of new school funding measures and to address other areas in need of funding equalization, such as school transportation and facilities and distribution of equalization aid through the foundation program schedules; and

WHEREAS, the Legislative Oversight Committee on School Funding Implementation devised a comprehensive study plan and met throughout the past interim to oversee the rulemaking granted various agencies in compliance with House Bill No. 28, to review the preliminary data on the results of equalization measures, and to begin study of equalization of school transportation and facility funding, the results of which are documented in a final report to the 52nd Legislature; and

WHEREAS, while the Legislative Oversight Committee on School Funding Implementation and its multiagency staff attempted to supply the best information available on a wide variety of requested issues and did recommend four vital pieces of legislation in response to implementation and equalization concerns, time constraints and the implementation time line worked against achievement of many of the intended study goals; and

WHEREAS, an interim study committee could be a useful tool for continued study of school funding issues, specifically equalization of school transportation and facilities, review of the guaranteed tax base mechanism, the status of tuition and out-of-district placement of students, and distribution of equalization aid through the foundation program schedules.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

(1) actual cost factors and equalization of school transportation and facilities;

(2) the guaranteed tax base mechanism;

(3) the laws and issues that relate to tuition and out-of-district placement of students; and

(4) distribution of equalization aid through the foundation program schedules.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 53rd Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 12, 1991.

SENATE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE RECOGNITION OF FLAG DAY AND THE PAUSE FOR THE PLEDGE OF ALLEGIANCE.

WHEREAS, National Flag Day is a recognized observance; and

WHEREAS, the Pause for the Pledge of Allegiance is observed nationally on Flag Day; and

WHEREAS, numerous cities have sponsored public events and organized projects in support of the troops in the Persian Gulf; and

WHEREAS, there is a legislative session only every two years.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That both National Flag Day and the concurring Pause for the Pledge of Allegiance be recognized on June 14 in the State of Montana for the years 1991 and 1992.

Approved April 23, 1991.

HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC) TO PROMOTE BREAST-FEEDING IN MONTANA.

WHEREAS, lactation is an ancient physiological function but has declined in prevalence in recent years; and

WHEREAS, breast-feeding is economical, both medically and fiscally; and

WHEREAS, breast-feeding is convenient and promotes maternal and infant health and the dental health of infants; and

WHEREAS, breast milk provides the best nutrition for human babies; and

WHEREAS, breast milk is unique in providing resistance to disease and protection against allergies; and

WHEREAS, breast-feeding is a high priority health objective for the nation for the year 2000; and

WHEREAS, breast-feeding is acknowledged as giving a baby the best start in life by the American Academy of Pediatrics, the American College of Obstetrics and Gynecology, the American Public Health Association, the National Healthy Mothers/Healthy Babies Coalition, the U.S. Department of Health and Human Services, the Montana Department of Health and Environmental Sciences, and the Montana Public Health Association.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 52nd Legislature fully support the stated goal of the Montana Supplemental Food Program for Women, Infants, and Children (WIC) to promote breast-feeding in Montana and to provide consistent and valid education and support so that a woman who chooses to breast-feed her infant is supported in that decision as long as she and the baby desire.

Passed January 29, 1991.

HOUSE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE MEN AND WOMEN SERVING IN OPERATION DESERT SHIELD AND URGING A PEACEFUL RESOLUTION OF THE PERSIAN GULF CRISIS.

WHEREAS, the firm commitment and courageous dedication of American men and women in the United States Armed Forces deserve the nation's highest respect and commitment to a just and peaceful resolution of the Persian Gulf Crisis; and

WHEREAS, the United Nations has condemned Iraq's invasion and occupation of Kuwait, has called for the withdrawal of Iraq from Kuwait, has imposed strict sanctions against Iraq, and has authorized all necessary means after January 15, 1991, to gain Iraq's compliance with the United Nations' resolutions; and

WHEREAS, war between Iraq and the United States and its allies will lead to much bloodshed and the loss of life of thousands of servicemen and servicewomen, as well as civilians, on all sides of the conflict; and

WHEREAS, the economic impact of war in the Persian Gulf could cost the United States and its allies $1 billion a day, cause serious international economic disarray and prolonged worldwide recession, and divert necessary funds from health care, housing, education, economic development, and human services; and

WHEREAS, war between Iraq and the United States and its allies may expand to a conflict beyond the borders of Iraq and Kuwait; and

WHEREAS, more than 1,000 Montanans from the active forces, reserves, and national guard have been deployed to support Operation Desert Shield, leaving behind their homes and families.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That this Legislature endorse the actions of the United Nations.

(2) That the Legislature recognize the sacrifices and hardships of separation on Montana families who have sons or daughters, mothers or fathers, and sisters or brothers called to service in the present crisis.

(3) That this Legislature express its heartfelt support and gratitude to all men and women serving our country in Operation Desert Shield and offer its sincere prayer for their safe return.

(4) That it is the hope and prayer of the people of Montana that the leadership of Iraq, the United States, and all nations involved in the Persian Gulf Crisis negotiate a just and peaceful solution to the dispute for the mutual security of all people.

(5) That this Legislature call upon Congress and the President of the United States to continue to work together, thereby resolving this conflict peacefully.

(6) That copies of this resolution be sent by the Secretary of State to the President of the United States, to the presiding officer of the United States Senate, and to each member of Congress.

Approved January 10, 1991.

HOUSE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONCERNING THE CLASSIFICATION, PAY, AND OTHER CONDITIONS OF EMPLOYMENT OF LEGISLATIVE EMPLOYEES; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE; AND PROVIDING FOR RETROACTIVE APPLICABILITY.

WHEREAS, it is necessary to establish a pay plan for legislative employees that compensates those employees on a basis similar to other state employees; and

WHEREAS, it is necessary that legislative employees know of their conditions of employment and that such conditions be uniform for the House of Representatives and the Senate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) (a) That the following legislative employee positions be classified at the grades indicated and be entitled to be paid according to the 1990-91 hourly pay matrix, which does not include insurance, issued by the Department of Administration on May 5, 1989. Because legislative employees receive no additional benefits, 50 cents an hour must be added to the hourly compensation as shown on the pay matrix.

(b) That an employee with no qualifying legislative experience be classified at step 2 of the appropriate grade. A person who has served as a legislator or an employee of the Montana House of Representatives or Senate for at least one-half of a regular session is entitled to be advanced one step for each session so served.

Grade 20
Chief Clerk of the House
Secretary of the Senate

Grade 17
Sergeant-at-arms

Grade 14
Chaplain

Grade 13
Assistant Chief Clerk of the House
Assistant Secretary of the Senate
Aide to the Speaker of the House
Aide to the Senate Minority Leader
Aide to the House Minority Leader
Aide to the President of the Senate

Grade 11
Training Coordinator
System Coordinator
Legislative Assistant
Word Processing Center Supervisor
Bills Clerk
Journal Clerk
Bills Coordinator
Amendments Coordinator
Assistant Sergeant-at-arms
Secretary to the following:

President, Speaker, Secretary of the Senate, Chief Clerk, and Majority and Minority Leaders and Whips in both the House and the Senate

Grade 10
Assistant Word Processing Center Supervisor
Assistant Journal Clerk
Assistant Bills Clerk
Committee Secretary
Bills Distributor
Legislative Telephone Operator
Status Input Technician
Assistant Bills Coordinator
Assistant Amendments Coordinator

Grade 9
Assistant Bills Distributor

Grade 8
Word Processor

Grade 7
Assistant Status Input Technician
Reading Clerk
Supply Clerk
Posting Clerk
Typist
Security Guard
Doorman

Grade 6
Proofreader
Clerk-typist
Steno Aide

Grade 5
Distribution Clerk
Parking Attendant
Page Supervisor

Grade 3
Committee Aide
Permanent Page

$4.00 an hour
Page

(2) (a) That each employee record the number of hours worked each day on a timesheet provided. A completed timesheet must be turned in each Friday that ends a pay period. Each chamber shall adopt a procedure for review, approval, and collection of the timesheets and for timely filing with the Legislative Council.

(b) That the Sergeants-at-arms review and approve the timesheets for the following employees: Assistant Sergeants-at-arms, Doormen, Security Guards, Distribution Clerks, and Pages.

(c) That the Speaker and Minority Leader of the House review and approve the timesheets for their employees.

(d) That the Chief Clerk of the House and the Secretary of the Senate review all timesheets and approve those not otherwise provided for.

(3) That the positions classified at Grade 17 and above be exempt from overtime pay. During a regular legislative session, employees in such positions must be paid for 48 hours a week regardless of the number of hours worked. Whenever such employees are preparing for or closing a regular or special session or otherwise working at the direction of their respective presiding officers during an interim, they must be paid for each hour worked at the hourly compensation determined under subsection (1) and their timesheets must be reviewed and approved by their presiding officers.

(4) That the positions classified below Grade 17 be subject to overtime pay. Hours over 40 a week worked by an employee so classified must be compensated at the rate of 1 1/2 times the employee's regular hourly wage.

(5) That the legislative employees listed in subsection (1)(b) be considered temporary employees and not be entitled to any additional benefits, such as sick leave, vacation leave, holiday pay, time off with pay, health insurance, or longevity allowances. Section 2-18-617(3), MCA, relating to assumption of liability for accrued vacation credits, does not apply to the Legislature and its employees.

(6) That a Chaplain be entitled to be paid for 2 hours for each legislative day served.

(7) That membership in the Public Employees' Retirement System be made available to legislative employees upon written request under the provisions of section 19-3-403(5), MCA.

(8) That the Legislature intends that this Joint Resolution apply to the employees hired to prepare for the 53rd Legislature by the leadership elected at the November 1992 caucuses.

(9) (a) That this resolution be effective upon passage and be effective until January 4, 1993.

(b) That this resolution apply retroactively to all employees of the 52nd Legislature.

(10) That the Legislature recommends that Legislative Branch Agencies offer session temporary personnel the additional compensation in lieu of benefits provided in this resolution.

Approved January 27, 1991.

HOUSE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING LOCAL GOVERNMENTS AND SCHOOL DISTRICTS TO DEVELOP SOURCE REDUCTION AND RECYCLING PROGRAMS AND GUIDELINES FOR THE PROCUREMENT OF MATERIALS AND SUPPLIES MADE FROM RECYCLED MATERIAL.

WHEREAS, Chapter 222, L. 1991, establishes a goal of reducing the volume of solid waste landfilled or incinerated in the state by 25%; and

WHEREAS, source reduction and recycling conserve scarce landfill space and energy; and

WHEREAS, state government is developing source reduction and recycling programs for state offices and procurement guidelines for the purchase of materials and supplies made from recycled material.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That local governments and school districts in the state be encouraged to develop source reduction and recycling programs for county and municipal office buildings and school facilities.

BE IT FURTHER RESOLVED, that local governments and school districts in the state be encouraged to adopt procurement guidelines for the purchase of materials and supplies made from recycled material.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the executive officer of each county and incorporated community and to each county superintendent of schools in the state.

Approved March 13, 1991.

HOUSE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL TO ENCOURAGE ENERGY CONSERVATION BY NORTHWESTERN UTILITY COMPANIES.

WHEREAS, the Pacific Northwest region is on the verge of long-term energy resource decisions of vital interest to the citizens of Montana; and

WHEREAS, those decisions include the Pacific Northwest Electric Power and Conservation Planning Council's adoption of its 1991 Northwest Conservation and Electric Power Plan; and

WHEREAS, the Council is charged by law with identifying the resource options that will minimize the economic and environmental costs of the energy services that a healthy Montana economy needs; and

WHEREAS, the Council and numerous other experts have determined that energy conservation represents the state's largest, cleanest, and least expensive untapped energy resource.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Pacific Northwest Electric Power and Conservation Planning Council's plan continue to assign top priority to cost-effective opportunities to improve the efficiency of energy use in all sectors of the economy;

(2) That the Council should encourage regulators in the Northwest to eliminate economic disincentives to investments by electric utilities in cost-effective energy conservation resources; and

(3) That the Council should encourage regulators in the Northwest to adopt ratemaking policies which do not encourage electric utilities to promote inefficient increased usage of electric energy; and

(4) That the Council should encourage regulators and electric utilities in the Northwest to explicitly consider environmental costs in their resource choices.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Pacific Northwest Electric Power and Conservation Planning Council and to the Montana Public Service Commission.

Approved March 28, 1991.

HOUSE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO PASS LEGISLATION ASSURING THAT A TRIBAL GOVERNMENT WITHIN THE UNITED STATES HAS THE AUTHORITY TO MAINTAIN CRIMINAL JURISDICTION OVER NONMEMBER INDIANS WHO COMMIT CRIMINAL ACTS WITHIN THE BOUNDARIES OF THE RESPECTIVE TRIBE'S RESERVATION AND UPON THE TRIBAL GOVERNMENT'S LANDS.

WHEREAS, the United States Supreme Court, in Duro v. Reina, No. 88-6546, (United States Sup. Ct., May 29, 1990), has ruled that Indian tribal governments and their courts do not have criminal jurisdiction over nonmember Indians who commit criminal acts upon the reservations or lands of the tribes; and

WHEREAS, it has been the practice of Indian tribes to regard nonmember Indians living in Indian country as tribal members for purposes of tribal jurisdiction; and

WHEREAS, the Montana-Wyoming Tribal Chairman's Association, composed of the tribal chairmen of the federally recognized tribes of Montana and Wyoming, has adopted a resolution urging the United States Congress to pass legislation to resolve the jurisdictional dilemma raised in the Duro decision; and

WHEREAS, the United State Congress is now considering legislation that would assure that tribal governments have the authority to maintain criminal jurisdiction over nonmember Indians.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature join the Montana-Wyoming Tribal Chairman's Association by formally requesting that Montana's Congressional Delegation support legislation assuring that tribal governments within the United States have the authority to maintain criminal jurisdiction over nonmember Indians who commit criminal acts within the boundaries of the reservations and upon lands of the tribes, so long as consistent with the protections guaranteed by the United States constitution.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of the Montana Congressional Delegation, the Tribal Chairman of each Montana tribe, and the Montana-Wyoming Tribal Chairman's Association.

Approved April 5, 1991.

HOUSE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT, TO PROVIDE ACCURATE AND COMPLETE RECEIPT INFORMATION TO ENSURE ACCOUNTABILITY OVER DISTRIBUTIONS OF TAYLOR GRAZING ACT RECEIPTS AND OTHER LEASE RECEIPTS.

WHEREAS, the United States Department of Interior, Bureau of Land Management (BLM), distributes a portion of revenues received from grazing leases and other leases to the state and counties of Montana; and

WHEREAS, Montana state and county governments have a responsibility to ensure that all money due from the BLM is collected and properly distributed; and

WHEREAS, payments to Montana state and county governments do not include adequate information to determine the source or completeness of this money; and

WHEREAS, the BLM has not provided adequate support of grazing boundaries to support its allocation of receipts under Section 3 of the Taylor Grazing Act; and

WHEREAS, the BLM does not provide the Montana Department of Administration, Treasury Bureau, with adequate information to distribute Taylor Grazing Act Section 3 receipts to counties in accordance with state law.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Interior, Bureau of Land Management, be urged to provide complete and detailed information supporting Taylor Grazing Act receipts and other lease receipts that will allow Montana state and county governments to ensure accountability over this money.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of Montana's Congressional Delegation, the U.S. Secretary of Interior, the Director of the Bureau of Land Management, the Western Interstate Region of the National Association of Counties, and the Western Office of the Council of State Governments.

Approved March 13, 1991.

HOUSE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO REFRAIN FROM ENACTING AND URGING THE PRESIDENT OF THE UNITED STATES TO DECLINE TO APPROVE ANY REVISION OF THE METHOD OF ALLOCATING FEDERAL HIGHWAY FUNDS THAT WOULD REDUCE THE MONEY AVAILABLE TO MONTANA FOR HIGHWAY CONSTRUCTION, RECONSTRUCTION, AND IMPROVEMENT.

WHEREAS, Montana is a sparsely populated and geographically vast state; and

WHEREAS, the federal-aid highway system is a national network intended to speed the unimpeded flow of traffic to and from all parts of the United States not only for the commercial, social, and recreational uses of all citizens but also for national defense and for relief in national emergencies; and

WHEREAS, without cost-sharing under the federal-aid highway program, the State of Montana lacks the financial resources necessary to construct, reconstruct, and improve the thousands of miles of federal-aid highway system within the state to the standards required to accommodate the traffic of a nationwide system; and

WHEREAS, the continuing growth of the volume of traffic, originating from both local and interstate sources, is increasing the burdens upon the highway system and requires ever-growing expenditures for construction, reconstruction, and improvements; and

WHEREAS, inflation further reduces the purchasing power of the dollars available to finance construction, reconstruction, and improvement of the highway system; and

WHEREAS, Montana receives about $100 million a year in federal-aid highway funds, or about two-thirds of the state's total highway construction expenditures; and

WHEREAS, the current Federal-Aid Highway Act will expire September 30, 1991, and there are proposals that would substantially revise the cost-matching ratios, apportionment formulae, and other aspects of the federal-aid highway program to the detriment of Montana and other states similarly situated; and

WHEREAS, without continuance of federal aid at its current level or an increase in the level of federal aid, Montana will be unable to accomplish construction, reconstruction, and improvement of the federal-aid highway system, including structures such as bridges and overpasses.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States be requested to refrain from enacting and the President be requested to decline to approve any law that revises the formulae for the allocation of highway or mass transportation aid money among the states, that revises the cost-matching ratios, or that otherwise changes the provisions of the federal-aid highway program to reduce either the amount of or the proportionate allocation of highway or mass transportation aid money to the State of Montana.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of Montana's Congressional Delegation, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and the President of the United States.

Approved March 13, 1991.

HOUSE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING THE OPPOSITION OF THE LEGISLATURE TO A RAILROAD CORPORATION'S PARTICIPATION IN MONTANA'S WORKERS' COMPENSATION SYSTEM.

WHEREAS, legislation has been introduced in the United States Congress to allow railroad corporations to participate in state workers' compensation programs; and

WHEREAS, Montana's industrial accident insurance program under the workers' compensation system has funding problems, and a long-term solution is being sought by this Legislature; and

WHEREAS, railroad workers in this state have been covered by the Federal Employees Liability Act (FELA) for many decades; and

WHEREAS, the dangerous work conditions related to the railroad industry prompted Congress 80 years ago to enact FELA to encourage railroad safety and to compensate railroad employees injured in the workplace; and

WHEREAS, FELA has proved to be effective and efficient for providing injury compensation to several areas of broader public policy and has proved to be a cornerstone for safety in the railroad industry and an important element in establishing corporate accountability; and

WHEREAS, Montana's no-fault workers' compensation system, which covers occupational injuries in other industries, differs from FELA; and

WHEREAS, FELA is negligence liability law specifically tailored to the characteristics of the railroad industry, and its liability provisions place strong emphasis on preventing accidents; and

WHEREAS, a direct financial incentive in the railroad industry to avoid negligence and to provide safe operations is the basic principle of FELA; and

WHEREAS, safety incentives in FELA are as important to the public as they are to workers, with safe working conditions translating to safety for passengers and for Montana communities through which railroads travel; and

WHEREAS, trains carry growing volumes of toxic chemicals, nuclear waste, and other hazardous materials within and across the state of Montana and make the linkage between safe working conditions for railroad employees and public safety clearer now than ever before in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana find that:

(1) for reasons previously cited, Montana's no-fault workers' compensation system was not designed to provide negligence liability in the railroad industry;

(2) the railroad industry operates in interstate commerce and is governed by the United States Congress and that FELA provides a uniform standard for injuries sustained by railroad workers in this country; and

(3) Montana's workers' compensation system is burdened with unfunded financial liabilities.

BE IT FURTHER RESOLVED, that the Legislature of the State of Montana opposes participation of railroad corporations in Montana's workers' compensation system.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Secretary of the United States Department of Transportation, the Interstate Commerce Commission, the United States Federal Railroad Administration, each member of Montana's Congressional Delegation, and the appropriate committees of the United States Congress that consider legislation allowing railroads to participate in state workers' compensation programs.

Approved March 28, 1991.

HOUSE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE UNITED STATES CONGRESS CONDUCT HEARINGS IN MONTANA TO DETERMINE WHETHER STANDARD FOREST PRACTICES ARE AFFECTING OTHER MULTIPLE USES OF NATIONAL FOREST LANDS AND WHETHER NATIONAL FORESTS ARE BEING MANAGED ON A SUSTAINABLE BASIS.

WHEREAS, national forest lands are a significant source of high-quality water and clean air upon which Montanans depend; and

WHEREAS, national forest lands provide natural splendor, wildlife habitat, scenic beauty, and recreational opportunity that all Montanans enjoy; and

WHEREAS, the economic stability of communities in western Montana is dependent upon a regular and stable supply of timber; and

WHEREAS, unsustainable rates of timber harvest affect other multiple uses of national forest lands and disrupt and destabilize dependent communities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature formally request that the United States Congress conduct hearings in Montana to evaluate whether forest practices in Montana are affecting other multiple uses of national forests, including clean water and air, and the scenic qualities of forest lands.

BE IT FURTHER RESOLVED, that the United States Congress also conduct these hearings to determine whether national forest lands are being managed on a sustainable basis and that the forest practices on these lands maximize timber growth for sustained-yield production.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Montana Congressional Delegation.

Approved March 23, 1991.

HOUSE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE GOVERNOR TO PROCLAIM THE SECOND WEEK OF OCTOBER IN EACH YEAR AS MONTANA'S OFFICIAL INVENTORS' AND INNOVATORS' WEEK; AND REQUESTING THE DEPARTMENT OF COMMERCE TO ARRANGE SUITABLE OBSERVANCES AND THE PUBLIC SCHOOLS TO TAKE APPROPRIATE NOTICE OF THE WEEK.

WHEREAS, throughout its history the United States has been on the leading edge of scientific and technological research, development, invention, innovation, and improvement; and

WHEREAS, encouragement of research, invention, and innovation is the key to the continued preeminence of the United States; and

WHEREAS, the State of Montana includes among its residents many persons who are endowed with the intellect, talent, skill, and ability to conceive innovative ideas and to turn those ideas into useful manifestations; and

WHEREAS, it is fitting that the State of Montana recognize its citizens who are making significant contributions in research, invention, and innovation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor proclaim the second week of October of each year as Montana's official Inventors' and Innovators' Week.

BE IT FURTHER RESOLVED, that the Department of Commerce arrange suitable observance of Inventors' and Innovators' Week.

BE IT FURTHER RESOLVED, that public schools take note of Inventors' and Innovators' Week with appropriate programs to instill in Montana students an appreciation of the importance of scientific and technological endeavors.

Approved March 8, 1991.

HOUSE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING A CHANGE IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES' REGULATION RESTRICTING NATIVE AMERICAN VETERANS' USE OF CONTRACT HEALTH SERVICES.

WHEREAS, the Indian Health Service was established under federal law to provide a trust service to Montana's tribal governments and its Native American population; and

WHEREAS, the Indian Health Service operates only three hospitals on Montana reservations and contracts with private or public hospitals to provide services to Native Americans on Montana's other reservations; and

WHEREAS, a Department of Health and Human Services' regulation designates the Indian Health Service as the payor of last resort and will not authorize payment for contract health services if a Native American is eligible for alternate resources; and

WHEREAS, "alternate resources" includes the health care services offered by the Veterans Benefits Administration; and

WHEREAS, this regulation forces many Native American veterans to seek medical care from the Veterans Benefits Administration; and

WHEREAS, the Veterans Benefits Administration operates only two medical facilities in the entire state; and

WHEREAS, this imposes a severe hardship on Native American veterans who are forced to travel long distances to receive medical care and on Native American families who traditionally accompany a family member to a medical facility and remain during the family member's stay; and

WHEREAS, the Blackfeet Tribal Business Council passed Resolution Number 38-91 supporting a change in the Department of Health and Human Services' regulation regarding health care services for Native American veterans.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Montana Legislature support the Blackfeet Tribal Business Council in its efforts to seek quality health care delivery for all Native American veterans.

(2) That the Montana Legislature support a change in the Department of Health and Human Services' regulation to allow Native American veterans the option of using contract health services instead of veterans' health services.

(3) That the Chief Clerk of the House of Representatives send a copy of this resolution to the Blackfeet Tribal Business Council, to each member of the Montana Congressional Delegation, to the Secretary of the United States Department of Health and Human Services, and to the United States Senate Select Committee on Indian Affairs.

Approved March 20, 1991.

HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE ENVIRONMENTAL QUALITY COUNCIL TO CONDUCT AN INTERIM STUDY ON THE NEED FOR AND THE NATURE OF UNIFORM STATE STANDARDS FOR THE PROTECTION AND APPROPRIATE DEVELOPMENT OF LAKESHORES.

WHEREAS, in section 75-7-201, MCA, the Legislature finds and declares that the natural lakes of Montana are high in scenic and resource values and that the conservation and protection of these lakes is important to the continued value of lakeshore property as well as to the state's residents and visitors who use and enjoy the lakes; and

WHEREAS, Montana contains many miles of lakeshore suitable for some type of development; and

WHEREAS, many of these lakeshore areas are experiencing or have the potential to experience intense development pressures; and

WHEREAS, most of these areas are fragile and susceptible to environmental and aesthetic damage; and

WHEREAS, in section 75-7-201, MCA, the Legislature has conferred the power to local governments to protect their lakes areas but has not provided the local governments with guidance regarding development standards for lakeshores.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Environmental Quality Council be requested to conduct an interim study on the need for and the nature of uniform state standards regarding the protection and appropriate development of lakeshores for the protection of public health, safety, and welfare.

(2) That the Environmental Quality Council be requested to consult with representatives of lakeshore property owners and others involved in this issue, including but not limited to: federal, state, tribal, and local government officials; industries; citizens; and other persons or groups with expertise in the regulation and development of lakeshores.

BE IT FURTHER RESOLVED, that the Environmental Quality Council report the findings of any study to the 53rd Legislature and present options for legislative consideration if the Council determines that options are necessary.

Approved March 28, 1991.

HOUSE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE MACBRIDE PRINCIPLES OF FAIR EMPLOYMENT IN NORTHERN IRELAND AND URGING PRIVATE COMPANIES AND THE STATE TO CONSIDER ADHERENCE TO THE MACBRIDE PRINCIPLES BEFORE CONDUCTING BUSINESS WITH A COMPANY.

WHEREAS, according to British government findings, a Catholic (nationalist) in Northern Ireland is 2 1/2 times more likely to be unemployed than a Protestant (loyalist), even though the Catholic and the Protestant communities have roughly the same educational levels and the same job skills; and

WHEREAS, the British government passed legislation banning employment discrimination in Northern Ireland in 1920, 1973, and 1976 in its Fair Employment Act and in 1987 proposed even further anti-discrimination legislation that was not acted upon until 1990; and

WHEREAS, unemployment in Northern Ireland is a staggering 22%, with 36% of Catholics being unemployed and only 16% of Protestants being unemployed; and

WHEREAS, the primarily Catholic area of West Belfast has an 80% unemployment rate and 40% of young Catholic males between 18 and 25 years of age are unemployed; and

WHEREAS, employment discrimination is considered the primary cause of violence in Northern Ireland; and

WHEREAS, many organizations, as well as 12 states and 20 cities, in the United States have supported the MacBride Principles for fair employment for Northern Ireland either through legislation or resolutions.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA THAT:

(1) The Legislature recognizes that employment discrimination in Northern Ireland and all other forms of discrimination practiced in Northern Ireland must be addressed forcefully and forthrightly;

(2) The Legislature supports the MacBride Principles that call upon employers in Northern Ireland to:

(a) increase representation of individuals from underrepresented religious groups in the workforce, including managerial, supervisory, administrative, clerical, and technical jobs;

(b) provide for adequate security for the protection of minority employees both at the workplace and while traveling to and from work;

(c) ban provocative religious or political emblems from the workplace;

(d) publicly advertise all job openings and pursue special recruitment efforts to attract applicants from underrepresented religious groups;

(e) provide that all layoff, recall, and termination procedures do not, in practice, favor a particular religious group;

(f) abolish job reservations, apprenticeship restrictions, and differential employment criteria that discriminate on the basis of religion or ethnic origin;

(g) develop training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train and upgrade and improve the skills of minority employees;

(h) establish procedures to assess, identify, and actively recruit minority employees with potential for further advancement; and

(i) provide for the appointment of a senior management staff member to oversee the company's affirmative action efforts and the setting up of timetables to carry out affirmative action principles.

(3) The Legislature calls upon all businesses, corporations, and industries in this state doing business with a company with operations in Northern Ireland to consider the company's adherence to the MacBride Principles of fair employment in Northern Ireland before conducting business with the company; and

(4) The Legislature urges the state, including the governing bodies of the state's retirement systems, to consider a company's adherence to the

MacBride Principles before it invests in or does business with a company with operations in Northern Ireland.

Approved March 16, 1991.

HOUSE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA FINDING THAT THE LONG-TERM MEDICAL CARE NEEDS OF ELDERLY OR DISABLED MONTANANS SHOULD BE MET IN THEIR HOMES AND COMMUNITIES WHENEVER APPROPRIATE; URGING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO MAKE LONG-TERM MEDICAL CARE AVAILABLE THROUGH MEDICAID HOME AND COMMUNITY SERVICES TO THE EXTENT POSSIBLE; AND ASKING THE UNITED STATES CONGRESS TO MAKE THE MEDICAID PROGRAM LESS RESTRICTIVE AND MORE COST-EFFECTIVE BY EXPANDING MEDICAID HOME AND COMMUNITY SERVICES AND BY APPLYING THE PRINCIPLES OF HOME AND COMMUNITY SERVICES AS A WHOLE.

WHEREAS, persons who are elderly or disabled desire to continue to live in their homes and remain in close association with their own communities; and

WHEREAS, persons who are elderly or disabled often are in need of long-term medical care services; and

WHEREAS, many persons who are elderly or disabled and receiving long-term medical care services are located away from their homes and communities; and

WHEREAS, Medicaid home and community services have shown that many elderly or disabled persons in need of long-term medical care services may remain in their homes and communities if provided the appropriate supportive services; and

WHEREAS, Medicaid home and community services show that quality long-term medical care can be provided at a savings over institutionally based, long-term medical care; and

WHEREAS, persons who are elderly or disabled continue to be placed into long-term medical care situations that are away from their homes and communities because of the limits on the availability of services through Medicaid home and community services; and

WHEREAS, the Legislature finds that Medicaid home and community services can provide an excellent alternative model for future Medicaid-funded, long-term medical care services.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That it is the state's policy that persons who are elderly or disabled in need of long-term medical care be provided Medicaid services in their homes and communities whenever appropriate.

(2) That the state, acting through the Department of Social and Rehabilitation Services, expand Medicaid home and community services to the extent permitted by the federal government.

(3) That the Congress of the United States be advised that the Medicaid program as a whole should be made more flexible and cost-effective and that these objectives can be realized through further funding, development, and expansion of home and community services and by applying the principles of home and community services to the Medicaid program as a whole.

(4) That copies of this resolution be sent by the Secretary of State to each member of the United States Congress.

Approved March 23, 1991.

HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA STATE LIBRARY AND THE MONTANA LEGISLATIVE COUNCIL TO WORK TOGETHER TO PRODUCE GUIDELINES FOR THE USE OF ACID-FREE PAPER FOR PUBLICATION OF STATE DOCUMENTS.

WHEREAS, it has been known for at least 3 decades that residual acids in most paper produced since the mid-19th century have drastically reduced the life of books and other publications and documents; and

WHEREAS, there has been a serious deterioration of the holdings of libraries and archives on the state and national levels; and

WHEREAS, one-fourth of the books in research library collections have become so embrittled that pages will break or crumble with use; and

WHEREAS, large expenditures of funds will be required during the next several decades to prevent the further deterioration of holdings printed on acidic papers by deacidifying the paper; and

WHEREAS, this problem can be alleviated by printing on alkaline paper, which is readily available and which has a prospective life of several hundred years; and

WHEREAS, Congress passed Public Law 101-423, based on Senate Joint Resolution 67 and on House Joint Resolution 226, introduced by Representative Pat Williams, to establish a national policy on permanent paper; and

WHEREAS, the National Information Standards Organization has urged American publishers to use paper meeting ANSI Standard Z39.48-1984 for the printing of publications of enduring value; and

WHEREAS, the Depository Library Council to the Public Printer of the United States adopted a recommendation on October 16, 1987, that permanent paper be used for federal government publications of enduring value; and

WHEREAS, the American Library Association adopted a resolution on January 13, 1988, urging that: publishers use paper meeting ANSI Standard Z39.48-1984; the United States Congressional Joint Committee on Printing adopt standards for permanent papers and to encourage agencies of the federal government to use permanent paper for publications of enduring value; and appropriate agencies of state and local governments adopt similar policies; and

WHEREAS, the Montana State Library, under the governance of the State Library Commission, administers the state publications library distribution center that distributes state publications to cooperating libraries throughout Montana; and

WHEREAS, the Montana Legislative Council functions as a major publisher of state documents, such as the Montana legislative review, the House and Senate journals, and the session laws.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State Library and the Montana Legislative Council work together to produce guidelines for the use of acid-free paper for the publication of state documents.

BE IT FURTHER RESOLVED, that these two entities report to the 53rd Legislature with recommendations on the use of acid-free paper by all agencies of state government.

Approved March 12, 1991.

HOUSE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY BY THE LEGISLATIVE BRANCH COMPUTER

SYSTEMS PLANNING COUNCIL TO PLAN FOR PRODUCTIVE USE OF COMPUTERS BY LEGISLATORS.

WHEREAS, technology has become an increasingly important partner of state agencies in the efficient, economical performance of public duties; and

WHEREAS, this trend is bound to continue; and

WHEREAS, computer applications in the Legislature have enhanced the speed and accuracy of legislative work to an increasing degree over the past 18 years; and

WHEREAS, applications now available through the use of personal computer technology could significantly enhance the ability of Montana legislators to communicate with each other, their constituents, and state government; and

WHEREAS, small portable computers with significant power are available that could be provided to legislators to support and improve their legislative work; and

WHEREAS, careful planning of potential applications requires consideration of not only the computer equipment that may be involved but also the software, software systems, communication systems, and power requirements that would be needed to serve legislators; and

WHEREAS, the Legislature has established the Legislative Branch Computer Systems Planning Council to plan computer applications within the Branch.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature request the Legislative Branch Computer Systems Planning Council to conduct an interim study relating to the use of computers by legislators.

That the Council involve members of the Legislature in the study, through surveys and other appropriate means, to ascertain the types of applications that members would find useful in their work.

That the Council survey the directions taken by other states in providing computer support to their legislators and evaluate the potential for similar applications in Montana.

That the Council submit recommendations and options, including budgets, for consideration by the 53rd Legislature to begin implementation by the 54th Legislature.

Approved March 23, 1991.

HOUSE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S ANTICIPATED REVENUE FOR EACH YEAR OF THE 1992-93 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING A JUNE 30, 1990, GENERAL FUND AND STATE EQUALIZATION ACCOUNT BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; REQUESTING THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING TO USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEARS 1991-92 AND 1992-93; AND ESTABLISHING AN ESTIMATE OF THE NONGENERAL FUND REVENUES FOR THE STATE EQUALIZATION ACCOUNT.

WHEREAS, Article VI, section 9, of the Montana Constitution requires the Governor to submit to the Legislature a budget for the ensuing fiscal period, containing in detail the estimated revenue of the state; and

WHEREAS, Article VIII, section 9, of the Montana Constitution requires that the Legislature may not appropriate funds in excess of the anticipated revenue of the state; and

WHEREAS, section 5-18-107(5), MCA, requires the Revenue Oversight Committee to estimate the amount of revenue projected to be available for legislative appropriation and to introduce a house joint resolution setting forth the Committee's current revenue estimate for the biennium; and

WHEREAS, section 5-12-302(6), MCA, requires the Office of the Legislative Fiscal Analyst to assist the Revenue Oversight Committee in its revenue estimating duties; and

WHEREAS, due to the complexity of economic variables involved in revenue forecasting and the diversity of sources from which state revenues are obtained, it has become increasingly difficult to project revenues in order to prepare a balanced budget for the ensuing biennium; and

WHEREAS, past legislatures have not agreed on revenue projections until the last days of the session, when there is little time for comprehensive analysis or reasoned criticism; and

WHEREAS, it is in the best interests of the state that revenue forecasts be discussed and arrived at in public hearings at which all the people may attend and participate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state general fund revenue for fiscal years 1991, 1992, and 1993 is estimated to be $433,059,000, $455,320,000, and $471,648,000, respectively. The school foundation revenue for fiscal years 1991, 1992, and 1993 is estimated to be $398,379,000, $372,177,000, and $381,854,000, respectively.

BE IT FURTHER RESOLVED, that the Legislature accepts for budget purposes the unreserved fund balance for the general fund of $89,038,000 and $20,592,000 for the state equalization account, prepared according to generally accepted accounting principles as published in the audited state financial statements as of June 30, 1990.

BE IT FURTHER RESOLVED, that the Governor's Office of Budget and Program Planning use the revenue estimates contained in this resolution as the official revenue estimates for fiscal years 1991-92 and 1992-93.

GENERAL FUND REVENUE

The projections for total general fund revenue during the 1992-93 biennium are based on an assumption of a continuation of Montana law as it existed on January 1, 1991.

The revenue estimates contained in the following tables are based on the assumptions stated previously in this resolution and those listed in the following tables.

ECONOMIC ASSUMPTIONS

Revenue Oversight Committee

YEAR	ASSUMPTION	CY/FY 1990	CY/FY 1991	CY/FY 1992	CY/FY 1993
	MT Population July 1 (Thousands)	800.000	800.000	804.000	808.000
	MT Population =16 July 1 (Thousands)	608.000	609.000	613.000	617.000
	MT Population 18-24 July 1 (Thousands)	71.000	67.000	64.000	61.000
CY	MT Nonfarm Employment (Thousands)	294.800	295.300	298.900	301.000
CY	MT Personal Income (Billions)	$11.902	$12.471	$13.041	$13.712
CY	MT Nonfarm Wage & Salary Income (Billions)	$5.676	$5.941	$6.226	$6.509
CY	U.S. Corporate Profits Before Taxes (Billions)	$297.700	$303.400	$310.300	$306.600
CY	CPI Percent Change	5.560%	5.730%	3.970%	4.590%
FY	Short-Term Interest Rate	8.120%	7.590%	7.710%	8.130%
FY	Long-Term Interest Rate	9.350%	9.410%	9.480%	9.610%
CY	Prime Interest Rate	9.950%	9.810%	10.000%	10.000%
FY	Treasury Cash Average Balance (Millions)	$327.724	$266.596	$238.918	$219.369
FY	TRANS Issue (Millions)	$0.000	$0.000	$50.000	$90.000
FY	Basis Points (Percentage)	0.000%	0.000%	1.500%	1.500%
FY	Individual Income Tax Audits (Millions)	$10.786	$11.266	$13.517	$14.640
FY	Legislative Audits (Millions)	$0.000	$0.000	$0.750	$0.750
FY	Corporation Tax Audits (Millions)	$8.369	$8.109	$8.239	$8.174
CY	Total Oil Production (Million bbls.)	18.558	18.000	17.600	17.000
CY	Montana Oil Price	$21.600	$21.500	$21.600	$21.227

YEAR	ASSUMPTION	CY/FY 1990	CY/FY 1991	CY/FY 1992	CY/FY 1993
FY	Statewide Taxable Valuation (Millions)	$1,884.550	$1,564.317	$1,587.654	$1,616.398
CY	Total Coal Production (Million tons)	34.822	34.473	34.356	34.818
CY	Montana Coal Price (CSP)	$7.409	$7.362	$7.434	$7.456
FY	Coal Tax Credits (Millions)	$7.141	$4.996	$2.449	$0.000
CY	Total Nat'l Gas Production (M MCF)	45.168	45.622	47.304	47.437
CY	Montana Nat'l Gas Price ($/MCF)	$1.564	$1.773	$1.907	$2.097
CY	Copper Production (M lbs.)	111.061	135.762	137.863	130.776
CY	Gold Production (M ozs.)	0.357	0.348	0.345	0.347
CY	Silver Production (M ozs.)	6.430	6.449	6.454	6.457
CY	Lead Production (M lbs.)	11.651	11.665	11.674	11.739
CY	Zinc Production (M lbs.)	31.986	32.029	32.421	32.602
CY	Molybdenum Production (M lbs.)	13.000	14.100	10.900	9.300
CY	Palladium Production (M ozs.)	0.185	0.200	0.222	0.290
CY	Platinum Production (M ozs.)	0.057	0.061	0.067	0.088
CY	Copper Price	$1.031	$1.046	$1.038	$1.042
CY	Gold Price	$400.675	$400.675	$400.675	$400.675
CY	Silver Price	$4.775	$4.775	$4.775	$4.775
CY	Lead Price	$0.209	$0.209	$0.209	$0.209
CY	Zinc Price	$0.502	$0.502	$0.502	$0.502
CY	Molybdenum Price	$3.104	$3.119	$3.112	$3.115
CY	Palladium Price	$132.725	$132.725	$132.725	$132.725
CY	Platinum Price	$453.253	$453.253	$453.253	$453.253
FY	Forest Receipts (Millions)	$7.582	$11.150	$7.753	$7.705
FY	Permanent Trust Gains/Losses (Millions)	$1.685	$1.195	$1.195	$1.195
FY	Common School Trust Gains/Losses (Millions)	$1.394	$1.231	$1.231	$1.231
FY	Resource Ind. Trust Gains/Losses (Millions)	$0.339	$0.339	$0.339	$0.339
FY	Park Acq. Trust Gains/Losses (Millions)	$0.084	$0.054	$0.054	$0.054
FY	Liquor Unit Sales (Millions)	4.883	4.780	4.680	4.582
FY	Wine Unit Sales (Millions)	0.121	0.100	0.083	0.067
FY	Liquor Cost Per Unit	$4.890	$4.977	$5.066	$5.156
FY	Wine Cost Per Unit	$3.262	$3.258	$3.372	$3.483
FY	Liquor Division Budget (% Change)	0.510%	0.000%	0.000%	0.000%
FY	Cigarette Packs (Millions)	69.568	68.874	68.068	67.156
FY	Tobacco Value (Millions)	$7.145	$7.626	$8.053	$8.490
FY	Insurance Premiums Growth (% Change)	1.890%	1.890%	1.890%	1.890%
FY	Insurance Premiums Tax Credit	$2.151	$3.231	$4.311	$5.391
FY	Police & Firemen Retirement (Millions)	$6.076	$6.213	$6.391	$6.479
CY	Telephone Taxable Income (% Change)	$223.653	$234.185	$241.724	$250.770
CY	Kilowatt Hours Produced (Millions)	22,674.000	22,664.000	22,682.000	22,663.000
FY	Barrels of Beer (Millions)	0.704	0.702	0.706	0.711
CY	Freight Line Earnings (Millions)	$21.206	$21.757	$21.768	$21.699
FY	Liters of Wine (Millions)	5.203	5.036	4.907	4.785
FY	Video Machine Net Income (Millions)	$112.635	$126.079	$139.382	$150.333

YEAR	ASSUMPTION	CY/FY 1990	CY/FY 1991	CY/FY 1992	CY/FY 1993
FY	Statewide Vehicle Value (Millions)	$1,901.204	$1,905.049	$1,935.412	$1,986.326
FY	Per Capita Lottery Sales	$26.917	$32.080	$38.478	$44.817

Current Law

General Fund Revenue Estimates

(In Millions)

Source of Revenue	ESTIMATED FY 1991	ESTIMATED FY 1992	ESTIMATED FY 1993
Individual Income Tax	$150.245000	$182.761000	$193.863000
Corporation License Tax	43.307000	32.724000	32.256000
Coal Severance Tax	7.456000	5.939000	5.913000
Oil Severance Tax	20.295000	19.429000	18.528000
Interest on Investments	20.235000	22.276000	25.152000
Long-Range Bond Excess	43.036000	41.749000	43.233000
Coal Trust Interest Income	42.473000	44.225000	45.890000
Insurance Premiums Tax	18.746000	18.020000	17.395000
Public Institutions Reimb.	12.205000	13.351000	12.930000
Liquor Profits	8.018000	4.363000	4.302000
Liquor Excise Tax	5.500000	5.710000	5.691000
Inheritance Tax	9.391000	9.704000	9.969000
Metal Mines Tax	4.641000	4.661000	4.460000
Electrical Energy Tax	4.240000	4.239000	4.241000
Driver's License Tax	0.879000	0.882000	0.886000
Telephone License Tax	3.903000	4.073000	4.209000
Beer License Tax	1.264000	1.272000	1.280000
Natural Gas Severance Tax	1.438000	1.634000	1.816000
Freight Line Tax	1.298000	1.197000	1.193000
Wine Tax	0.806000	0.785000	0.766000
Video Gaming Income Tax	6.304000	6.969000	7.517000
Motor Vehicle Account	6.672000	6.850000	7.033000
Vehicle Fees	2.667000	2.710000	2.781000
Public Contractor's Tax	1.044000	1.070000	1.067000
Other Revenue Sources	16.996000	18.727000	19.277000
GRAND TOTAL	$433.059000	$455.320000	$471.648000

Current Law

Foundation Program Revenue Estimates

(In Millions)

Source of Revenue	ESTIMATED FY 1991	ESTIMATED FY 1992	ESTIMATED FY 1993
State Revenue			
Income Tax	$124.102000	$97.677000	$103.611000
Corporation Tax	20.234000	15.289000	15.070000
Coal Tax	5.523000	4.399000	4.380000
Interest & Income	36.961000	38.063000	39.293000
U.S. Oil & Gas Royalties	25.420000	25.527000	24.916000
Education Trust Interest	0.175000	0.070000	0.072000
State Equal. Account Interest	0.629000	0.375000	0.000000
Permanent Trust Interest	6.245000	7.804000	8.098000
Lottery	4.975000	5.997000	7.020000
Statewide 40 Mills	62.573000	63.506000	64.656000
Miscellaneous	7.337000	8.358000	8.722000
County Levy Surplus	0.000000	0.000000	0.000000
Total State	$294.174000	$267.065000	$275.838000
Statewide Taxable Valuation	$1,564.317000	$1,587.654000	$1,616.398000
County Revenue			
45 Mills	$86.037000	$87.321000	$88.902000
Elementary Transportation	-3.754000	-3.766000	-3.779000
Cash Reappropriated	2.657000	1.116000	0.339000
Forest Funds	1.252000	1.276000	1.304000
Taylor Grazing	0.114000	0.113000	0.112000
Miscellaneous	18.701000	19.862000	19.958000
High School Tuition	-0.802000	-0.810000	-0.820000
Total County	$104.205000	$105.112000	$106.016000
District Revenue			
Permissive Levy	$0.000000	$0.000000	$0.000000
Light Vehicle Replacement	0.000000	0.000000	0.000000
Total District	$0.000000	$0.000000	$0.000000
Total State, County, District	$398.379000	$372.177000	$381.854000

Approved April 16, 1991.

HOUSE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING

THAT NO UNNECESSARY FEE, CHARGE, OR RESTRICTION BE IMPOSED THAT WOULD IMPEDE PASSAGE ACROSS THE INTERNATIONAL BOUNDARY BETWEEN THE UNITED STATES AND CANADA.

WHEREAS, the principle underlying the recently negotiated free trade agreement between the United States and Canada is that unrestricted movement of goods and services across the international boundary contributes to the economic well-being of both countries; and

WHEREAS, Canadians, and particularly residents of Saskatchewan, Alberta, and British Columbia, have historically constituted a major market for Montana businesses; and

WHEREAS, the enactment by the Parliament of Canada last year of a national excise tax on goods and services will enhance the relative attractiveness of products available in the United States; and

WHEREAS, the states of the northern tier who enjoy geographic proximity to Canada are advantageously situated for commercial and economic purposes; and

WHEREAS, imposition of any unnecessary or artificial obstruction to the unimpeded flow of commerce between friendly peoples sharing a common heritage and common aspirations is counterproductive.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States, the President of the United States, and the Director of the United States Immigration and Naturalization Service be urged to refrain from imposing a border-crossing fee or any other charge or restriction, other than those required by the immigration laws, by the tariff laws, or for the enforcement of laws intended to combat crime or to protect the persons, lives, or property of the people of the United States.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the President of the United States, to each member of the Montana Congressional Delegation, to the Speaker of the United States House of Representatives, to the Majority Leader of the United States Senate, and to the Director of the United States Immigration and Naturalization Service.

Approved March 6, 1991.

HOUSE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE

UNITED STATES SECRETARY OF LABOR TO ALLOCATE RESERVE FUNDS AVAILABLE UNDER TITLE III OF THE JOB TRAINING PARTNERSHIP ACT TO STATES, INCLUDING MONTANA, WHOSE DISLOCATED WORKER FUNDS WERE DECREASED.

WHEREAS, funds available under Title III of the Job Training Partnership Act, which are used to train dislocated workers, were increased nationwide by 14% for fiscal year 1991; and

WHEREAS, despite a continuing increase in the number of dislocated workers, Montana's share of Title III funds was decreased by 18% for fiscal year 1991; and

WHEREAS, five of the top seven states whose Title III funds were decreased are western states that continue to suffer from the decline in the nation's economy; and

WHEREAS, Montana's dislocated worker program was developed as an exemplary program that has served as a model for programs established in other states; and

WHEREAS, section 322(a)(2) of the Job Training Partnership Act provides for the allocation of Title III reserve funds for exemplary dislocated worker programs; and

WHEREAS, although the amount of Title III funds available to the United States Department of Labor for discretionary uses increased by $14 million for fiscal year 1991, the total decrease in the amount of Title III funds equaled $17.8 million.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature urge the United States Secretary of Labor to allocate reserve funds available under Title III of the Job Training Partnership Act to states, including the State of Montana, whose Title III dislocated worker funds were decreased.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the United States Secretary of Labor, the appropriate standing committees of the United States Senate and United States House of Representatives, and each member of Montana's Congressional Delegation.

Approved March 16, 1991.

HOUSE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING CONGRESS'S PASSAGE OF THE FOREST RESOURCES CONSERVA-

TION AND SHORTAGE RELIEF ACT OF 1990, WHICH PROHIBITS THE EXPORT FROM THE UNITED STATES OF UNPROCESSED TIMBER ORIGINATING FROM LANDS OWNED BY THE STATES.

WHEREAS, in August 1990, the 101st Congress passed a historic law, the Forest Resources Conservation and Shortage Relief Act of 1990, banning the export of all unprocessed timber purchased on state lands or on federal lands west of the 100th meridian; and

WHEREAS, forests, forest resources, and the forest environment are exhaustible natural resources that require efficient and effective conservation stewardship; and

WHEREAS, there is evidence of a shortfall in the supply of unprocessed timber in Montana and the western United States, and there is reason to believe that this shortfall may worsen in the future; and

WHEREAS, prior to the passage of the federal law, timber on Montana's state lands was vulnerable to increasing pressure for harvesting and exporting, with no milling or processing in Montana by Montana workers; and

WHEREAS, federal timberlands are essential to maintaining a healthy timber industry in Montana, and prior to the passage of the federal law, the well-being of Montana's industry was increasingly jeopardized by artificially high prices for federal timber inflated by international competition for raw-log exports; and

WHEREAS, Montana's timber industry is essential to a healthy economy in Montana; and

WHEREAS, in recent years, administrative, statutory, and judicial actions have set aside a substantial amount of federal lands that otherwise might have been harvested for timber, and in future years, additional lands may be set aside for conservation purposes pursuant to the Endangered Species Act of 1973, the National Forest Management Act of 1976, or other conservation laws; and

WHEREAS, there is growing indication that the new federal law will be challenged by the Japanese in upcoming General Agreement on Trade and Tariffs negotiations; and

WHEREAS, large timber exporters on the west coast are planning legal challenges to the new federal statute.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Montana Legislature is adamantly opposed to the exporting of state and federal unprocessed timber.

(2) That the Montana Legislature fully support the Forest Resources Conservation and Shortage Relief Act of 1990 passed by the 101st Congress to ban the export of unprocessed timber.

(3) That Congress be urged to continue the Forest Resources Conservation and Shortage Relief Act of 1990.

(4) That copies of this resolution be mailed by the Secretary of State to each member of the Montana Congressional Delegation and to the leader of each party in each House of Congress.

Approved March 23, 1991.

HOUSE JOINT RESOLUTION NO. 31

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE ENVIRONMENTAL QUALITY COUNCIL TO STUDY ENERGY RESOURCES AND ENERGY USE IN MONTANA AND TO DEVELOP A PROPOSED STATE ENERGY POLICY IN COOPERATION WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE CONSUMER COUNSEL; AND DIRECTING THE ENVIRONMENTAL QUALITY COUNCIL TO REPORT ITS FINDINGS TO THE 53RD LEGISLATURE.

WHEREAS, while Montana has an extensive number of laws and programs designed to promote the production, consumption, and conservation of various sources and forms of energy, Montana does not have a comprehensive state energy policy; and

WHEREAS, Montana has substantial renewable and nonrenewable resources that are important for the production of electricity, liquid fuels, heat, and other energy forms for use within and outside of the state; and

WHEREAS, although there is no comprehensive national energy policy, many aspects of energy production, consumption, and conservation in Montana are determined or strongly influenced by national programs and legislation; regional, national, and international market factors; and national and regional energy production and distribution systems; and

WHEREAS, the nation's dependence on imported crude oil and the United States' entry into war in the Middle East have raised substantial public concern about the need for a national energy policy; and

WHEREAS, new electric power generating capacity or new energy conservation, or both, may be needed in the Pacific Northwest region in the near future to meet projected demands for electricity; and

WHEREAS, energy production and consumption have substantial economic value to the state and substantial social and environmental costs; and

WHEREAS, the Legislature and the Executive Branch of state government do not have a comprehensive analysis of the renewable and nonrenewable sources of energy available to the state; the economic, social, and environmental factors influencing production, consumption, and conservation of the various sources and forms of energy in the state; and specific aspects of energy production, consumption, and conservation that can be significantly influenced by state policies and programs; and

WHEREAS, the Department of Natural Resources and Conservation, Energy Division, and the Consumer Counsel have considerable expertise and information related to energy production, consumption, and conservation in Montana; and

WHEREAS, the state should promote energy conservation and the production and consumption of an appropriate mix of energy sources that are reliable and efficient and that represent the least social, environmental, and economic costs and the most benefits to the state and its citizens over the long term.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Environmental Quality Council, in cooperation with the Department of Natural Resources and Conservation and the Consumer Counsel, be assigned to:

(1) study the current energy conservation patterns in the state, the forms and amounts of energy conservation available to the state that are not being used, and options for increasing the amount of energy conserved by the state's citizens and all sectors of the state's economy;

(2) study the renewable and nonrenewable sources of energy available to the state and patterns of energy production and consumption in the state, including but not limited to energy sources and forms such as liquid fuels, natural gas, coal, electricity, biomass, solar, wind, wood, and geothermal;

(3) study existing programs in Montana and programs and legislation in other states, the region, and the nation relating to the production, consumption, and conservation of energy, including the influence of regional and national energy production, consumption, and conservation patterns upon Montana;

(4) develop the framework for a proposed state energy policy that is designed to provide reliable and efficient energy supplies with the least social and environmental cost to the state and its citizens over the long term, including:

(a) specific goals and recommended legislation to guide the development of state programs relating to energy production, consumption, and conservation; and

(b) recommended assignments of responsibility to specific agencies within the Executive Branch of state government for the implementation and administration of the various elements of the proposed policy; and

(5) develop the framework for a proposed state energy policy in consultation and cooperation with state and federal agencies, the Pacific Northwest Electric Power and Conservation Planning Council, the Public Service Commission, Indian tribes, units of local government, energy producers and distributors, and organizations and citizens with energy-related expertise or interests in the study and development of the proposed state energy policy.

BE IT FURTHER RESOLVED, that the Environmental Quality Council report the findings of the study to the 53rd Legislature, including recommendations for a comprehensive state energy policy and options for implementation of the proposed policy by the Legislature.

Approved March 28, 1991.

HOUSE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING MONTANANS TO AFFIRM THE CULTURAL CONTRIBUTIONS OF NATIVE AMERICANS ON OCTOBER 12, 1992, THE OBSERVANCE OF COLUMBUS DAY.

WHEREAS, in 1992, this nation will observe the 500th anniversary of the "discovery" of North America by Christopher Columbus despite historical records establishing that North America had been home to hundreds of Indian tribes prior to the arrival of Columbus; and

WHEREAS, the European nations and, later, the United States government acquired this land from the Indians by military conquest and through treaty negotiations; and

WHEREAS, our nation's treatment of the Indian tribes indigenous to Montana and this region included the annihilation of Native Americans and the extraordinary maltreatment of their lands, people, and sustenance; and

WHEREAS, the Montana Constitution provides for the protection of human dignity and freedom from discrimination for all Montanans; and

WHEREAS, the State of Montana has benefited from the contributions of Native Americans who have shared many valuable gifts from their way of life, thus contributing to the development and successful settlement of the land they have long inhabited; and

WHEREAS, this way of life continues to offer insight into solutions for contemporary and urgent problems for a troubled planet and a fragmented people; and

WHEREAS, Native Americans had culture, religion, and value systems long before October 12, 1492, but had little opportunity to share these values with newcomers; and

WHEREAS, Montanans should take appropriate action whenever the culture, customs, and traditions of Native Americans are being abused; and

WHEREAS, a great danger is present for our state and country to be swept into euphoria by the uncritical romanticizing of a cruel and bloody history that ignores the cultural and demographic devastation suffered by Native Americans after 1492; and

WHEREAS, an urgent need exists for a more inclusive and less biased historical account of the European dealings with Native Americans, including the rewriting of North American history to remove stereotypical images that demean Native Americans; and

WHEREAS, by continued silence and denial of past injustices, people often do not recognize the damage contributed to the present situation of many Native Americans; and

WHEREAS, the survival of Native American nations and cultures over 500 years of adversity demonstrates the resilience of a people who are contributing to a stronger American society.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That as this nation observes the 500th anniversary of the arrival of Christopher Columbus in North America, the people of Montana affirm the cultural contributions of all peoples to our great state and create "a new beginning" by deepening our appreciation of Native Americans for their reverence for the sacredness of all creation, their belief in the oneness of the human family, and their recognition of the wisdom of elders, as well as their other gifts of culture, language, and tradition.

(2) That all Montanans observe "a new beginning" on October 12, 1992, in the workplace, home, and school by creating observances, events, and studies that build awareness of the contributions of Native Americans to Montana.

(3) That all Montanans resolve to approach the 1992 observance of Columbus Day by responding to our commitments to human dignity and the call for "a new beginning" that invites each of us to walk the circle of life together in our journey toward deeper human respect and affirmation of our diverse gifts of culture, language, and tradition.

(4) That all Montanans utilize communications networks to recognize the history and presence of Native American peoples within the state through teaching and narration by Native Americans whenever possible.

(5) That all Montanans affirm their commitment to honoring Indian treaties and respect the inherent sovereignty, dignity, and cultural uniqueness of this nation's first Americans.

Approved April 20, 1991.

HOUSE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THE DEPARTMENT OF COMMERCE TO DEVELOP A LONG-RANGE PLANNING PROCESS FOR MONTANA COMMUNITIES.

WHEREAS, it is the public policy of the State of Montana to promote, stimulate, and encourage the planning and development of the state's economy in order to provide for the social and economic prosperity of its citizens; and

WHEREAS, community planning is an integral part of this public policy in that communities need to develop their economic potential while providing for their residents a quality of life that is unique to Montana; and

WHEREAS, the challenges of the 21st century will soon be upon us, and communities must begin to prepare for those challenges; and

WHEREAS, an open community planning effort encompassing a broad range of views is an excellent tool to assist communities to prepare for the future; and

WHEREAS, the Vision 2000 planning process recently completed in Great Falls is an excellent tool for communities to use in developing a long-range plan; and

WHEREAS, the Department of Commerce is presently charged with providing technical assistance to communities to aid and encourage their orderly, productive, and coordinated development.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Department of Commerce be encouraged to develop a long-range planning process similar to Vision 2000.

(2) That the Department assist local government and private sector leaders in implementing the process in their communities.

(3) That copies of this resolution be sent to the Director of the Department of Commerce and to the Administrator of the Department's Local Government Assistance Division.

Approved March 14, 1991.

HOUSE JOINT RESOLUTION NO. 34

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING STATE AGENCIES AND LOCAL GOVERNMENTS TO WORK TOGETHER TO COMBINE VOTER LISTS, DRIVERS' LICENSE LISTS, MOTOR VEHICLE REGISTRATION LISTS, AND OTHER PERTINENT LISTS OF INDIVIDUALS FOR THE PURPOSE OF CREATING JURY POOLS AND FOR COMPILING ANY OTHER STATISTICAL INFORMATION THE STATE AGENCIES OR LOCAL GOVERNMENTS MAY FIND USEFUL OR NECESSARY.

WHEREAS, certain research by the Office of the Secretary of State indicates that a number of individuals do not register to vote to avoid being placed on lists for jury duty; and

WHEREAS, jury lists or pools should be representative of the entire community to ensure that a person having a matter heard before a jury is being judged by a jury of his peers; and

WHEREAS, state agencies and local government may be able to develop other necessary or helpful statistical information by combining various lists of individuals.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That state agencies and local government units, including but not limited to the Secretary of State, the Department of Justice, District Court Clerks, Clerks and Recorders, and Justices of the Peace, work together to develop a plan for creating a system to combine various lists of individuals, including but not limited to voter lists, drivers' license lists, and motor vehicle registration lists.

(2) That the state agencies and local government units strive to have a plan, including proposed costs, developed in time to present to the 1993 Montana Legislature.

(3) That all state agencies and local government units have access to the combined list to create jury pools and to compile other statistical information that may be necessary or helpful to the state agency or local government unit.

Approved March 16, 1991.

HOUSE JOINT RESOLUTION NO. 35

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO URGE THE

UNITS OF THE MONTANA UNIVERSITY SYSTEM AND PRIVATE COLLEGES IN MONTANA THAT OFFER A DEGREE IN EDUCATION TO OFFER A COURSE IN HEALTH EDUCATION THAT INCLUDES INSTRUCTION IN ACQUIRED IMMUNE DEFICIENCY SYNDROME.

WHEREAS, the Legislature recognizes that the epidemic of human immunodeficiency virus (HIV) infection, the causative agent of acquired immune deficiency syndrome (AIDS) and related medical conditions, constitutes a serious danger to the public health and welfare of Montana; and

WHEREAS, the Legislature recognizes that education is the most effective weapon with which to fight this deadly disease; and

WHEREAS, arming the state's young people with knowledge on the prevention of HIV infection is an especially important component in confronting and halting the progress of this serious public health concern; and

WHEREAS, the educators in the public school system of the state can play a very important role in the dissemination of vital knowledge to students about preventing the spread of AIDS.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the units of the Montana University System and private colleges in Montana that offer a degree in education be strongly urged to offer AIDS education as part of the health education courses required of persons who are seeking a degree in education.

BE IT FURTHER RESOLVED, that the Office of Public Instruction act in an advisory capacity in establishing any AIDS education curriculum that is developed and required by a university or college in Montana.

Approved March 28, 1991.

HOUSE JOINT RESOLUTION NO. 36

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE DEPARTMENT OF STATE LANDS AND THE STATE FIRE MARSHAL TO WORK COOPERATIVELY TO DEVELOP AND IMPLEMENT STANDARDS AND GUIDELINES FOR FIRE AGENCIES, LAND-USE PLANNERS, ARCHITECTS, DEVELOPERS, AND LOCAL GOVERNMENTS FOR FIRE-SAFE DEVELOPMENT IN AREAS THAT MAY BE THREATENED BY WILDFIRE.

WHEREAS, the Department of State Lands is mandated by law to protect the natural resources of the state from fire and to extinguish forest, brush, and grass fires; and

WHEREAS, the State Fire Marshal is mandated by law to reduce the state's fire loss, to encourage and assist local fire authorities in fire prevention programs, and to adopt rules and standards for fire safety within the state; and

WHEREAS, standards of the National Fire Protection Association may be adopted in whole or in part by the Fire Marshal, and the Uniform Fire Code has been adopted by the state in whole or in part through the Fire Marshal; and

WHEREAS, Montanans have subdivided and developed many wildland areas for residential uses, and this development has created a variety of communities mixed with wildland vegetation that is known as "Wildland Urban Interface (WUI)"; and

WHEREAS, the responsibilities and jurisdictions of different fire protection agencies for different types of fires can limit their ability to provide adequate fire protection in WUI areas; and

WHEREAS, landowners, developers, local government officials, and fire protection agencies often have conflicting perceptions of wildfire danger; and

WHEREAS, suppression forces often find inadequate roads, not enough available water, and excessive accumulation of natural fuels; and

WHEREAS, WUI areas may have no organized structural fire department; and

WHEREAS, these conditions call for adoption and implementation of standards, rules, and procedures for fire protection in WUI areas.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of State Lands and the State Fire Marshal be urged to work cooperatively with the Montana fire service, land-use planners, architects, developers, and representatives of local governments in the affected areas to clarify jurisdictions and responsibilities and to develop minimum wildfire protection standards, rules, and procedures that local governing bodies might adopt to reduce the risk of wildfire destroying life, property, and resources in the Wildland Urban Interface.

BE IT FURTHER RESOLVED, that, as appropriate, criteria for the protection of life, property, and resources from wildfire be recommended to the 53rd Legislature.

Approved March 28, 1991.

HOUSE JOINT RESOLUTION NO. 37

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE UNITED STATES PORT OF ENTRY STATION AT PIEGAN BE OPEN 16 HOURS A DAY.

WHEREAS, although U.S. Highway 89 is an important route from the State of Montana into the Province of Alberta, the port of entry station at Piegan operates only one-third of each day; and

WHEREAS, the nearest alternate 24-hour highway crossing of the boundary between the United States and the Province of Alberta is located 135 miles away at Sweetgrass; and

WHEREAS, U.S. Highway 89 is a principal avenue of commercial traffic, interruption of which for any period of time seriously impedes economic activity; and

WHEREAS, U.S. Highway 89 is a major thoroughfare for skiers, business people, tourists, and other traffic from Alberta, encouragement of which is a significant component of Montana's efforts to stimulate its economy; and

WHEREAS, the restriction of hours at the port of entry at Piegan often cuts off the residents of Babb, Montana, from emergency medical services in Cardston, Alberta, during the winter months when the highway south to Browning, Montana, is frequently impassable because of bad weather; and

WHEREAS, because the port of entry at Piegan is open for only one-third of each day, students in Montana and students in Alberta cannot compete in extracurricular activities or sports unless they stay overnight in either Montana or Alberta; and

WHEREAS, the lack of staffing at the United States port of entry station at Piegan contributes to serious law enforcement problems concerning illegal crossings; and

WHEREAS, any restriction of interchange between the United States and Canada hinders the enhancement of good neighborliness that has long been the distinguishing attribute of the relationship between the two countries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Immigration and Naturalization Service and the United States Customs Service be requested to operate the port of entry station at Piegan 16 hours each day.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor of the State of Montana, the Premier of the Province of Alberta, the Commissioner of the United State Customs

Service, the Commissioner of the Immigration and Naturalization Service, and each member of Montana's Congressional Delegation.

Approved April 5, 1991.

HOUSE JOINT RESOLUTION NO. 38

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA AFL-CIO, THE MONTANA JOB TRAINING PARTNERSHIP, INCORPORATED, THE DEPARTMENT OF LABOR AND INDUSTRY, AND THE DEPARTMENT OF COMMERCE TO SEEK ADDITIONAL FEDERAL FUNDS TO ASSIST IN THE EMPLOYMENT AND TRAINING NEEDS OF DISLOCATED WORKERS IN THE WOOD PRODUCTS INDUSTRY.

WHEREAS, workers in Montana's wood products industry have experienced massive layoffs and plant closures throughout the state in recent years, with an estimated 2,000 Montana wood products workers laid off in the past 12 months; and

WHEREAS, the existing Job Training Partnership Act/Economic Dislocation Worker Adjustment Assistance Act (EDWAA) formula funds for 1990-91 have been allocated and are currently depleted; and

WHEREAS, the EDWAA funding allocation for fiscal year 1991-92 has been reduced by approximately $300,000; and

WHEREAS, the future of the timber industry in Montana remains uncertain, layoffs and plant closures are likely to continue, and workers in Montana need to have access to retraining programs that enable them to remain competitive in today's ever-changing job market; and

WHEREAS, since 1980, the Montana programs serving dislocated workers have set standards for performance, have coordinated statewide efforts effectively, and have been fiscally accountable for public dollars used; and

WHEREAS, since 1980, the Montana job training system has funded the Montana State AFL-CIO's Project Challenge: Work Again, a program that helps dislocated workers return to the job market, and has repeatedly set and achieved high standards for serving workers; and

WHEREAS, the money presently allocated to the state of Montana is not sufficient to help all the workers dramatically affected by the recent closures in the wood products industry.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana AFL-CIO, Montana Job Training Partnership, Incorporated, the Department of Labor and Industry, and the Department of

Commerce be urged to actively seek additional federal discretionary and other funds to assist in the employment and training needs of Montana workers affected by the depressed wood products market.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, to each member of the Montana Congressional Delegation, to the Speaker of the United States House of Representatives, to the Majority Leader of the United States Senate, and to the United States Secretary of Labor.

Approved April 3, 1991.

HOUSE JOINT RESOLUTION NO. 39

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA STRONGLY URGING THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES CONGRESS TO GIVE HIGHEST PRIORITY TO CLEANUP OF THE BERKELEY PIT AND PROTECTION OF ALLUVIAL AQUIFERS UNDERLYING THE SILVER BOW CREEK SUPERFUND SITE.

WHEREAS, the Berkeley Pit, located at the headwaters of the Columbia River, is included in the nation's largest Superfund site, the Silver Bow Creek Site, and is the site of the world's largest mine flooding; and

WHEREAS, mining activity for the past 110 years has resulted in soil and water contamination and changes in the way ground water and surface water flow in and near Butte; and

WHEREAS, mining companies installed an elaborate pumping and bulkhead system during the active mining period to dewater the underground mines and the Berkeley Pit; and

WHEREAS, when underground mine dewatering ended on April 22, 1982, and the underground mines and subsequently the pit began to flood, with water rising 2,680 feet in the mines and to a depth of 740 feet in the pit; and

WHEREAS, the Berkeley Pit currently contains over 16 billion gallons of water and fills at an average rate of 7.6 million gallons a day; and

WHEREAS, mine flooding in the Butte area is of significant concern because the water is acidic and contains concentrations of iron, manganese, arsenic, lead, cadmium, copper, zinc, and sulfates that far exceed state and federal standards, conditions that prevented water in the pit from freezing even when temperatures fell to minus 40 degrees Fahrenheit in 1989; and

WHEREAS, water in the West Camp of the Butte mining area did discharge into the Silver Bow Creek alluvium and into basements in the central Butte area when the West Camp was sealed off with bulkheads in 1959; and

WHEREAS, many citizens of the Butte area believe that the United States Environmental Protection Agency (EPA) has ignored preliminary documentation indicating that the surrounding aquifers may be contaminated in the near future, but instead has negotiated a consent order that sets water level targets well above previously established levels without scientific documentation supporting such a conclusion; and

WHEREAS, despite these alarming developments, residents of Butte and the Silver Bow Creek drainage have been frustrated by the lack of progress by the EPA in developing a plan that will adequately treat the contaminated water and protect the environment and citizens of the area from the potential threat to the alluvial aquifer surrounding Butte; and

WHEREAS, the EPA's commitment of personnel located full-time in Butte consists of only one employee who is employed by a subcontractor of a contractor for the EPA; and

WHEREAS, the Legislature of the State of Montana has provided state funds for the Upper Clark Fork Coordinator to assist local communities in dealing with the numerous agencies and potentially responsible parties involved in the Superfund process; and

WHEREAS, the only financial assistance provided to area local governments, in addition to the state-funded Upper Clark Fork Coordinator, has been provided by the Atlantic Richfield Company.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Environmental Protection Agency and the United States Congress be strongly urged to give the Mine Flooding Operable Unit of the Silver Bow Creek Superfund Site the highest priority for cleanup and action to prevent disastrous environmental damage and human health problems.

(2) That the EPA and potentially responsible parties proceed with haste to develop and implement plans and design criteria for a facility to treat contaminated water before it reaches alluvial aquifers surrounding the Berkeley Pit.

(3) That the EPA be more responsive to the concerns and desires of citizens of the Butte community by locating more personnel in Butte and assisting the Butte-Silver Bow and other Upper Clark Fork basin local governments with financial resources to deal with these enormous problems.

(4) That copies of this resolution be sent by the Secretary of State to the Administrator of the EPA, the Director of the Montana EPA Office, the Governor, and the Montana Congressional Delegation.

Approved April 10, 1991.

HOUSE JOINT RESOLUTION NO. 40

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO ADEQUATELY FUND MEDICARE.

WHEREAS, the Legislature is concerned that all citizens of the State of Montana 65 years of age and older do not have access to physician services but should have such access regardless of their ability to pay; and

WHEREAS, 18 counties in the State of Montana are without physician services; and

WHEREAS, this loss of access to medical care in many areas of our state will only increase unless the factors causing physicians to leave and causing physicians not to come into the state to replace those who are retiring are reversed; and

WHEREAS, when physician services become unavailable, hospitals are forced to close, further exacerbating the lack of access to medical care; and

WHEREAS, this lack of access to medical care is particularly difficult for persons over 65, many of whom have fixed incomes, because of the increased necessity to obtain medical care by traveling further distances, in many cases with the complications of physical disabilities, hearing and sight loss, need for a traveling companion, and resultant increased costs for that transportation, food, and lodging; and

WHEREAS, a contributing factor to the lack of physician services in rural Montana is the low level at which the federal government funds Medicare reimbursement in this state; and

WHEREAS, Congress has slashed billions of dollars from the Medicare program during the 1980s and the current administration is proposing further cuts in the appropriations for Medicare; and

WHEREAS, the number of Medicare beneficiaries has been increasing; and

WHEREAS, reimbursement of physician fees under Medicare Part B has been either frozen or substantially limited since July 1, 1984, even though the costs to physicians who provide Medicare services have increased during the same period; and

WHEREAS, Medicare beneficiaries are paying an increasingly greater percentage of their income for medical care, including at least 20% of the approved medical bill, a $100 deductible on medical expenses, a deductible of $628 for hospitalization, and all costs of medicine; and

WHEREAS, Montana citizens contribute to the Medicare program amounts equal to those contributed by citizens of other states, yet Part B payments for Medicare services to Montana citizens are considerably less than those paid in most other states.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Congressional Delegation be requested to seek Medicare funding at a level sufficient to cover the increasing number of Medicare beneficiaries and the increasing costs to physicians who provide care to Medicare beneficiaries.

BE IT FURTHER RESOLVED, that the Montana Congressional Delegation and the President of the United States be urged not to make further cuts in appropriations to Medicare, but to increase those appropriations particularly to Medicare beneficiaries in rural states.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of the Montana Congressional Delegation, the President of the United States, the Montana Medical Association, the Montana Nurses Association, and each senior citizen organization currently registered as a lobbying organization before the Montana Legislature, and other senior citizen organizations known to the Secretary of State.

Approved April 10, 1991.

HOUSE JOINT RESOLUTION NO. 41

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO RESOLVE THE MCCARTY FARMS CASE.

WHEREAS, Montana grain shippers commenced court action against the Burlington Northern Railroad in 1980, alleging that the railroad charged unjust and unreasonable rates for the shipment of wheat in violation of 49 U.S.C. 10701; and

WHEREAS, this court action, popularly known as the "McCarty Farms Case", was referred to the Interstate Commerce Commission (ICC) in 1981; and

WHEREAS, since the commencement of the action, the ICC has reopened the case six times, with the possibility of a seventh reopening in the near future; and

WHEREAS, the last occasion on which the ICC took action on the McCarty Farms Case was in 1989; and

WHEREAS, the ICC has experienced a 100% turnover in membership since the McCarty Farms Case was initiated; and

WHEREAS, these continued delays make a final resolution in favor of the State of Montana and Montana's grain shippers more difficult to obtain; and

WHEREAS, the complainants in the McCarty Farms Case number 14,000; and

WHEREAS, many of the wheat and barley shippers who brought the original suit are leaving the business or dying, thereby losing their ability to share in the ultimate settlement of the case; and

WHEREAS, the resolution of the McCarty Farms Case will establish the basis for freight rates in the future; and

WHEREAS, there is a growing sense of dismay among Montana grain shippers about the delays in the resolution of this issue.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana's Congressional Delegation be urged to expedite hearings by the appropriate congressional committees on the progress of the Interstate Commerce Commission in resolving the McCarty Farms Case and related cases.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to each member of Montana's Congressional Delegation, to the Chairman of the Interstate Commerce Commission, and to the Director of the Montana Department of Commerce.

Approved March 16, 1991.

HOUSE JOINT RESOLUTION NO. 42

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING THE OPPOSITION OF THE LEGISLATURE TO THE USE OF MONTANA WATER FOR THE TRANSPORTATION OF COAL UNTIL MONTANA'S WATER RIGHTS ADJUDICATION PROCESS IS COMPLETE.

WHEREAS, Montana's water is a precious resource that is necessary and claimed for agricultural, domestic, recreational, and industrial beneficial uses; and

WHEREAS, Montana's Yellowstone, Missouri, and Powder River Basins have suffered from a drastic drought that has depleted the supply of water in mountain watersheds and Pick-Sloan and other storage projects all along the mainstem of the Missouri River; and

WHEREAS, the water rights of Montanans in these basins have not been fully adjudicated and may be preempted by President Bush's proposed energy policy now pending before Congress that would authorize the use of Montana water to transport coal by means of slurry pipeline; and

WHEREAS, President Bush's proposed energy policy would permit coal slurry pipeline consortiums the right of eminent domain to use Montana water for the transportation of Montana coal to distant utilities; and

WHEREAS, unit coal trains would be eliminated, causing the loss of Montana railroad jobs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That, until Montana's water rights adjudication process is completed, the Montana Legislature oppose President Bush's proposed energy policy pending before Congress that would authorize the right of eminent domain for coal slurry pipeline consortiums to use Montana water for the transportation of Montana coal to distant utilities.

(2) That the Secretary of State send copies of this resolution to the United States Department of Transportation, the United States Department of the Interior, each member of Montana's Congressional Delegation, and the appropriate committees of the United States Congress that will consider the energy policy legislation.

Approved April 23, 1991.

HOUSE JOINT RESOLUTION NO. 45

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE ACUTE AND COMPLEX NATURE OF CERTAIN ISSUES IMPAIRING THE SUSTAINABILITY OF MONTANA COUNTIES AND COMMUNITIES; RECOGNIZING THE NEED FOR APPLIED RESEARCH TO ANALYZE THESE ISSUES IN SUPPORT OF SOUND PUBLIC POLICY; ENDORSING THE ROLE OF THE MONTANA LOCAL GOVERNMENT POLICY COUNCIL AS AN APPROPRIATE AGENCY TO SPONSOR AND CONDUCT APPLIED PUBLIC POLICY RESEARCH CONCERNING LOCAL GOVERNMENT ISSUES; ANTICIPATING SIGNIFICANT POLICY CONTRIBUTIONS AND RECOMMENDATIONS BY THE MONTANA LOCAL GOVERNMENT POLICY COUNCIL; AND COMMENDING THE NORTHWEST AREA FOUNDATION FOR ITS ENABLING SUPPORT.

WHEREAS, Montana's local government officials and the communities they serve are confronted with a complex array of issues threatening the well-being of their people and the sustainability of their communities; and

WHEREAS, the Legislature recognizes that both state and local policymakers need applied policy research in order to formulate sound public policy dealing with such acute local issues as solid waste management, infrastructure renewal, and cooperative service delivery; and

WHEREAS, the Montana Local Government Policy Council has been established by the Local Government Center at Montana State University, with funding support from the Northwest Area Foundation, to sponsor and conduct applied policy research concerning local government issues.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature endorse the role of the Montana Local Government Policy Council as an appropriate agency to sponsor and conduct applied public policy research concerning local government issues.

(2) That the Legislature anticipate significant policy contributions and recommendations from the Montana Local Government Policy Council.

(3) That the Legislature commend the Northwest Area Foundation for making the work of the Montana Local Government Policy Council possible.

Approved April 16, 1991.

HOUSE JOINT RESOLUTION NO. 46

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE GOVERNOR TO PROCLAIM NORTHERN MONTANA COLLEGE LIGHTS WRESTLING AND SKYLIGHTS WOMEN'S BASKETBALL APPRECIATION DAYS.

WHEREAS, participation in intercollegiate athletic competition is an important part of the college experience; and

WHEREAS, intercollegiate athletic competition promotes the values of discipline, perseverance, commitment, and teamwork; and

WHEREAS, 14 of the 16 members of the Northern Montana College Lights wrestling team are Montanans, and 6 of the 8 qualifiers for the NAIA national tournament come from the Montana communities of Havre, Big Sandy, Kalispell, Billings, and Great Falls; and

WHEREAS, one of the eight national qualifiers, Scott Filius of Billings, is a 1990 academic All-American; and

WHEREAS, Scott Filius was the team's only individual champion, and the balance of the Northern Montana College Lights' 100 3/4 points was the result of a total team effort on the part of Steve Komac of Havre, Tony Beardsley of Great Falls, Rod Clugston of Kalispell, Darren Andy of Billings, Dave Singletery of Lorain, Ohio, and Glen Amador of Meridian, Idaho; and

WHEREAS, the Northern Montana College Lights wrestlers have progressed through the national ranks from eighth place in 1987, to sixth place in 1989, and to second place in 1990; and

WHEREAS, the Northern Montana College Lights were ranked fourth in the nation, taking a relatively new team to the NAIA national tournament in Butte; and

WHEREAS, Northern Montana College Lights wrestling coach Jason Lilies was named national NAIA coach of the year; and

WHEREAS, Montana hosted the NAIA national championships for the first time in 34 years, and the Northern Montana College Lights won the school's first NATIONAL CHAMPIONSHIP at the tournament, defeating 45 small colleges from throughout the United States, a major accomplishment for a small school from a sparsely populated state; and

WHEREAS, the NAIA national championship in wrestling brings honor and recognition to Montana and to Montana's student athletes; and

WHEREAS, the Northern Montana College Skylights women's basketball team had a record of 30-5 in the last season; and

WHEREAS, the Northern Montana College Skylights women's basketball team has made it to the NAIA national tournament in Jackson, Tennessee, for the last 2 years and the Skylights made it to the last round this year, only to be defeated by the national champions; and

WHEREAS, 9 of the 11 members of the Northern Montana College Skylights are Montanans; and

WHEREAS, Patty Pohle, a senior from Great Falls, was named Academic All-American; Shelly Hermanson, a senior from Wisconsin, Patti Weed from Kalispell, and Sheila Green from Boulder made the All-Conference 1st Team; and Shelly Hermanson was also named All-District XII and All-American 3rd Team.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the congratulations of the State of Montana be extended to the Northern Montana College Lights wrestling team and Northern Montana College Skylights women's basketball team.

BE IT FURTHER RESOLVED, that the Governor be urged to proclaim a Northern Montana College Lights Wrestling Appreciation Day and a Northern Montana College Skylights Women's Basketball Appreciation Day.

Approved April 22, 1991.

HOUSE JOINT RESOLUTION NO. 47

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONGRATULATING THE WOMEN'S AND MEN'S BASKETBALL TEAMS OF THE UNIVERSITY OF MONTANA ON WINNING THE BIG SKY CONFERENCE CHAMPIONSHIPS.

WHEREAS, the Montana Lady Grizzly basketball team has been undefeated in Big Sky Conference play for 3 consecutive years; and

WHEREAS, the Montana Lady Grizzly basketball team is ranked in the top 10 in the nation for crowd attendance; and

WHEREAS, the Montana Lady Grizzly basketball team held the longest winning streak in NCAA Division I women's basketball this year at 19 consecutive games; and

WHEREAS, KGVO radio, the voice of the Montana Lady Grizzly basketball team, and KYLT radio, the voice of the Montana Grizzlies, allow fans to follow the exploits of their teams throughout the Big Sky Conference; and

WHEREAS, the Montana Lady Grizzly and Montana Grizzly basketball teams both won the regular season Big Sky Conference championships and earned the right to host the Big Sky Conference tournaments; and

WHEREAS, the Montana Lady Grizzly and Montana Grizzly basketball teams both successfully defended their regular season titles and won the Big Sky Conference tournaments, earning the right to participate in the NCAA national tournaments; and

WHEREAS, the success of the Montana Lady Grizzly and Montana Grizzly basketball teams marks the first time that one school in the Big Sky Conference has qualified both the women's and men's teams for the NCAA national tournaments; and

WHEREAS, the success of the teams was mirrored in individual accomplishments because for the first time in Big Sky Conference history, the same school had the Most Valuable Player in both conference tournaments, Shannon Cate of the Montana Lady Grizzlies and Kevin Kearney of the Montana Grizzlies; and

WHEREAS, the Montana Grizzlies' 23 victories are the second most in team history.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the congratulations of all Montanans be extended to the Montana Lady Grizzly and Montana Grizzly basketball teams for their outstanding seasons and for bringing recognition and honor to the University of Montana and the State of Montana.

Approved April 22, 1991.

HOUSE JOINT RESOLUTION NO. 48

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY BY THE LEGISLATIVE FINANCE COMMITTEE OF COMPUTER SERVICES, COMPUTER EQUIPMENT ACQUISITION, AND COMPUTER APPLICATIONS IN MONTANA STATE GOVERNMENT; AND REQUIRING THE COMMITTEE TO REPORT ITS FINDINGS TO THE 53RD LEGISLATURE.

WHEREAS, information is a costly resource that must be managed as other resources, such as money, inventories, personnel, and facilities are managed; and

WHEREAS, reliable information is the essential ingredient in decisionmaking in all branches of government; and

WHEREAS, the full impact of the computer and the influence it has on state government is not obvious; and

WHEREAS, that influence is substantial and becomes even more so as the use of computers increases; and

WHEREAS, while the development of computing and communications technology has been dramatic since the end of World War II, even more dramatic changes may be expected well into the next century as new technologies demand application if state government is to serve the citizenry in an effective and efficient manner; and

WHEREAS, the Department of Administration has asserted that as Montana state government looks to the challenges of the 1990s and beyond, it is clear that information and communications technology plays a more important role than ever before in the delivery of government services; that computers of all sizes and capabilities, telecommunications systems in government offices and schools, and advanced software for management and processing of state government's huge information resources will grow in numbers; and that our reliance upon them will grow as well; and

WHEREAS, information resource management should reflect the organizational structure of state government and should support and reflect the long-range enterprise strategy of the organization and the decision structures that support the strategy; and

WHEREAS, the Department of Administration is responsible, under section 2-17-501, MCA, for planning for the operation and development of data processing in state government; and

WHEREAS, the Legislative Auditor is responsible for determining whether the assets of state agencies, including their electronic data processing assets, are adequately safeguarded and controlled and utilized in an efficient manner; and

WHEREAS, the Legislative Auditor has recently undertaken a statewide review of electronic data processing systems in state government, focusing on hardware, software, data processing organizations, and risks associated with the systems; and

WHEREAS, the growing use of computers in Montana state government is comprising an increasing share of total state expenditures even as the cost per processing unit decreases; and

WHEREAS, the Legislature, as the approving authority for state government expenditures, has a vital interest and need to understand the information management policy and strategies of state government and the role of computer and computer application acquisition and management in those policies and strategies; and

WHEREAS, it is through decisions on appropriations policy that the Legislature has its principal interaction with the data processing policies and strategies of state government; and

WHEREAS, the Legislature is aware that some data processing system applications have failed or necessitated replacement of costly components; and

WHEREAS, the complexity of current data processing issues, the rapid development of technology, and the criticality of wise investment decisions every biennium, as they relate to the long-term health of state government, make it essential that the Legislature be well informed on state data processing issues.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislative Finance Committee be requested to study:

(a) whether the Department of Administration has effectively undertaken its responsibilities in the development, application, and management of data processing systems for state government;

(b) major applications of computer systems used in providing significant state services now and in the future;

(c) methods of funding investments in information processing technologies and services in Montana and other state governments;

(d) short- and long-term policy, planning, and appropriations issues related to state government's information management policies and strategies; and

(e) other necessary issues related to information management services and costs identified by the Committee.

(2) That the Legislative Finance Committee work closely with and seek the input of the Legislative Audit Committee and the Department of Administration in conducting the study.

(3) That the Legislative Finance Committee report the findings of the study to the 53rd Legislature, together with recommendations or options that may have been developed for consideration by the Legislature.

Approved April 20, 1991.

HOUSE JOINT RESOLUTION NO. 49

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE FEASIBILITY OF EXTENDING THE REQUIRED SCHOOL YEAR FOR ELEMENTARY AND HIGH SCHOOL STUDENTS; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 53RD LEGISLATURE.

WHEREAS, the condition of elementary and high school public education, which has been debated as a crisis situation for the past decade, continues to worry educators and the public as evidence mounts that, overall, the nation's students consistently test lower than their counterparts in many European and Asian countries, such as Germany and Japan; and

WHEREAS, the competitive edge of the United States is dulled by the fact that the nation's students fail to achieve the levels of excellence in math and science that are achieved by many foreign students; and

WHEREAS, in Montana and other states, educational achievement is increasingly perceived as the most critical building block of a quality future for a state's citizens; and

WHEREAS, the educational strategies devised to address the perceived crisis in public education have not emphasized lengthening the student's time in the educational setting; and

WHEREAS, the required minimum of 180 pupil-instruction days in a school year has prevailed in Montana and most of the nation, while other countries with students who consistently score higher than our students have minimum school years of 190, 220, or even 240 days; and

WHEREAS, while Montana students compare favorably with students around the nation in attainment of basic skills, as testimony to the state's commitment to quality schools, Montana students may be able to attain greater proficiencies with a longer school year; and

WHEREAS, extension of the school year for Montana's elementary and high school students presents a fiscal challenge that should be fully examined because the benefits of improved educational results, maximized use of school facilities, and enhanced economic competitiveness may outweigh any increased costs to the state and to local school districts.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study the costs and benefits of extending the elementary and high school year from 180 days to as many as 220 days.

BE IT FURTHER RESOLVED, that the Office of Public Instruction, the Board of Public Education, and the various education interest groups contribute to the goals of the committee upon request.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 53rd Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 22, 1991.

HOUSE JOINT RESOLUTION NO. 50

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEMS; PROVIDING A METHOD TO FUND THE STUDY; AND REQUIRING THE STUDY COMMITTEE TO REPORT ITS FINDINGS TO THE 53RD LEGISLATURE.

WHEREAS, the people of the state of Montana, through the Legislature, have authorized the establishment of various pension and retirement systems for the purpose of providing those in public service with financial security in their later years; and

WHEREAS, the Legislature has an obligation in trust to ensure that the public pension and retirement systems are funded and operated so that they will continue to provide the benefits upon which thousands of dedicated public servants rely and, at the same time, ensure that the costs of providing these benefits are not disproportionately placed upon future generations of Montana taxpayers; and

WHEREAS, over 45 bills affecting the various retirement systems have been introduced during this legislative session; and

WHEREAS, the relatively large number of individual public retirement systems in Montana makes it difficult for the Legislature to consider the potential effects of statutory amendments to one retirement system on other retirement systems; and

WHEREAS, the Legislature is concerned that some retirement systems are being amended in ways that may result in unanticipated long-term costs that will exceed the financial resources available to pay benefits through these systems; and

WHEREAS, it is the intent of the Legislature that pension benefits continue to accrue equitably among the various retirement systems and that the retirement systems be administered and funded in the most cost-effective manner.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council assign an appropriate interim committee to study each of the public employee retirement systems described in Title 19, MCA, and that the study include:

(1) a comparison of the benefits provided by each retirement system and the interrelationships between and among the systems and recommendations for benefit changes to keep each system current with the needs of its members;

(2) a study of each system's actuarial reports in order to outline the funding obligations of the state for each retirement system and to determine the progress of each system toward meeting the state's long-term obligations;

(3) legislative options available to ensure that the current funding and administration of the benefits of the retirement systems are adequate to guarantee that present and future obligations of the systems are met in the most equitable and cost-effective manner possible; and

(4) recommendations, including recodification, for clarifying the statutory provisions of each retirement system.

BE IT FURTHER RESOLVED, that the study be funded from the investment earnings of the various retirement system trust funds through the provisions of House Bill No. 2.

BE IT FURTHER RESOLVED, that the interim study committee report its findings, conclusions, and options for legislative consideration to the 53rd Legislature.

Approved April 23, 1991.

HOUSE JOINT RESOLUTION NO. 53

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE REVENUE OVERSIGHT COMMITTEE CONDUCT AN INTERIM STUDY OF ALL ASPECTS OF FEDERAL, STATE, LOCAL, AND TRIBAL TAXATION ON INDIAN RESERVATIONS, INCLUDING BUT NOT LIMITED TO INCOME, PROPERTY, NATURAL RESOURCE, SELECTIVE SALES, EXCISE, AND OTHER TAXES; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY, WITH ANY RECOMMENDATIONS BY THE COMMITTEE, TO THE 53RD LEGISLATURE.

WHEREAS, as stated in the first sentence of the introduction to a January 1990 report entitled "Taxation on Montana Indian Reservations", prepared for the Committee on Indian Affairs by the Committee's staff, "taxation has become one of the most controversial issues in Indian affairs"; and

WHEREAS, as further stated in the introduction to that report, economic development on reservations; growing demands for state, local, and tribal services by the reservations; the increasing difficulty of raising state and local taxes; the apparent federal government policy to encourage tribes to assume a greater share of the administrative responsibility and cost of reservation services; and other matters have all combined to make the subject of taxation on Indian reservations evermore important, complex, and perplexing; and

WHEREAS, Senate Bill No. 15 exempts from the resource indemnity trust tax oil and gas royalties received by an Indian tribe or by the United States as trustee for individual Indians; and

WHEREAS, Senate Bill No. 428 provides for the allocation of motor fuels tax to tribal governments that enact motor fuels taxes at rates that are identical to the rates imposed by the state; and

WHEREAS, Senate Bill No. 464 provides for the allocation of tax from oil and natural gas produced on a reservation to tribal governments that enact a tax identical to the state severance tax or resource indemnity trust tax; and

WHEREAS, the above three bills were controversial; and

WHEREAS, bill drafts were requested urging the United States Congress to resolve tribal taxation issues and revising cigarette taxation on Indian reservations; and

WHEREAS, the taxation authority (and limits on that authority) of the tribes and of the federal, state, and local governments and the interrelated provision of services and funding for such services by the federal, state, local, and tribal governments are issues of serious concern to those governments and their constituents.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Revenue Oversight Committee conduct an interim study of all aspects of federal, state, local, and tribal taxation on Indian reservations, including but not limited to income, property, natural resource, selective sales, excise, and other taxes, and report its findings, with any recommendations of the Committee, to the 53rd Legislature.

Approved April 23, 1991.

HOUSE JOINT RESOLUTION NO. 54

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING ESTABLISHMENT OF AN INTERIM STUDY COMMITTEE ON CHILDREN AND FAMILIES; AND DIRECTING THE COMMITTEE TO REPORT ITS FINDINGS TO THE 53RD LEGISLATURE.

WHEREAS, in fiscal year 1989, 3,961 Montana children and youth were removed from their families and placed in foster homes, group homes, residential treatment facilities, psychiatric hospitals, and state youth correctional facilities, costing taxpayers $21.27 million; and

WHEREAS, traditionally, most public resources have been focused toward families in crisis or toward assisting families after breakup has already occurred; and

WHEREAS, because of the high level of expenditures required to provide out-of-home placement, many experts now question whether many of these expenses could be avoided if family-based services were established to enable a family to stay together; and

WHEREAS, it is preferable to leave the family intact, whenever possible, and provide individualized services to improve family functioning and to strengthen the family unit; and

WHEREAS, mounting evidence demonstrates that efforts made to support and strengthen vulnerable families before a crisis occurs can substantially contribute to family health and stability and prevent future long-term governmental costs; and

WHEREAS, an effective service system for children and families should include a range of services aimed at strengthening and supporting families, rather than focusing only on families when they have developed severe problems or are in crisis; and

WHEREAS, early intervention and family support services, in combination with more specialized services, can strengthen the capacity of parents to care for their own children and can increase the likelihood of keeping children in their own homes; and

WHEREAS, specialization of social service professions has tended to fragment service delivery, creating a variety of programs that fall short of the integration necessary to provide a full continuum of services for families and children; and

WHEREAS, research shows marked similarities in the children who make up the child welfare, juvenile justice, and child mental health populations in that these children often respond to and need the same type of services; and

WHEREAS, promoting family well-being is in the best interest of all citizens of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature establish an appropriate interim study committee on children and families.

BE IT FURTHER RESOLVED, that the committee:

(1) examine public and private programs and services for at-risk children and families to identify duplications or gaps in, and the effectiveness or inefficiency of, existing programs and services;

(2) study the "Healthy Start" program in Hawaii, including the delivery of services and the laws and administrative rules used to implement that program in Hawaii;

(3) study methods of interagency coordination of programs and services for at-risk children and families in Montana;

(4) develop recommendations for programs and services to:

(a) strengthen and preserve families to enable them to continue as a family and to prevent removal of children from their homes;

(b) assist children and families before crises emerge by providing early intervention and other individualized family services; and

(c) provide a continuum of care for children in out-of-home placement;

(5) explore the feasibility of establishing a statutory legislative oversight committee to review and monitor public and private programs and services for at-risk children and families.

BE IT FURTHER RESOLVED, that the committee apply to the National Conference of State Legislatures for technical assistance in developing a comprehensive state policy toward children and families in crisis or at risk.

BE IT FURTHER RESOLVED, that the committee report its findings and recommendations to the 53rd Legislature and, if appropriate, prepare legislation to implement its recommendations.

Approved April 24, 1991.

HOUSE JOINT RESOLUTION NO. 55

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY ON ALL ASPECTS OF TAXATION; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 53RD LEGISLATURE.

WHEREAS, Initiative Measure No. 105 directed the Legislature to reform property taxes; and

WHEREAS, property taxation is a complex issue that involves many special interests; and

WHEREAS, property taxation is believed to be a primary factor in economic development in Montana; and

WHEREAS, many bills addressing property taxation have been introduced in the 52nd Legislature; and

WHEREAS, there are various alternative methods for addressing property taxation; and

WHEREAS, the Legislature has not studied the need for property tax reform.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Revenue Oversight Committee be assigned to perform a thorough and indepth study of all aspects of taxation in Montana.

That the Committee in its study:

(1) examine existing sources and levels of taxation, with particular attention given to the classification of property and the taxable percentages applied to that property, and evaluate the sources and levels of taxation;

(2) examine alternative methods of taxation from existing sources as well as new sources of revenue, such as broadening the property tax base to include, among other things, stocks and bonds, and evaluate the alternative methods and new sources; and

(3) develop recommendations of a balanced and integrated tax structure for the state.

That the Committee, in its deliberations, solicit the knowledge and advice of economists, tax policy experts, and representatives of tax reform coalitions, local governments, small business organizations, large industries, agriculture, the Montana Chamber of Commerce, and the Department of Revenue.

BE IT FURTHER RESOLVED, that the Revenue Oversight Committee report the findings of the study to the 53rd Legislature and present options for legislative consideration if the committee determines that options are necessary.

Approved April 29, 1991.

HOUSE JOINT RESOLUTION NO. 56

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE COMMITTEE ON INDIAN AFFAIRS TO CONDUCT A STUDY ON DISPARITIES IN SENTENCING OF NATIVE AMERICANS.

WHEREAS, in 1987, approximately 17% of all prison inmates under state or federal jurisdiction in Montana were Native Americans; and

WHEREAS, Native Americans account for only 6% of the total population in Montana; and

WHEREAS, these statistics show that Native Americans are disproportionately represented in the Montana inmate population; and

WHEREAS, the disproportionate representation of Native Americans in the inmate population raises questions concerning the sentencing of Native Americans in this state; and

WHEREAS, national studies have documented racial disparities in sentencing and the time served by minorities who are sentenced to prison.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Indian Affairs conduct a study on disparities in sentencing of Native Americans.

BE IT FURTHER RESOLVED, that in conducting its study, the Committee on Indian Affairs:

(1) collect and analyze data on sentencing of Native Americans in Montana;

(2) examine the reasons for any disparities in sentencing of Native Americans; and

(3) make recommendations for eliminating or reducing any disparities in sentencing of Native Americans in this state.

BE IT FURTHER RESOLVED, that the Committee report its findings and recommendations to the 53rd Legislature and, if appropriate, prepare legislation to implement its recommendations.

BE IT FURTHER RESOLVED, that the Montana Bar Association, the University of Montana Law School, and the Department of Institutions assist and cooperate with the Committee on Indian Affairs in conducting the study called for by this resolution.

Approved April 25, 1991.

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS.

BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules be adopted:

Chapter 1

Administration

S10-10. Officers of the Senate. The officers of the Senate are the officers listed and elected in accordance with Title 5, chapter 2, part 2, MCA.

S10-20. Term of office. The term of office for the officers and employees of the Senate established by law shall be until the succeeding Legislature is organized. Nothing in this rule shall be construed to mean the staff will be full-time employees during an interim.

S10-30. President pro tempore and other officers. (1) The Senate shall, at the beginning of each regular session, and at such other times as may be necessary, elect a Senator President pro tempore.

(2) The Senate shall choose its other officers and shall be the judge of the elections, returns, and qualifications of the Senators.

S10-40. Voting by presiding officer. Any Senator, when acting as presiding officer of the Senate, shall vote as any other Senator.

S10-50. Presiding officer and duties. (1) The presiding officer of the Senate shall be the President of the Senate who shall be chosen in accordance with law.

(2) The President shall take the chair on every legislative day at the hour to which the Senate adjourned at the last sitting.

(3) The President may name a Senator to perform the duties of the chair when the President pro tempore is not present in the Senate chamber. The Senator who is named is vested during such time with all the powers of the President.

(4) The President shall have general control over the assignment of rooms for the Senate and shall preserve order and decorum. The President may order the galleries and lobbies cleared in case of disturbance or disorderly conduct.

(5) The President shall issue cards to the media to allow floor access, and reporters holding such passes shall be subject to placement on the floor by the President. The President may administer this rule through the office of the Secretary of the Senate.

(6) The President shall sign all necessary certifications of the Senate, including enrolled bills and resolutions, journals, subpoenas, and payrolls. His signature must be attested by the Secretary of the Senate.

(7) The President shall approve the calendar for each legislative day.

(8) The President is the chief administrative officer of the Senate, with authority for the general supervision of all Senate employees. The President may seek the advice and counsel of the Legislative Administration Committee.

(9) The President of the Senate is the authorized approving authority of the Senate during the term of election to that office.

(10) The President shall refer bills to committee upon introduction or reception in the office of the Secretary of the Senate.

S10-60. Succession. (1) In case of the absence or disqualification of the President, the President pro tempore of the Senate shall perform the duties of the President until the vacancy is filled or the disability removed.

(2) Whenever the President pro tempore of the Senate is of the opposite political party from that of the President, the following procedure applies:

(a) If the President dies while in office, the members of his political party shall have the right to immediately nominate and elect an acting President of the same party.

(b) If the President is absent for two or more legislative days or at any time after the 85th legislative day or at any time during special session of the Legislature but able and desirous of appointing an acting President to act in his absence, he may do so, or the members of his political party shall have the right to immediately nominate and elect an acting President of the same party.

(c) An acting President of the Senate shall have the powers of the President and supersede the powers of the President pro tempore.

S10-70. President-elect. The President-elect nominated by the appropriate party caucus held in accordance with section 5-2-201, MCA, shall have the responsibility and authority to assume the duties of President of the Senate.

S10-80. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the Senate, subject to the approval of the President.

(4) The committee shall consider disputes or complaints involving the competency or decorum of legislative employees referred to it by the President and recommend dismissal, suspension and/or retention of such employees.

(5) The chairman of the Legislative Administration Committee may, upon approval of the President, have purchase orders and requisitions prepared and forwarded to the accounting office in the Legislative Council.

S10-90. Senate employees. (1) In addition to the employees appointed by the President in accordance with section 5-2-221, MCA, the Senate shall employ staff recommended by the leadership and the Legislative Administration Committee as necessary to perform the functions of the Senate.

(2) Standing committee chairmen shall designate a secretary to take and transcribe minutes of committee meetings. A committee secretary is immediately responsible to the chairman, but shall work under the overall direction of the Secretary of the Senate, subject to authority of the committee chairman.

(3) (a) The President and floor leaders may each appoint a private secretary.

(b) The whips may each appoint a private secretary whose duties will include assisting other staff on an assigned basis when authorized by their respective whip.

S10-100. Secretary of the Senate and duties. The Secretary of the Senate works under the direction of the President. The responsibilities of the Secretary of the Senate include:

(1) performing the duties prescribed by law or other provisions of these rules;

(2) serving as parliamentary advisor to the Senate;

(3) compiling and maintaining the calendar for approval by the President;

(4) keeping the leadership informed on the progress and workload of the Senate;

(5) transmitting bills with appropriate messages to the House of Representatives as instructed by action of the Senate;

(6) keeping and maintaining records of the Senate; and

(7) supervision of the Senate employees, except as otherwise provided.

S10-110. Sergeant-at-Arms duties. Under the direction of the President, the Sergeant-at-Arms shall:

(1) maintain order as directed by the President or chairman of the Committee of the Whole;

(2) enforce the lobbying rules of the Senate;

(3) supervise the employees assigned to his office;

(4) receive, distribute, and maintain supplies, equipment, and other inventory of the Senate, along with records of purchase and disposal in accordance with law;

(5) perform such duties as required by other rules and the Senate.

S10-120. Legislative aides. Each Senator may designate one person of legal age to serve as an aide during the session. Exceptions to this policy may be approved by the rules committee. The Senator shall register his aide with the Secretary of the Senate and arrange for the purchase of a nametag with the Sergeant-at-Arms.

S10-130. Senate journal. (1) The Senate shall keep and authenticate a journal of its proceedings as required by law and the rules.

(2) The Secretary of the Senate will supervise the preparation of the journal under the direction of the President.

(3) In addition to the proceedings required by law to be recorded, the journal must include:

(a) committee reports;

(b) every motion, the name of the Senator presenting it, and its disposition;

(c) the introduction of legislation in the Senate;

(d) consideration of legislation subsequent to introduction;

(e) roll call votes;

(f) messages from the Governor and the House of Representatives;

(g) every amendment, the name of the Senator presenting it, and its disposition;

(h) the names of Senators and their votes on any question upon a request by two Senators before a vote is taken; and

(i) any other records the Senate directs by rule or action.

(4) The Secretary of the Senate shall provide such information as may be necessary for the preparation of the daily journal for printing by the Legislative Council. Upon approval by the President, the daily journal shall be reproduced and distributed.

(5) Any Senator may examine the daily journal and propose corrections. Without objection by the Senate, the President may direct the correction to be made.

(6) The President shall authenticate the original daily journal, from time to time, and the Secretary of the Senate shall, as appropriate, deliver it to the Legislative Council to be prepared for publication and distribution in accordance with law.

Chapter 2

Decorum

S20-10. Questions of order. The President of the Senate shall decide all questions of order, subject to an appeal by any Senator seconded by two other Senators. No Senator may speak more than once on an appeal without the consent of a majority of the Senate.

S20-20. Questions of privilege. Questions of privilege in order of precedence are those:

(1) affecting the collective rights, safety, dignity, or integrity of the proceedings of the Senate; and

(2) affecting the rights, reputation, or conduct of individual Senators in their capacity as Senators.

S20-30. Recognition by chair. A Senator desiring to speak shall rise and address the presiding officer, and once being recognized, shall speak standing in his or her place. When two or more Senators rise at the same time, the presiding officer shall name the order of the speakers. The presiding officer may grant permission for a speaker to leave his or her place to speak.

S20-40. Senators called to order. When a Senator has been called to order, he shall sit down until the presiding officer determines whether he is in order or not. If the Senator is called to order for words spoken in debate, the language excepted to shall be taken down in writing by the Secretary of the Senate.

S20-50. Communications to Senate. A communication to the Senate shall be addressed to the President and shall bear the name of the person submitting it. The President shall decide if the communication bears including in the calendar.

S20-60. Floor privileges. (1) When the Senate is in session no person is permitted in the chambers except:

(a) legislators;

(b) legislative officers and employees whose presence is necessary for the conduct of business of the session;

(c) accredited members of the news media; and

(d) former legislators (not currently registered as lobbyists).

(2) The President may make exceptions for visiting dignitaries.

(3) Beginning 1 hour before and ending one-half hour after adjournment, no person is permitted in the chambers except those authorized as exceptions under subsection (1).

S20-70. Distribution of materials on floor. No materials may be distributed on the Senators' desks in the chamber unless such material bears the signature of the bearer and a Senator and has been approved by the President.

Chapter 3

Committees

S30-10. Committee appointments. (1) The Senate shall elect a Committee on Committees consisting of five members. If the Senate is evenly divided between parties, the committee shall consist of six Senators, three from each party.

(2) The Committee on Committees shall, with the approval of the Senate, appoint the members of Senate standing committees, select committees, and joint committees.

(3) The President of the Senate shall appoint all conference committees and special committees, with the advice of the floor leaders.

(4) The Senate may change the membership of any committee on 1 day's notice.

S30-20. Standing committees. The standing committees of the Senate are as follows:

(1) Agriculture, Livestock, and Irrigation

(2) Bills and Journal

(3) Business and Industry

(4) Education and Cultural Resources

(5) Finance and Claims

(6) Fish and Game

(7) Highways and Transportation

(8) Judiciary

(9) Labor and Employment Relations

(10) Legislative Administration

(11) Local Government

(12) Natural Resources

(13) Public Health, Welfare, and Safety

(14) Rules

(15) State Administration

(16) Taxation

S30-30. Members of Select Committee on Long-Range Planning. Members of the Select Committee on Long-Range Planning may participate and vote as members of the Committee on Finance and Claims on issues considered by them as members of the select committee.

S30-40. Ex officio members. Each floor leader is an ex officio member of all committees in order to establish a quorum.

S30-50. Chairman's duties. (1) The chairman of a committee is the presiding officer of that committee and is responsible for maintaining order within the committee room and its environs, scheduling hearings and executive action, supervising committee work, and authenticating committee reports and minutes by his signature.

(2) At the close of the session, the chairman shall turn the original and two complete copies of the minutes over to the Secretary of the Senate for distribution as follows:

(a) original to the Montana Historical Society;

(b) copy to the State Law Library of Montana; and

(c) copy to the Legislative Council.

S30-60. Committee reports to Senate. (1) Reports of standing committees shall be read on Order of Business No. 2, and no debate may be had on any report unless a minority report has been submitted.

(2) Committee reports may recommend approval, disapproval, or placement on consent calendar, with or without amendment. They may not be reported to the Senate without recommendation.

(3) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider. Any Senator may make such motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary.

(4) The Rules Committee and conference committees may report at any time, except during a call of the Senate or when a vote is being taken.

S30-70. Pairs. Pairs in standing committee are prohibited. Standing and select committees may by a majority vote of the committee authorize Senators to vote in absentia while engaged in other legislative business. Authorization for such voting shall be reflected in the committee minutes.

S30-80. Committee hearings. (1) No bill or resolution shall be considered or become a law unless referred to a committee and returned therefrom.

(2) A bill may be rereferred at any time before its passage.

S30-90. Notice of committee hearings — exceptions. (1) Notice of a committee hearing must be made by posting the date, time, and subject of the hearing in a conspicuous public place not less than 3 legislative days in advance of the hearing. This 3-day notice requirement does not apply to hearings scheduled:

(a) prior to the 3rd legislative day;

(b) less than 5 legislative days before the transmittal deadline applicable to the subject of the hearing; or

(c) to consider confirmation of a gubernatorial appointment received less than 10 legislative days before the last scheduled day of a legislative session.

(2) When a committee hearing is scheduled with less than 3 days' notice, the committee chairman shall use all practical means to disseminate notice of the hearing to the public.

(3) Notice of conference committee hearings must be given as provided in Joint Rule 30-30.

S30-100. Majority/minority reports. If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. Such reports shall be entered at length on the journal, unless otherwise ordered by the Senate.

S30-110. Consent calendar eligibility. (1) To be eligible for the consent calendar, legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended).

(2) A motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report.

(3) Appropriations or revenue bills may not be recommended for the consent calendar.

S30-120. Reconsideration in committee. Except for the Committee of the Whole, a committee may at any time prior to submitting a report to the Secretary of the Senate reconsider its previous action on legislation.

S30-130. Committee requested legislation. (1) At least three-fourths of all the members of a standing committee must have voted in favor of the question to allow the committee to request the introduction of legislation.

(2) The chairman of a committee shall introduce, or shall designate a member of the committee to introduce, legislation requested by the committee.

(3) When a committee has proposed an amendment, the chairman is the principal sponsor.

Chapter 4

Legislation

S40-10. Types of legislation. The only types of legislation that may be introduced in the Senate are those that have been drafted and approved by the Legislative Council and signed by a Senator. The types of legislation allowed include:

(1) bills of any subject, except appropriations;

(2) joint resolutions, which may:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request an interim study by a legislative subcommittee;

(c) adopt or amend the joint rules;

(d) set salaries and other terms of employment for legislative employees; and

(e) accomplish other legislative duties required by law; and

(3) simple resolutions, which may:

(a) adopt or amend Senate rules;

(b) provide for the internal affairs of the Senate;

(c) express confirmation of the Governor's appointments;

(d) make recommendations concerning the districting and apportionment plan as provided by Article V, section 14(4), of the Montana Constitution.

S40-20. Introduction. (1) Upon receiving a bill or resolution in triplicate from a Senator, the Secretary of the Senate shall assign an appropriate sequential number, which constitutes introduction of the legislation.

(2) Bills and resolutions may be preintroduced, assigned to committee, and printed prior to the legislative session. The Legislative Council shall be responsible for assuring the preintroduction intent from each Senator and presenting such legislation to the Secretary of the Senate.

(3) Upon referral to committee, the Secretary of the Senate shall publicly post a listing of the bill or resolution by a summary of its title, together with a notation of the committee to which it has been assigned.

S40-30. Additional sponsors. (1) Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill or resolution. Forms for adding sponsors will be supplied on request by the Secretary of the Senate.

(2) Upon passage of the motion, the names of the additional sponsors will be printed in the journal and the form containing the signatures of the additional sponsors will be forwarded to the Legislative Council with the original bill for the inclusion of the names in subsequent printings of the bill or resolution.

S40-40. Reading limitations. (1) Except for consent calendar bills, every bill shall be read three times prior to passage, either by title or by summary of title as provided in these rules.

(2) No bill or resolution shall have more than one reading on the same day except the last legislative day.

(3) No amendment may be offered on third reading.

S40-50. Rules for questions requiring other than a majority vote. (1) When a question requires more than a majority vote for final passage, a majority vote is sufficient to decide any question relating to the question prior to third reading.

(2) Any vote in the Senate on a bill proposing an amendment to the Montana Constitution under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

(3) If a bill has been amended in the House of Representatives and the amendments are accepted by the Senate, the bill shall again be placed on

third reading in the Senate to determine if the required number of votes has been cast.

S40-60. Scheduling for second reading. (1) All bills and resolutions, except those recommended for the consent calendar, which have been reported by a committee, accepted by the Senate and reproduced shall be scheduled for consideration by Committee of the Whole.

(2) Until the 50th legislative day, 1 day must elapse between receiving the legislation from printing and scheduling for second reading for consideration by Committee of the Whole.

(3) Legislation shall be arranged on the agenda in numerical order unless bills are grouped as companion bills or are placed in order otherwise by the Senate or Committee of the Whole.

S40-70. Consent calendar procedure. (1) Legislation reported by committee for placement on the consent calendar shall be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(2) Legislation shall be immediately posted (as soon as it is received as a third reading version) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the President of the Senate will announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate will be allowed.

(3) Any three Senators may submit written objections to the Secretary of the Senate, and the legislation must then be removed from the consent calendar and added to the regular second reading agenda.

(4) Consent calendar legislation must be added to the end of the third reading agenda and clearly identified as "consent calendar" and voted on individually.

(5) Consent calendar legislation passed on third reading will then be transmitted to the House of Representatives.

Chapter 5

Floor Action

S50-10. Attendance. Unless excused, Senators shall be present at every sitting of the Senate and shall vote on questions put before the Senate.

S50-20. Orders of business. After prayer, roll call, and report on the journal, the order of business of the Senate is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Governor;

(5) messages from the House of Representatives;

(6) motions;

(7) first reading and commitment of bills;

(8) second reading of bills (Committee of the Whole);

(9) third reading of bills and consent calendar bills;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the Senate shall revert to Order of Business No. 1 when reconvening after a recess.

S50-30. Limitations on debate. No Senator may speak more than twice on any one motion or question without unanimous consent of the Senate, unless he has introduced or proposed the motion or question under debate, in which case he may speak twice and also close the debate. However, a Senator who has spoken may not speak again on the same motion or question to the exclusion of a Senator who has not spoken.

S50-40. Procedure upon offering a motion. (1) When a motion is offered it shall be restated by the presiding officer. If requested by the presiding officer or a Senator, it shall be reduced to writing, presented at the rostrum, and read aloud by the Secretary.

(2) A motion may be withdrawn by the Senator offering it at any time before it is amended or voted upon.

S50-50. Precedence of motions. (1) When a question is under debate only the following privileged and subsidiary motions shall be made:

(a) to adjourn;

(b) for a call of the Senate;

(c) to recess;

(d) question of privilege;

(e) to lay on the table;

(f) for the previous question;

(g) to postpone to a certain day;

(h) to refer or commit;

(i) to amend; and

(j) to postpone indefinitely.

(2) The motions listed in subsection (1) of this section have precedence in the order listed.

(3) A question may be indefinitely postponed by a majority roll call of all Senators present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again during the biennium except upon a motion of reconsideration.

(4) No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment or substitute.

S50-60. Nondebatable motions. The following motions are not debatable:

(1) to adjourn;

(2) for a call of the Senate;

(3) to recess;

(4) for parliamentary inquiry;

(5) for suspension of the rules;

(6) to lay on the table;

(7) for the previous question;

(8) to limit, extend the limits of, or to close debate;

(9) to amend an undebatable motion;

(10) to divide a question;

(11) to pass business in Committee of the Whole;

(12) to take from the table;

(13) a decision of the presiding officer, unless appealed or unless he submits the question to the Senate for advice or decision; and

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

S50-70. Amending motions. No more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

S50-80. Previous question. (1) Except as provided in subsection (2) of this rule, the effect of calling for the previous question, if adopted, is to close debate immediately, to prevent the offering of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of such time to be given to the proponents and one-half to the opponents.

(3) A call of the Senate is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

S50-90. Reconsideration. (1) Any Senator may, on the day the vote was taken or on the next day the Senate is in session, move to reconsider the question.

(2) A motion to reconsider may not be withdrawn after such next legislative day without the unanimous consent of the Senate, and thereafter any Senator may call it up for consideration; however, a motion to reconsider made after the 54th day of the session shall be disposed of when made.

(3) A motion to recall a bill from the House of Representatives constitutes notice to reconsider and shall be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the House of Representatives may be made only under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

(4) When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

(5) If a motion to reconsider third reading action is carried, there shall be no further action until the succeeding legislative day.

S50-100. Dividing a question. A Senator may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

S50-110. Conference committee reports. When a conference committee report is filed with the Secretary of the Senate, the same shall be read under Order of Business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day.

S50-120. Second reading. (1) The Senate may resolve itself into a Committee of the Whole for consideration of business on second reading, by approval of a motion for that purpose.

(2) After a Committee of the Whole has been formed, the President shall appoint a chairman to preside.

(3) All legislation considered in Committee of the Whole shall be read by a summary of its title. Proposed amendments shall be considered; then the bill shall be considered in its entirety.

(4) Prior to adoption of the Committee of the Whole report, a Senator may move to segregate legislation. If the motion prevails, the legislation remains on second reading.

(5) When a Committee of the Whole report on legislation is rejected, the legislation shall remain on second reading.

S50-130. Committee of the Whole amendments. (1) All Committee of the Whole amendments shall be prepared, stipulating the date and time of preparation and staff approval, and delivered to the Secretary of the Senate for reading before the amendment is voted on.

(2) Each amendment, rejected or adopted, shall be printed in the journal, along with the name of the sponsor and the vote on each.

S50-140. Motions in Committee of the Whole. (1) All proper motions on second reading are debatable.

(2) The only motions in order during Committee of the Whole are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) pass consideration;

(f) rise;

(g) rise and report; or

(h) rise and report progress and ask leave to sit again.

S50-150. Committee of the Whole — generally. (1) The committee may not appoint subcommittees.

(2) The committee may not punish its members for misconduct, but may report disorder to the Senate.

S50-160. Voting on second reading. On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

S50-170. Third reading procedure. (1) All legislation passing second reading shall be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) On Order of Business No. 9 the Secretary shall read the title and the President shall state the question as follows: "Senate bill number (or other appropriate identification)..... having been read three several times, the question is, shall the bill (or other appropriate identification) pass the Senate?"

(3) If an electronic voting system is used, the President shall state "Those in favor vote yes and those opposed vote no" and the Secretary will sound the signal and open the board for voting. After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause), "Does any member wish to change his or her vote?" (reasonable pause), "The Secretary will record the vote."

S50-180. Senate voting. (1) A roll call vote shall be taken on the request of two Senators, if the request occurs before the vote is taken.

(2) On a roll call vote the names of the Senators shall be called alphabetically, unless an electronic voting system is used. A Senator may not vote or change his vote after the decision is announced from the chair. A Senator may not explain his vote until after the decision is announced from the chair.

S50-190. Pairs. (1) Two Senators may pair on a question that will be determined by a majority vote. On a question requiring a two-thirds vote for adoption, three Senators may pair, with two Senators for the question and one Senator against. Pairing is permitted only when one of the paired Senators is excused when the vote is taken.

(2) An agreement to pair must be in writing and dated and signed by the Senators agreeing to be bound, and must specify the duration of the pair. When an agreement to pair is filed with the Secretary of the Senate, it shall bind the Senators signing until the expiration of time for which it was signed, unless the paired Senators sooner appear and ask that the agreement be canceled.

(3) Pairs in Committee of the Whole are prohibited.

S50-200. Call of the Senate. (1) In the absence of a quorum, a majority of Senators present may compel the attendance of absent Senators by ordering a call of the Senate.

(2) If a quorum is present, five Senators may order a call of the Senate.

(3) On a call of the Senate, a Senator who refuses to attend may be arrested by the Sergeant-at-Arms or any other person, as the majority of such Senators present shall direct. When the attendance of an absent Senator is secured and the Senate refuses to excuse the Senator's absence, the Senator shall not be paid any expense payments during his absence and is liable for the expenses incurred in procuring his attendance.

(4) During a call of the Senate, all business shall be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

Chapter 6

Rules

S60-10. Senate rules. (1) A motion to amend or adopt a rule of the Senate shall be referred to the Rules Committee without debate. A rule of the Senate may be amended or adopted only with the concurrence of a majority of the Senate and after 1 day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

S60-20. Mason's Manual of Legislative Procedure. Mason's Manual of Legislative Procedure (1989) governs the proceedings of the Senate in all cases not covered by these rules.

S60-30. Quorum. A majority of the Senate shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent Senators, in such manner and under such penalties as the Senate may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

Chapter 7

Nominations from the Governor

S70-10. Nominations. (1) The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law and for whom appointment or election is not otherwise provided.

(2) If during a recess of the Senate a vacancy occurs in any such office, the Governor shall appoint some fit person to discharge the duties thereof until the next meeting of the Senate, when he shall nominate a person to fill such office.

S70-20. Introduction and first reading of nominations. (1) Nominations received from the Governor are:

(a) received by the President;

(b) delivered to the Secretary of the Senate;

(c) read under Order of Business No. 4, messages from the Governor; and

(d) referred to committee.

(2) The above procedure constitutes introduction and first reading of the nominations.

(3) The Secretary shall distribute a copy of the list of nominations to each Senator.

S70-30. Committee process. (1) (a) The committee shall hold hearings on the nominations after appropriate public notice has been made.

(b) As part of the hearing process, the committee may request biographical information from the Governor for each nominee, if none has been provided.

(2) Following the hearings, the committee shall issue preliminary standing committee reports to be distributed to each Senator, stating the committee's recommendations concerning the nominees.

(3) (a) If a Senator wishes to have an individual nominee, or group of nominees, considered by the Senate separately from the group of nominees recommended by the committee, the Senator may request of the chairman of the committee that the nominee or nominees be considered by a separate resolution.

(b) A Senator must request separate consideration of a nominee within 3 days of receipt of the preliminary standing committee report. The committee chairman shall honor this request.

(4) After waiting 3 days from the day of distribution of the preliminary standing committee report, the committee chairman shall issue formal standing committee reports for simple resolutions based on recommendations from the Senators and deliver the reports to the Secretary of the Senate.

(5) The Secretary will assign numbers and read the reports under Order of Business No. 2, reports of standing committees, and forward them to the Legislative Council for processing and printing.

(6) Thereafter, the resolution must be placed on Order of Business No. 11 the next legislative day for consideration by the Senate. Motions to approve or disapprove of the resolution are in order and may be debated.

Appendix A

List of Questions Requiring Other Than a Majority Vote

The following questions require the vote specified:

(1) a call of the Senate with a quorum (five Senators);

(2) a motion to lift a call of the Senate (two-thirds of the members present and voting);

(3) a motion to amend or suspend rules (two-thirds);

(4) a motion to override the Governor's veto (two-thirds);

(5) a motion to approve a bill to appropriate the principal of the coal trust fund (three-fourths of each house);

(6) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than therein described (three-fifths of each house);

(7) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature); and

(8) an appeal of the ruling of the presiding officer (one Senator, seconded by two other Senators).

Approved January 11, 1991.

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA EXONERATING JUDGE CHARLES LIEBERT CRUM FROM THE WRONGFUL CONVICTION OF IMPEACHMENT ON MARCH 22, 1918.

WHEREAS, the people of Montana hold the dignity of the human being inviolable as provided in Article II, section 4, of The Constitution of the State of Montana; and

WHEREAS, Montanans pride themselves on their rugged individualism and diverse heritage; and

WHEREAS, there is no time limitation for correcting political injustice and clearing an honorable person's name; and

WHEREAS, the emotional fervor surrounding the United States' entry into World War I led to public hysteria, constituting one of the darkest periods of Montana's political history; and

WHEREAS, Charles Liebert Crum was elected to the bench of the 13th Judicial District in November 1912 and was reelected without opposition in November 1916; and

WHEREAS, Judge Crum maintained a stellar and unblemished judicial record during his term of office; and

WHEREAS, although he was an outspoken opponent of entry into World War I, after the United States declared war on Germany in April 1917, Judge Crum issued a statement in open court espousing his patriotism towards the United States and its constitutional principles, including freedom of speech; and

WHEREAS, misguided patriotism led to the formation of self-appointed local groups to establish standards of Americanism and to identify and intimidate those found lacking in patriotic fervor; and

WHEREAS, a local group requested Judge Crum to resign because he was not in sympathy with his constituency, while another local group expressed support for his record as a fair, impartial, fearless, and conscientious judge, impervious to personal and political influence; and

WHEREAS, at the urging of dissatisfied local zealots, Governor Stewart forwarded documents to the House of Representatives, which generated articles of impeachment on the last day of a special session called to legalize the Montana Council of Defense and to pass a sedition law; and

WHEREAS, in an effort to protect himself, his family, the public interest, and the public treasury, Judge Crum resigned from office but steadfastly maintained his innocence of the charges; and

WHEREAS, in spite of his resignation, the Montana Senate commenced an impeachment trial on March 20, 1918, when Judge Crum was absent and unable to defend himself; and

WHEREAS, the Senate denied the motion of the bastion of legislative ethics, Fred Whiteside, to allow someone to examine witnesses on Judge Crum's behalf; and

WHEREAS, the Senate found Judge Crum guilty of high crimes, misdemeanors, and malfeasance in office, while in fact he was innocent of any official wrongdoing save perhaps being politically recalcitrant or adhering to unpopular policies; and

WHEREAS, the impeachment of Judge Crum banished him to political oblivion, devastated his life, and exposed him to continued calumny; and

WHEREAS, other Montana public figures who withstood the political hysteria of the time and defended civil and constitutional rights, including Jeannette Rankin, Burton K. Wheeler, and Judge George Bourquin, have become state heroes; and

WHEREAS, Article V, section 13, of The Constitution of the State of Montana vests impeachment power in the Legislature; and

WHEREAS, the Legislature in section 5-5-403, MCA, has retained the Senate as the sole court of impeachment; and

WHEREAS, the Senate as a court of impeachment may, sua sponte, in light of historical evidence and in the absence of the emotionalism of the time, reconsider the verdict rendered on March 22, 1918; and

WHEREAS, in 1919, Judge Crum expressed the hope that at a future time, the people of Montana would fulfill his faith in their honesty and justice by undoing the wrong done to him; and

WHEREAS, the people of Montana, in a reavowal of the principles of free speech and responsive democratic government, desire to right a historical wrong.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That upon adoption of this resolution by a two-thirds vote of the members of the Senate, the conviction of impeachment of Judge Charles Liebert Crum be overturned.

BE IT FURTHER RESOLVED, that the Secretary of the Senate send copies of this resolution to Judge Crum's grandchildren, Darwin R. Crum of Schaumburg, Illinois, and Patricia Crum Scott of Pleasanton, California.

Approved January 25, 1991.

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE FIFTY-SECOND LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 9, 1991, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations, below designated, of appointments which have been submitted to the Senate by the Governor, to wit:

(1) As Director of the Department of Commerce, in accordance with the provisions of sections 2-15-111 and 2-15-1801, MCA:

Mr. Charles A. Brooke, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

(2) As Director of the Department of Administration, in accordance with the provisions of sections 2-15-111 and 2-15-1001, MCA:

Mr. Robert L. Marks, Clancy, Montana, appointed to serve a term at the pleasure of the Governor.

(3) As Director of the Department of Health and Environmental Sciences, in accordance with the provisions of sections 2-15-111 and 2-15-2101, MCA:

Mr. Dennis Iverson, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

(4) As Director of the Department of Family Services, in accordance with the provisions of sections 2-15-111 and 2-15-2401, MCA:

Mr. Tom L. Olsen, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

(5) As Director of the Montana State Lottery, in accordance with the provisions of section 23-5-1011, MCA:

Ms. Zoann Attwood, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

(6) As Director of the Department of Revenue, in accordance with the provisions of sections 2-15-111 and 2-15-1302, MCA:

Mr. Denis Adams, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

(7) As Director of the Department of Highways, in accordance with the provisions of sections 2-15-111 and 2-15-2501, MCA:

Mr. John Rothwell, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 52nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this Resolution pursuant to section 5-5-303, MCA.

Approved February 13, 1991.

SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 16, 1991, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments designated below that have been submitted to the Senate by the Governor:

(1) As members of the State Electrical Board, in accordance with section 2-15-1874, MCA:

Mr. Richard Leibrand, Scobey, Montana, appointed for the term ending July 1, 1994.

Mr. Charles T. Sweet, Kalispell, Montana, appointed for the term ending July 1, 1995.

(2) As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Mr. Grant Zerbe, Frazer, Montana, appointed for the term ending April 18, 1993.

(3) As a member of the Board of Sanitarians, in accordance with section 2-15-1861, MCA:

Mr. Donald E. Sampson, Missoula, Montana, appointed for the term ending July 1, 1993.

(4) As members of the Board of Nursing, in accordance with section 2-15-1844, MCA:

Ms. Elizabeth Campo, Great Falls, Montana, appointed for a term ending July 1, 1993.

Ms. Helen Carey, Boulder, Montana, appointed for a term ending July 1, 1994.

Ms. Laura A. Lenau, Miles City, Montana, appointed for a term ending July 1, 1994.

Ms. Blanche Proul, Anaconda, Montana, appointed for a term ending July 1, 1994.

Ms. Suzzie Thomas, Stevensville, Montana, appointed for a term ending July 1, 1994.

(5) As members of the Board of Occupational Therapy Practice, in accordance with section 2-15-1859, MCA:

Ms. Lynn Baden, Missoula, Montana, appointed for a term ending December 31, 1994.

Ms. Lynn R. Davis, Billings, Montana, appointed for a term ending December 31, 1994.

Ms. Arlene Mathews, Helena, Montana, appointed for a term ending December 31, 1993.

Ms. Leigh Ann Rosemore, Plentywood, Montana, appointed for a term ending December 31, 1992.

(6) As members of the Board of Optometrists, in accordance with section 2-15-1846, MCA:

Dr. P.L. Kathrein, Great Falls, Montana, appointed for a term ending April 3, 1991.

Dr. Kenneth R. Zuroff, Glendive, Montana, appointed for a term ending April 3, 1993.

(7) As members of the Board of Pardons, in accordance with section 2-15-2302, MCA:

Mr. Burton O. Bosch, Havre, Montana, appointed for a term ending January 1, 1995.

Ms. Kathleen M. Fleury, Helena, Montana, appointed for a term ending January 2, 1993.

(8) As members of the Board of Pharmacy, in accordance with section 2-15-1843, MCA:

Mr. Robert J. Kelley, Helena, Montana, appointed for a term ending July 7, 1994.

Ms. Patricia M. Mitchell, Dillon, Montana, appointed for a term ending July 1, 1995.

(9) As members of the Board of Physical Therapy Examiners, in accordance with section 2-15-1858, MCA:

Ms. Joyce Dougan, Missoula, Montana, appointed for a term ending July 1, 1993.

Mr. Thomas K. Meagher, Butte, Montana, appointed for a term ending July 1, 1992.

(10) As members of the Board of Plumbers, in accordance with section 2-15-1875, MCA:

Mr. Richard Grover, Missoula, Montana, appointed for a term ending May 4, 1994.

Mr. Randy Hinebauch, Chinook, Montana, appointed for a term ending May 4, 1993.

Mr. Robert R. Nault, Havre, Montana, appointed for a term ending April 28, 1991.

Mr. Michael Waldenberg, Great Falls, Montana, appointed for a term ending May 4, 1994.

(11) As members of the Board of Veterans' Affairs, in accordance with section 2-15-1205, MCA:

Mr. Ruben McKinney, Havre, Montana, appointed for a term ending May 18, 1995.

Mr. Neil Shepherd, Chester, Montana, appointed for a term ending May 18, 1994.

(12) As members of the Board of Radiologic Technologists, in accordance with section 2-15-1848, MCA:

Ms. Robin Anderson, Bozeman, Montana, appointed for the term ending July 1, 1993.

Ms. Sandra Curtiss, Havre, Montana, appointed for the term ending July 1, 1991.

Ms. Deborah Metz, Big Arm, Montana, appointed for the term ending July 1, 1993.

Ms. Debbie Stanford, Lewistown, Montana, appointed for the term ending July 1, 1993.

Mr. Jim Winter, Great Falls, Montana, appointed for the term ending July 1, 1992.

Dr. J.D. "Jerry" Wolf, Billings, Montana, appointed for the term ending July 1, 1993.

(13) As a member of the Board of Social and Rehabilitation Appeals, in accordance with section 2-15-2203, MCA:

Ms. Jolene Goodover, Great Falls, Montana, appointed for the term ending January 1, 1995.

(14) As a member of the Board of Aeronautics, in accordance with section 2-15-1812, MCA:

Mr. George Teslovick, Great Falls, Montana, appointed for the term ending January 1, 1995.

(15) As members of the Air Pollution Control Advisory Council, in accordance with section 2-15-2106, MCA:

Mr. Ronald E. Burnam, Billings, Montana, appointed for the term ending November 8, 1991.

Mr. Ed Handl, Butte, Montana, appointed for the term ending November 8, 1991.

Mr. Rodney A. James, Butte, Montana, appointed for the term ending November 8, 1991.

Mr. Jess Kilgore, Three Forks, Montana, appointed for the term ending November 8, 1991.

Mr. Terry Konkright, Superior, Montana, appointed for the term ending November 8, 1991.

Mr. Stephen L'Heureau, Great Falls, Montana, appointed for the term ending November 8, 1991.

Mr. Joe Nelson, Walkerville, Montana, appointed for the term ending November 8, 1991.

Mr. Martin W. Perga, Laurel, Montana, appointed for the term ending November 8, 1991.

Dr. Earl Pruyn, Missoula, Montana, appointed for the term ending November 8, 1991.

Mr. Paul Sawyer, Butte, Montana, appointed for the term ending November 8, 1991.

(16) As members of the Board of Architects, in accordance with section 2-15-1871, MCA:

Ms. Shirley Pappin, Great Falls, Montana, appointed for the term ending July 1, 1992.

Mr. Keith E. Rupert, Billings, Montana, appointed for the term ending March 27, 1993.

Mr. Robert C. Utzinger, Bozeman, Montana, appointed for the term ending March 27, 1992.

(17) As members of the Montana Arts Council, in accordance with section 2-15-1513, MCA:

Mr. Henry Badt, Hamilton, Montana, appointed for the term ending February 1, 1993.

Ms. Kathy Doeden, Miles City, Montana, appointed for the term ending February 1, 1995.

Mr. James M. Haughey, Billings, Montana, appointed for the term ending February 1, 1992.

Mr. Bebe Kezar, Whitefish, Montana, appointed for the term ending January 2, 1995.

Ms. Carol A. Novotne, Ft. Harrison, Montana, appointed for the term ending February 1, 1992.

Mr. James Whitlock, Hamilton, Montana, appointed for the term ending February 1, 1995.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 52nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations, that the Secretary of the Senate immediately deliver a copy of this resolution, properly certified by the President and Secretary of the Senate, to the Secretary of State of the State of Montana, and that a like copy be certified by the Secretary of the Senate and sent to the Governor of the State of Montana.

Approved February 21, 1991.

SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT OF HONORABLE JAMES E. PURCELL AS DISTRICT JUDGE, SECOND JUDICIAL DISTRICT, BUTTE, MONTANA, MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination, below designated, of an appointment that has been submitted to the Senate by the Governor, to wit:

As District Judge, Second Judicial District, Butte, Montana, to replace deceased District Judge Arnold H. Olsen, James E. Purcell.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 52nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary, to the Secretary of State and a copy, certified by the Secretary, to the Governor pursuant to section 5-5-303, MCA.

Approved February 26, 1991.

SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT OF KARLA MARIE GRAY AS JUSTICE, MONTANA SUPREME COURT, MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination, below designated, of an appointment that has been submitted to the Senate by the Governor, to wit:

As Justice, Montana Supreme Court, to replace resigning Honorable Diane G. Barz, Karla Marie Gray.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 52nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary, to the Secretary of State and a copy, certified by the Secretary, to the Governor pursuant to section 5-5-303, MCA.

Approved March 14, 1991.

SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 16, 1991, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments designated below that have been submitted to the Senate by the Governor:

(1) As members of the Board of Athletics, in accordance with section 2-15-1882, MCA:

Mr. Harry Atchinson, Havre, Montana, appointed for a term ending April 25, 1992.

Mr. Andrew Vandolah, Conrad, Montana, appointed for a term ending April 25, 1992.

(2) As members of the State Banking Board, in accordance with section 2-15-1803, MCA:

Mr. C. David Bliss, Conrad, Montana, appointed for a term ending July 1, 1993.

Mr. Chuck Brooke, Helena, Montana, appointed for a term ending July 1, 1993.

(3) As members of the Board of Barbers, in accordance with section 2-15-1856, MCA:

Ms. Donna Elaine Buska, Billings, Montana, appointed for a term ending July 1, 1992.

Mr. James Thul, Great Falls, Montana, appointed for a term ending July 1, 1993.

Mr. Robert "Lanny" White, Townsend, Montana, appointed for a term ending July 1, 1993.

(4) As members of the Board of Chiropractors, in accordance with section 2-15-1847, MCA:

Dr. Dwayne S. Borgstrand, Red Lodge, Montana, appointed for a term ending January 9, 1994.

Mr. Ronald Remick, Havre, Montana, appointed for a term ending October 6, 1993.

(5) As a member of the Fish and Game Commission, in accordance with section 2-15-3402, MCA:

Mr. James D. Rector, Glasgow, Montana, appointed for a term ending January 1, 1995.

(6) As members of the Board of Health and Environmental Sciences, in accordance with section 2-15-2104, MCA:

Dr. P.L. Kathrein, Great Falls, Montana, appointed for a term ending January 2, 1993.

Mr. Remington Kohrt, Darby, Montana, appointed for a term ending January 1, 1995.

Dr. Dennis Schreffler, Billings, Montana, appointed for a term ending January 1, 1995.

Mr. Jeremy Thane, Missoula, Montana, appointed for a term ending January 1, 1995.

(7) As members of the Board of Hearing Aid Dispensers, in accordance with section 2-15-1850, MCA:

Mr. Ben Havdahl, Helena, Montana, appointed for a term ending July 1, 1993.

Mr. Walter G. Hopkins, Great Falls, Montana, appointed for a term ending July 1, 1993.

Ms. Patricia Ingalls, Butte, Montana, appointed for a term ending July 1, 1992.

(8) As members of the Highway Commission, in accordance with section 2-15-2502, MCA:

Mr. Murray Ehlers, Billings, Montana, appointed for a term ending January 1, 1993.

Mr. Ed Smith, Dagmar, Montana, appointed for a term ending January 2, 1995.

(9) As members of the Board of Trustees of the State Historical Society, in accordance with section 2-15-1512, MCA:

Mr. John Burke, Butte, Montana, appointed for a term ending July 1, 1995.

Ms. Charmaine Fisher, Billings, Montana, appointed for a term ending July 1, 1994.

Mr. Jack Hayne, Dupuyer, Montana, appointed for a term ending July 1, 1995.

Mr. William Holt, Lolo, Montana, appointed for a term ending July 1, 1993.

Mr. William R. Mackay, Roscoe, Montana, appointed for a term ending July 1, 1994.

Ms. Susan R. McDaniel, Miles City, Montana, appointed for a term ending July 1, 1994.

Mr. James W. Reger, Billings, Montana, appointed for a term ending July 1, 1995.

Dr. Richard Roeder, Helena, Montana, appointed for a term ending July 1, 1992.

(10) As a member of the Board of Horseracing, in accordance with section 2-15-1881, MCA:

Dr. James A. Scott, Great Falls, Montana, appointed for a term ending January 20, 1995.

(11) As members of the Board of Housing, in accordance with section 2-15-1814, MCA:

Mr. Gerry G. Hudson, Billings, Montana, appointed for a term ending January 1, 1995.

Mr. Dean J. Mart, Great Falls, Montana, appointed for a term ending January 1, 1995.

Mr. Bob Thomas, Stevensville, Montana, appointed for a term ending January 1, 1995.

(12) As members of the Commission for Human Rights, in accordance with section 2-15-1706, MCA:

Ms. Sarah Arnott, Utica, Montana, appointed for a term ending January 2, 1993.

Ms. Jane Meyer, Great Falls, Montana, appointed for a term ending January 7, 1995.

(13) As members of the Board of Investments, in accordance with section 2-15-1808, MCA:

Mr. Dwight MacKay, Billings, Montana, appointed for a term ending January 2, 1993.

Mr. F. Lee Robinson, Malta, Montana, appointed for a term ending January 1, 1995.

(14) As a member of the Board of Labor Appeals, in accordance with section 2-15-1704, MCA:

Mr. Stephen A. Birch, Great Falls, Montana, appointed for a term ending January 1, 1995.

(15) As members of the Board of Landscape Architects, in accordance with section 2-15-1872, MCA:

Mr. Bruce F. Lutz, Kalispell, Montana, appointed for a term ending July 1, 1993.

Mr. Tom Selstad, Great Falls, Montana, appointed for a term ending July 1, 1993.

Ms. Jean Stephenson, Helena, Montana, appointed for a term ending July 1, 1994.

Mr. Patrick A. Thomas, Kalispell, Montana, appointed for a term ending July 1, 1994.

(16) As members of the State Library Commission, in accordance with section 22-1-101, MCA:

Ms. Mary Doggett, White Sulphur Springs, Montana, appointed for a term ending May 22, 1992.

Ms. Anne Hauptman, Billings, Montana, appointed for a term ending May 22, 1993.

Mr. Lloyd Wallin, Deer Lodge, Montana, appointed for a term ending May 22, 1993.

(17) As members of the Board of Medical Examiners, in accordance with section 2-15-1841, MCA:

Dr. Robert Brace, Billings, Montana, appointed for a term ending October 1, 1994.

Mr. Ben P. Broderick, Great Falls, Montana, appointed for a term ending September 1, 1993.

Mr. Clark A. Grimm, Havre, Montana, appointed for a term ending September 1, 1994.

Mr. James Harkness, Glendive, Montana, appointed for a term ending September 1, 1994.

Ms. Lillian LaCroix, Missoula, Montana, appointed for a term ending September 1, 1993.

(18) As members of the Board of Regents of Higher Education, in accordance with section 2-15-1505, MCA:

Mr. Cordell Johnson, Helena, Montana, appointed for a term ending February 1, 1996.

Mr. Brad Musgrove, Bozeman, Montana, appointed for a term ending June 1, 1991.

Mr. Kermit R. Schwanke, Missoula, Montana, appointed for a term ending February 1, 1997.

Mr. Thomas P. Topel, Billings, Montana, appointed for a term ending February 1, 1993.

(19) As members of the Board of Realty Regulation, in accordance with section 2-15-1867, MCA:

Ms. B. Helen Garrick, Missoula, Montana, appointed for a term ending May 9, 1993.

Mr. Jack K. Moore, Great Falls, Montana, appointed for a term ending May 9, 1994.

(20) As members of the Board of Social Work Examiners and Professional Counselors, in accordance with section 2-15-1854, MCA:

Ms. Sheila May Banks, Great Falls, Montana, appointed for a term ending January 2, 1993.

Mr. Ervin Booth, Roundup, Montana, appointed for a term ending January 2, 1993.

Mr. Ray M. Lappin, Deer Lodge, Montana, appointed for a term ending January 2, 1993.

Ms. Leta A. Livoti, Helena, Montana, appointed for a term ending January 1, 1995.

Ms. Mary Meis, Shelby, Montana, appointed for a term ending January 2, 1993.

Ms. Antoinette Frazer Rosell, Billings, Montana, appointed for a term ending January 1, 1995.

Mr. Richard A. Simonton, Glendive, Montana, appointed for a term ending January 1, 1995.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 52nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations, that the Secretary of the Senate immediately deliver a copy of this resolution, properly certified by the President and Secretary of the Senate, to the Secretary of State of the State of Montana, and that a like copy be certified by the Secretary of the Senate to the Governor of the State of Montana.

Approved March 22, 1991.

SENATE RESOLUTION NO. 9

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 1991, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination of appointments, designated below, that have been submitted to the Senate by the Governor:

(1) As members of the Board of Cosmetologists, in accordance with section 2-15-1857, MCA:

Mr. Tobe Green, Bozeman, Montana, appointed for a term ending October 1, 1993.

Ms. Janet Markle, Glasgow, Montana, appointed for a term ending July 1, 1993.

Ms. Rose Ellen Paris, Missoula, Montana, appointed for a term ending October 1, 1993.

Ms. Geraldine Sorenson, Billings, Montana, appointed for a term ending October 1, 1993.

Mr. Scott Stekly, Great Falls, Montana, appointed for a term ending July 1, 1993.

(2) As members of the Board of County Printing, in accordance with section 2-15-1811, MCA:

Mr. Marion Davis, Florence, Montana, appointed for a term ending April 1, 1991.

Mr. James Halverson, Wolf Point, Montana, appointed for a term ending April 1, 1991.

Ms. Jane Lopp, Kalispell, Montana, appointed for a term ending April 1, 1991.

Mr. James Moore, Red Lodge, Montana, appointed for a term ending April 1, 1991.

(3) As members of the Board of Dentistry, in accordance with section 2-15-1842, MCA:

Dr. Scott D. Erler, Missoula, Montana, appointed for a term ending March 29, 1996.

Ms. Michele Kiesling, Helena, Montana, appointed for a term ending July 1, 1994.

Dr. R.W. Rector, Havre, Montana, appointed for a term ending March 29, 1995.

(4) As members of the Board of Milk Control, in accordance with section 2-15-1802, MCA:

Mr. Jesse Russell Gleason, Fairfield, Montana, appointed for a term ending January 2, 1993.

Dr. Robert Greer, Bozeman, Montana, appointed for a term ending January 1, 1995.

(5) As members of the Board of Morticians, in accordance with section 2-15-1853, MCA:

Mr. John Patrick Hoffman, Havre, Montana, appointed for a term ending July 1, 1993.

Mr. John J. Michelotti, Billings, Montana, appointed for a term ending July 1, 1995.

Mr. Guy W. Miser, Fort Benton, Montana, appointed for a term ending July 1, 1994.

(6) As members of the Montana Health Facility Authority, in accordance with section 2-15-1815, MCA:

Ms. Sandy Johnson, Fairfield, Montana, appointed for a term ending January 1, 1993.

Dr. Amos Little, Helena, Montana, appointed for a term ending July 29, 1993.

Mr. John H. Solheim, Glendive, Montana, appointed for a term ending January 1, 1992.

(7) As members of the Montana Board of Science and Technology Development, in accordance with section 2-15-1818, MCA:

Mr. W. Lloyd Allen, Ph.D., Billings, Montana, appointed for a term ending January 1, 1995.

Ms. Rebecca W. Mahurin, Ph.D., Bozeman, Montana, appointed for a term ending January 1, 1995.

Mr. Ken Thuerbach, Victor, Montana, appointed for a term ending January 1, 1993.

Mr. Kirk G. Wilson, Great Falls, Montana, appointed for a term ending January 1, 1995.

(8) As members of the Board of Natural Resources and Conservation, in accordance with section 2-15-3302, MCA:

Mr. John Bailey, Livingston, Montana, appointed for a term ending January 1, 1995.

Mr. Fred Booth, Highwood, Montana, appointed for a term ending January 1, 1993.

Mr. Jack Galt, Helena, Montana, appointed for a term ending January 1, 1995.

(9) As members of the Board of Nursing Home Administrators, in accordance with section 2-15-1845, MCA:

Ms. Joyce Asay, Forsyth, Montana, appointed for a term ending May 29, 1995.

Mr. Gerald W. Bibo, Havre, Montana, appointed for a term ending May 29, 1993.

Ms. Molly L. Munro, Great Falls, Montana, appointed for a term ending May 29, 1994.

(10) As members of the Board of Private Security Patrol Officers and Investigators, in accordance with section 2-15-1891, MCA:

Mr. Gary Gray, Great Falls, Montana, appointed for a term ending August 1, 1992.

Col. Robert J. Griffith, Helena, Montana, appointed for a term ending August 1, 1993.

Ms. Mary G. Luntsford, Kalispell, Montana, appointed for a term ending August 1, 1992.

Ms. Luana K. Ross, Bozeman, Montana, appointed for a term ending August 1, 1993.

Mr. Joseph H. Servel, Missoula, Montana, appointed for a term ending August 1, 1991.

(11) As members of the Board of Professional Engineers and Professional Land Surveyors, in accordance with section 2-15-1873, MCA:

Mr. Richard A. Ainsworth, Missoula, Montana, appointed for a term ending July 1, 1994.

Mr. Dennis F. Carver, Kalispell, Montana, appointed for a term ending April 23, 1993.

Mr. Paul Dana, Billings, Montana, appointed for a term ending March 31, 1994.

Mr. Daniel F. Prill, Great Falls, Montana, appointed for a term ending July 1, 1994.

Mr. J.G. Shockley, Victor, Montana, appointed for a term ending March 31, 1991.

(12) As members of the Board of Psychologists, in accordance with section 2-15-1851, MCA:

Dr. Barbara Ann Looby, Livingston, Montana, appointed for a term ending September 1, 1992.

Mr. Neil McCaslin, Bozeman, Montana, appointed for a term ending September 1, 1992.

Ms. Alice Omang, Helena, Montana, appointed for a term ending September 1, 1993.

Dr. David Schulberg, Missoula, Montana, appointed for a term ending September 1, 1993.

(13) As members of the Board of Public Accountants, in accordance with section 2-15-1866, MCA:

Mr. Gary Nelson, Plentywood, Montana, appointed for a term ending July 1, 1995.

Mr. Ivah G. Schmitz, Missoula, Montana, appointed for a term ending July 1, 1991.

Ms. Shirley Warehime, Helena, Montana, appointed for a term ending July 1, 1994.

(14) As a member of the Board of Public Education, in accordance with section 2-15-1507, MCA:

Mr. Ronald N. Fernelius, Missoula, Montana, appointed for a term ending February 1, 1997.

(15) As members of the Board of Speech-Language Pathologists and Audiologists, in accordance with section 2-15-1849, MCA:

Mr. Carl H. Clark, Kalispell, Montana, appointed for a term ending December 31, 1993.

Mr. Christian D. Grover, Helena, Montana, appointed for a term ending December 31, 1993.

Ms. Jane L. Hudson, Billings, Montana, appointed for a term ending December 31, 1993.

Ms. Beverly Roy, Fort Shaw, Montana, appointed for a term ending December 31, 1993.

Ms. Lonna Tempel, Joplin, Montana, appointed for a term ending December 31, 1993.

(16) As members of the Board of Directors of the State Compensation Mutual Insurance Fund, in accordance with section 2-15-1019, MCA:

Mr. James T. Harrison, Helena, Montana, appointed for a term ending April 29, 1993.

Mr. Les Hirsch, Miles City, Montana, appointed for a term ending April 28, 1991.

Mr. Robert Holman, Kalispell, Montana, appointed for a term ending April 28, 1991.

Mr. Robert S. Short, Great Falls, Montana, appointed for a term ending April 28, 1993.

Mr. Clyde Smith, Kalispell, Montana, appointed for a term ending April 28, 1993.

(17) As members of the State Tax Appeal Board, in accordance with section 15-2-101, MCA:

Mr. John J. McNaught, Great Falls, Montana, appointed for a term ending March 1, 1995.

Mr. Norman E. Taylor, Missoula, Montana, appointed for a term ending March 1, 1997.

(18) As members of the Board of Veterinary Medicine, in accordance with section 2-15-1852, MCA:

Ms. Catherine L. Kuhl, Superior, Montana, appointed for a term ending July 31, 1995.

Dr. Minott E. Pruyn, Missoula, Montana, appointed for a term ending July 31, 1995.

Dr. Don E. Woerner, Laurel, Montana, appointed for a term ending July 31, 1994.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 52nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations, that the Secretary of the Senate immediately deliver a copy of this resolution, properly certified by the President and Secretary of the Senate, to the Secretary of State of the State of Montana, and that a like copy be certified by the Secretary of the Senate to the Governor of the State of Montana.

Approved April 2, 1991.

SENATE RESOLUTION NO. 10

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 16, 1991, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination of appointment, designated below, that has been submitted to the Senate by the Governor:

As a member of the Board of Horseracing, in accordance with section 2-15-1881, MCA:

Mr. Gibson G. Goodman, Helena, Montana, appointed for a term ending January 20, 1993.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 52nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and, that the Secretary of the Senate immediately deliver a copy of this resolution, properly certified by the President and Secretary of the Senate, to the Secretary of State of the State of Montana, and that a like copy be certified by the Secretary of the Senate to the Governor of the State of Montana.

Approved March 28, 1991.

SENATE RESOLUTION NO. 11

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 16, 1991, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination of appointment, designated below, that has been submitted to the Senate by the Governor:

As a member of the Fish and Game Commission, in accordance with section 2-15-3402, MCA:

Ms. Elaine K. Allestad, Big Timber, Montana, appointed for a term ending January 1, 1995.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 52nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination, that the Secretary of the Senate immediately deliver a copy of this resolution, properly certified by the President and Secretary of the Senate, to the Secretary of State of the State of Montana, and that a like copy be certified by the Secretary of the Senate to the Governor of the State of Montana.

Approved March 22, 1991.

SENATE RESOLUTION NO. 12

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND

SUBMITTED BY WRITTEN COMMUNICATIONS DATED MARCH 6, 1991, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations, designated below, of appointments that have been submitted to the Senate by the Governor:

(1) As members of the Board of Aeronautics, in accordance with section 2-15-1812, MCA:

Mr. Joe Attwood, Great Falls, Montana, appointed for a term ending February 1, 1993.

Mr. Leland F. Ford, Missoula, Montana, appointed for a term ending January 1, 1995.

Mr. Greg Mecklenburg, Belgrade, Montana, appointed for a term ending January 1, 1995.

Ms. Sharel K. Stroh, Havre, Montana, appointed for a term ending January 1, 1995.

(2) As members of the Coal Board, in accordance with section 2-15-1821, MCA:

Mr. James Dale Anderson, Colstrip, Montana, appointed for a term ending January 1, 1995.

Dr. Thomas E. Finch, Butte, Montana, appointed for a term ending January 1, 1995.

Ms. Helena S. Maclay, Florence, Montana, appointed for a term ending January 1, 1995.

(3) As members of the Board of County Printing, in accordance with section 2-15-1811, MCA:

Mr. Ronald Dale Fossen, Scobey, Montana, appointed for a term ending April 1, 1993.

Ms. Jane Lopp, Kalispell, Montana, appointed for a term ending April 1, 1993.

Mr. James Moore, Red Lodge, Montana, appointed for a term ending April 1, 1993.

Mr. Verle L. Rademacher, White Sulphur Springs, Montana, appointed for a term ending April 1, 1993.

Mr. Norman Starr, Melville, Montana, appointed for a term ending April 1, 1993.

(4) As a member of the Board of Dentistry, in accordance with section 2-15-1842, MCA:

Mr. Ronald L. Olson, Billings, Montana, appointed for a term ending March 29, 1992.

(5) As a member of the Hard-Rock Mining Impact Board, in accordance with section 2-15-1822, MCA:

Mr. Mike Manuel, Fairfield, Montana, appointed for a term ending January 1, 1995.

(6) As a member of the Highway Commission, in accordance with section 2-15-2502, MCA:

Mr. Roy M. Duff, Whitefish, Montana, appointed for a term ending January 1, 1995.

(7) As a member of the Board of Horseracing, in accordance with section 2-15-1881, MCA:

Mr. Wesley Tibbetts, Miles City, Montana, appointed for a term ending January 20, 1995.

(8) As members of the Board of Investments, in accordance with section 2-15-1808, MCA:

Ms. Maureen J. Fleming, Ph.D., Missoula, Montana, appointed for a term ending January 1, 1995.

Mr. Earl W. Johnson, Helena, Montana, appointed for a term ending January 1, 1995.

Mr. William S. MacFadden, Great Falls, Montana, appointed for a term ending January 1, 1995.

(9) As members of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Ms. Nancy Espy, Boyes, Montana, appointed for a term ending March 1, 1997.

Mr. James F. Hagenbarth, Dillon, Montana, appointed for a term ending March 1, 1997.

(10) As a member of the Board of Milk Control, in accordance with section 2-15-1802, MCA:

Mr. Michael F. Kleese, Stevensville, Montana, appointed for a term ending January 1, 1995.

(11) As members of the Oil and Gas Conservation Board, in accordance with section 2-15-3303, MCA:

Mr. James Nelson, Cut Bank, Montana, appointed for a term ending January 1, 1995.

Mr. Warren H. Ross, Chinook, Montana, appointed for a term ending January 1, 1995.

Mr. Dean A. Swanson, Billings, Montana, appointed for a term ending January 1, 1995.

(12) As a member of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Mr. Ivan O'Neil, Kalispell, Montana, appointed for a term ending January 1, 1995.

(13) As members of the Board of Physical Therapy Examiners, in accordance with section 2-15-1858, MCA:

Mr. John Delano, Helena, Montana, appointed for a term ending January 1, 1994.

Dr. John Halseth, Great Falls, Montana, appointed for a term ending January 1, 1994.

(14) As a member of the Board of Private Security Patrol Officers and Investigators, in accordance with section 2-15-1891, MCA:

Mr. Robert F. Ash, Hysham, Montana, appointed for a term ending August 1, 1991.

(15) As a member of the Board of Public Education, in accordance with section 2-15-1507, MCA:

Ms. Sarah Listerud, Wolf Point, Montana, appointed for a term ending February 1, 1998.

(16) As a member of the Board of Regents of Higher Education, in accordance with section 2-15-1505, MCA:

Mr. Paul F. Boylan, Bozeman, Montana, appointed for a term ending February 1, 1998.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 52nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations, that the Secretary of the Senate immediately deliver a copy of this resolution, properly certified by the President and Secretary of the Senate, to the Secretary of State of the State of Montana, and that a like copy be certified by the Secretary of the Senate to the Governor of the State of Montana.

Approved April 24, 1991.

SENATE RESOLUTION NO. 15

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOM-

INATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED APRIL 10, 1991, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, designated below, that have been submitted to the Senate by the Governor:

(1) As a member of the Board of Architects, in accordance with section 2-15-1871, MCA:

Mr. Eric W. Hefty, Missoula, Montana, appointed for a term ending March 27, 1994.

(2) As a member of the Board of County Printing, in accordance with section 2-15-1811, MCA:

Mr. James Crane, Helena, Montana, appointed for a term ending April 1, 1993.

(3) As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Mr. David P. Roehm, Great Falls, Montana, appointed for a term ending April 18, 1994.

(4) As members of the State Library Commission, in accordance with section 22-1-101, MCA:

Ms. Peggy Guthrie, Choteau, Montana, appointed for a term ending May 22, 1994.

Ms. Vada Taylor, Glendive, Montana, appointed for a term ending May 22, 1994.

(5) As members of the Board of Optometrists, in accordance with section 2-15-1846, MCA:

Dr. P. L. Kathrein, Great Falls, Montana, appointed for a term ending April 3, 1995.

Ms. Charliene Staffanson, Deer Lodge, Montana, appointed for a term ending April 3, 1995.

(6) As members of the Board of Plumbers, in accordance with section 2-15-1875, MCA:

Mr. Donald L. Kent, Bozeman, Montana, appointed for a term ending April 28, 1995.

Mr. Robert R. Nault, Havre, Montana, appointed for a term ending April 28, 1995.

(7) As members of the Board of Professional Engineers and Professional Land Surveyors, in accordance with section 2-15-1873, MCA:

Mr. David Gibson, Bozeman, Montana, appointed for a term ending April 30, 1995.

Mr. J. G. Shockley, Victor, Montana, appointed for a term ending April 30, 1995.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 52nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations, that the Secretary of the Senate immediately deliver a copy of this resolution, properly certified by the President and Secretary of the Senate, to the Secretary of State of the State of Montana, and that a like copy be certified by the Secretary of the Senate to the Governor of the State of Montana.

Approved April 24, 1991.

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules be adopted:

Chapter 1

Administration

H10-10. House officers. (1) House officers include a Speaker, a Speaker pro tempore, majority and minority floor leaders, and majority and minority whips (section 5-2-221, MCA).

(2) A majority of representatives voting elects the Speaker and Speaker pro tempore from the House membership. A majority of each caucus voting nominates House members to the remaining offices, and those nominees are considered to have been elected by a majority vote of the House.

H10-20. Speaker's duties. (1) The Speaker is the presiding officer of the House, with authority for administration, order, and decorum.

(2) The Speaker may order the galleries or lobbies cleared in case of disturbance or disorderly conduct.

(3) The Speaker shall appoint and may remove the members of all standing and select committees not otherwise specified by law or rule.

(4) The Speaker shall sign all necessary certifications by the House, including enrolled bills and resolutions, journals (section 5-11-201, MCA), subpoenas, and payrolls.

(5) The Speaker shall arrange the agendas for second and third readings each legislative day. Representatives may amend the agendas as provided in H40-130.

(6) The Speaker is the chief administrative officer of the House, with authority for supervising all House employees. The Speaker may seek the advice and counsel of the Legislative Administration Committee regarding employees.

H10-30. Speaker-elect. During the transition period between the party organization caucuses and the election of House officers, the Speaker-elect has the responsibilities and authority appropriate to organize the House (section 5-2-202, MCA). Authority includes approving presession expenditures.

H10-40. Speaker pro tempore duties. The Speaker pro tempore shall act as the presiding officer in the absence of the Speaker and shall carry out other duties assigned by the Speaker.

H10-50. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions. It may delegate specific duties to a legislative agency.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the House, subject to the approval of the Speaker.

(4) The committee shall comprise the House membership of the Joint Legislative Administration Committee.

H10-60. Employees. (1) The Speaker shall appoint a Chief Clerk, Sergeant-at-Arms, and Chaplain, subject to confirmation of the House (section 5-2-221, MCA).

(2) The Speaker shall recommend to the Legislative Administration Committee employment of necessary staff.

(3) The secretary for a standing or select committee is generally responsible to the committee chairman but shall work under the direction of the Chief Clerk.

(4) The Speaker and majority and minority floor leaders may each appoint a private secretary.

H10-70. Chief Clerk's duties. The Chief Clerk, under the supervision of the Speaker, is responsible to:

(1) have custody of all records and documents of the House;

(2) supervise the handling of legislation in the House, the House journal, and other House publications; deliver to the Secretary of State at the close of each session the House journal, bill and resolution records, and all original House bills and joint resolutions; collect minutes and exhibits from all House committees and subcommittees and deliver them, unbound, to the Legislative Council librarian who will arrange to have them copied on microfilm. A microfilm copy will be provided to the Legislative Council and the Montana State Law Library. The Legislative Fiscal Analyst will receive a microfilm copy of the minutes from the appropriation committee and subcommittees. After microfilming, the original minutes will be delivered to the Montana Historical Society.

H10-80. Sergeant-at-Arms duties. The Sergeant-at-Arms, under the supervision of the Speaker, has the responsibility to:

(1) maintain order under the direction of the presiding officer;

(2) execute commands and serve all processes of the House; and

(3) receive, distribute, and have custody of House supplies and equipment.

H10-90. Legislative aides. (1) A legislative aide is a person specifically designated by a representative to assist that representative in performing legislative duties. A representative may sponsor one legislative aide a session by written notification to the Sergeant-at-Arms.

(2) No representative may designate a second legislative aide in the same session without the approval of the House Rules Committee.

(3) A legislative aide must be of legal age unless otherwise approved by the House Rules Committee.

(4) The Sergeant-at-Arms shall issue distinctive identification tags to legislative aides. The cost must be paid by the sponsoring representative.

H10-100. Legislative interns. A legislative intern is a person designated under Title 5, chapter 6, MCA.

H10-110. House journal. (1) The House shall keep a journal, which is the official record of House actions (Montana Constitution, Art. V, Sec. 10). The journal must be prepared under the direction of the Speaker.

(2) Records of the following proceedings must be entered on the journal:

(a) the taking and subscription of the constitutional oath by representatives (Montana Constitution, Art. III, Sec. 3; 5-2-214);

(b) committee reports;

(c) messages from the Governor;

(d) messages from the Senate;

(e) every motion, the name of the representative presenting it, and its disposition;

(f) the introduction of legislation in the House;

(g) consideration of legislation subsequent to introduction;

(h) on final passage of legislation, the names of the representatives and their vote on the question (Montana Constitution, Art. V, Sec. 11);

(i) roll call votes; and

(j) upon a request by two representatives before a vote is taken, the names of the representatives and their votes on the question.

(3) The Chief Clerk shall provide to the Legislative Council such information as may be required for the publication of the daily journal. Upon approval by the Speaker, the daily journal shall be reproduced and distributed.

(4) Any representative may examine the daily journal and propose corrections. The speaker may direct a correction to be made when suggested subject to objection by the House.

(5) The Speaker shall authenticate the House journal after the close of the session (section 5-11-201, MCA).

(6) The Legislative Council shall publish and distribute the House journal (sections 5-11-202 and 5-11-203, MCA). The title of each bill must be listed in the index of the published session journal.

H10-120. Votes recorded and public. Every vote of each representative on each substantive question in the House, in any committee, or in committee of the whole must be recorded and made public (Montana Constitution, Art. V, Sec. 11).

H10-130. Duration of legislative day. A legislative day ends either 24 hours after the House convenes for that day or at the time the House convenes for the following legislative day, whichever is earlier.

Chapter 2

Decorum

H20-10. Questions of order and privilege. (1) Questions of order and privilege, in order of precedence, are:

(a) those affecting the collective rights, safety, dignity, and integrity of the House; and

(b) those affecting the rights, reputation, and conduct of individual representatives.

(2) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative seconded by two representatives.

H20-20. Limits on lobbying. Lobbying on the House floor and in the anteroom is prohibited during a daily session, 2 hours before the session, and 2 hours after the session.

H20-30. Admittance to the House floor. The following persons may be admitted to the House floor during a daily session: present and former legislators; legislative employees necessary for the conduct of the session; accredited news staff; and members' spouses and children. The Speaker may allow exceptions to this rule.

H20-40. Dilatory motions or questions. The House has a right to protect itself from dilatory motions or questions used for the purpose of delaying or obstructing business. The presiding officer shall decide if motions (except a call of the House) or questions are dilatory. This decision may be appealed to the House.

H20-50. Opening and order of business. The opening of each legislative day must include an invocation, the pledge of allegiance, and roll call. Following the opening, the order of business of the House is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Senate;

(5) messages from the Governor;

(6) first reading and commitment of bills;

(7) second reading of bills;

(8) third reading of bills;

(9) motions;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

H20-60. Lobbying by employees. (1) A legislative employee, intern, or aide of either house is prohibited from lobbying, although a legislative committee may request testimony from a person so restricted.

(2) The Speaker or the Legislative Administration Committee may discipline or discharge any House employee violating this prohibition. The Speaker or the committee may withdraw the privileges of any House aide or intern violating this prohibition.

H20-70. Papers distributed on desks. A paper concerning proposed legislation may not be placed on representatives' desks unless it is signed and permission has been granted by the Speaker. The Sergeant-at-Arms shall direct its distribution.

Chapter 3

Committees

H30-10. House standing committees. The following are the House standing committees: Agriculture, Livestock, and Irrigation; Appropriations; Business and Economic Development; Education and Cultural Resources; Fish and Game; Highways and Transportation; Human Services and Aging; Judiciary; Labor and Employment Relations; Legislative Administration; Local Government; Natural Resources; Rules; State Administration; and Taxation.

H30-20. Chairman's duties. The chairman of a committee is the presiding officer of that committee and is responsible for maintaining order within the committee room and its environs, scheduling hearings and executive action, supervising committee work, and certifying committee reports and minutes.

H30-30. Officers as members. The Speaker, majority leader, and minority leader are ex officio, nonvoting members of all House committees. They are not required to be considered in the quorum, but they may count toward establishing a quorum.

H30-40. Committee action. (1) When legislation is referred to a committee, it may recommend approval or disapproval, with or without amendment.

(2) The committee may recommend that a bill on which it has made a favorable recommendation by unanimous vote be placed on the consent calendar.

(3) The committee may not report a bill to the House without recommendation.

(4) If a bill is withdrawn from a committee and brought to the House floor without a committee recommendation, the bill must include amendments formally adopted by committee action as reflected in committee minutes for debate on second reading.

H30-50. Reconsideration in committee. A committee, including the Committee of the Whole, may at any time prior to submitting a report to the Chief Clerk reconsider its previous action on legislation.

H30-60. Legislation requested by a committee. At least two-thirds of all the representatives of a standing committee must have voted in favor of the question to allow the committee to request the drafting or introduction of legislation. Votes requesting drafting and introduction of committee legislation may be taken jointly or separately.

H30-70. Rules committee makeup. The Speaker will determine the total number of members and the party division, but each party will appoint its own members.

Chapter 4

Legislation

H40-10. Introduction deadlines. (1) Except as provided in subsection (2), if a representative accepts drafted legislation from the Legislative Council after the deadline for introduction, the representative may not introduce that legislation after 48 hours from the time the bill was accepted from the Legislative Council.

(2) No bill or resolution may be introduced any later than 5 p.m. 5 legislative days prior to the appropriate transmittal deadline.

H40-20. House resolutions. (1) A House resolution is used to adopt or amend House rules, make recommendations on the districting and apportionment plan (Montana Constitution, Art. V, Sec. 14), express the sentiment of the House, or assist House operations.

(2) As to drafting, introduction, and referral, a House resolution is treated as a bill. Final passage of a House resolution is determined by the Committee of the Whole report. A House resolution does not progress to third reading.

(3) The Chief Clerk shall transmit a copy of each passed House resolution to the Senate and the Secretary of State.

H40-30. Cosponsors. (1) Prior to submitting legislation to the Chief Clerk for introduction, the chief sponsor may add representatives and senators as cosponsors by having them sign the three copies.

(2) After legislation is submitted for introduction but before the legislation returns from the first House committee, the chief sponsor may add or remove cosponsors by filing a cosponsor form with the Chief Clerk. This filing must be noted by the Chief Clerk for the record on Order of Business No. 11.

H40-40. Introduction. (1) During a session, proposed House legislation may be introduced in the House by submitting it in triplicate, endorsed with the signature of a representative as chief sponsor, to the Chief Clerk for introduction. In each session of the Legislature, the proposed legislation must be numbered consecutively by type in the order of receipt. Submission and numbering of properly endorsed legislation constitutes introduction.

(2) Preintroduction of legislation prior to a session under provisions of the joint rules constitutes introduction in the House.

(3) Acknowledgment by the Chief Clerk of receipt of legislation transmitted from the Senate for consideration by the House constitutes introduction of the Senate legislation in the House.

H40-50. First reading. Legislation properly introduced or received in the House must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a representative may question adherence to rules.

H40-60. One reading per day. Except on the final legislative day, legislation may receive no more than one reading per legislative day. On the final legislative day, legislation may receive more than one reading.

H40-70. Referral. (1) The Speaker shall refer to a House committee all properly introduced House legislation and transmitted Senate legislation.

(2) Legislation may not receive final passage and approval unless it has been referred to a House committee.

H40-80. Rereferral. Legislation that is in the possession of the House and that has not been killed may be rereferred to a House committee by House motion approved by not less than three-fifths of the members present and voting.

H40-90. Legislation withdrawn from committee. Legislation may be withdrawn from a House committee by House motion approved by not less than three-fifths of the members present and voting.

H40-100. Standing committee reports. (1) A House standing committee recommendation of "do pass" or "be concurred in" must be announced across the rostrum and, if there is no objection to form, is considered adopted.

(2) A recommendation of "do not pass" or "be not concurred in" must be announced across the rostrum and, on the following legislative day, may be debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of the members voting. Failure to adopt a motion to reject an adverse committee report constitutes adoption of the report.

(3) If the House rejects an adverse committee report, the bill progresses to second reading, as scheduled by the Speaker, with any amendments recommended by the committee.

H40-110. Consent calendar procedure. Noncontroversial bills and simple and joint resolutions may be recommended for the consent calendar by a standing committee and processed according to the following provisions:

(1) To be eligible for the consent calendar, the legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. Appropriation or revenue bills may not be recommended for the consent calendar.

(2) The legislation must then be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(3) Legislation must be posted immediately (as soon as it is received as a third reading version) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer shall announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate is allowed.

(4) If any three representatives submit written objections to the placement of the legislation on the consent calendar, the legislation must be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be considered on Order of Business No. 8, third reading of bills, following the regular third reading agenda.

(6) Legislation on the consent calendar must be considered individually with the roll call vote spread on the journal as the final vote in the House.

(7) Legislation passed on the consent calendar must then be transmitted to the Senate.

H40-120. Legislation requiring other than a majority vote. Legislation that requires other than a majority vote for final passage needs only a majority vote for any action that is taken prior to final passage and that normally requires a majority vote.

H40-130. Amending House second and third reading agendas. (1) A majority of representatives present may rearrange or remove legislation from either the second or third reading agenda on that legislative day.

(2) Legislation may be added to the second or third reading agenda on that legislative day on a motion approved by not less than three-fifths of the members present and voting.

H40-140. Second reading. (1) Legislation returned from committee may be placed on second reading unless otherwise ordered by the House.

(2) The House shall form itself into a Committee of the Whole to consider business on second reading. The Committee of the Whole may debate legislation, attach amendments, and recommend approval or disapproval of legislation.

(3) Except on the final legislative day, at least 1 legislative day must elapse between the time legislation is reported from committee and the time it is considered on second reading.

(4) If a motion to recommend that a bill "do pass" or "be concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do not pass" or "be not concurred in", is considered to have passed.

(5) An amendment attached to legislation by the Committee of the Whole remains unless removed by further legislative action.

(6) When the Committee of the Whole reports to the House, the House shall adopt or reject the Committee of the Whole report. If the House rejects the Committee of the Whole report, the legislation remains on second reading, as amended by the Committee of the Whole, unless the House orders otherwise.

(7) A representative may move to segregate legislation from the Committee of the Whole report before the report is adopted. Segregated legislation, as amended by the Committee of the Whole, must be placed on second reading unless the House orders otherwise.

H40-150. Amendments in the Committee of the Whole. (1) All Committee of the Whole amendments must be checked by the House amendments coordinator for format, style, clarity, consistency, and other factors, in accordance with the most recent Bill Drafting Manual published by the Legislative Council, before the amendment may be accepted at the rostrum. The amendment form must include the date and time the amendment is submitted for that check.

(2) An amendment submitted to the rostrum for consideration by the Committee of the Whole must be marked as checked by the amendments coordinator and signed by a representative.

(3) A copy of every amendment rejected by the Committee of the Whole must be kept as part of the official records.

H40-160. Motions in the Committee of the Whole. (1) When the House resolves itself into a Committee of the Whole, the only motions in order are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) reconsider;

(f) pass consideration;

(g) call for cloture;

(h) rise, rise and report, or rise and report progress and beg leave to sit again; and

(i) to change the order in which legislation is placed on the agenda.

(2) Subsections (1)(e) through (1)(h) are nondebatable but may be amended.

(3) If a quorum of representatives is not present during second reading, the Committee of the Whole may conduct no business on legislation and a motion for a call of the House without a quorum is in order.

H40-170. Limits on debate in the Committee of the Whole. (1) Except for the representative who makes a motion, no representative may speak more than once on the motion and for no more than 5 minutes. The representative who makes the motion may have 5 minutes to close.

(2) After at least two proponents and two opponents have spoken on a question and 45 minutes have elapsed, a motion to call for cloture is in order. Approval by not less than two-thirds of the members present and voting is required to sustain a motion for cloture. Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

(3) By previous agreement of the Speaker and the minority floor leader, a bill or resolution may be allocated a predetermined amount of time for debate and number of speakers.

H40-180. Special provisions for debate on the general appropriations bill. (1) The Appropriations Committee chairman, in presenting the bill, is not subject to the 5-minute speaking limitation.

(2) Each appropriations subcommittee chairman shall fully present his or her portion of the bill. A subcommittee chairman is not subject to the 5-minute speaking limitation.

(3) After the presentation by the subcommittee chairman, the respective section of the bill is open for debate, questions, and amendments.

(4) An amendment that affects more than one section of the bill must be offered when the first section affected is considered.

(5) Following completion of the debate on each section, that section is closed and may not be reopened except by majority vote.

(6) If a member moves to reopen a section for amendment, only the amendment of that member may be entertained. Another member wishing to amend the same section shall make a separate motion to reopen the section.

(7) Debate on the motion to reopen a section is limited to the question of reopening the section. The amendment itself may not be debated at that time. This limitation does not prohibit the member from explaining the amendment to be considered.

(8) A motion for cloture is not in order during debate on the general appropriations bill.

H40-190. Engrossing. (1) After legislation is passed on second reading, it must be engrossed within 48 hours under the direction of the Speaker. The Speaker may grant additional time for engrossing.

(2) When the legislation has been reported correctly engrossed, it may be placed on third reading on the following legislative day. On the final legislative day, the correctly engrossed legislation may be placed on third reading on the same legislative day.

H40-200. Third reading. (1) All bills, joint resolutions, and Senate amendments to House bills and resolutions passing second reading must be placed on third reading.

(2) Legislation on third reading may not be amended or debated.

(3) The Speaker shall state the question on legislation on third reading. If a majority of the representatives voting does not approve the legislation, it fails to pass third reading.

H40-210. Senate legislation in the House. Senate legislation properly transmitted to the House must be treated as House legislation.

H40-220. Senate amendments to House legislation. (1) When the Senate has properly returned House legislation with Senate amendments, the House shall announce the amendments on Order of Business No. 4, and the Speaker shall place them on second reading for debate.

(2) If the House accepts Senate amendments on legislation requiring more than a majority vote for final passage, the House, following approval of the Senate amendments on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(3) If the House rejects the Senate amendments, the House may request the Senate to recede from its amendments or may direct appointment of a conference committee and request the Senate to appoint a like committee.

H40-230. Conference committee reports. (1) When a House conference committee files a report, the report must be announced under Order of Business No. 3.

(2) The House may debate and adopt or reject the conference committee report on second reading on any legislative day. The House may reconsider its action in rejecting a conference committee report under rules for reconsideration, H50-160.

(3) If both the House and the Senate adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the House, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(4) If the House rejects a conference committee report, the committee continues to exist unless dissolved by the Speaker or by motion. The committee may file a subsequent report.

(5) A House conference committee may confer regarding matters assigned to it with any Senate conference committee with like jurisdiction and submit recommendations for consideration of the House.

H40-240. Enrolling. (1) When House legislation has passed both houses, it must be enrolled within 48 hours under the direction of the Speaker. The Speaker may grant additional time for enrolling.

(2) The chief sponsor of the legislation shall examine the enrolled legislation and, if it has no enrolling errors, shall, within 1 legislative day, certify the legislation as correctly enrolled.

(3) The correctly enrolled legislation must be delivered to the Speaker, who shall sign the legislation not later than the following legislative day. When enrolled legislation is delivered on the final legislative day, the Speaker shall sign it that day.

(4) After the legislation has been reported correctly enrolled but before it is signed, any representative may examine the legislation.

H40-250. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the House shall announce the amendments under Order of Business No. 5.

(2) The House may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the House and the Senate accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the House shall place the final form of the legislation on third reading to determine if the required vote is obtained.

H40-260. Governor's veto. (1) When the Governor returns a bill with a veto, the House shall announce the veto under Order of Business No. 5.

(2) On any legislative day, a representative may move to override the Governor's veto by a two-thirds vote under Order of Business No. 9.

Chapter 5

Floor Actions

H50-10. Attendance. (1) A representative, unless excused, is required to be present at every sitting of the House.

(2) A representative may request in writing to be excused for a specified cause by his party leader. This excused absence is not a leave with cause from a call of the House.

H50-20. Quorum. (1) A quorum of the House is fifty-one representatives (Montana Constitution, Art. V, Sec. 10).

(2) Any representative may question the lack of a quorum at any time a vote is not being taken. The question is nondebatable, may not be amended, and is resolved by a roll call.

(3) The House may conduct no business without a quorum, except that representatives present may convene, compel the attendance of absent representatives, or adjourn.

H50-30. Call of the House without a quorum. (1) In the absence of a quorum, a majority of the representatives present may compel the attendance of absent representatives through a call of the House without a quorum. The motion for the call is nondebatable, may not be amended, and is in order at any time it has been established that a quorum is not present.

(2) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(3) When a quorum has been achieved under the call, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-40. Call of the House with a quorum. (1) If a quorum is present but at least one representative is excused or absent, one-third of the representatives present and voting may order a call of the House with a quorum.

(2) The motion for a call is nondebatable, may not be amended, and is in order at any time a vote is not being taken, except that a call of the House with a quorum is not allowed in the Committee of the Whole.

(3) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(4) When all representatives are present, except those on leave with cause, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-50. Leave with cause. (1) During a call of the House, a representative with an overriding medical or personal reason may request a leave with cause.

(2) If the representative is present at the time of the call, the Speaker may approve a request for a leave with cause.

(3) If the representative is not present at the time of the call, two-thirds of the representatives present and voting may approve a request for leave with cause.

(4) During a call of the House, a representative on leave with cause may not cast an absentee vote.

H50-60. Motions. (1) Any representative may propose a motion allowed by the rules for the order of business under which the motion is offered for the consideration of the House. Unless otherwise specified in rule or law, a majority of representatives voting is necessary and sufficient to decide a motion.

(2) Seconds to motions on the House floor are not required.

(3) Absentee votes are not allowed on votes that are specified as "representatives present and voting".

H50-70. Limits on debate of debatable motions. (1) Except for the representative who places a debatable motion before the body, no representative may speak more than once on the question unless a unanimous House consents. The representative who places the motion may close.

(2) No representative may speak for more than 15 minutes on the same question, except that a representative may have 5 minutes to close.

H50-80. Nondebatable motions. (1) A representative has the right to understand any question before the House and, usually under the administration of the presiding officer, may ask questions to exercise this right.

(2) The following motions are nondebatable:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for parliamentary inquiry;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to amend a nondebatable motion;

(h) to divide a question;

(i) to postpone consideration to a day certain;

(j) to suspend the rules; and

(k) all incidental motions, such as motions relating to voting or of a general procedural nature.

H50-90. Questions. A representative may, through the presiding officer, ask questions of another representative during a floor session. There is no limit on questions and answers, except as provided in H20-40.

H50-100. Amending motions — limitations. (1) A representative may move to amend the specific provisions of a motion without changing its substance.

(2) No more than one motion to amend a motion is in order at any one time.

(3) A motion for a call of the House, for the previous question, to table, or to take from the table may not be amended.

H50-110. Substitute motions. (1) When a question is before the House, no substitute motion may be made except the following, which have precedence in the order listed:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer to a committee;

(i) to propose amendments; and

(j) to postpone indefinitely.

(2) Nothing in this section allows a motion that would not otherwise be allowed under a particular order of business.

(3) No more than one substitute motion is in order at any one time.

H50-120. Withdrawing motions. A representative who proposes a motion may withdraw it before it is voted on or amended.

H50-130. Dividing a question. A representative may move to divide a question if it includes two or more propositions so distinct that they can be separated and if at least one substantive question remains after one substantive question is removed.

H50-140. Previous question. (1) If a majority of representatives present and voting adopts a motion for the previous question, debate is closed on the question and it must be brought to a vote. The Speaker may not entertain a motion to end debate unless at least one proponent and one opponent have spoken on the question.

(2) Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

H50-150. Questions requiring other than a majority vote. The following questions require the vote specified:

(1) a call of the House with a quorum (one-third of the members present and voting);

(2) a motion to lift a call of the House (two-thirds of the members present and voting);

(3) a motion to amend or suspend rules (two-thirds of the members voting);

(4) a motion to record a vote (one representative);

(5) a motion to spread a vote on the journal (two representatives);

(6) a motion to override the Governor's veto (two-thirds of each house);

(7) a motion to approve a bill to appropriate the principal of the coal trust fund (three-fourths of each house);

(8) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than therein described (three-fifths of each house);

(9) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature);

(10) a motion to approve a bill to authorize creation of state debt (two-thirds of each house);

(11) an appeal of the ruling of the presiding officer (three representatives);

(12) a motion to speak more than once on a debatable motion (unanimous vote);

(13) a motion to overturn an adverse committee report (three-fifths of the members voting);

(14) a motion to rerefer a bill from one committee to another (three-fifths of the members present and voting);

(15) a motion to withdraw a bill from a committee (three-fifths of the members present and voting);

(16) a motion to add legislation to the second or third reading agenda (three-fifths of the members present and voting);

(17) any motion to remove legislation from its normal progress through the House as provided under these rules and reassign it unless otherwise specifically provided by these rules (three-fifths of the members present and voting);

(18) a motion to change a vote (unanimous);

(19) a motion to call for cloture (two-thirds of the members present and voting); and

(20) a motion to approve leave with cause during a call of the house (two-thirds of the members present and voting).

H50-160. Reconsideration. (1) Any representative may, within 1 legislative day of a vote, move to reconsider the House vote on any matter still within the control of the House.

(2) A motion for reconsideration, unless tabled or replaced by a substitute motion, must be disposed of when made.

(3) When a motion for reconsideration fails, the question is finally settled. A motion for reconsideration may not be renewed or reconsidered.

(4) A motion to recall legislation from the Senate constitutes a motion to reconsider and is subject to the same rules.

H50-170. Renewing procedural motions. The House may renew a procedural motion if further House business has intervened.

H50-180. Tabling. (1) Under Order of Business No. 9, a representative may move to table any question, motion, or legislation before the House except the question of a quorum or a call of the House. The motion is nondebatable and may not be amended.

(2) When a matter has been tabled, a representative may move to take it from the table under Order of Business No. 9 on any legislative day.

H50-190. Indefinite postponement. A majority of representatives may indefinitely postpone any matter properly before the House.

H50-200. Voting. (1) The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.

(2) The House may, without objection, use a voice vote on procedural motions that are not required to be recorded in the journal. If a representative rises and objects, the House shall record the vote.

(3) The House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.

H50-210. Changing a vote. (1) A representative may move to change his vote within 1 legislative day of the vote. The motion is nondebatable. A unanimous House shall consent to the change. The representative making the motion shall first specify the question and the original vote tally.

(2) An error caused by a malfunction of the voting system may be corrected without a vote.

H50-220. Absentee votes. (1) An excused representative may file an absentee vote authorization form to vote during the excused absence on any vote for which absentee voting is allowed.

(2) An excused representative shall sign an absentee vote authorization form that specifies the motion and the desired vote.

(3) The absentee vote authorization form must be handed in at the rostrum by the party whip or designated representative before voting on the motion has commenced.

(4) The absentee vote authorization may be revoked before the vote by the member who signed the authorization.

H50-230. Recess. The House may stand at ease or, by majority vote, may recess under any order of business. The recess may be ended at the call of the chair or at a time specified.

H50-240. Adjournment for a legislative day. (1) A representative may move that the House adjourn for that legislative day. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

(2) A motion to adjourn for a legislative day must specify a date and time for the House to convene on the subsequent legislative day.

H50-250. Adjournment sine die. A representative may move that the House adjourn for the session. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

Chapter 6

Rules

H60-10. House rules. (1) The House may adopt, through a House resolution passed by a majority of its members, rules to govern its proceedings.

(2) After adoption of the House rules, two-thirds of the representatives voting must vote in favor of the question to amend the rules.

(3) The Speaker shall refer to the House Rules Committee all resolutions for House rules.

(4) The House Rules Committee shall report all resolutions for House rules within 1 legislative day of referral.

H60-20. Tenure of rules. Rules adopted by the House remain in effect until removed by House resolution or until a new House is elected and takes office.

H60-30. Suspension of rules. The House may suspend a House rule on a motion approved by not less than two-thirds of the members voting.

H60-40. Supplementary rules. Mason's Manual of Legislative Procedure (1989) governs House proceedings in all cases not covered by House rules.

H60-50. Interpreting rules. The Speaker shall interpret all questions on House rules, subject to appeal by any fifteen representatives to the House Rules Committee. The decision of the House Rules Committee may be appealed to the House by any representative.

H60-60. Joint rules superseded. A House rule, insofar as it relates to the internal proceedings of the House, supersedes a joint rule.

Approved January 14, 1991.

HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AMENDING HOUSE RULES TO EXPAND THE USE OF THE CONSENT CALENDAR IN THE HOUSE.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That House Rule H40-110 be amended as follows:

"**H40-110. Consent calendar procedure.** *(1)* Noncontroversial bills and simple and joint resolutions may be recommended for the consent calendar by a standing committee and processed according to the following provisions:

~~(1)~~*(a)* To be eligible for the consent calendar, the legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. Appropriation or revenue bills may not be recommended for the consent calendar.

~~(2)~~*(b)* The legislation must then be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(2) Other legislation may be placed on the consent calendar by agreement between the speaker and the minority leader following a positive recommendation by a standing committee. The legislation must be sent to be processed as a second reading version but must be specifically announced and posted as a "consent calendar" item.

(3) Legislation must be posted immediately (as soon as it is received ~~as a third reading version~~ *appropriately printed*) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer shall announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate is allowed.

(4) If any three representatives submit written objections to the placement of ~~the~~ legislation on the consent calendar *by the action of a standing committee or if any one representative submits a written objection to the placement of legislation on the consent calendar by the speaker and minority*

leader, the legislation must be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be considered on Order of Business No. 8, third reading of bills, following the regular third reading agenda.

(6) Legislation on the consent calendar must be considered individually with the roll call vote spread on the journal as the final vote in the House.

(7) Legislation passed on the consent calendar must then be transmitted to the Senate. *Legislation must be appropriately printed prior to transmittal.*"

Approved February 19, 1991.

HOUSE RESOLUTION NO. 3

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE DESIGNATION OF THE WEEK OF APRIL 7 THROUGH 13, 1991, AS "MONTANA COUNTY GOVERNMENT WEEK".

WHEREAS, county government is the oldest form of local government in the United States; and

WHEREAS, 98% of the nation's population reside in counties; and

WHEREAS, county governments in Montana employed over 6,500 people and spent almost $175 million last year to provide a wide range of services for the benefit of the people of Montana; and

WHEREAS, county government in Montana is often the last available resource for providing emergency and long-term services for the poor, the homeless, immigrants, refugees, the disadvantaged, and other segments of society; and

WHEREAS, county governments in Montana own and operate health care facilities and provide health departments; and

WHEREAS, over the last 30 years Montana county governments have assumed increasing responsibility for the administration and funding of health, welfare, justice, transportation, housing, and community development programs; and

WHEREAS, Montana county governments have been assigned a greater role in solving problems relating to air pollution, water pollution, solid waste disposal, airports, transit systems, parks, and other issues.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor is urged to designate the week of April 7 through 13, 1991, as "Montana County Government Week" in conjunction with "National County Government Week" and to issue a proclamation calling upon the people of Montana to observe the week with appropriate ceremonies and activities.

BE IT FURTHER RESOLVED, that the Chief Clerk of the House send a copy of this resolution to the Governor.

Approved March 23, 1991.

BALLOT

ISSUE

BALLOT ISSUE

CONSTITUTIONAL AMENDMENT NO. 21

By Chapter 587, Laws of 1989, the Legislature proposed an amendment to The Constitution of the State of Montana to require that once an initiative or referendum qualifies for the ballot, if the election is declared invalid because it was improperly conducted, the measure must be placed on the ballot at the next regularly scheduled statewide election unless the Legislature orders a special election. It would also require the courts to give priority to any challenge to the procedures involving the qualification of an initiative or referendum for placement on the ballot or to the manner in which the election was conducted.

Chapter 587 was approved by the following vote at the General Election held November 6, 1990:

For:	166,143
Against:	129,477

The title and text of Chapter 587 follow:

AN ACT AMENDING ARTICLE IV OF THE CONSTITUTION OF THE STATE OF MONTANA BY REQUIRING THAT A VALID ELECTION BE HELD ON PROPERLY QUALIFIED BALLOT ISSUES; AND PROVIDING THAT THE ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article IV of The Constitution of the State of Montana is amended by adding a new section 7 that reads:

Section 7. **Ballot issues — challenges — elections.** (1) An initiative or referendum that qualifies for the ballot under Article III or Article XIV shall be submitted to the qualified electors as provided in the Article under which the initiative or referendum qualified unless a new election is held pursuant to this section.

(2) A preelection challenge to the procedure by which an initiative or referendum qualified for the ballot or a postelection challenge to the manner in which the election was conducted shall be given priority by the courts.

(3) If the election on an initiative or referendum properly qualifying for the ballot is declared invalid because the election was improperly conducted, the secretary of state shall submit the issue to the qualified electors at the next regularly scheduled statewide election unless the legislature orders a special election.

Section 2. **Submission to electorate.** The amendment set forth in section 1 shall be submitted to the qualified electors of Montana at the general election to be held in November 1990 by printing on the ballot the full title of this act and the following:

☐ FOR requiring a valid and timely election on properly qualified initiatives and referendums.

☐ AGAINST requiring a valid and timely election on properly qualified initiatives and referendums.

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1-1-202	amended	Ch. 800	SB 0051
1-1-207	amended	Ch. 800	SB 0051
1-1-214	repealed	Ch. 17	SB 0078
1-1-216	amended	Ch. 17	SB 0078
1-1-224	enacted	Ch. 421	HB 0594
1-1-226	enacted	Ch. 455	HB 0613
1-1-513	enacted	Ch. 332	SB 0320
1-2-201	amended	Ch. 604	HB 0579
1-11-204	amended	Ch. 16	SB 0033
1-11-204	amended	Ch. 112	HB 0231
2-2-121	amended	Ch. 59	HB 0140
2-2-201	amended	Ch. 65	HB 0242
2-2-302	amended	Ch. 55	HB 0027
2-2-302	amended	Ch. 238	HB 0347
2-4-102	amended	Ch. 340	HB 0174
2-4-110	amended	Ch. 3	HB 0015
2-4-303	amended	Cn. 5	HB 0078
2-4-321	repealed	Ch. 16	SB 0033
2-4-322	repealed	Ch. 16	SB 0033
2-4-323	repealed	Ch. 16	SB 0033
2-4-411	amended	Ch. 112	HB 0231
2-6-101	amended	Ch. 748	HB 0131
2-6-102	amended	Ch. 748	HB 0131
2-6-103	amended	Ch. 254	HB 0562
2-6-109	amended	Ch. 289	SB 0423
2-6-110	enacted	Ch. 254	HB 0562
2-6-203	amended	Ch. 378	HB 0897
2-6-206	amended	Ch. 378	HB 0897
2-6-211	amended	Ch. 378	HB 0897
2-6-213	amended	Ch. 378	HB 0897
2-6-214	enacted	Ch. 378	HB 0897
2-6-302	amended	Ch. 378	HB 0897
2-6-304	amended	Ch. 378	HB 0897
2-7-104	amended	Ch. 112	HB 0231
2-7-501	amended	Ch. 489	HB 0328
2-7-502	amended	Ch. 489	HB 0328
2-7-503	amended	Ch. 489	HB 0328
2-7-504	amended	Ch. 489	HB 0328
2-7-505	amended	Ch. 489	HB 0328
2-7-506	amended	Ch. 489	HB 0328
2-7-507	amended	Ch. 489	HB 0328
2-7-508	amended	Ch. 489	HB 0328
2-7-509	enacted	Ch. 678	SB 0389
2-7-511	amended	Ch. 489	HB 0328
2-7-512	amended	Ch. 489	HB 0328
2-7-513	amended	Ch. 489	HB 0328
2-7-514	amended	Ch. 489	HB 0328
2-7-515	amended	Ch. 128	SB 0098
2-7-515	amended	Ch. 489	HB 0328
2-7-516	amended	Ch. 489	HB 0328
2-7-517	amended	Ch. 489	HB 0328
2-7-518	amended	Ch. 489	HB 0328
2-7-521	amended	Ch. 489	HB 0328

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2-7-522	enacted	Ch. 489	HB 0328
2-8-112	amended	Ch. 112	HB 0231
2-8-203	amended	Ch. 112	HB 0231
2-8-205	amended	Ch. 195	SB 0350
2-8-206	amended	Ch. 195	SB 0350
2-8-207	amended	Ch. 112	HB 0231
2-8-207	amended	Ch. 195	SB 0350
2-8-208	amended	Ch. 112	HB 0231
2-8-209	repealed	Ch. 195	SB 0350
2-8-301	enacted	Ch. 762	HB 0857
2-8-302	enacted	Ch. 762	HB 0857
2-8-303	enacted	Ch. 762	HB 0857
2-8-304	enacted	Ch. 762	HB 0857
2-9-111	amended	Ch. 818	HB 0691
2-9-111	amended	Ch. 821	SB 0154
2-9-212	amended	Ch. 568	HB 0715
2-9-301	amended	Ch. 494	HB 0419
2-15-104	amended	Ch. 262	HB 0848
2-15-104	amended	Ch. 512	SB 0164
2-15-104	amended	Ch. 512	SB 0164
2-15-108	enacted	Ch. 208	HB 0424
2-15-122	amended	Ch. 119	HB 0695
2-15-211	amended	Ch. 262	HB 0848
2-15-212	amended	Ch. 784	HB 0360
2-15-216	repealed	Ch. 25	HB 0243
2-15-403	enacted	Ch. 289	SB 0423
2-15-501	amended	Ch. 691	HB 0567
2-15-1013	amended	Ch. 378	HB 0897
2-15-1016	amended	Ch. 426	HB 0875
2-15-1020	enacted	Ch. 781	HB 0268
2-15-1519	amended	Ch. 706	HB 0896
2-15-1522	amended	Ch. 124	SB 0088
2-15-1523	enacted	Ch. 769	SB 0094
2-15-1705	amended	Ch. 239	HB 0356
2-15-1812	amended and renumbered 2-15-2506	Ch. 512	SB 0164
2-15-1816	amended	Ch. 301	HB 0819
2-15-1818	amended	Ch. 594	SB 0242
2-15-1840	enacted	Ch. 524	SB 0381
2-15-1842	amended	Ch. 331	SB 0307
2-15-1851	amended	Ch. 671	SB 0174
2-15-1860	enacted	Ch. 532	HB 0620
2-15-1868	enacted	Ch. 409	SB 0008
2-15-2005	amended	Ch. 706	HB 0896
2-15-2021	amended	Ch. 112	HB 0231
2-15-2021	amended	Ch. 647	SB 0427
2-15-2108	amended	Ch. 706	HB 0896
2-15-2109	amended	Ch. 634	HB 0876
2-15-2204	amended	Ch. 262	HB 0848
2-15-2204	amended	Ch. 443	SB 0277
2-15-2210	enacted	Ch. 569	HB 0728
2-15-2301	amended	Ch. 262	HB 0848
2-15-2402	amended	Ch. 514	SB 0284
2-15-2501	amended	Ch. 512	SB 0164
2-15-2502	amended	Ch. 512	SB 0164
2-15-2505	enacted	Ch. 512	SB 0164

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2-15-2506	formerly 2-15-1812	Ch. 512	SB 0164
2-15-3002	amended	Ch. 507	HB 0888
2-15-3011	repealed	Ch. 168	HB 0090
2-15-3308	enacted	Ch. 209	HB 0537
2-15-3402	amended	Ch. 28	HB 0089
2-15-3404	amended	Ch. 28	HB 0089
2-16-404	amended	Ch. 656	SB 0228
2-16-405	amended	Ch. 720	HB 0509
2-17-105	amended	Ch. 512	SB 0164
2-17-111	amended	Ch. 625	HB 0298
2-17-112	amended	Ch. 706	HB 0896
2-17-402	amended	Ch. 512	SB 0164
2-17-402	amended	Ch. 535	HB 0678
2-17-411	amended	Ch. 512	SB 0164
2-17-411	amended	Ch. 535	HB 0678
2-17-412	amended	Ch. 512	SB 0164
2-17-412	amended	Ch. 535	HB 0678
2-17-413	amended	Ch. 512	SB 0164
2-17-413	amended	Ch. 535	HB 0678
2-17-414	enacted	Ch. 462	HB 0144
2-17-421	amended	Ch. 535	HB 0678
2-17-422	amended	Ch. 512	SB 0164
2-17-422	amended	Ch. 535	HB 0678
2-17-423	amended	Ch. 512	SB 0164
2-17-423	amended	Ch. 535	HB 0678
2-17-431	amended	Ch. 512	SB 0164
2-17-431	amended	Ch. 535	HB 0678
2-17-432	amended	Ch. 535	HB 0678
2-18-101	amended	Ch. 720	HB 0509
2-18-103	amended	Ch. 262	HB 0848
2-18-103	amended	Ch. 447	SB 0330
2-18-103	amended	Ch. 507	HB 0888
2-18-110	enacted	Ch. 720	HB 0509
2-18-111	enacted	Ch. 506	HB 0882
2-18-209	amended	Ch. 112	HB 0231
2-18-301	amended	Ch. 720	HB 0509
2-18-303	amended	Ch. 262	HB 0848
2-18-303	amended	Ch. 720	HB 0509
2-18-304	amended	Ch. 720	HB 0509
2-18-305	amended	Ch. 720	HB 0509
2-18-312	amended	Ch. 720	HB 0509
2-18-313	amended	Ch. 720	HB 0509
2-18-314	amended	Ch. 720	HB 0509
2-18-315	amended	Ch. 720	HB 0509
2-18-501	amended	Ch. 561	HB 0520
2-18-601	amended	Ch. 260	HB 0794
2-18-601	amended	Ch. 756	HB 0758
2-18-606	enacted	Ch. 756	HB 0758
2-18-618	amended	Ch. 25	HB 0243
2-18-618	amended	Ch. 758	HB 0804
2-18-620	amended	Ch. 692	HB 0650
2-18-622	enacted	Ch. 758	HB 0804
2-18-702	amended	Ch. 139	SB 0180
2-18-703	amended	Ch. 171	HB 0123
2-18-703	amended	Ch. 720	HB 0509

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2-18-703	amended	Ch. 758	HB 0804
2-18-704	amended	Ch. 738	SB 0301
2-18-811	amended	Ch. 112	HB 0231
2-18-1001	amended	Ch. 14	HB 0085
2-18-1001	amended	Ch. 512	SB 0164
2-18-1002	amended	Ch. 512	SB 0164
2-18-1103	amended	Ch. 112	HB 0231
3-1-702	amended	Ch. 112	HB 0231
3-1-702	amended	Ch. 704	HB 0864
3-1-1001	amended	Ch. 810	SB 0441
3-1-1002	amended	Ch. 810	SB 0441
3-1-1007	amended	Ch. 810	SB 0441
3-1-1010	amended	Ch. 810	SB 0441
3-1-1106	amended	Ch. 386	HB 0173
3-1-1109	amended	Ch. 386	HB 0173
3-1-1122	amended	Ch. 386	HB 0173
3-1-1126	amended	Ch. 112	HB 0231
3-1-1502	amended	Ch. 317	HB 0421
3-1-1503	amended	Ch. 317	HB 0421
3-5-101	amended	Ch. 642	HB 0934
3-5-211	amended	Ch. 656	SB 0228
3-5-516	enacted	Ch. 295	HB 0290
3-5-604	amended	Ch. 704	HB 0864
3-5-901	amended	Ch. 704	HB 0864
3-5-901	amended	Ch. 781	HB 0268
3-5-902	amended	Ch. 489	HB 0328
3-5-902	amended	Ch. 704	HB 0864
3-5-903	amended	Ch. 704	HB 0864
3-6-101	amended	Ch. 99	HB 0069
3-6-102	amended	Ch. 99	HB 0069
3-6-103	amended	Ch. 330	SB 0293
3-6-110	enacted	Ch. 99	HB 0069
3-6-201	amended	Ch. 99	HB 0069
3-6-202	amended	Ch. 317	HB 0421
3-6-203	amended	Ch. 99	HB 0069
3-6-301	amended	Ch. 99	HB 0069
3-7-211	amended	Ch. 16	SB 0033
3-10-202	amended	Ch. 317	HB 0421
3-10-231	amended	Ch. 317	HB 0421
3-10-301	amended	Ch. 307	SB 0214
3-10-305	repealed	Ch. 16	SB 0033
3-10-306	repealed	Ch. 16	SB 0033
3-10-601	amended	Ch. 296	HB 0311
3-10-601	amended	Ch. 667	HB 0155
3-10-702	amended	Ch. 16	SB 0033
3-10-1004	amended	Ch. 307	SB 0214
3-11-103	amended	Ch. 307	SB 0214
3-11-302	amended	Ch. 16	SB 0033
3-15-107	amended	Ch. 16	SB 0033
3-15-203	amended	Ch. 660	SB 0331
3-15-402	amended	Ch. 159	SB 0444
3-15-701	amended	Ch. 351	HB 0697
3-15-702	amended	Ch. 351	HB 0697
3-15-705	amended	Ch. 16	SB 0033
5-2-105	amended	Ch. 685	HB 0244

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5-2-301	amended	Ch. 720	HB 0509
5-4-207	amended	Ch. 195	SB 0350
5-4-306	amended	Ch. 685	HB 0244
5-5-216	amended	Ch. 112	HB 0231
5-7-101	amended	Ch. 498	HB 0472
5-7-102	amended	Ch. 498	HB 0472
5-7-103	amended	Ch. 91	HB 0450
5-7-103	amended	Ch. 498	HB 0472
5-7-108	enacted	Ch. 91	HB 0450
5-7-201	amended	Ch. 91	HB 0450
5-7-208	amended	Ch. 91	HB 0450
5-7-208	amended	Ch. 498	HB 0472
5-7-212	amended	Ch. 91	HB 0450
5-7-212	amended	Ch. 498	HB 0472
5-7-305	amended	Ch. 91	HB 0450
5-11-210	enacted	Ch. 112	HB 0231
5-11-301	amended	Ch. 630	HB 0508
5-11-701	enacted	Ch. 630	HB 0508
5-11-702	enacted	Ch. 630	HB 0508
5-11-703	enacted	Ch. 630	HB 0508
5-11-704	enacted	Ch. 630	HB 0508
5-12-303	amended	Ch. 787	HB 0454
5-13-303	amended	Ch. 48	HB 0318
5-13-304	amended	Ch. 112	HB 0231
5-17-103	amended	Ch. 112	HB 0231
5-17-201	enacted	Ch. 689	HB 0500
5-17-202	enacted	Ch. 689	HB 0500
5-17-203	enacted	Ch. 689	HB 0500
5-17-204	enacted	Ch. 689	HB 0500
5-17-205	enacted	Ch. 689	HB 0500
5-17-206	enacted	Ch. 689	HB 0500
5-17-207	enacted	Ch. 689	HB 0500
5-18-107	amended	Ch. 603	HB 0558
5-18-203	amended	Ch. 112	HB 0231
5-19-108	amended	Ch. 112	HB 0231
7-1-2111	amended	Ch. 161	HB 0262
7-1-4130	amended	Ch. 359	SB 0156
7-2-2213	amended	Ch. 16	SB 0033
7-2-2214	repealed	Ch. 16	SB 0033
7-2-2225	amended	Ch. 16	SB 0033
7-3-184	amended	Ch. 395	SB 0107
7-3-4334	repealed	Ch. 359	SB 0156
7-4-501	enacted	Ch. 87	SB 0166
7-4-502	enacted	Ch. 87	SB 0166
7-4-503	enacted	Ch. 87	SB 0166
7-4-504	enacted	Ch. 87	SB 0166
7-4-505	enacted	Ch. 87	SB 0166
7-4-506	enacted	Ch. 87	SB 0166
7-4-2107	amended	Ch. 527	HB 0497
7-4-2208	amended	Ch. 232	HB 0295
7-4-2502	amended	Ch. 667	HB 0155
7-4-2503	amended	Ch. 527	HB 0497
7-4-2503	amended	Ch. 667	HB 0155
7-4-2504	amended	Ch. 527	HB 0497
7-4-2611	amended	Ch. 591	SB 0157

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7-4-2631	amended	Ch. 451	HB 0176
7-4-2632	amended	Ch. 355	HB 0813
7-4-2635	enacted	Ch. 355	HB 0813
7-4-2711	amended	Ch. 7	SB 0035
7-4-2711	amended	Ch. 88	SB 0201
7-4-2911	amended	Ch. 660	SB 0331
7-4-2912	repealed	Ch. 660	SB 0331
7-4-2913	amended	Ch. 262	HB 0848
7-4-2915	amended	Ch. 660	SB 0331
7-4-2916	repealed	Ch. 660	SB 0331
7-5-132	amended	Ch. 359	SB 0156
7-5-134	amended	Ch. 359	SB 0156
7-5-2109	amended	Ch. 415	HB 0487
7-5-2110	amended	Ch. 415	HB 0487
7-5-2301	amended	Ch. 98	HB 0055
7-5-2302	amended	Ch. 98	HB 0055
7-5-2303	amended	Ch. 98	HB 0055
7-5-2306	amended	Ch. 233	HB 0296
7-5-4304	amended	Ch. 770	SB 0189
7-5-4321	amended	Ch. 770	SB 0189
7-6-501	enacted	Ch. 745	HB 0074
7-6-502	enacted	Ch. 745	HB 0074
7-6-2207	enacted	Ch. 93	SB 0025
7-6-2323	amended	Ch. 194	SB 0334
7-6-2348	enacted	Ch. 347	HB 0602
7-6-2352	amended	Ch. 489	HB 0328
7-6-2352	amended	Ch. 704	HB 0864
7-6-2427	amended	Ch. 262	HB 0848
7-6-2427	amended	Ch. 749	HB 0312
7-6-2540	enacted	Ch. 680	SB 0412
7-6-2701	amended	Ch. 349	HB 0625
7-6-4113	amended	Ch. 489	HB 0328
7-6-4202	amended	Ch. 16	SB 0033
7-6-4259	enacted	Ch. 347	HB 0602
7-6-4461	amended	Ch. 549	SB 0128
7-6-4463	amended	Ch. 549	SB 0128
7-6-4464	amended	Ch. 549	SB 0128
7-6-4465	amended	Ch. 549	SB 0128
7-6-4468	enacted	Ch. 549	SB 0128
7-6-4469	enacted	Ch. 549	SB 0128
7-7-2402	amended	Ch. 16	SB 0033
7-7-2501	amended	Ch. 770	SB 0189
7-7-4402	amended	Ch. 770	SB 0189
7-8-2301	amended	Ch. 185	HB 0481
7-8-2301	amended	Ch. 496	HB 0446
7-8-2304	amended	Ch. 674	SB 0262
7-8-2306	amended	Ch. 675	SB 0263
7-11-106	repealed	Ch. 83	SB 0100
7-11-107	amended	Ch. 83	SB 0100
7-11-1102	amended	Ch. 193	SB 0305
7-12-1111	amended	Ch. 79	HB 0367
7-12-1112	amended	Ch. 79	HB 0367
7-12-1114	amended	Ch. 79	HB 0367
7-12-1115	amended	Ch. 79	HB 0367
7-12-1133	amended	Ch. 79	HB 0367

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7-12-4102	amended	Ch. 54	HB 0119
7-13-201	amended	Ch. 770	SB 0189
7-13-202	amended	Ch. 770	SB 0189
7-13-203	amended	Ch. 770	SB 0189
7-13-204	amended	Ch. 770	SB 0189
7-13-205	amended	Ch. 770	SB 0189
7-13-209	amended	Ch. 770	SB 0189
7-13-210	amended	Ch. 770	SB 0189
7-13-212	amended	Ch. 770	SB 0189
7-13-213	amended	Ch. 770	SB 0189
7-13-214	amended	Ch. 770	SB 0189
7-13-215	amended	Ch. 770	SB 0189
7-13-218	amended	Ch. 770	SB 0189
7-13-231	amended	Ch. 643	SB 0209
7-13-231	amended	Ch. 770	SB 0189
7-13-232	amended	Ch. 770	SB 0189
7-13-233	amended	Ch. 770	SB 0189
7-13-234	amended	Ch. 770	SB 0189
7-13-235	amended	Ch. 770	SB 0189
7-13-236	enacted	Ch. 770	SB 0189
7-13-237	enacted	Ch. 770	SB 0189
7-13-241	repealed	Ch. 770	SB 0189
7-13-242	repealed	Ch. 770	SB 0189
7-13-243	repealed	Ch. 770	SB 0189
7-13-301	enacted	Ch. 770	SB 0189
7-13-302	enacted	Ch. 770	SB 0189
7-13-303	enacted	Ch. 770	SB 0189
7-13-304	enacted	Ch. 770	SB 0189
7-13-305	enacted	Ch. 770	SB 0189
7-13-306	enacted	Ch. 770	SB 0189
7-13-307	enacted	Ch. 770	SB 0189
7-13-308	enacted	Ch. 770	SB 0189
7-13-309	enacted	Ch. 770	SB 0189
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7-13-311	enacted	Ch. 770	SB 0189
7-13-2214	amended	Ch. 591	SB 0157
7-13-2218	amended	Ch. 645	SB 0407
7-13-2225	amended	Ch. 591	SB 0157
7-13-2237	repealed	Ch. 591	SB 0157
7-13-2238	repealed	Ch. 591	SB 0157
7-13-2239	repealed	Ch. 591	SB 0157
7-13-2240	repealed	Ch. 591	SB 0157
7-13-2241	amended	Ch. 591	SB 0157
7-13-2242	repealed	Ch. 591	SB 0157
7-13-2244	repealed	Ch. 591	SB 0157
7-13-2245	repealed	Ch. 591	SB 0157
7-13-2247	amended	Ch. 591	SB 0157
7-13-2401	repealed	Ch. 770	SB 0189
7-13-2402	repealed	Ch. 770	SB 0189
7-13-2403	repealed	Ch. 770	SB 0189
7-13-2404	repealed	Ch. 770	SB 0189
7-13-2405	repealed	Ch. 770	SB 0189
7-13-2406	repealed	Ch. 770	SB 0189
7-13-2527	amended	Ch. 773	SB 0436
7-13-2529	amended	Ch. 538	HB 0856

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7-13-3001	enacted	Ch. 282	SB 0261
7-13-3002	enacted	Ch. 282	SB 0261
7-13-3003	enacted	Ch. 282	SB 0261
7-13-3004	enacted	Ch. 282	SB 0261
7-13-3005	enacted	Ch. 282	SB 0261
7-13-3006	enacted	Ch. 282	SB 0261
7-13-3007	enacted	Ch. 282	SB 0261
7-13-3008	enacted	Ch. 282	SB 0261
7-13-3011	enacted	Ch. 282	SB 0261
7-13-3012	enacted	Ch. 282	SB 0261
7-13-3013	enacted	Ch. 282	SB 0261
7-13-3016	enacted	Ch. 282	SB 0261
7-13-3017	enacted	Ch. 282	SB 0261
7-13-3018	enacted	Ch. 282	SB 0261
7-13-3019	enacted	Ch. 282	SB 0261
7-13-3020	enacted	Ch. 282	SB 0261
7-13-3021	enacted	Ch. 282	SB 0261
7-13-3022	enacted	Ch. 282	SB 0261
7-13-3023	enacted	Ch. 282	SB 0261
7-13-3024	enacted	Ch. 282	SB 0261
7-13-3026	enacted	Ch. 282	SB 0261
7-13-3027	enacted	Ch. 282	SB 0261
7-13-3028	enacted	Ch. 282	SB 0261
7-13-3029	enacted	Ch. 282	SB 0261
7-13-3031	enacted	Ch. 282	SB 0261
7-13-3032	enacted	Ch. 282	SB 0261
7-13-3034	enacted	Ch. 282	SB 0261
7-13-3035	enacted	Ch. 282	SB 0261
7-13-3036	enacted	Ch. 282	SB 0261
7-13-3037	enacted	Ch. 282	SB 0261
7-13-3038	enacted	Ch. 282	SB 0261
7-13-3039	enacted	Ch. 282	SB 0261
7-13-3041	enacted	Ch. 282	SB 0261
7-13-3043	enacted	Ch. 282	SB 0261
7-13-4501	enacted	Ch. 357	SB 0136
7-13-4502	enacted	Ch. 357	SB 0136
7-13-4504	enacted	Ch. 357	SB 0136
7-13-4505	enacted	Ch. 357	SB 0136
7-13-4506	enacted	Ch. 357	SB 0136
7-13-4507	enacted	Ch. 357	SB 0136
7-13-4509	enacted	Ch. 357	SB 0136
7-13-4510	enacted	Ch. 357	SB 0136
7-13-4511	enacted	Ch. 357	SB 0136
7-13-4512	enacted	Ch. 357	SB 0136
7-13-4513	enacted	Ch. 357	SB 0136
7-13-4516	enacted	Ch. 357	SB 0136
7-13-4517	enacted	Ch. 357	SB 0136
7-13-4518	enacted	Ch. 357	SB 0136
7-13-4519	enacted	Ch. 357	SB 0136
7-13-4521	enacted	Ch. 357	SB 0136
7-13-4522	enacted	Ch. 357	SB 0136
7-13-4523	enacted	Ch. 357	SB 0136
7-13-4524	enacted	Ch. 357	SB 0136
7-13-4525	enacted	Ch. 357	SB 0136
7-13-4527	enacted	Ch. 357	SB 0136

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7-13-4528	enacted	Ch. 357	SB 0136
7-13-4529	enacted	Ch. 357	SB 0136
7-14-102	amended	Ch. 512	SB 0164
7-14-120	amended	Ch. 512	SB 0164
7-14-303	amended	Ch. 512	SB 0164
7-14-1101	amended	Ch. 640	HB 0853
7-14-1103	amended	Ch. 640	HB 0853
7-14-1104	amended	Ch. 640	HB 0853
7-14-1106	enacted	Ch. 640	HB 0853
7-14-1111	amended	Ch. 640	HB 0853
7-14-1112	amended	Ch. 640	HB 0853
7-14-1125	amended	Ch. 640	HB 0853
7-14-1126	amended	Ch. 640	HB 0853
7-14-1131	amended	Ch. 640	HB 0853
7-14-1133	amended	Ch. 640	HB 0853
7-14-2105	amended	Ch. 512	SB 0164
7-14-2109	amended	Ch. 512	SB 0164
7-14-2132	amended	Ch. 512	SB 0164
7-14-2201	amended	Ch. 512	SB 0164
7-14-2406	amended	Ch. 512	SB 0164
7-14-4108	amended	Ch. 512	SB 0164
7-15-4237	amended	Ch. 441	SB 0236
7-15-4258	amended	Ch. 441	SB 0236
7-15-4286	amended	Ch. 441	SB 0236
7-15-4288	amended	Ch. 737	SB 0272
7-15-4292	amended	Ch. 441	SB 0236
7-16-2203	amended	Ch. 681	SB 0440
7-16-2302	amended	Ch. 681	SB 0440
7-16-2303	amended	Ch. 681	SB 0440
7-16-2304	repealed	Ch. 681	SB 0440
7-16-2322	amended	Ch. 800	SB 0051
7-21-3401	amended	Ch. 681	SB 0440
7-21-3402	repealed	Ch. 681	SB 0440
7-22-2101	amended	Ch. 303	HB 0840
7-22-2103	amended	Ch. 681	SB 0440
7-22-2104	repealed	Ch. 681	SB 0440
7-22-2121	amended	Ch. 530	HB 0549
7-22-2130	enacted	Ch. 530	HB 0549
7-22-2142	amended	Ch. 530	HB 0549
7-22-2143	amended	Ch. 530	HB 0549
7-22-2144	amended	Ch. 512	SB 0164
7-22-2145	amended	Ch. 530	HB 0549
7-22-2148	amended	Ch. 530	HB 0549
7-22-2151	amended	Ch. 262	HB 0848
7-22-2151	amended	Ch. 512	SB 0164
7-22-2153	amended	Ch. 512	SB 0164
7-22-2215	amended	Ch. 681	SB 0440
7-22-2411	amended	Ch. 681	SB 0440
7-22-2412	repealed	Ch. 681	SB 0440
7-22-2432	amended	Ch. 782	HB 0285
7-31-201	enacted	Ch. 58	HB 0138
7-31-202	enacted	Ch. 58	HB 0138
7-31-203	enacted	Ch. 58	HB 0138
7-32-201	amended	Ch. 800	SB 0051
7-32-233	amended	Ch. 800	SB 0051

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7-32-235	amended	Ch. 353	HB 0791
7-32-303	amended	Ch. 662	SB 0362
7-32-2222	amended	Ch. 768	SB 0058
7-32-2242	amended	Ch. 768	SB 0058
7-32-2244	amended	Ch. 547	SB 0038
7-32-4120	amended	Ch. 60	HB 0163
7-32-4303	amended	Ch. 800	SB 0051
7-33-2105	amended	Ch. 144	HB 0182
7-33-2106	amended	Ch. 146	HB 0227
7-33-2106	amended	Ch. 591	SB 0157
7-33-2109	amended	Ch. 459	SB 0010
7-33-2111	enacted	Ch. 224	HB 0230
7-33-2129	enacted	Ch. 459	SB 0010
7-33-2209	amended	Ch. 733	HB 0354
7-33-2211	enacted	Ch. 733	HB 0354
7-33-2401	amended	Ch. 345	HB 0536
7-33-2402	amended	Ch. 345	HB 0536
7-33-2404	amended	Ch. 345	HB 0536
7-33-4133	enacted	Ch. 396	SB 0276
7-34-102	amended	Ch. 668	HB 0738
7-34-2101	amended	Ch. 453	HB 0325
7-34-2102	amended	Ch. 453	HB 0325
7-34-2115	amended	Ch. 7	SB 0035
7-34-2122	amended	Ch. 349	HB 0625
7-34-2122	amended	Ch. 453	HB 0325
7-34-2131	amended	Ch. 349	HB 0625
10-1-110	repealed	Ch. 724	SB 0191
10-1-604	amended	Ch. 80	HB 0480
10-2-101	amended	Ch. 70	HB 0326
10-2-401	amended	Ch. 262	HB 0848
10-2-402	amended	Ch. 262	HB 0848
10-2-403	amended	Ch. 262	HB 0848
10-2-404	amended	Ch. 262	HB 0848
10-2-413	amended	Ch. 262	HB 0848
10-2-415	amended	Ch. 262	HB 0848
10-2-416	amended	Ch. 262	HB 0848
10-2-501	amended	Ch. 70	HB 0326
10-2-503	amended	Ch. 70	HB 0326
10-2-504	amended	Ch. 70	HB 0326
10-3-107	amended	Ch. 512	SB 0164
10-3-312	amended	Ch. 256	HB 0630
10-4-102	amended	Ch. 112	HB 0231
10-4-206	enacted	Ch. 676	SB 0280
10-4-207	enacted	Ch. 676	SB 0280
10-4-211	amended	Ch. 676	SB 0280
10-4-302	amended	Ch. 153	SB 0160
13-2-212	amended	Ch. 302	HB 0829
13-2-301	amended	Ch. 302	HB 0829
13-4-106	amended	Ch. 591	SB 0157
13-10-503	amended	Ch. 591	SB 0157
13-10-507	enacted	Ch. 591	SB 0157
13-10-601	amended	Ch. 196	SB 0358
13-13-114	amended	Ch. 591	SB 0157
13-13-115	amended	Ch. 591	SB 0157
13-13-212	amended	Ch. 591	SB 0157

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13-13-271	amended	Ch. 302	HB 0829
13-13-276	enacted	Ch. 111	HB 0225
13-13-277	enacted	Ch. 111	HB 0225
13-13-278	enacted	Ch. 111	HB 0225
13-13-279	enacted	Ch. 111	HB 0225
13-14-115	amended	Ch. 591	SB 0157
13-15-111	amended	Ch. 591	SB 0157
13-15-403	amended	Ch. 591	SB 0157
13-15-405	amended	Ch. 317	HB 0421
13-16-420	enacted	Ch. 591	SB 0157
13-19-106	amended	Ch. 591	SB 0157
13-19-206	amended	Ch. 591	SB 0157
13-19-306	amended	Ch. 591	SB 0157
13-19-308	amended	Ch. 591	SB 0157
13-19-311	amended	Ch. 591	SB 0157
13-19-312	amended	Ch. 591	SB 0157
13-22-101	enacted	Ch. 348	HB 0606
13-22-102	enacted	Ch. 348	HB 0606
13-22-103	enacted	Ch. 348	HB 0606
13-22-104	enacted	Ch. 348	HB 0606
13-22-105	enacted	Ch. 348	HB 0606
13-22-106	enacted	Ch. 348	HB 0606
13-22-107	enacted	Ch. 348	HB 0606
13-22-108	enacted	Ch. 348	HB 0606
13-27-104	amended	Ch. 359	SB 0156
13-27-202	amended	Ch. 359	SB 0156
13-27-208	enacted	Ch. 158	SB 0399
13-27-301	amended	Ch. 359	SB 0156
13-27-312	amended	Ch. 359	SB 0156
13-27-403	amended	Ch. 359	SB 0156
13-35-225	amended	Ch. 23	HB 0079
13-35-225	amended	Ch. 482	HB 0195
13-37-106	amended	Ch. 720	HB 0509
13-37-201	amended	Ch. 591	SB 0157
13-37-206	amended	Ch. 361	SB 0173
13-37-225	amended	Ch. 591	SB 0157
13-37-226	amended	Ch. 75	HB 0456
13-37-228	amended	Ch. 75	HB 0456
13-37-229	amended	Ch. 75	HB 0456
13-37-304	amended	Ch. 361	SB 0173
13-37-305	amended	Ch. 361	SB 0173
15-1-101	amended	Ch. 411	HB 0741
15-1-101	amended	Ch. 680	SB 0412
15-1-101	amended	Ch. 705	HB 0869
15-1-101	amended	Ch. 783	HB 0340
15-1-111	amended	Ch. 773	SB 0436
15-1-205	amended	Ch. 112	HB 0231
15-1-207	enacted	Ch. 84	SB 0110
15-1-211	enacted	Ch. 811	SB 0445
15-1-221	enacted	Ch. 619	SB 0279
15-1-222	enacted	Ch. 619	SB 0279
15-1-223	enacted	Ch. 619	SB 0279
15-1-403	amended	Ch. 811	SB 0445
15-1-406	amended	Ch. 811	SB 0445
15-1-501	amended	Ch. 626	HB 0321

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15-1-501	amended	Ch. 767	SB 0017
15-1-504	amended	Ch. 72	HB 0434
15-1-701	amended	Ch. 512	SB 0164
15-1-705	amended	Ch. 811	SB 0445
15-2-102	amended	Ch. 720	HB 0509
15-2-301	amended	Ch. 247	HB 0422
15-2-304	amended	Ch. 620	SB 0299
15-2-305	amended	Ch. 620	SB 0299
15-6-131	amended	Ch. 695	HB 0976
15-6-131	amended	Ch. 700	HB 0699
15-6-133	amended	Ch. 773	SB 0436
15-6-134	amended	Ch. 612	HB 0904
15-6-134	amended	Ch. 773	SB 0436
15-6-135	amended	Ch. 694	HB 0970
15-6-136	amended	Ch. 773	SB 0436
15-6-141	amended	Ch. 773	SB 0436
15-6-142	amended	Ch. 612	HB 0904
15-6-142	repealed	Ch. 773	SB 0436
15-6-143	amended	Ch. 773	SB 0436
15-6-143	amended	Ch. 783	HB 0340
15-6-144	amended	Ch. 773	SB 0436
15-6-145	amended	Ch. 773	SB 0436
15-6-147	repealed	Ch. 773	SB 0436
15-6-148	repealed	Ch. 773	SB 0436
15-6-149	repealed	Ch. 773	SB 0436
15-6-150	repealed	Ch. 773	SB 0436
15-6-153	repealed	Ch. 773	SB 0436
15-6-154	repealed	Ch. 773	SB 0436
15-6-155	amended	Ch. 773	SB 0436
15-6-155	repealed effective 01/01/93	Ch. 773	SB 0436
15-6-201	amended	Ch. 71	HB 0039
15-6-201	amended	Ch. 123	SB 0085
15-6-201	amended	Ch. 271	SB 0152
15-6-201	amended	Ch. 467	HB 0338
15-6-201	amended	Ch. 783	HB 0340
15-7-102	amended	Ch. 680	SB 0412
15-7-111	amended	Ch. 680	SB 0412
15-7-132	repealed effective 07/01/93	Ch. 680	SB 0412
15-7-133	repealed effective 07/01/93	Ch. 680	SB 0412
15-7-201	amended	Ch. 172	HB 0137
15-7-201	amended	Ch. 680	SB 0412
15-7-202	amended	Ch. 590	SB 0069
15-7-202	amended	Ch. 705	HB 0869
15-8-111	amended	Ch. 695	HB 0976
15-8-111	amended	Ch. 773	SB 0436
15-8-111	amended	Ch. 783	HB 0340
15-8-201	amended	Ch. 570	HB 0757
15-8-205	amended	Ch. 773	SB 0436
15-8-601	amended	Ch. 37	SB 0081
15-8-601	amended	Ch. 811	SB 0445
15-10-103	repealed	Ch. 767	SB 0017
15-10-203	amended	Ch. 817	HB 0518
15-10-402	amended	Ch. 745	HB 0074
15-10-402	amended	Ch. 773	SB 0436
15-10-406	enacted	Ch. 474	HB 0947

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15-10-412	amended	Ch. 668	HB 0738
15-10-412	amended	Ch. 680	SB 0412
15-10-412	amended	Ch. 745	HB 0074
15-10-412	amended	Ch. 773	SB 0436
15-15-101	amended	Ch. 242	HB 0392
15-16-118	enacted	Ch. 474	HB 0947
15-16-201	amended	Ch. 227	HB 0237
15-16-203	enacted	Ch. 570	HB 0757
15-16-402	amended	Ch. 611	HB 0883
15-16-601	amended	Ch. 560	HB 0513
15-16-611	amended	Ch. 717	SB 0390
15-16-611	amended	Ch. 773	SB 0436
15-16-613	amended	Ch. 778	HB 0151
15-18-212	amended	Ch. 181	HB 0313
15-18-411	amended	Ch. 104	HB 0135
15-18-412	amended	Ch. 104	HB 0135
15-23-103	amended	Ch. 695	HB 0976
15-23-104	amended	Ch. 811	SB 0445
15-23-106	amended	Ch. 695	HB 0976
15-23-115	amended	Ch. 695	HB 0976
15-23-502	amended	Ch. 695	HB 0976
15-23-502	amended	Ch. 700	HB 0699
15-23-503	amended	Ch. 695	HB 0976
15-23-515	amended	Ch. 695	HB 0976
15-23-516	enacted	Ch. 695	HB 0976
15-23-521	amended	Ch. 695	HB 0976
15-23-601	amended	Ch. 267	SB 0086
15-23-602	amended	Ch. 267	SB 0086
15-23-603	amended	Ch. 267	SB 0086
15-23-603	amended	Ch. 597	SB 0468
15-23-607	amended	Ch. 267	SB 0086
15-23-607	amended	Ch. 711	SB 0082
15-23-607	amended	Ch. 790	HB 0580
15-23-613	amended	Ch. 267	SB 0086
15-23-621	amended	Ch. 267	SB 0086
15-23-703	amended	Ch. 610	HB 0793
15-23-703	amended	Ch. 641	HB 0868
15-23-703	amended	Ch. 711	SB 0082
15-23-703	amended	Ch. 790	HB 0580
15-23-705	enacted	Ch. 641	HB 0868
15-23-706	enacted	Ch. 641	HB 0868
15-23-707	enacted	Ch. 641	HB 0868
15-24-202	amended	Ch. 557	HB 0441
15-24-206	amended	Ch. 557	HB 0441
15-24-209	enacted	Ch. 557	HB 0441
15-24-210	enacted	Ch. 557	HB 0441
15-24-920	enacted	Ch. 627	HB 0334
15-24-921	amended	Ch. 627	HB 0334
15-24-922	amended	Ch. 627	HB 0334
15-24-926	amended	Ch. 627	HB 0334
15-24-1203	amended	Ch. 621	SB 0438
15-24-1401	amended	Ch. 694	HB 0970
15-24-1402	amended	Ch. 694	HB 0970
15-24-1402	amended	Ch. 767	SB 0017
15-24-1701	amended	Ch. 16	SB 0033

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15-24-1701	amended	Ch. 77	HB 0058
15-24-1802	amended	Ch. 669	HB 0753
15-24-1902	amended	Ch. 702	HB 0787
15-24-2001	enacted	Ch. 693	HB 0914
15-24-2002	enacted	Ch. 693	HB 0914
15-24-2301	enacted	Ch. 722	HB 0701
15-24-2302	enacted	Ch. 722	HB 0701
15-24-2401	enacted	Ch. 786	HB 0452
15-24-2402	enacted	Ch. 786	HB 0452
15-24-2403	enacted	Ch. 786	HB 0452
15-24-2404	enacted	Ch. 786	HB 0452
15-24-2405	enacted	Ch. 786	HB 0452
15-25-114	amended	Ch. 811	SB 0445
15-25-122	amended	Ch. 799	SB 0037
15-30-101	amended	Ch. 823	SB 0226
15-30-111	amended	Ch. 807	SB 0333
15-30-111	amended	Ch. 823	SB 0226
15-30-117	amended	Ch. 20	SB 0061
15-30-117	amended	Ch. 807	SB 0333
15-30-121	amended	Ch. 613	HB 0949
15-30-121	amended	Ch. 670	HB 0790
15-30-121	amended	Ch. 808	SB 0370
15-30-126	amended	Ch. 807	SB 0333
15-30-128	amended	Ch. 670	HB 0790
15-30-129	enacted	Ch. 606	HB 0693
15-30-136	amended	Ch. 807	SB 0333
15-30-136	amended	Ch. 823	SB 0226
15-30-144	amended	Ch. 796	HB 0959
15-30-148	amended	Ch. 811	SB 0445
15-30-149	amended	Ch. 811	SB 0445
15-30-158	enacted	Ch. 808	SB 0370
15-30-159	enacted	Ch. 808	SB 0370
15-30-160	enacted	Ch. 808	SB 0370
15-30-161	amended	Ch. 807	SB 0333
15-30-163	enacted	Ch. 542	HB 0894
15-30-171	amended	Ch. 612	HB 0904
15-30-188	enacted	Ch. 771	SB 0359
15-30-189	enacted	Ch. 771	SB 0359
15-30-190	enacted	Ch. 771	SB 0359
15-30-191	enacted	Ch. 771	SB 0359
15-30-203	amended	Ch. 33	SB 0070
15-30-301	amended	Ch. 89	SB 0202
15-31-103	amended	Ch. 368	HB 0552
15-31-124	amended	Ch. 694	HB 0970
15-31-131	amended	Ch. 416	HB 0543
15-31-132	enacted	Ch. 606	HB 0693
15-31-135	enacted	Ch. 542	HB 0894
15-31-136	enacted	Ch. 542	HB 0894
15-31-141	amended	Ch. 86	SB 0147
15-31-201	amended	Ch. 807	SB 0333
15-31-202	amended	Ch. 807	SB 0333
15-31-204	amended	Ch. 807	SB 0333
15-31-208	repealed effective 12/31/91	Ch. 807	SB 0333
15-31-503	amended	Ch. 811	SB 0445
15-31-532	amended	Ch. 811	SB 0445

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15-31-552	amended	Ch. 658	SB 0275
15-31-701	amended	Ch. 811	SB 0445
15-31-702	amended	Ch. 16	SB 0033
15-31-702	amended	Ch. 626	HB 0321
15-32-102	amended	Ch. 467	HB 0338
15-32-102	amended	Ch. 646	SB 0416
15-32-115	enacted	Ch. 646	SB 0416
15-32-201	amended	Ch. 467	HB 0338
15-32-601	enacted	Ch. 712	SB 0111
15-32-602	enacted	Ch. 712	SB 0111
15-32-603	enacted	Ch. 712	SB 0111
15-32-604	enacted	Ch. 712	SB 0111
15-32-610	enacted	Ch. 712	SB 0111
15-32-611	enacted	Ch. 712	SB 0111
15-35-108	amended	Ch. 16	SB 0033
15-35-108	amended	Ch. 191	SB 0122
15-35-108	amended	Ch. 615	HB 1008
15-35-112	amended	Ch. 811	SB 0445
15-36-101	amended	Ch. 267	SB 0086
15-36-101	amended	Ch. 597	SB 0468
15-36-105	amended	Ch. 597	SB 0468
15-36-105	amended	Ch. 811	SB 0445
15-36-107	amended	Ch. 597	SB 0468
15-36-108	amended	Ch. 597	SB 0468
15-36-112	amended	Ch. 610	HB 0793
15-36-113	amended	Ch. 597	SB 0468
15-36-113	amended	Ch. 811	SB 0445
15-36-114	amended	Ch. 597	SB 0468
15-36-121	amended	Ch. 597	SB 0468
15-37-110	amended	Ch. 811	SB 0445
15-37-114	amended	Ch. 811	SB 0445
15-37-117	amended	Ch. 760	HB 0832
15-37-210	amended	Ch. 811	SB 0445
15-38-101	amended	Ch. 769	SB 0094
15-38-102	amended	Ch. 769	SB 0094
15-38-103	amended	Ch. 520	SB 0093
15-38-103	amended	Ch. 695	HB 0976
15-38-104	amended	Ch. 520	SB 0093
15-38-104	amended	Ch. 695	HB 0976
15-38-106	amended	Ch. 769	SB 0094
15-38-110	amended	Ch. 811	SB 0445
15-38-113	amended	Ch. 769	SB 0094
15-38-121	amended	Ch. 92	SB 0015
15-38-125	enacted	Ch. 520	SB 0093
15-38-127	enacted	Ch. 695	HB 0976
15-44-101	enacted	Ch. 783	HB 0340
15-44-102	enacted	Ch. 783	HB 0340
15-44-103	enacted	Ch. 783	HB 0340
15-44-104	enacted	Ch. 783	HB 0340
15-44-105	enacted	Ch. 783	HB 0340
15-51-109	amended	Ch. 811	SB 0445
15-53-101	amended	Ch. 742	SB 0462
15-53-102	amended	Ch. 742	SB 0462
15-53-105	amended	Ch. 676	SB 0280
15-53-105	amended	Ch. 742	SB 0462

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15-53-105	amended	Ch. 811	SB 0445
15-53-111	amended	Ch. 676	SB 0280
15-53-111	amended	Ch. 742	SB 0462
15-54-101	repealed	Ch. 595	SB 0278
15-54-102	repealed	Ch. 595	SB 0278
15-54-103	repealed	Ch. 595	SB 0278
15-54-104	repealed	Ch. 595	SB 0278
15-54-105	repealed	Ch. 595	SB 0278
15-54-111	repealed	Ch. 595	SB 0278
15-54-112	repealed	Ch. 595	SB 0278
15-54-113	repealed	Ch. 595	SB 0278
15-55-106	amended	Ch. 811	SB 0445
15-55-107	repealed	Ch. 811	SB 0445
15-55-108	amended	Ch. 676	SB 0280
15-56-101	repealed	Ch. 595	SB 0278
15-56-102	repealed	Ch. 595	SB 0278
15-56-103	repealed	Ch. 595	SB 0278
15-56-104	repealed	Ch. 595	SB 0278
15-56-105	repealed	Ch. 595	SB 0278
15-56-106	repealed	Ch. 595	SB 0278
15-56-107	repealed	Ch. 595	SB 0278
15-56-108	repealed	Ch. 595	SB 0278
15-56-111	repealed	Ch. 595	SB 0278
15-56-112	repealed	Ch. 595	SB 0278
15-56-113	repealed	Ch. 595	SB 0278
15-57-101	repealed effective 12/31/91	Ch. 658	SB 0275
15-57-102(3)	enacted	Ch. 417	HB 0547
15-57-102	repealed effective 12/31/91	Ch. 658	SB 0275
15-57-103	repealed effective 12/31/91	Ch. 658	SB 0275
15-57-104	repealed effective 12/31/91	Ch. 658	SB 0275
15-57-105	repealed effective 12/31/91	Ch. 658	SB 0275
15-57-106	repealed effective 12/31/91	Ch. 658	SB 0275
15-57-107	repealed effective 12/31/91	Ch. 658	SB 0275
15-57-108	repealed effective 12/31/91	Ch. 658	SB 0275
15-57-109	repealed effective 12/31/91	Ch. 658	SB 0275
15-57-110	repealed effective 12/31/91	Ch. 658	SB 0275
15-58-101	repealed	Ch. 658	SB 0275
15-58-102	repealed	Ch. 658	SB 0275
15-58-103	repealed	Ch. 658	SB 0275
15-58-104	repealed	Ch. 658	SB 0275
15-58-105	repealed	Ch. 658	SB 0275
15-58-106	repealed	Ch. 658	SB 0275
15-58-107	repealed	Ch. 658	SB 0275
15-58-108	repealed	Ch. 658	SB 0275
15-58-109	repealed	Ch. 658	SB 0275
15-58-110	repealed	Ch. 658	SB 0275
15-58-110	amended	Ch. 811	SB 0445
15-58-111	repealed	Ch. 658	SB 0275
15-58-121	repealed	Ch. 658	SB 0275
15-58-122	repealed	Ch. 658	SB 0275
15-58-123	repealed	Ch. 658	SB 0275
15-58-124	repealed	Ch. 658	SB 0275
15-58-125	repealed	Ch. 658	SB 0275
15-58-126	repealed	Ch. 658	SB 0275
15-59-112	amended	Ch. 811	SB 0445

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15-59-212	amended	Ch. 811	SB 0445
15-60-101	enacted	Ch. 746	HB 0093
15-60-102	enacted	Ch. 746	HB 0093
15-60-103	enacted	Ch. 746	HB 0093
15-60-104	enacted	Ch. 746	HB 0093
15-60-201	enacted	Ch. 746	HB 0093
15-60-202	enacted	Ch. 746	HB 0093
15-60-203	enacted	Ch. 746	HB 0093
15-60-204	enacted	Ch. 746	HB 0093
15-60-205	enacted	Ch. 746	HB 0093
15-60-205	amended	Ch. 746	HB 0093
15-60-206	enacted	Ch. 746	HB 0093
15-60-207	enacted	Ch. 746	HB 0093
15-60-208	enacted	Ch. 746	HB 0093
15-60-209	enacted	Ch. 746	HB 0093
15-60-210	enacted	Ch. 746	HB 0093
15-65-112	amended	Ch. 676	SB 0280
15-65-115	amended	Ch. 676	SB 0280
15-65-115	amended	Ch. 811	SB 0445
15-65-116	enacted	Ch. 676	SB 0280
15-70-101	amended	Ch. 82	SB 0092
15-70-101	amended	Ch. 512	SB 0164
15-70-102	amended	Ch. 512	SB 0164
15-70-104	amended	Ch. 512	SB 0164
15-70-111	amended	Ch. 512	SB 0164
15-70-121	amended	Ch. 512	SB 0164
15-70-122	amended	Ch. 512	SB 0164
15-70-202	amended	Ch. 512	SB 0164
15-70-203	amended	Ch. 512	SB 0164
15-70-204	amended	Ch. 512	SB 0164
15-70-205	amended	Ch. 512	SB 0164
15-70-205	amended	Ch. 521	SB 0148
15-70-206	amended	Ch. 512	SB 0164
15-70-207	amended	Ch. 512	SB 0164
15-70-208	amended	Ch. 512	SB 0164
15-70-209	amended	Ch. 512	SB 0164
15-70-209	amended	Ch. 521	SB 0148
15-70-210	amended	Ch. 512	SB 0164
15-70-211	amended	Ch. 512	SB 0164
15-70-222	amended	Ch. 512	SB 0164
15-70-223	amended	Ch. 67	HB 0023
15-70-223	amended	Ch. 512	SB 0164
15-70-225	amended	Ch. 512	SB 0164
15-70-226	amended	Ch. 512	SB 0164
15-70-234	enacted	Ch. 772	SB 0428
15-70-234	amended	Ch. 772	SB 0428
15-70-235	enacted	Ch. 772	SB 0428
15-70-235	amended	Ch. 772	SB 0428
15-70-236	enacted	Ch. 772	SB 0428
15-70-301	amended	Ch. 512	SB 0164
15-70-302	amended	Ch. 157	SB 0290
15-70-302	amended	Ch. 512	SB 0164
15-70-304	amended	Ch. 121	SB 0022
15-70-308	amended	Ch. 512	SB 0164
15-70-309	amended	Ch. 512	SB 0164

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15-70-311	amended	Ch. 512	SB 0164
15-70-312	amended	Ch. 512	SB 0164
15-70-503	amended	Ch. 512	SB 0164
15-70-503	amended	Ch. 723	SB 0077
15-70-522	amended	Ch. 512	SB 0164
15-70-522	amended	Ch. 723	SB 0077
15-71-101	amended	Ch. 94	SB 0119
15-71-101	amended	Ch. 512	SB 0164
15-71-102	amended	Ch. 512	SB 0164
15-71-104	amended	Ch. 512	SB 0164
16-1-106	amended	Ch. 314	HB 0076
16-1-302	amended	Ch. 156	SB 0206
16-1-304	amended	Ch. 766	HB 1013
16-1-404	amended	Ch. 262	HB 0848
16-1-408	amended	Ch. 262	HB 0848
16-1-411	amended	Ch. 262	HB 0848
16-3-214	amended	Ch. 721	HB 0698
16-3-235	amended	Ch. 207	HB 0411
16-3-401	amended	Ch. 314	HB 0076
16-3-405	amended	Ch. 207	HB 0411
16-3-415	enacted	Ch. 314	HB 0076
16-3-416	enacted	Ch. 314	HB 0076
16-3-417	enacted	Ch. 314	HB 0076
16-3-418	enacted	Ch. 314	HB 0076
16-3-419	enacted	Ch. 314	HB 0076
16-3-420	enacted	Ch. 314	HB 0076
16-3-421	enacted	Ch. 314	HB 0076
16-4-203	amended	Ch. 156	SB 0206
16-4-207	amended	Ch. 156	SB 0206
16-4-402	amended	Ch. 156	SB 0206
16-4-404	amended	Ch. 156	SB 0206
16-4-405	amended	Ch. 156	SB 0206
16-4-406	amended	Ch. 156	SB 0206
16-4-412	enacted	Ch. 156	SB 0206
16-4-413	enacted	Ch. 156	SB 0206
16-10-202	repealed	Ch. 130	SB 0116
16-10-305	repealed	Ch. 130	SB 0116
16-11-102	amended	Ch. 130	SB 0116
16-11-104	amended	Ch. 207	HB 0411
16-11-111	amended	Ch. 130	SB 0116
16-11-113	amended	Ch. 130	SB 0116
16-11-115	amended	Ch. 130	SB 0116
16-11-116	amended	Ch. 130	SB 0116
16-11-118	amended	Ch. 130	SB 0116
16-11-147	amended	Ch. 800	SB 0051
17-1-102	amended	Ch. 787	HB 0454
17-2-107	amended	Ch. 628	HB 0393
17-2-108	amended	Ch. 787	HB 0454
17-3-213	amended	Ch. 711	SB 0082
17-3-1001	amended	Ch. 262	HB 0848
17-3-1002	amended	Ch. 262	HB 0848
17-4-103	amended	Ch. 97	HB 0038
17-4-106	amended	Ch. 97	HB 0038
17-4-107	amended	Ch. 112	HB 0231
17-5-205	amended	Ch. 187	HB 0529

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17-5-501	amended	Ch. 512	SB 0164
17-5-502	amended	Ch. 512	SB 0164
17-5-703	amended	Ch. 722	HB 0701
17-5-704	amended	Ch. 787	HB 0454
17-5-720	enacted	Ch. 775	HB 0007
17-5-903	amended	Ch. 512	SB 0164
17-5-1302	amended	Ch. 168	HB 0090
17-5-1312	amended	Ch. 168	HB 0090
17-5-1325	enacted	Ch. 168	HB 0090
17-5-1506	amended	Ch. 589	SB 0026
17-5-1519	repealed	Ch. 589	SB 0026
17-5-1520	repealed	Ch. 589	SB 0026
17-5-1525	amended	Ch. 589	SB 0026
17-5-1526	amended	Ch. 589	SB 0026
17-5-1527	amended	Ch. 589	SB 0026
17-5-1604	amended	Ch. 593	SB 0238
17-5-1650	amended	Ch. 112	HB 0231
17-6-105	amended	Ch. 339	HB 0164
17-6-201	amended	Ch. 291	HB 0146
17-6-207	enacted	Ch. 488	HB 0300
17-6-302	amended	Ch. 589	SB 0026
17-6-305	amended	Ch. 16	SB 0033
17-6-305	amended	Ch. 589	SB 0026
17-6-305	amended	Ch. 787	HB 0454
17-6-306	repealed	Ch. 589	SB 0026
17-6-306	amended	Ch. 787	HB 0454
17-6-308	amended	Ch. 251	HB 0479
17-6-308	amended	Ch. 589	SB 0026
17-6-308	amended	Ch. 594	SB 0242
17-6-310	amended	Ch. 589	SB 0026
17-6-310	amended	Ch. 594	SB 0242
17-6-311	amended	Ch. 589	SB 0026
17-6-314	amended	Ch. 589	SB 0026
17-6-315	repealed	Ch. 589	SB 0026
17-6-318	enacted	Ch. 589	SB 0026
17-6-319	enacted	Ch. 589	SB 0026
17-6-322	amended	Ch. 589	SB 0026
17-6-401	enacted	Ch. 602	HB 0477
17-6-402	enacted	Ch. 602	HB 0477
17-6-403	enacted	Ch. 602	HB 0477
17-6-406	enacted	Ch. 602	HB 0477
17-6-407	enacted	Ch. 602	HB 0477
17-6-408	enacted	Ch. 602	HB 0477
17-6-409	enacted	Ch. 602	HB 0477
17-6-411	enacted	Ch. 602	HB 0477
17-7-102	amended	Ch. 787	HB 0454
17-7-122	amended	Ch. 657	SB 0229
17-7-138	enacted	Ch. 787	HB 0454
17-7-139	enacted	Ch. 787	HB 0454
17-7-140	enacted	Ch. 787	HB 0454
17-7-141	enacted	Ch. 787	HB 0454
17-7-201	amended	Ch. 512	SB 0164
17-7-211	enacted	Ch. 787	HB 0454
17-7-212	enacted	Ch. 787	HB 0454
17-7-304	amended	Ch. 787	HB 0454

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17-7-401	amended	Ch. 16	SB 0033
17-7-401	repealed	Ch. 787	HB 0454
17-7-502	amended	Ch. 16	SB 0033
17-7-502	amended	Ch. 344	HB 0423
17-7-502	amended	Ch. 370	HB 0586
17-7-502	amended	Ch. 394	HB 0974
17-7-502	amended	Ch. 493	HB 0418
17-7-502	amended	Ch. 495	HB 0431
17-7-502	amended	Ch. 567	HB 0711
17-7-502	amended	Ch. 571	HB 0777
17-7-502	amended	Ch. 575	HB 0841
17-7-502	amended	Ch. 600	HB 0414
17-7-502	amended	Ch. 602	HB 0477
17-7-502	amended	Ch. 609	HB 0778
17-7-502	amended	Ch. 641	HB 0868
17-7-502	amended	Ch. 647	SB 0427
17-7-502	amended	Ch. 690	HB 0511
17-7-502	amended	Ch. 701	HB 0763
17-7-502	amended	Ch. 748	HB 0131
17-7-502	amended	Ch. 787	HB 0454
17-7-502	amended	Ch. 819	HB 0963
17-7-502	amended	Ch. 823	SB 0226
17-8-306	amended	Ch. 118	HB 0585
18-1-102	amended	Ch. 32	SB 0011
18-1-110	enacted	Ch. 506	HB 0882
18-1-118	enacted	Ch. 787	HB 0454
18-2-101	amended	Ch. 512	SB 0164
18-2-301	amended	Ch. 262	HB 0848
18-2-403(4)	enacted	Ch. 420	HB 0591
18-4-133	amended	Ch. 262	HB 0848
18-4-226	amended	Ch. 234	HB 0304
18-4-301	amended	Ch. 761	HB 0846
18-4-303	amended	Ch. 761	HB 0846
18-6-101	amended	Ch. 234	HB 0304
18-6-103	amended	Ch. 512	SB 0164
18-7-107	amended	Ch. 53	HB 0016
18-7-303	amended	Ch. 112	HB 0231
19-3-105	amended	Ch. 823	SB 0226
19-3-401	amended	Ch. 162	HB 0769
19-3-403	amended	Ch. 275	SB 0231
19-3-511	amended	Ch. 64	HB 0205
19-3-513	amended	Ch. 16	SB 0033
19-3-602	amended	Ch. 221	HB 0158
19-3-802	amended	Ch. 138	SB 0167
19-3-804	amended	Ch. 138	SB 0167
19-3-901	amended	Ch. 162	HB 0769
19-3-1002	amended	Ch. 49	HB 0323
19-3-1008	amended	Ch. 49	HB 0323
19-3-1106	amended	Ch. 275	SB 0231
19-4-101	amended	Ch. 13	HB 0080
19-4-201	amended	Ch. 112	HB 0231
19-4-409	amended	Ch. 64	HB 0205
19-4-412	amended	Ch. 8	HB 0052
19-4-413	enacted	Ch. 13	HB 0080
19-4-501	amended	Ch. 8	HB 0052

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19-4-706	amended	Ch. 823	SB 0226
19-4-901	amended	Ch. 8	HB 0052
19-5-301	amended	Ch. 364	SB 0243
19-5-402	amended	Ch. 74	HB 0453
19-5-403	amended	Ch. 50	HB 0373
19-5-404	amended	Ch. 344	HB 0423
19-5-404(2)	enacted	Ch. 364	SB 0243
19-5-408	enacted	Ch. 138	SB 0167
19-5-704	amended	Ch. 74	HB 0453
19-5-704	amended	Ch. 823	SB 0226
19-6-306	enacted	Ch. 142	SB 0230
19-6-401	amended	Ch. 816	HB 0077
19-6-402	amended	Ch. 816	HB 0077
19-6-403	amended	Ch. 50	HB 0373
19-6-404	amended	Ch. 816	HB 0077
19-6-405	amended	Ch. 221	HB 0158
19-6-409	enacted	Ch. 138	SB 0167
19-6-502	amended	Ch. 816	HB 0077
19-6-506	amended	Ch. 16	SB 0033
19-6-506	amended	Ch. 735	SB 0192
19-6-705	amended	Ch. 823	SB 0226
19-6-709	enacted	Ch. 567	HB 0711
19-6-709	amended	Ch. 735	SB 0192
19-7-304	amended	Ch. 50	HB 0373
19-7-305	repealed	Ch. 50	HB 0373
19-7-310	amended	Ch. 214	HB 0941
19-7-311	enacted	Ch. 214	HB 0941
19-7-405	amended	Ch. 221	HB 0158
19-7-409	enacted	Ch. 138	SB 0167
19-7-503	amended	Ch. 78	HB 0288
19-7-504	amended	Ch. 116	HB 0432
19-7-705	amended	Ch. 50	HB 0373
19-7-705	amended	Ch. 823	SB 0226
19-8-403	amended	Ch. 221	HB 0158
19-8-503	amended	Ch. 50	HB 0373
19-8-504	amended	Ch. 609	HB 0778
19-8-505	enacted	Ch. 138	SB 0167
19-8-805	amended	Ch. 823	SB 0226
19-9-104	amended	Ch. 178	HB 0274
19-9-104	amended	Ch. 631	HB 0595
19-9-104	amended	Ch. 822	SB 0222
19-9-304	amended	Ch. 50	HB 0373
19-9-403	amended	Ch. 178	HB 0274
19-9-601	amended	Ch. 631	HB 0595
19-9-702	amended	Ch. 631	HB 0595
19-9-703	amended	Ch. 631	HB 0595
19-9-707	enacted	Ch. 138	SB 0167
19-9-801	amended	Ch. 178	HB 0274
19-9-801	amended	Ch. 631	HB 0595
19-9-801	amended	Ch. 822	SB 0222
19-9-802	amended	Ch. 631	HB 0595
19-9-802	amended	Ch. 822	SB 0222
19-9-804	amended	Ch. 631	HB 0595
19-9-804	amended	Ch. 822	SB 0222
19-9-902	amended	Ch. 822	SB 0222

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19-9-903	amended	Ch. 631	HB 0595
19-9-903	amended	Ch. 822	SB 0222
19-9-911	amended	Ch. 822	SB 0222
19-9-1005	amended	Ch. 823	SB 0226
19-9-1007	amended	Ch. 633	HB 0830
19-9-1011	amended	Ch. 822	SB 0222
19-10-504	amended	Ch. 823	SB 0226
19-11-204	amended	Ch. 489	HB 0328
19-11-205	amended	Ch. 489	HB 0328
19-11-612	amended	Ch. 823	SB 0226
19-12-202(3)	enacted	Ch. 81	HB 0599
19-12-404	amended	Ch. 81	HB 0599
19-12-407	amended	Ch. 823	SB 0226
19-12-501	amended	Ch. 129	SB 0102
19-13-503	amended	Ch. 44	HB 0372
19-13-604	amended	Ch. 617	HB 0760
19-13-609	enacted	Ch. 138	SB 0167
19-13-803	amended	Ch. 617	HB 0760
19-13-1003	amended	Ch. 823	SB 0226
19-15-101	enacted	Ch. 823	SB 0226
19-15-102	enacted	Ch. 823	SB 0226
19-21-111	amended	Ch. 365	SB 0264
19-21-212	amended	Ch. 823	SB 0226
20-3-103	amended	Ch. 249	HB 0436
20-3-106	amended	Ch. 767	SB 0017
20-3-201	amended	Ch. 76	HB 0054
20-3-205	amended	Ch. 767	SB 0017
20-3-210	amended	Ch. 252	HB 0507
20-3-210	amended	Ch. 439	SB 0120
20-3-211	amended	Ch. 249	HB 0436
20-3-302	amended	Ch. 528	HB 0534
20-3-322	amended	Ch. 154	SB 0179
20-3-324	amended	Ch. 767	SB 0017
20-3-331	amended	Ch. 568	HB 0715
20-3-351	amended	Ch. 528	HB 0534
20-3-352	amended	Ch. 528	HB 0534
20-4-104	amended	Ch. 257	HB 0654
20-4-109	amended	Ch. 495	HB 0431
20-4-111	amended	Ch. 495	HB 0431
20-4-131	amended	Ch. 124	SB 0088
20-4-203	amended	Ch. 204	HB 0105
20-4-206	amended	Ch. 439	SB 0120
20-4-208	enacted	Ch. 204	HB 0105
20-4-302	amended	Ch. 325	SB 0084
20-5-102	amended	Ch. 249	HB 0436
20-5-111	enacted	Ch. 444	SB 0287
20-5-301	amended	Ch. 765	HB 0999
20-5-303	amended	Ch. 368	HB 0552
20-5-305	amended	Ch. 380	HB 0962
20-5-307	amended	Ch. 767	SB 0017
20-5-311	amended	Ch. 765	HB 0999
20-5-312	amended	Ch. 380	HB 0962
20-5-312	amended	Ch. 767	SB 0017
20-5-313	amended	Ch. 368	HB 0552
20-5-403	amended	Ch. 165	SB 0372

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20-5-404	amended	Ch. 165	SB 0372
20-6-101	amended	Ch. 555	HB 0335
20-6-213	amended	Ch. 145	HB 0217
20-6-213	amended	Ch. 517	SB 0395
20-6-320	amended	Ch. 517	SB 0395
20-6-410	enacted	Ch. 497	HB 0470
20-6-604	amended	Ch. 568	HB 0715
20-6-624	amended	Ch. 706	HB 0896
20-6-640	enacted	Ch. 585	HB 0645
20-6-701	enacted	Ch. 555	HB 0335
20-6-702	enacted	Ch. 555	HB 0335
20-6-703	enacted	Ch. 555	HB 0335
20-6-711	enacted	Ch. 555	HB 0335
20-6-712	enacted	Ch. 555	HB 0335
20-7-117	amended	Ch. 399	HB 0175
20-7-401	amended	Ch. 16	SB 0033
20-7-401	amended	Ch. 249	HB 0436
20-7-402	amended	Ch. 249	HB 0436
20-7-403	amended	Ch. 249	HB 0436
20-7-403	amended	Ch. 765	HB 0999
20-7-411	amended	Ch. 249	HB 0436
20-7-412	amended	Ch. 249	HB 0436
20-7-414	amended	Ch. 249	HB 0436
20-7-415	amended	Ch. 249	HB 0436
20-7-420	amended	Ch. 765	HB 0999
20-7-421	amended	Ch. 765	HB 0999
20-7-422	amended	Ch. 765	HB 0999
20-7-423	amended	Ch. 249	HB 0436
20-7-423	repealed	Ch. 765	HB 0999
20-7-431	amended	Ch. 765	HB 0999
20-7-435	enacted	Ch. 765	HB 0999
20-7-436	enacted	Ch. 765	HB 0999
20-7-437	enacted	Ch. 765	HB 0999
20-7-442	amended	Ch. 711	SB 0082
20-7-451	amended	Ch. 136	SB 0141
20-7-452	amended	Ch. 136	SB 0141
20-7-454	amended	Ch. 136	SB 0141
20-7-455	amended	Ch. 136	SB 0141
20-7-456	amended	Ch. 136	SB 0141
20-7-457	amended	Ch. 136	SB 0141
20-7-457	amended	Ch. 568	HB 0715
20-7-458	amended	Ch. 136	SB 0141
20-7-461	amended	Ch. 249	HB 0436
20-7-462	amended	Ch. 249	HB 0436
20-7-501	amended	Ch. 428	HB 0899
20-7-501	amended	Ch. 701	HB 0763
20-7-502	amended	Ch. 701	HB 0763
20-7-504	amended	Ch. 512	SB 0164
20-7-504	amended	Ch. 701	HB 0763
20-7-510	formerly 61-2-401	Ch. 701	HB 0763
20-7-511	formerly 61-2-402	Ch. 701	HB 0763
20-7-512	formerly 61-2-403	Ch. 701	HB 0763
20-7-513	formerly 61-2-404	Ch. 701	HB 0763
20-7-514	formerly 61-2-405	Ch. 701	HB 0763
20-7-705	amended	Ch. 555	HB 0335

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20-7-705	amended	Ch. 568	HB 0715
20-7-713	amended	Ch. 568	HB 0715
20-7-713	amended	Ch. 767	SB 0017
20-7-714	enacted	Ch. 792	HB 0677
20-7-1001	repealed	Ch. 622	HB 0030
20-7-1101	enacted	Ch. 534	HB 0665
20-9-104	amended	Ch. 767	SB 0017
20-9-111	repealed	Ch. 767	SB 0017
20-9-133	amended	Ch. 568	HB 0715
20-9-141	amended	Ch. 267	SB 0086
20-9-141	amended	Ch. 767	SB 0017
20-9-142	amended	Ch. 767	SB 0017
20-9-145	amended	Ch. 767	SB 0017
20-9-147	enacted	Ch. 767	SB 0017
20-9-161	amended	Ch. 767	SB 0017
20-9-162	amended	Ch. 767	SB 0017
20-9-163	amended	Ch. 767	SB 0017
20-9-164	amended	Ch. 767	SB 0017
20-9-165	amended	Ch. 767	SB 0017
20-9-166	amended	Ch. 767	SB 0017
20-9-167	repealed	Ch. 767	SB 0017
20-9-201	amended	Ch. 568	HB 0715
20-9-201	amended	Ch. 767	SB 0017
20-9-203	amended	Ch. 489	HB 0328
20-9-204	amended	Ch. 154	SB 0179
20-9-206	amended	Ch. 767	SB 0017
20-9-208	amended	Ch. 767	SB 0017
20-9-209	amended	Ch. 767	SB 0017
20-9-210	amended	Ch. 767	SB 0017
20-9-212	amended	Ch. 711	SB 0082
20-9-213	amended	Ch. 489	HB 0328
20-9-214	amended	Ch. 767	SB 0017
20-9-221	amended	Ch. 767	SB 0017
20-9-231	amended	Ch. 767	SB 0017
20-9-301	amended	Ch. 767	SB 0017
20-9-304	amended	Ch. 262	HB 0848
20-9-311	amended	Ch. 250	HB 0462
20-9-314	amended	Ch. 555	HB 0335
20-9-315	amended	Ch. 767	SB 0017
20-9-321	amended	Ch. 249	HB 0436
20-9-321	amended	Ch. 767	SB 0017
20-9-331	amended	Ch. 267	SB 0086
20-9-333	amended	Ch. 267	SB 0086
20-9-334	amended	Ch. 711	SB 0082
20-9-334	amended	Ch. 765	HB 0999
20-9-343	amended	Ch. 622	HB 0030
20-9-343	amended	Ch. 729	HB 0913
20-9-343	amended	Ch. 787	HB 0454
20-9-344	amended	Ch. 622	HB 0030
20-9-344	amended	Ch. 767	SB 0017
20-9-346	amended	Ch. 112	HB 0231
20-9-353	amended	Ch. 767	SB 0017
20-9-360	amended	Ch. 767	SB 0017
20-9-361	amended	Ch. 729	HB 0913
20-9-366	amended	Ch. 711	SB 0082

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20-9-366	amended	Ch. 790	HB 0580
20-9-367	amended	Ch. 711	SB 0082
20-9-367	amended	Ch. 767	SB 0017
20-9-368	amended	Ch. 711	SB 0082
20-9-368	amended	Ch. 767	SB 0017
20-9-369	amended	Ch. 790	HB 0580
20-9-406	amended	Ch. 555	HB 0335
20-9-406	amended	Ch. 767	SB 0017
20-9-435	amended	Ch. 568	HB 0715
20-9-435	amended	Ch. 767	SB 0017
20-9-438	amended	Ch. 767	SB 0017
20-9-439	amended	Ch. 767	SB 0017
20-9-471	amended	Ch. 719	SB 0456
20-9-471	amended	Ch. 767	SB 0017
20-9-501	amended	Ch. 767	SB 0017
20-9-502	amended	Ch. 555	HB 0335
20-9-504	amended	Ch. 767	SB 0017
20-9-505	amended	Ch. 767	SB 0017
20-9-507	amended	Ch. 767	SB 0017
20-9-512	amended	Ch. 568	HB 0715
20-9-512	amended	Ch. 754	HB 0589
20-10-101	amended	Ch. 767	SB 0017
20-10-141	amended	Ch. 711	SB 0082
20-10-142	amended	Ch. 711	SB 0082
20-10-143	amended	Ch. 711	SB 0082
20-10-143	amended	Ch. 767	SB 0017
20-10-144	amended	Ch. 267	SB 0086
20-10-144	amended	Ch. 711	SB 0082
20-10-144	amended	Ch. 767	SB 0017
20-10-145	amended	Ch. 711	SB 0082
20-10-145	amended	Ch. 767	SB 0017
20-10-146	amended	Ch. 711	SB 0082
20-10-147	amended	Ch. 69	HB 0154
20-10-147	amended	Ch. 568	HB 0715
20-10-202	amended	Ch. 489	HB 0328
20-15-323	enacted	Ch. 767	SB 0017
20-15-324	enacted	Ch. 767	SB 0017
20-15-325	enacted	Ch. 767	SB 0017
20-15-326	enacted	Ch. 767	SB 0017
20-15-404	amended	Ch. 767	SB 0017
20-25-236	amended	Ch. 112	HB 0231
20-25-301	amended	Ch. 112	HB 0231
20-25-324	amended	Ch. 430	SB 0117
20-26-1501	enacted	Ch. 394	HB 0974
20-26-1502	enacted	Ch. 394	HB 0974
20-26-1503	enacted	Ch. 394	HB 0974
20-32-101	enacted	Ch. 622	HB 0030
20-32-102	enacted	Ch. 622	HB 0030
20-32-103	enacted	Ch. 622	HB 0030
20-32-104	enacted	Ch. 622	HB 0030
22-1-301	amended	Ch. 356	HB 0817
22-1-326	amended	Ch. 356	HB 0817
22-1-501	amended	Ch. 16	SB 0033
22-2-301	amended	Ch. 587	HB 0842
22-2-308	amended	Ch. 587	HB 0842

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22-2-601	enacted	Ch. 755	HB 0746
22-2-602	enacted	Ch. 755	HB 0746
22-3-107	amended	Ch. 112	HB 0231
22-3-522	amended	Ch. 16	SB 0033
22-3-701	enacted	Ch. 45	HB 0427
22-3-801	enacted	Ch. 748	HB 0131
22-3-802	enacted	Ch. 748	HB 0131
22-3-803	enacted	Ch. 748	HB 0131
22-3-804	enacted	Ch. 748	HB 0131
22-3-805	enacted	Ch. 748	HB 0131
22-3-806	enacted	Ch. 748	HB 0131
22-3-807	enacted	Ch. 748	HB 0131
22-3-808	enacted	Ch. 748	HB 0131
22-3-809	enacted	Ch. 748	HB 0131
22-3-810	enacted	Ch. 748	HB 0131
22-3-811	enacted	Ch. 748	HB 0131
23-1-102	amended	Ch. 512	SB 0164
23-1-104	amended	Ch. 512	SB 0164
23-1-105	amended	Ch. 339	HB 0164
23-1-105	amended	Ch. 662	SB 0362
23-1-106	amended	Ch. 662	SB 0362
23-1-108	amended	Ch. 28	HB 0089
23-1-110	amended	Ch. 28	HB 0089
23-1-110	enacted	Ch. 367	HB 0495
23-1-121	enacted	Ch. 662	SB 0362
23-1-122	enacted	Ch. 662	SB 0362
23-2-301	amended	Ch. 28	HB 0089
23-2-403	amended	Ch. 28	HB 0089
23-2-410	amended	Ch. 662	SB 0362
23-2-502	amended	Ch. 728	HB 0833
23-2-506	amended	Ch. 662	SB 0362
23-2-508	amended	Ch. 16	SB 0033
23-2-508	amended	Ch. 463	HB 0209
23-2-510	amended	Ch. 375	HB 0742
23-2-511	amended	Ch. 375	HB 0742
23-2-512	amended	Ch. 728	HB 0833
23-2-513	amended	Ch. 375	HB 0742
23-2-520	enacted	Ch. 604	HB 0579
23-2-521	amended	Ch. 728	HB 0833
23-2-522(2)-(5)	enacted	Ch. 728	HB 0833
23-2-523	amended	Ch. 728	HB 0833
23-2-523	amended	Ch. 789	HB 0559
23-2-525	amended	Ch. 28	HB 0089
23-2-526	amended	Ch. 728	HB 0833
23-2-529	amended	Ch. 728	HB 0833
23-2-530	amended	Ch. 728	HB 0833
23-2-531	enacted	Ch. 728	HB 0833
23-2-532	enacted	Ch. 728	HB 0833
23-2-535	amended	Ch. 789	HB 0559
23-2-611	amended	Ch. 16	SB 0033
23-2-611	amended	Ch. 463	HB 0209
23-2-620	enacted	Ch. 604	HB 0579
23-2-641	amended	Ch. 662	SB 0362
23-2-715	amended	Ch. 34	SB 0041
23-2-716	enacted	Ch. 676	SB 0280

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23-2-717	enacted	Ch. 676	SB 0280
23-2-718	enacted	Ch. 676	SB 0280
23-2-802	amended	Ch. 423	HB 0659
23-2-804	amended	Ch. 423	HB 0659
23-2-806	amended	Ch. 662	SB 0362
23-2-810	enacted	Ch. 604	HB 0579
23-2-811	amended	Ch. 463	HB 0209
23-4-106	amended	Ch. 447	SB 0330
23-4-301	amended	Ch. 516	SB 0363
23-4-302	amended	Ch. 516	SB 0363
23-5-112	amended	Ch. 473	HB 0847
23-5-112	amended	Ch. 523	SB 0270
23-5-112	amended	Ch. 647	SB 0427
23-5-113	amended	Ch. 647	SB 0427
23-5-114	amended	Ch. 647	SB 0427
23-5-115	amended	Ch. 647	SB 0427
23-5-116	enacted	Ch. 647	SB 0427
23-5-117	enacted	Ch. 647	SB 0427
23-5-118	enacted	Ch. 647	SB 0427
23-5-136	amended	Ch. 647	SB 0427
23-5-152	amended	Ch. 211	HB 0774
23-5-152	amended	Ch. 647	SB 0427
23-5-153	amended	Ch. 647	SB 0427
23-5-154	amended	Ch. 647	SB 0427
23-5-156	amended	Ch. 647	SB 0427
23-5-158	amended	Ch. 647	SB 0427
23-5-159	enacted	Ch. 647	SB 0427
23-5-160	enacted	Ch. 709	SB 0053
23-5-162	amended	Ch. 647	SB 0427
23-5-165	enacted	Ch. 647	SB 0427
23-5-176	amended	Ch. 647	SB 0427
23-5-177	amended	Ch. 473	HB 0847
23-5-177	amended	Ch. 647	SB 0427
23-5-308	amended	Ch. 647	SB 0427
23-5-309	amended	Ch. 647	SB 0427
23-5-310	enacted	Ch. 473	HB 0847
23-5-317	enacted	Ch. 647	SB 0427
23-5-324	enacted	Ch. 647	SB 0427
23-5-406	amended	Ch. 647	SB 0427
23-5-407	amended	Ch. 647	SB 0427
23-5-409	amended	Ch. 647	SB 0427
23-5-410	enacted	Ch. 473	HB 0847
23-5-412	amended	Ch. 647	SB 0427
23-5-413	amended	Ch. 647	SB 0427
23-5-424	enacted	Ch. 647	SB 0427
23-5-425	enacted	Ch. 647	SB 0427
23-5-426	enacted	Ch. 647	SB 0427
23-5-501	amended	Ch. 647	SB 0427
23-5-502	amended	Ch. 647	SB 0427
23-5-503	amended	Ch. 647	SB 0427
23-5-512	enacted	Ch. 647	SB 0427
23-5-602	amended	Ch. 647	SB 0427
23-5-603	amended	Ch. 647	SB 0427
23-5-610	amended	Ch. 647	SB 0427
23-5-611	amended	Ch. 647	SB 0427

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23-5-612	amended	Ch. 647	SB 0427
23-5-625	amended	Ch. 647	SB 0427
23-5-628	enacted	Ch. 647	SB 0427
23-5-631	amended	Ch. 647	SB 0427
23-5-701	enacted	Ch. 647	SB 0427
23-5-702	enacted	Ch. 647	SB 0427
23-5-705	enacted	Ch. 647	SB 0427
23-5-706	enacted	Ch. 647	SB 0427
23-5-710	enacted	Ch. 647	SB 0427
23-5-711	enacted	Ch. 647	SB 0427
23-5-715	enacted	Ch. 647	SB 0427
23-5-801	enacted	Ch. 647	SB 0427
23-5-802	enacted	Ch. 647	SB 0427
23-5-805	enacted	Ch. 647	SB 0427
23-5-806	enacted	Ch. 647	SB 0427
23-5-810	enacted	Ch. 647	SB 0427
23-5-1001	renumbered 23-7-101	Ch. 647	SB 0427
23-5-1002	renumbered 23-7-102	Ch. 647	SB 0427
23-5-1003	renumbered 23-7-103	Ch. 647	SB 0427
23-5-1006	renumbered 23-7-201	Ch. 647	SB 0427
23-5-1007	renumbered 23-7-202	Ch. 647	SB 0427
23-5-1007	amended	Ch. 799	SB 0037
23-5-1008	amended	Ch. 112	HB 0231
23-5-1008	renumbered 23-7-203	Ch. 647	SB 0427
23-5-1011	renumbered 23-7-210	Ch. 647	SB 0427
23-5-1012	renumbered 23-7-211	Ch. 647	SB 0427
23-5-1013	renumbered 23-7-212	Ch. 647	SB 0427
23-5-1016	renumbered 23-7-301	Ch. 647	SB 0427
23-5-1017	renumbered 23-7-302	Ch. 647	SB 0427
23-5-1018	renumbered 23-7-305	Ch. 647	SB 0427
23-5-1019	renumbered 23-7-306	Ch. 647	SB 0427
23-5-1020	renumbered 23-7-307	Ch. 647	SB 0427
23-5-1021	renumbered 23-7-310	Ch. 647	SB 0427
23-5-1022	renumbered 23-7-311	Ch. 647	SB 0427
23-5-1026	renumbered 23-7-401	Ch. 647	SB 0427
23-5-1027	renumbered 23-7-402	Ch. 647	SB 0427
23-5-1027	amended	Ch. 799	SB 0037
23-5-1028	renumbered 23-7-410	Ch. 647	SB 0427
23-5-1029	renumbered 23-7-411	Ch. 647	SB 0427
23-5-1030	renumbered 23-7-412	Ch. 647	SB 0427
23-5-1036	renumbered 23-7-110	Ch. 647	SB 0427
23-6-101	enacted	Ch. 523	SB 0270
23-6-102	enacted	Ch. 523	SB 0270
23-6-103	enacted	Ch. 523	SB 0270
23-6-104	enacted	Ch. 523	SB 0270
23-6-105	enacted	Ch. 523	SB 0270
23-6-106	enacted	Ch. 523	SB 0270
23-6-107	enacted	Ch. 523	SB 0270
23-7-101	formerly 23-5-1001	Ch. 647	SB 0427
23-7-102	formerly 23-5-1002	Ch. 647	SB 0427
23-7-103	formerly 23-5-1003	Ch. 647	SB 0427
23-7-110	formerly 23-5-1036	Ch. 647	SB 0427
23-7-201	formerly 23-5-1006	Ch. 647	SB 0427
23-7-202	formerly 23-5-1007	Ch. 647	SB 0427
23-7-203	formerly 23-5-1008	Ch. 647	SB 0427

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23-7-210	formerly 23-5-1011	Ch. 647	SB 0427
23-7-211	formerly 23-5-1012	Ch. 647	SB 0427
23-7-212	formerly 23-5-1013	Ch. 647	SB 0427
23-7-301	formerly 23-5-1016	Ch. 647	SB 0427
23-7-302	formerly 23-5-1017	Ch. 647	SB 0427
23-7-305	formerly 23-5-1018	Ch. 647	SB 0427
23-7-306	formerly 23-5-1019	Ch. 647	SB 0427
23-7-307	formerly 23-5-1020	Ch. 647	SB 0427
23-7-310	formerly 23-5-1021	Ch. 647	SB 0427
23-7-311	formerly 23-5-1022	Ch. 647	SB 0427
23-7-401	formerly 23-5-1026	Ch. 647	SB 0427
23-7-402	formerly 23-5-1027	Ch. 647	SB 0427
23-7-410	formerly 23-5-1028	Ch. 647	SB 0427
23-7-411	formerly 23-5-1029	Ch. 647	SB 0427
23-7-412	formerly 23-5-1030	Ch. 647	SB 0427
25-1-201	amended	Ch. 656	SB 0228
25-10-405	amended	Ch. 466	HB 0292
25-13-802	amended	Ch. 503	HB 0739
25-13-803	amended	Ch. 503	HB 0739
25-13-804	amended	Ch. 503	HB 0739
25-13-805	amended	Ch. 503	HB 0739
25-13-822	amended	Ch. 503	HB 0739
25-30-101	amended	Ch. 16	SB 0033
25-31-114	repealed	Ch. 16	SB 0033
25-31-116	repealed	Ch. 16	SB 0033
25-31-119	enacted	Ch. 326	SB 0087
25-31-201	repealed	Ch. 16	SB 0033
25-31-202	repealed	Ch. 16	SB 0033
25-31-203	repealed	Ch. 16	SB 0033
25-31-204	repealed	Ch. 16	SB 0033
25-31-301	repealed	Ch. 16	SB 0033
25-31-302	repealed	Ch. 16	SB 0033
25-31-303	repealed	Ch. 16	SB 0033
25-31-304	repealed	Ch. 16	SB 0033
25-31-305	repealed	Ch. 16	SB 0033
25-31-306	repealed	Ch. 16	SB 0033
25-31-307	repealed	Ch. 16	SB 0033
25-31-308	repealed	Ch. 16	SB 0033
25-31-401	repealed	Ch. 16	SB 0033
25-31-402	amended	Ch. 16	SB 0033
25-31-403	repealed	Ch. 16	SB 0033
25-31-404	repealed	Ch. 16	SB 0033
25-31-406	amended	Ch. 16	SB 0033
25-31-407	amended	Ch. 16	SB 0033
25-31-408	repealed	Ch. 16	SB 0033
25-31-501	repealed	Ch. 16	SB 0033
25-31-502	repealed	Ch. 16	SB 0033
25-31-503	repealed	Ch. 16	SB 0033
25-31-504	repealed	Ch. 16	SB 0033
25-31-505	repealed	Ch. 16	SB 0033
25-31-506	repealed	Ch. 16	SB 0033
25-31-507	repealed	Ch. 16	SB 0033
25-31-511	repealed	Ch. 16	SB 0033
25-31-521	repealed	Ch. 16	SB 0033
25-31-522	repealed	Ch. 16	SB 0033

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25-31-701	repealed	Ch. 16	SB 0033
25-31-702	amended	Ch. 16	SB 0033
25-31-804	repealed	Ch. 16	SB 0033
25-31-811	repealed	Ch. 16	SB 0033
25-31-812	repealed	Ch. 16	SB 0033
25-31-901	repealed	Ch. 16	SB 0033
25-31-902	repealed	Ch. 16	SB 0033
25-31-903	repealed	Ch. 16	SB 0033
25-31-904	repealed	Ch. 16	SB 0033
25-31-905	repealed	Ch. 16	SB 0033
25-31-911	repealed	Ch. 16	SB 0033
25-31-911	repealed	Ch. 285	SB 0315
25-31-912	repealed	Ch. 16	SB 0033
25-31-912	repealed	Ch. 285	SB 0315
25-31-913	repealed	Ch. 16	SB 0033
25-31-913	amended	Ch. 285	SB 0315
25-31-914	amended	Ch. 285	SB 0315
25-31-915	repealed	Ch. 16	SB 0033
25-31-1001	repealed	Ch. 16	SB 0033
25-31-1003	repealed	Ch. 16	SB 0033
25-31-1004	repealed	Ch. 16	SB 0033
25-31-1005	repealed	Ch. 16	SB 0033
25-31-1101	repealed	Ch. 16	SB 0033
25-31-1102	repealed	Ch. 16	SB 0033
25-31-1103	repealed	Ch. 16	SB 0033
25-31-1105	repealed	Ch. 16	SB 0033
25-32-101	repealed	Ch. 16	SB 0033
25-32-102	repealed	Ch. 16	SB 0033
25-32-103	repealed	Ch. 16	SB 0033
25-32-104	repealed	Ch. 16	SB 0033
25-33-104	amended	Ch. 63	HB 0194
25-33-201	amended	Ch. 63	HB 0194
25-34-106	amended	Ch. 326	SB 0087
25-35-502	amended	Ch. 326	SB 0087
25-35-508	enacted	Ch. 326	SB 0087
26-1-608	enacted	Ch. 739	SB 0327
27-1-221	amended	Ch. 16	SB 0033
27-1-520	enacted	Ch. 478	HB 0159
27-1-717	amended	Ch. 410	SB 0001
27-1-718	amended	Ch. 739	SB 0327
27-1-734	amended	Ch. 550	SB 0172
27-1-735	enacted	Ch. 452	HB 0303
27-2-104	amended	Ch. 293	HB 0191
27-2-501	enacted	Ch. 293	HB 0191
27-2-502	enacted	Ch. 293	HB 0191
27-2-503	enacted	Ch. 293	HB 0191
27-2-504	enacted	Ch. 293	HB 0191
27-2-505	enacted	Ch. 293	HB 0191
27-2-506	enacted	Ch. 293	HB 0191
27-2-507	enacted	Ch. 293	HB 0191
27-5-113	amended	Ch. 258	HB 0663
30-1-105	amended	Ch. 410	SB 0001
30-1-201	amended	Ch. 410	SB 0001
30-1-207	amended	Ch. 410	SB 0001
30-2-103	amended	Ch. 410	SB 0001

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30-2-403	amended	Ch. 410	SB 0001
30-2-511	amended	Ch. 410	SB 0001
30-2A-101	enacted	Ch. 410	SB 0001
30-2A-102	enacted	Ch. 410	SB 0001
30-2A-103	enacted	Ch. 410	SB 0001
30-2A-104	enacted	Ch. 410	SB 0001
30-2A-105	enacted	Ch. 410	SB 0001
30-2A-106	enacted	Ch. 410	SB 0001
30-2A-107	enacted	Ch. 410	SB 0001
30-2A-108	enacted	Ch. 410	SB 0001
30-2A-109	enacted	Ch. 410	SB 0001
30-2A-201	enacted	Ch. 410	SB 0001
30-2A-202	enacted	Ch. 410	SB 0001
30-2A-203	enacted	Ch. 410	SB 0001
30-2A-204	enacted	Ch. 410	SB 0001
30-2A-205	enacted	Ch. 410	SB 0001
30-2A-206	enacted	Ch. 410	SB 0001
30-2A-207	enacted	Ch. 410	SB 0001
30-2A-208	enacted	Ch. 410	SB 0001
30-2A-209	enacted	Ch. 410	SB 0001
30-2A-210	enacted	Ch. 410	SB 0001
30-2A-211	enacted	Ch. 410	SB 0001
30-2A-212	enacted	Ch. 410	SB 0001
30-2A-213	enacted	Ch. 410	SB 0001
30-2A-214	enacted	Ch. 410	SB 0001
30-2A-215	enacted	Ch. 410	SB 0001
30-2A-216	enacted	Ch. 410	SB 0001
30-2A-217	enacted	Ch. 410	SB 0001
30-2A-218	enacted	Ch. 410	SB 0001
30-2A-219	enacted	Ch. 410	SB 0001
30-2A-220	enacted	Ch. 410	SB 0001
30-2A-221	enacted	Ch. 410	SB 0001
30-2A-301	enacted	Ch. 410	SB 0001
30-2A-302	enacted	Ch. 410	SB 0001
30-2A-303	enacted	Ch. 410	SB 0001
30-2A-304	enacted	Ch. 410	SB 0001
30-2A-305	enacted	Ch. 410	SB 0001
30-2A-306	enacted	Ch. 410	SB 0001
30-2A-307	enacted	Ch. 410	SB 0001
30-2A-308	enacted	Ch. 410	SB 0001
30-2A-309	enacted	Ch. 410	SB 0001
30-2A-310	enacted	Ch. 410	SB 0001
30-2A-311	enacted	Ch. 410	SB 0001
30-2A-401	enacted	Ch. 410	SB 0001
30-2A-402	enacted	Ch. 410	SB 0001
30-2A-403	enacted	Ch. 410	SB 0001
30-2A-404	enacted	Ch. 410	SB 0001
30-2A-405	enacted	Ch. 410	SB 0001
30-2A-406	enacted	Ch. 410	SB 0001
30-2A-407	enacted	Ch. 410	SB 0001
30-2A-501	enacted	Ch. 410	SB 0001
30-2A-502	enacted	Ch. 410	SB 0001
30-2A-503	enacted	Ch. 410	SB 0001
30-2A-504	enacted	Ch. 410	SB 0001
30-2A-505	enacted	Ch. 410	SB 0001

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30-2A-506	enacted	Ch. 410	SB 0001
30-2A-507	enacted	Ch. 410	SB 0001
30-2A-508	enacted	Ch. 410	SB 0001
30-2A-509	enacted	Ch. 410	SB 0001
30-2A-510	enacted	Ch. 410	SB 0001
30-2A-511	enacted	Ch. 410	SB 0001
30-2A-512	enacted	Ch. 410	SB 0001
30-2A-513	enacted	Ch. 410	SB 0001
30-2A-514	enacted	Ch. 410	SB 0001
30-2A-515	enacted	Ch. 410	SB 0001
30-2A-516	enacted	Ch. 410	SB 0001
30-2A-517	enacted	Ch. 410	SB 0001
30-2A-518	enacted	Ch. 410	SB 0001
30-2A-519	enacted	Ch. 410	SB 0001
30-2A-520	enacted	Ch. 410	SB 0001
30-2A-521	enacted	Ch. 410	SB 0001
30-2A-522	enacted	Ch. 410	SB 0001
30-2A-523	enacted	Ch. 410	SB 0001
30-2A-524	enacted	Ch. 410	SB 0001
30-2A-525	enacted	Ch. 410	SB 0001
30-2A-526	enacted	Ch. 410	SB 0001
30-2A-527	enacted	Ch. 410	SB 0001
30-2A-528	enacted	Ch. 410	SB 0001
30-2A-529	enacted	Ch. 410	SB 0001
30-2A-530	enacted	Ch. 410	SB 0001
30-2A-531	enacted	Ch. 410	SB 0001
30-2A-532	enacted	Ch. 410	SB 0001
30-3-101	amended	Ch. 410	SB 0001
30-3-102	amended	Ch. 410	SB 0001
30-3-103	repealed	Ch. 410	SB 0001
30-3-104	amended	Ch. 410	SB 0001
30-3-105	amended	Ch. 410	SB 0001
30-3-106	repealed	Ch. 410	SB 0001
30-3-107	amended	Ch. 410	SB 0001
30-3-108	amended	Ch. 410	SB 0001
30-3-109	amended	Ch. 410	SB 0001
30-3-110	repealed	Ch. 410	SB 0001
30-3-111	amended	Ch. 410	SB 0001
30-3-112	repealed	Ch. 410	SB 0001
30-3-113	repealed	Ch. 410	SB 0001
30-3-114	amended	Ch. 410	SB 0001
30-3-115	amended	Ch. 410	SB 0001
30-3-116	repealed	Ch. 410	SB 0001
30-3-117	repealed	Ch. 410	SB 0001
30-3-118	repealed	Ch. 410	SB 0001
30-3-119	amended	Ch. 410	SB 0001
30-3-120	repealed	Ch. 410	SB 0001
30-3-121	repealed	Ch. 410	SB 0001
30-3-122	amended	Ch. 410	SB 0001
30-3-123	repealed	Ch. 410	SB 0001
30-3-124	enacted	Ch. 410	SB 0001
30-3-125	enacted	Ch. 410	SB 0001
30-3-126	enacted	Ch. 410	SB 0001
30-3-127	enacted	Ch. 410	SB 0001
30-3-128	enacted	Ch. 410	SB 0001

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30-3-129	enacted	Ch. 410	SB 0001
30-3-130	enacted	Ch. 410	SB 0001
30-3-131	enacted	Ch. 410	SB 0001
30-3-201	repealed	Ch. 410	SB 0001
30-3-202	amended	Ch. 410	SB 0001
30-3-203	amended	Ch. 410	SB 0001
30-3-204	amended	Ch. 410	SB 0001
30-3-205	amended	Ch. 410	SB 0001
30-3-206	repealed	Ch. 410	SB 0001
30-3-207	repealed	Ch. 410	SB 0001
30-3-208	amended	Ch. 410	SB 0001
30-3-209	enacted	Ch. 410	SB 0001
30-3-210	enacted	Ch. 410	SB 0001
30-3-301	amended	Ch. 410	SB 0001
30-3-302	amended	Ch. 410	SB 0001
30-3-303	amended	Ch. 410	SB 0001
30-3-304	amended	Ch. 410	SB 0001
30-3-305	amended	Ch. 410	SB 0001
30-3-306	amended	Ch. 410	SB 0001
30-3-307	amended	Ch. 410	SB 0001
30-3-308	enacted	Ch. 410	SB 0001
30-3-309	enacted	Ch. 410	SB 0001
30-3-310	enacted	Ch. 410	SB 0001
30-3-311	enacted	Ch. 410	SB 0001
30-3-401	amended	Ch. 410	SB 0001
30-3-402	repealed	Ch. 410	SB 0001
30-3-403	amended	Ch. 410	SB 0001
30-3-404	amended	Ch. 410	SB 0001
30-3-405	amended	Ch. 410	SB 0001
30-3-406	amended	Ch. 410	SB 0001
30-3-407	amended	Ch. 410	SB 0001
30-3-408	repealed	Ch. 410	SB 0001
30-3-409	amended	Ch. 410	SB 0001
30-3-410	amended	Ch. 410	SB 0001
30-3-411	repealed	Ch. 410	SB 0001
30-3-412	amended	Ch. 410	SB 0001
30-3-413	amended	Ch. 410	SB 0001
30-3-414	amended	Ch. 410	SB 0001
30-3-415	amended	Ch. 410	SB 0001
30-3-416	repealed	Ch. 410	SB 0001
30-3-417	amended	Ch. 410	SB 0001
30-3-418	repealed	Ch. 410	SB 0001
30-3-419	amended	Ch. 410	SB 0001
30-3-420	enacted	Ch. 410	SB 0001
30-3-421	enacted	Ch. 410	SB 0001
30-3-422	enacted	Ch. 410	SB 0001
30-3-423	enacted	Ch. 410	SB 0001
30-3-424	enacted	Ch. 410	SB 0001
30-3-425	enacted	Ch. 410	SB 0001
30-3-501	repealed	Ch. 410	SB 0001
30-3-502	repealed	Ch. 410	SB 0001
30-3-503	repealed	Ch. 410	SB 0001
30-3-504	amended	Ch. 410	SB 0001
30-3-505	repealed	Ch. 410	SB 0001
30-3-506	repealed	Ch. 410	SB 0001

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30-3-507	repealed	Ch. 410	SB 0001
30-3-508	amended	Ch. 410	SB 0001
30-3-509	repealed	Ch. 410	SB 0001
30-3-510	amended	Ch. 410	SB 0001
30-3-511	repealed	Ch. 410	SB 0001
30-3-512	enacted	Ch. 410	SB 0001
30-3-513	enacted	Ch. 410	SB 0001
30-3-601	amended	Ch. 410	SB 0001
30-3-602	repealed	Ch. 410	SB 0001
30-3-603	amended	Ch. 410	SB 0001
30-3-604	amended	Ch. 410	SB 0001
30-3-605	amended	Ch. 410	SB 0001
30-3-606	repealed	Ch. 410	SB 0001
30-3-607	enacted	Ch. 410	SB 0001
30-3-701	repealed	Ch. 410	SB 0001
30-3-801	repealed	Ch. 410	SB 0001
30-3-802	repealed	Ch. 410	SB 0001
30-3-803	repealed	Ch. 410	SB 0001
30-3-804	repealed	Ch. 410	SB 0001
30-3-805	repealed	Ch. 410	SB 0001
30-4-102	amended	Ch. 410	SB 0001
30-4-103	amended	Ch. 410	SB 0001
30-4-104	amended	Ch. 410	SB 0001
30-4-105	amended	Ch. 410	SB 0001
30-4-106	amended	Ch. 410	SB 0001
30-4-108	amended	Ch. 410	SB 0001
30-4-109	repealed	Ch. 410	SB 0001
30-4-110	enacted	Ch. 410	SB 0001
30-4-111	enacted	Ch. 410	SB 0001
30-4-112	enacted	Ch. 410	SB 0001
30-4-201	amended	Ch. 410	SB 0001
30-4-202	amended	Ch. 410	SB 0001
30-4-203	amended	Ch. 410	SB 0001
30-4-204	amended	Ch. 410	SB 0001
30-4-205	amended	Ch. 410	SB 0001
30-4-206	amended	Ch. 410	SB 0001
30-4-207	amended	Ch. 410	SB 0001
30-4-208	amended	Ch. 410	SB 0001
30-4-209	amended	Ch. 410	SB 0001
30-4-210	amended	Ch. 410	SB 0001
30-4-211	amended	Ch. 410	SB 0001
30-4-212	amended	Ch. 410	SB 0001
30-4-213	amended	Ch. 410	SB 0001
30-4-214	amended	Ch. 410	SB 0001
30-4-215	enacted	Ch. 410	SB 0001
30-4-216	enacted	Ch. 410	SB 0001
30-4-301	amended	Ch. 410	SB 0001
30-4-302	amended	Ch. 410	SB 0001
30-4-303	amended	Ch. 410	SB 0001
30-4-401	amended	Ch. 410	SB 0001
30-4-402	amended	Ch. 410	SB 0001
30-4-403	amended	Ch. 410	SB 0001
30-4-406	amended	Ch. 410	SB 0001
30-4-407	amended	Ch. 410	SB 0001
30-4-503	amended	Ch. 410	SB 0001

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30-4A-101	enacted	Ch. 410	SB 0001
30-4A-102	enacted	Ch. 410	SB 0001
30-4A-103	enacted	Ch. 410	SB 0001
30-4A-104	enacted	Ch. 410	SB 0001
30-4A-105	enacted	Ch. 410	SB 0001
30-4A-106	enacted	Ch. 410	SB 0001
30-4A-107	enacted	Ch. 410	SB 0001
30-4A-108	enacted	Ch. 410	SB 0001
30-4A-201	enacted	Ch. 410	SB 0001
30-4A-202	enacted	Ch. 410	SB 0001
30-4A-203	enacted	Ch. 410	SB 0001
30-4A-204	enacted	Ch. 410	SB 0001
30-4A-205	enacted	Ch. 410	SB 0001
30-4A-206	enacted	Ch. 410	SB 0001
30-4A-207	enacted	Ch. 410	SB 0001
30-4A-208	enacted	Ch. 410	SB 0001
30-4A-209	enacted	Ch. 410	SB 0001
30-4A-210	enacted	Ch. 410	SB 0001
30-4A-211	enacted	Ch. 410	SB 0001
30-4A-212	enacted	Ch. 410	SB 0001
30-4A-301	enacted	Ch. 410	SB 0001
30-4A-302	enacted	Ch. 410	SB 0001
30-4A-303	enacted	Ch. 410	SB 0001
30-4A-304	enacted	Ch. 410	SB 0001
30-4A-305	enacted	Ch. 410	SB 0001
30-4A-401	enacted	Ch. 410	SB 0001
30-4A-402	enacted	Ch. 410	SB 0001
30-4A-403	enacted	Ch. 410	SB 0001
30-4A-404	enacted	Ch. 410	SB 0001
30-4A-405	enacted	Ch. 410	SB 0001
30-4A-406	enacted	Ch. 410	SB 0001
30-4A-501	enacted	Ch. 410	SB 0001
30-4A-502	enacted	Ch. 410	SB 0001
30-4A-503	enacted	Ch. 410	SB 0001
30-4A-504	enacted	Ch. 410	SB 0001
30-4A-505	enacted	Ch. 410	SB 0001
30-4A-506	enacted	Ch. 410	SB 0001
30-4A-507	enacted	Ch. 410	SB 0001
30-6-101	repealed	Ch. 410	SB 0001
30-6-102	repealed	Ch. 410	SB 0001
30-6-103	repealed	Ch. 410	SB 0001
30-6-104	repealed	Ch. 410	SB 0001
30-6-105	repealed	Ch. 410	SB 0001
30-6-106	repealed	Ch. 410	SB 0001
30-6-107	repealed	Ch. 410	SB 0001
30-6-108	repealed	Ch. 410	SB 0001
30-6-109	repealed	Ch. 410	SB 0001
30-6-110	repealed	Ch. 410	SB 0001
30-6-111	repealed	Ch. 410	SB 0001
30-6-112	enacted	Ch. 410	SB 0001
30-9-111	repealed	Ch. 410	SB 0001
30-9-113	amended	Ch. 410	SB 0001
30-10-103	amended	Ch. 2	SB 0005
30-10-103	amended	Ch. 228	HB 0248
30-10-104	amended	Ch. 228	HB 0248

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30-10-105	amended	Ch. 46	HB 0014
30-10-105	amended	Ch. 263	HB 0863
30-10-105	amended	Ch. 278	SB 0248
30-10-201	amended	Ch. 2	SB 0005
30-10-206	amended	Ch. 2	SB 0005
30-10-208	amended	Ch. 2	SB 0005
30-10-209	amended	Ch. 2	SB 0005
30-11-702	amended	Ch. 522	SB 0158
30-11-801	amended	Ch. 522	SB 0158
30-11-804	enacted	Ch. 522	SB 0158
30-11-805	enacted	Ch. 522	SB 0158
30-11-806	enacted	Ch. 522	SB 0158
30-11-807	enacted	Ch. 522	SB 0158
30-11-808	enacted	Ch. 522	SB 0158
30-11-809	enacted	Ch. 522	SB 0158
30-14-602	amended	Ch. 182	HB 0348
30-14-801	enacted	Ch. 499	HB 0538
30-14-802	enacted	Ch. 499	HB 0538
30-14-803	enacted	Ch. 499	HB 0538
30-14-804	enacted	Ch. 499	HB 0538
30-14-805	enacted	Ch. 499	HB 0538
30-14-806	enacted	Ch. 499	HB 0538
30-14-901	enacted	Ch. 486	HB 0261
30-14-902	enacted	Ch. 486	HB 0261
30-14-903	enacted	Ch. 486	HB 0261
30-14-904	enacted	Ch. 486	HB 0261
30-14-905	enacted	Ch. 486	HB 0261
30-14-906	enacted	Ch. 486	HB 0261
30-16-102	amended	Ch. 744	HB 0046
30-16-103	amended	Ch. 744	HB 0046
30-16-201	amended	Ch. 744	HB 0046
30-16-204	enacted	Ch. 744	HB 0046
31-1-111	amended	Ch. 294	HB 0203
31-1-233	amended	Ch. 16	SB 0033
31-2-106	amended	Ch. 586	HB 0651
31-2-301	repealed	Ch. 324	SB 0007
31-2-302	repealed	Ch. 324	SB 0007
31-2-303	repealed	Ch. 324	SB 0007
31-2-311	repealed	Ch. 324	SB 0007
31-2-312	repealed	Ch. 324	SB 0007
31-2-313	repealed	Ch. 324	SB 0007
31-2-314	repealed	Ch. 324	SB 0007
31-2-315	repealed	Ch. 324	SB 0007
31-2-316	repealed	Ch. 324	SB 0007
31-2-317	repealed	Ch. 324	SB 0007
31-2-321	repealed	Ch. 324	SB 0007
31-2-322	repealed	Ch. 324	SB 0007
31-2-323	repealed	Ch. 324	SB 0007
31-2-324	repealed	Ch. 324	SB 0007
31-2-325	repealed	Ch. 324	SB 0007
31-2-326	enacted	Ch. 324	SB 0007
31-2-327	enacted	Ch. 324	SB 0007
31-2-328	enacted	Ch. 324	SB 0007
31-2-329	enacted	Ch. 324	SB 0007
31-2-330	enacted	Ch. 324	SB 0007

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31-2-333	enacted	Ch. 324	SB 0007
31-2-334	enacted	Ch. 324	SB 0007
31-2-335	enacted	Ch. 324	SB 0007
31-2-339	enacted	Ch. 324	SB 0007
31-2-340	enacted	Ch. 324	SB 0007
31-2-341	enacted	Ch. 324	SB 0007
31-2-342	enacted	Ch. 324	SB 0007
31-3-141	amended	Ch. 16	SB 0033
32-1-372	amended	Ch. 15	SB 0020
32-3-704	amended	Ch. 4	HB 0019
32-5-302	amended	Ch. 150	HB 0725
33-1-102	amended	Ch. 727	HB 0719
33-1-208	amended	Ch. 152	HB 0854
33-1-316	amended	Ch. 246	HB 0420
33-1-502	amended	Ch. 699	HB 0672
33-1-704	amended	Ch. 798	SB 0016
33-1-711	amended	Ch. 798	SB 0016
33-2-126	enacted	Ch. 132	SB 0131
33-2-127	enacted	Ch. 132	SB 0131
33-2-128	enacted	Ch. 132	SB 0131
33-2-305	amended	Ch. 180	HB 0297
33-2-306	amended	Ch. 180	HB 0297
33-2-705	amended	Ch. 798	SB 0016
33-2-708	amended	Ch. 798	SB 0016
33-2-709	amended	Ch. 798	SB 0016
33-2-712	amended	Ch. 638	HB 0696
33-2-712	repealed effective 06/30/93	Ch. 638	HB 0696
33-2-713	repealed effective 06/30/93	Ch. 638	HB 0696
33-3-103	amended	Ch. 368	HB 0552
33-3-401	amended	Ch. 798	SB 0016
33-3-431	amended	Ch. 798	SB 0016
33-3-601	amended	Ch. 368	HB 0552
33-3-602	amended	Ch. 368	HB 0552
33-3-603	amended	Ch. 368	HB 0552
33-7-101	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-102	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-103	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-104	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-105	enacted	Ch. 586	HB 0651
33-7-106	enacted	Ch. 586	HB 0651
33-7-107	enacted	Ch. 586	HB 0651
33-7-108	enacted	Ch. 586	HB 0651
33-7-109	enacted	Ch. 586	HB 0651
33-7-110	enacted	Ch. 586	HB 0651
33-7-111	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-112	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-113	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-114	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-115	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-116	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-117	enacted	Ch. 586	HB 0651
33-7-118	enacted	Ch. 586	HB 0651
33-7-119	enacted	Ch. 586	HB 0651
33-7-120	enacted	Ch. 586	HB 0651
33-7-121	enacted	Ch. 586	HB 0651

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33-7-122	enacted	Ch. 586	HB 0651
33-7-123	enacted	Ch. 586	HB 0651
33-7-124	enacted	Ch. 586	HB 0651
33-7-125	enacted	Ch. 586	HB 0651
33-7-126	enacted	Ch. 586	HB 0651
33-7-201	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-202	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-203	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-204	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-205	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-206	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-207	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-208	enacted	Ch. 586	HB 0651
33-7-209	enacted	Ch. 586	HB 0651
33-7-210	enacted	Ch. 586	HB 0651
33-7-211	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-212	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-213	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-214	enacted	Ch. 586	HB 0651
33-7-215	enacted	Ch. 586	HB 0651
33-7-216	enacted	Ch. 586	HB 0651
33-7-217	enacted	Ch. 586	HB 0651
33-7-301	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-302	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-303	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-304	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-305	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-306	enacted	Ch. 586	HB 0651
33-7-307	enacted	Ch. 586	HB 0651
33-7-308	enacted	Ch. 586	HB 0651
33-7-401	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-402	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-403	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-404	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-405	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-406	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-407	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-408	enacted	Ch. 586	HB 0651
33-7-409	enacted	Ch. 586	HB 0651
33-7-410	enacted	Ch. 586	HB 0651
33-7-411	enacted	Ch. 586	HB 0651
33-7-501	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-502	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-503	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-504	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-505	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-506	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-507	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-508	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-509	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-510	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-511	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-512	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-513	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-514	repealed effective 01/01/92	Ch. 586	HB 0651

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33-7-515	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-516	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-517	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-518	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-519	repealed effective 01/01/92	Ch. 586	HB 0651
33-7-519	amended	Ch. 798	SB 0016
33-7-520	enacted	Ch. 586	HB 0651
33-7-521	enacted	Ch. 586	HB 0651
33-7-522	enacted	Ch. 586	HB 0651
33-7-523	enacted	Ch. 586	HB 0651
33-7-524	enacted	Ch. 586	HB 0651
33-7-531	enacted	Ch. 586	HB 0651
33-7-532	enacted	Ch. 586	HB 0651
33-7-533	enacted	Ch. 586	HB 0651
33-11-108	amended	Ch. 180	HB 0297
33-15-201	amended	Ch. 670	HB 0790
33-15-1102	amended	Ch. 180	HB 0297
33-15-1106	amended	Ch. 699	HB 0672
33-16-1004	amended	Ch. 480	HB 0187
33-17-102	amended	Ch. 798	SB 0016
33-17-206	amended	Ch. 798	SB 0016
33-17-208	amended	Ch. 16	SB 0033
33-17-208	amended	Ch. 798	SB 0016
33-17-211	amended	Ch. 368	HB 0552
33-17-211	amended	Ch. 411	HB 0741
33-17-603	amended	Ch. 798	SB 0016
33-17-1107	enacted	Ch. 699	HB 0672
33-18-206	amended	Ch. 318	HB 0530
33-18-210	amended	Ch. 699	HB 0672
33-18-210	amended	Ch. 798	SB 0016
33-18-501	amended	Ch. 798	SB 0016
33-20-101	amended	Ch. 699	HB 0672
33-20-121	amended	Ch. 699	HB 0672
33-20-124	enacted	Ch. 798	SB 0016
33-20-127	enacted	Ch. 152	HB 0854
33-20-128	enacted	Ch. 152	HB 0854
33-20-131	amended	Ch. 699	HB 0672
33-20-303	amended	Ch. 798	SB 0016
33-20-305	amended	Ch. 798	SB 0016
33-20-1213	enacted	Ch. 798	SB 0016
33-21-207	amended	Ch. 16	SB 0033
33-22-107	enacted	Ch. 699	HB 0672
33-22-111	amended	Ch. 362	SB 0188
33-22-125	enacted	Ch. 727	HB 0719
33-22-130	enacted	Ch. 387	HB 0260
33-22-132	enacted	Ch. 663	SB 0366
33-22-216	enacted	Ch. 699	HB 0672
33-22-229	amended	Ch. 798	SB 0016
33-22-303	enacted	Ch. 199	SB 0371
33-22-502	amended	Ch. 798	SB 0016
33-22-508	amended	Ch. 200	SB 0424
33-22-508	amended	Ch. 699	HB 0672
33-22-512	enacted	Ch. 199	SB 0371
33-22-513	enacted	Ch. 200	SB 0424
33-22-702	amended	Ch. 262	HB 0848

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33-22-705	amended	Ch. 262	HB 0848
33-22-921	amended	Ch. 798	SB 0016
33-22-923	amended	Ch. 798	SB 0016
33-22-924	amended	Ch. 798	SB 0016
33-22-1107	amended	Ch. 152	HB 0854
33-22-1201	enacted	Ch. 606	HB 0693
33-22-1202	enacted	Ch. 606	HB 0693
33-22-1203	enacted	Ch. 606	HB 0693
33-22-1204	enacted	Ch. 606	HB 0693
33-22-1205	enacted	Ch. 606	HB 0693
33-22-1501	amended	Ch. 798	SB 0016
33-22-1504	amended	Ch. 798	SB 0016
33-22-1511	amended	Ch. 798	SB 0016
33-22-1512	amended	Ch. 798	SB 0016
33-22-1513	amended	Ch. 112	HB 0231
33-22-1513	amended	Ch. 798	SB 0016
33-22-1514	amended	Ch. 798	SB 0016
33-22-1515	amended	Ch. 798	SB 0016
33-22-1516	amended	Ch. 798	SB 0016
33-22-1521	amended	Ch. 798	SB 0016
33-22-1522	repealed	Ch. 798	SB 0016
33-22-1703	amended	Ch. 586	HB 0651
33-22-1704	amended	Ch. 714	SB 0256
33-23-103	enacted	Ch. 798	SB 0016
33-23-302	amended	Ch. 798	SB 0016
33-24-105	enacted	Ch. 798	SB 0016
33-30-101	amended	Ch. 362	SB 0188
33-30-1007	amended	Ch. 200	SB 0424
33-30-1014	enacted	Ch. 199	SB 0371
33-30-1015	enacted	Ch. 200	SB 0424
33-30-1016	enacted	Ch. 387	HB 0260
33-31-102	amended	Ch. 437	HB 0785
33-31-102	amended	Ch. 663	SB 0366
33-31-103	amended	Ch. 437	HB 0785
33-31-104	repealed	Ch. 437	HB 0785
33-31-114	enacted	Ch. 387	HB 0260
33-31-201	amended	Ch. 368	HB 0552
33-31-201	amended	Ch. 437	HB 0785
33-31-202	amended	Ch. 437	HB 0785
33-31-212	amended	Ch. 437	HB 0785
33-31-401	amended	Ch. 437	HB 0785
33-31-402	amended	Ch. 437	HB 0785
33-31-404	amended	Ch. 437	HB 0785
33-31-405	amended	Ch. 437	HB 0785
33-32-101	enacted	Ch. 665	SB 0394
33-32-102	enacted	Ch. 665	SB 0394
33-32-103	enacted	Ch. 665	SB 0394
33-32-104	enacted	Ch. 665	SB 0394
33-32-105	enacted	Ch. 665	SB 0394
33-32-201	enacted	Ch. 665	SB 0394
33-32-202	enacted	Ch. 665	SB 0394
33-32-203	enacted	Ch. 665	SB 0394
33-32-204	enacted	Ch. 665	SB 0394
35-1-101	renumbered 35-1-112	Ch. 368	HB 0552
35-1-102	repealed	Ch. 368	HB 0552

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35-1-103	repealed	Ch. 368	HB 0552
35-1-104	repealed	Ch. 368	HB 0552
35-1-105	repealed	Ch. 368	HB 0552
35-1-106	repealed	Ch. 368	HB 0552
35-1-107	repealed	Ch. 368	HB 0552
35-1-108	repealed	Ch. 368	HB 0552
35-1-109	renumbered 35-1-119	Ch. 368	HB 0552
35-1-110	repealed	Ch. 368	HB 0552
35-1-111	repealed	Ch. 368	HB 0552
35-1-112	formerly 35-1-101	Ch. 368	HB 0552
35-1-113	enacted	Ch. 368	HB 0552
35-1-114	enacted	Ch. 368	HB 0552
35-1-115	enacted	Ch. 368	HB 0552
35-1-116	enacted	Ch. 368	HB 0552
35-1-117	enacted	Ch. 368	HB 0552
35-1-118	enacted	Ch. 368	HB 0552
35-1-119	formerly 35-1-109	Ch. 368	HB 0552
35-1-201	repealed	Ch. 368	HB 0552
35-1-202	repealed	Ch. 368	HB 0552
35-1-203	repealed	Ch. 368	HB 0552
35-1-204	repealed	Ch. 368	HB 0552
35-1-205	repealed	Ch. 368	HB 0552
35-1-206	repealed	Ch. 368	HB 0552
35-1-207	repealed	Ch. 368	HB 0552
35-1-208	repealed	Ch. 368	HB 0552
35-1-209	repealed	Ch. 368	HB 0552
35-1-210	repealed	Ch. 368	HB 0552
35-1-211	repealed	Ch. 368	HB 0552
35-1-212	repealed	Ch. 368	HB 0552
35-1-213	repealed	Ch. 368	HB 0552
35-1-214	repealed	Ch. 368	HB 0552
35-1-215	enacted	Ch. 368	HB 0552
35-1-216	enacted	Ch. 368	HB 0552
35-1-217	enacted	Ch. 368	HB 0552
35-1-218	enacted	Ch. 368	HB 0552
35-1-219	enacted	Ch. 368	HB 0552
35-1-220	enacted	Ch. 368	HB 0552
35-1-221	enacted	Ch. 368	HB 0552
35-1-222	enacted	Ch. 368	HB 0552
35-1-225	enacted	Ch. 368	HB 0552
35-1-226	enacted	Ch. 368	HB 0552
35-1-227	enacted	Ch. 368	HB 0552
35-1-228	enacted	Ch. 368	HB 0552
35-1-229	enacted	Ch. 368	HB 0552
35-1-230	enacted	Ch. 368	HB 0552
35-1-231	enacted	Ch. 368	HB 0552
35-1-232	enacted	Ch. 368	HB 0552
35-1-233	enacted	Ch. 368	HB 0552
35-1-234	enacted	Ch. 368	HB 0552
35-1-236	enacted	Ch. 368	HB 0552
35-1-237	enacted	Ch. 368	HB 0552
35-1-238	enacted	Ch. 368	HB 0552
35-1-239	enacted	Ch. 368	HB 0552
35-1-301	repealed	Ch. 368	HB 0552
35-1-302	repealed	Ch. 368	HB 0552

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35-1-303	repealed	Ch. 368	HB 0552
35-1-304	repealed	Ch. 368	HB 0552
35-1-305	repealed	Ch. 368	HB 0552
35-1-306	repealed	Ch. 368	HB 0552
35-1-307	repealed	Ch. 368	HB 0552
35-1-308	enacted	Ch. 368	HB 0552
35-1-309	enacted	Ch. 368	HB 0552
35-1-310	enacted	Ch. 368	HB 0552
35-1-311	enacted	Ch. 368	HB 0552
35-1-313	enacted	Ch. 368	HB 0552
35-1-314	enacted	Ch. 368	HB 0552
35-1-315	enacted	Ch. 368	HB 0552
35-1-316	enacted	Ch. 368	HB 0552
35-1-317	enacted	Ch. 368	HB 0552
35-1-401	repealed	Ch. 368	HB 0552
35-1-402	repealed	Ch. 368	HB 0552
35-1-403	repealed	Ch. 368	HB 0552
35-1-404	repealed	Ch. 368	HB 0552
35-1-405	repealed	Ch. 368	HB 0552
35-1-406	repealed	Ch. 368	HB 0552
35-1-407	repealed	Ch. 368	HB 0552
35-1-408	repealed	Ch. 368	HB 0552
35-1-409	repealed	Ch. 368	HB 0552
35-1-410	repealed	Ch. 368	HB 0552
35-1-411	repealed	Ch. 368	HB 0552
35-1-412	renumbered 35-1-428	Ch. 368	HB 0552
35-1-413	repealed	Ch. 368	HB 0552
35-1-414	repealed	Ch. 368	HB 0552
35-1-415	repealed	Ch. 368	HB 0552
35-1-416	enacted	Ch. 368	HB 0552
35-1-417	enacted	Ch. 368	HB 0552
35-1-418	enacted	Ch. 368	HB 0552
35-1-419	enacted	Ch. 368	HB 0552
35-1-420	enacted	Ch. 368	HB 0552
35-1-421	enacted	Ch. 368	HB 0552
35-1-422	enacted	Ch. 368	HB 0552
35-1-423	enacted	Ch. 368	HB 0552
35-1-424	enacted	Ch. 368	HB 0552
35-1-425	enacted	Ch. 368	HB 0552
35-1-426	enacted	Ch. 368	HB 0552
35-1-427	enacted	Ch. 368	HB 0552
35-1-428	formerly 35-1-412	Ch. 368	HB 0552
35-1-431	enacted	Ch. 368	HB 0552
35-1-432	enacted	Ch. 368	HB 0552
35-1-433	enacted	Ch. 368	HB 0552
35-1-434	enacted	Ch. 368	HB 0552
35-1-435	enacted	Ch. 368	HB 0552
35-1-439	enacted	Ch. 368	HB 0552
35-1-441	enacted	Ch. 368	HB 0552
35-1-442	enacted	Ch. 368	HB 0552
35-1-443	enacted	Ch. 368	HB 0552
35-1-444	enacted	Ch. 368	HB 0552
35-1-445	enacted	Ch. 368	HB 0552
35-1-451	enacted	Ch. 368	HB 0552
35-1-452	enacted	Ch. 368	HB 0552

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35-1-453	enacted	Ch. 368	HB 0552
35-1-454	enacted	Ch. 368	HB 0552
35-1-455	enacted	Ch. 368	HB 0552
35-1-456	enacted	Ch. 368	HB 0552
35-1-457	enacted	Ch. 368	HB 0552
35-1-458	enacted	Ch. 368	HB 0552
35-1-459	enacted	Ch. 368	HB 0552
35-1-461	enacted	Ch. 368	HB 0552
35-1-462	enacted	Ch. 368	HB 0552
35-1-463	enacted	Ch. 368	HB 0552
35-1-464	enacted	Ch. 368	HB 0552
35-1-501	repealed	Ch. 368	HB 0552
35-1-502	repealed	Ch. 368	HB 0552
35-1-503	repealed	Ch. 368	HB 0552
35-1-504	repealed	Ch. 368	HB 0552
35-1-505	repealed	Ch. 368	HB 0552
35-1-506	repealed	Ch. 368	HB 0552
35-1-507	repealed	Ch. 368	HB 0552
35-1-508	repealed	Ch. 368	HB 0552
35-1-509	repealed	Ch. 368	HB 0552
35-1-510	repealed	Ch. 368	HB 0552
35-1-511	repealed	Ch. 368	HB 0552
35-1-512	repealed	Ch. 368	HB 0552
35-1-513	repealed	Ch. 368	HB 0552
35-1-514	repealed	Ch. 368	HB 0552
35-1-515	repealed	Ch. 368	HB 0552
35-1-516	enacted	Ch. 368	HB 0552
35-1-517	enacted	Ch. 368	HB 0552
35-1-518	enacted	Ch. 368	HB 0552
35-1-519	enacted	Ch. 368	HB 0552
35-1-520	enacted	Ch. 368	HB 0552
35-1-521	enacted	Ch. 368	HB 0552
35-1-522	enacted	Ch. 368	HB 0552
35-1-523	enacted	Ch. 368	HB 0552
35-1-524	enacted	Ch. 368	HB 0552
35-1-525	enacted	Ch. 368	HB 0552
35-1-526	enacted	Ch. 368	HB 0552
35-1-527	enacted	Ch. 368	HB 0552
35-1-528	enacted	Ch. 368	HB 0552
35-1-529	enacted	Ch. 368	HB 0552
35-1-530	enacted	Ch. 368	HB 0552
35-1-531	enacted	Ch. 368	HB 0552
35-1-532	enacted	Ch. 368	HB 0552
35-1-533	enacted	Ch. 368	HB 0552
35-1-534	enacted	Ch. 368	HB 0552
35-1-535	enacted	Ch. 368	HB 0552
35-1-541	enacted	Ch. 368	HB 0552
35-1-542	enacted	Ch. 368	HB 0552
35-1-543	enacted	Ch. 368	HB 0552
35-1-544	enacted	Ch. 368	HB 0552
35-1-545	enacted	Ch. 368	HB 0552
35-1-546	enacted	Ch. 368	HB 0552
35-1-547	enacted	Ch. 368	HB 0552
35-1-548	enacted	Ch. 368	HB 0552
35-1-550	enacted	Ch. 368	HB 0552

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35-1-601	repealed	Ch. 368	HB 0552
35-1-602	repealed	Ch. 368	HB 0552
35-1-603	repealed	Ch. 368	HB 0552
35-1-604	repealed	Ch. 368	HB 0552
35-1-605	repealed	Ch. 368	HB 0552
35-1-606	repealed	Ch. 368	HB 0552
35-1-607	repealed	Ch. 368	HB 0552
35-1-609	repealed	Ch. 368	HB 0552
35-1-610	repealed	Ch. 368	HB 0552
35-1-611	repealed	Ch. 368	HB 0552
35-1-612	repealed	Ch. 368	HB 0552
35-1-617	repealed	Ch. 368	HB 0552
35-1-618	enacted	Ch. 368	HB 0552
35-1-619	enacted	Ch. 368	HB 0552
35-1-620	enacted	Ch. 368	HB 0552
35-1-621	enacted	Ch. 368	HB 0552
35-1-622	enacted	Ch. 368	HB 0552
35-1-623	enacted	Ch. 368	HB 0552
35-1-624	enacted	Ch. 368	HB 0552
35-1-625	enacted	Ch. 368	HB 0552
35-1-626	enacted	Ch. 368	HB 0552
35-1-627	enacted	Ch. 368	HB 0552
35-1-628	enacted	Ch. 368	HB 0552
35-1-629	enacted	Ch. 368	HB 0552
35-1-630	enacted	Ch. 368	HB 0552
35-1-711	repealed	Ch. 368	HB 0552
35-1-712	enacted	Ch. 368	HB 0552
35-1-713	enacted	Ch. 368	HB 0552
35-1-801	repealed	Ch. 368	HB 0552
35-1-803	repealed	Ch. 368	HB 0552
35-1-804	repealed	Ch. 368	HB 0552
35-1-805	repealed	Ch. 368	HB 0552
35-1-806	repealed	Ch. 368	HB 0552
35-1-807	repealed	Ch. 368	HB 0552
35-1-808	repealed	Ch. 368	HB 0552
35-1-809	repealed	Ch. 368	HB 0552
35-1-810	repealed	Ch. 368	HB 0552
35-1-812	repealed	Ch. 368	HB 0552
35-1-813	enacted	Ch. 368	HB 0552
35-1-814	enacted	Ch. 368	HB 0552
35-1-815	enacted	Ch. 368	HB 0552
35-1-816	enacted	Ch. 368	HB 0552
35-1-817	enacted	Ch. 368	HB 0552
35-1-818	enacted	Ch. 368	HB 0552
35-1-819	enacted	Ch. 368	HB 0552
35-1-822	enacted	Ch. 368	HB 0552
35-1-823	enacted	Ch. 368	HB 0552
35-1-826	enacted	Ch. 368	HB 0552
35-1-827	enacted	Ch. 368	HB 0552
35-1-828	enacted	Ch. 368	HB 0552
35-1-829	enacted	Ch. 368	HB 0552
35-1-830	enacted	Ch. 368	HB 0552
35-1-831	enacted	Ch. 368	HB 0552
35-1-832	enacted	Ch. 368	HB 0552
35-1-833	enacted	Ch. 368	HB 0552

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35-1-834	enacted	Ch. 368	HB 0552
35-1-835	enacted	Ch. 368	HB 0552
35-1-836	enacted	Ch. 368	HB 0552
35-1-837	enacted	Ch. 368	HB 0552
35-1-838	enacted	Ch. 368	HB 0552
35-1-839	enacted	Ch. 368	HB 0552
35-1-901	repealed	Ch. 368	HB 0552
35-1-902	repealed	Ch. 368	HB 0552
35-1-903	repealed	Ch. 368	HB 0552
35-1-904	repealed	Ch. 368	HB 0552
35-1-905	repealed	Ch. 368	HB 0552
35-1-906	repealed	Ch. 368	HB 0552
35-1-907	repealed	Ch. 368	HB 0552
35-1-908	repealed	Ch. 368	HB 0552
35-1-909	repealed	Ch. 368	HB 0552
35-1-910	repealed	Ch. 368	HB 0552
35-1-911	repealed	Ch. 368	HB 0552
35-1-912	repealed	Ch. 368	HB 0552
35-1-921	repealed	Ch. 368	HB 0552
35-1-922	repealed	Ch. 368	HB 0552
35-1-923	repealed	Ch. 368	HB 0552
35-1-924	repealed	Ch. 368	HB 0552
35-1-925	repealed	Ch. 368	HB 0552
35-1-926	repealed	Ch. 368	HB 0552
35-1-927	repealed	Ch. 368	HB 0552
35-1-928	renumbered 35-1-944	Ch. 368	HB 0552
35-1-929	repealed	Ch. 368	HB 0552
35-1-930	repealed	Ch. 368	HB 0552
35-1-931	enacted	Ch. 368	HB 0552
35-1-932	enacted	Ch. 368	HB 0552
35-1-933	enacted	Ch. 368	HB 0552
35-1-934	enacted	Ch. 368	HB 0552
35-1-935	enacted	Ch. 368	HB 0552
35-1-936	enacted	Ch. 368	HB 0552
35-1-937	enacted	Ch. 368	HB 0552
35-1-938	enacted	Ch. 368	HB 0552
35-1-939	enacted	Ch. 368	HB 0552
35-1-940	enacted	Ch. 368	HB 0552
35-1-941	enacted	Ch. 368	HB 0552
35-1-942	enacted	Ch. 368	HB 0552
35-1-943	enacted	Ch. 368	HB 0552
35-1-944	formerly 35-1-928	Ch. 368	HB 0552
35-1-1001	repealed	Ch. 368	HB 0552
35-1-1002	repealed	Ch. 368	HB 0552
35-1-1003	repealed	Ch. 368	HB 0552
35-1-1004	repealed	Ch. 368	HB 0552
35-1-1005	repealed	Ch. 368	HB 0552
35-1-1006	repealed	Ch. 368	HB 0552
35-1-1007	repealed	Ch. 368	HB 0552
35-1-1008	repealed	Ch. 368	HB 0552
35-1-1009	repealed	Ch. 368	HB 0552
35-1-1010	repealed	Ch. 368	HB 0552
35-1-1011	repealed	Ch. 368	HB 0552
35-1-1012	repealed	Ch. 368	HB 0552
35-1-1013	repealed	Ch. 368	HB 0552

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35-1-1014	renumbered 35-1-1034	Ch. 368	HB 0552
35-1-1015	repealed	Ch. 368	HB 0552
35-1-1016	repealed	Ch. 368	HB 0552
35-1-1017	repealed	Ch. 368	HB 0552
35-1-1018	repealed	Ch. 368	HB 0552
35-1-1019	repealed	Ch. 368	HB 0552
35-1-1020	repealed	Ch. 368	HB 0552
35-1-1025	repealed	Ch. 368	HB 0552
35-1-1026	enacted	Ch. 368	HB 0552
35-1-1027	enacted	Ch. 368	HB 0552
35-1-1028	enacted	Ch. 368	HB 0552
35-1-1029	enacted	Ch. 368	HB 0552
35-1-1030	enacted	Ch. 368	HB 0552
35-1-1031	enacted	Ch. 368	HB 0552
35-1-1032	enacted	Ch. 368	HB 0552
35-1-1033	enacted	Ch. 368	HB 0552
35-1-1034	formerly 35-1-1014	Ch. 368	HB 0552
35-1-1036	enacted	Ch. 368	HB 0552
35-1-1037	enacted	Ch. 368	HB 0552
35-1-1038	enacted	Ch. 368	HB 0552
35-1-1039	enacted	Ch. 368	HB 0552
35-1-1040	enacted	Ch. 368	HB 0552
35-1-1101	repealed	Ch. 368	HB 0552
35-1-1102	repealed	Ch. 368	HB 0552
35-1-1103	repealed	Ch. 368	HB 0552
35-1-1104	enacted	Ch. 368	HB 0552
35-1-1106	enacted	Ch. 368	HB 0552
35-1-1107	enacted	Ch. 368	HB 0552
35-1-1108	enacted	Ch. 368	HB 0552
35-1-1109	enacted	Ch. 368	HB 0552
35-1-1110	enacted	Ch. 368	HB 0552
35-1-1111	enacted	Ch. 368	HB 0552
35-1-1201	repealed	Ch. 368	HB 0552
35-1-1202	repealed	Ch. 368	HB 0552
35-1-1203	repealed	Ch. 368	HB 0552
35-1-1204	repealed	Ch. 368	HB 0552
35-1-1205	repealed	Ch. 368	HB 0552
35-1-1206	enacted	Ch. 368	HB 0552
35-1-1207	enacted	Ch. 368	HB 0552
35-1-1301	repealed	Ch. 368	HB 0552
35-1-1302	repealed	Ch. 368	HB 0552
35-1-1303	repealed	Ch. 368	HB 0552
35-1-1304	repealed	Ch. 368	HB 0552
35-1-1305	repealed	Ch. 368	HB 0552
35-1-1306	repealed	Ch. 368	HB 0552
35-1-1307	enacted	Ch. 368	HB 0552
35-1-1308	enacted	Ch. 368	HB 0552
35-1-1309	enacted	Ch. 368	HB 0552
35-1-1310	enacted	Ch. 368	HB 0552
35-1-1311	enacted	Ch. 368	HB 0552
35-1-1312	enacted	Ch. 368	HB 0552
35-2-101	renumbered 35-2-113	Ch. 411	HB 0741
35-2-102	repealed	Ch. 411	HB 0741
35-2-103	repealed	Ch. 411	HB 0741
35-2-104	repealed	Ch. 411	HB 0741

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35-2-105	repealed	Ch. 411	HB 0741
35-2-106	repealed	Ch. 411	HB 0741
35-2-107	repealed	Ch. 411	HB 0741
35-2-108	repealed	Ch. 411	HB 0741
35-2-109	repealed	Ch. 411	HB 0741
35-2-110	repealed	Ch. 411	HB 0741
35-2-111	repealed	Ch. 411	HB 0741
35-2-112	repealed	Ch. 411	HB 0741
35-2-113	formerly 35-2-101	Ch. 411	HB 0741
35-2-114	enacted	Ch. 411	HB 0741
35-2-115	enacted	Ch. 411	HB 0741
35-2-116	enacted	Ch. 411	HB 0741
35-2-117	enacted	Ch. 411	HB 0741
35-2-118	enacted	Ch. 411	HB 0741
35-2-119	enacted	Ch. 411	HB 0741
35-2-120	enacted	Ch. 411	HB 0741
35-2-121	enacted	Ch. 411	HB 0741
35-2-122	enacted	Ch. 411	HB 0741
35-2-123	enacted	Ch. 411	HB 0741
35-2-126	enacted	Ch. 411	HB 0741
35-2-127	enacted	Ch. 411	HB 0741
35-2-128	enacted	Ch. 411	HB 0741
35-2-130	enacted	Ch. 411	HB 0741
35-2-131	enacted	Ch. 411	HB 0741
35-2-132	enacted	Ch. 411	HB 0741
35-2-133	enacted	Ch. 411	HB 0741
35-2-201	repealed	Ch. 411	HB 0741
35-2-202	amended	Ch. 368	HB 0552
35-2-202	repealed	Ch. 411	HB 0741
35-2-203	repealed	Ch. 411	HB 0741
35-2-204	repealed	Ch. 411	HB 0741
35-2-205	repealed	Ch. 411	HB 0741
35-2-206	repealed	Ch. 411	HB 0741
35-2-207	repealed	Ch. 411	HB 0741
35-2-208	repealed	Ch. 411	HB 0741
35-2-209	repealed	Ch. 411	HB 0741
35-2-210	repealed	Ch. 411	HB 0741
35-2-211	repealed	Ch. 411	HB 0741
35-2-212	enacted	Ch. 411	HB 0741
35-2-213	enacted	Ch. 411	HB 0741
35-2-214	enacted	Ch. 411	HB 0741
35-2-215	enacted	Ch. 411	HB 0741
35-2-216	enacted	Ch. 411	HB 0741
35-2-217	enacted	Ch. 411	HB 0741
35-2-218	enacted	Ch. 411	HB 0741
35-2-221	enacted	Ch. 411	HB 0741
35-2-222	enacted	Ch. 411	HB 0741
35-2-223	enacted	Ch. 411	HB 0741
35-2-224	enacted	Ch. 411	HB 0741
35-2-225	enacted	Ch. 411	HB 0741
35-2-226	enacted	Ch. 411	HB 0741
35-2-227	enacted	Ch. 411	HB 0741
35-2-228	enacted	Ch. 411	HB 0741
35-2-229	enacted	Ch. 411	HB 0741
35-2-230	enacted	Ch. 411	HB 0741

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35-2-231	enacted	Ch. 411	HB 0741
35-2-232	enacted	Ch. 411	HB 0741
35-2-233	enacted	Ch. 411	HB 0741
35-2-301	repealed	Ch. 411	HB 0741
35-2-302	repealed	Ch. 411	HB 0741
35-2-303	repealed	Ch. 411	HB 0741
35-2-304	repealed	Ch. 411	HB 0741
35-2-305	enacted	Ch. 411	HB 0741
35-2-306	enacted	Ch. 411	HB 0741
35-2-307	enacted	Ch. 411	HB 0741
35-2-309	enacted	Ch. 411	HB 0741
35-2-310	enacted	Ch. 411	HB 0741
35-2-311	enacted	Ch. 411	HB 0741
35-2-314	enacted	Ch. 411	HB 0741
35-2-315	enacted	Ch. 411	HB 0741
35-2-401	repealed	Ch. 411	HB 0741
35-2-413	repealed	Ch. 411	HB 0741
35-2-402	repealed	Ch. 411	HB 0741
35-2-403	repealed	Ch. 411	HB 0741
35-2-404	repealed	Ch. 411	HB 0741
35-2-405	repealed	Ch. 411	HB 0741
35-2-406	repealed	Ch. 411	HB 0741
35-2-407	repealed	Ch. 411	HB 0741
35-2-408	repealed	Ch. 411	HB 0741
35-2-409	repealed	Ch. 411	HB 0741
35-2-410	repealed	Ch. 411	HB 0741
35-2-411	repealed	Ch. 411	HB 0741
35-2-412	repealed	Ch. 411	HB 0741
35-2-414	enacted	Ch. 411	HB 0741
35-2-415	enacted	Ch. 411	HB 0741
35-2-416	enacted	Ch. 411	HB 0741
35-2-417	enacted	Ch. 411	HB 0741
35-2-418	enacted	Ch. 411	HB 0741
35-2-419	enacted	Ch. 411	HB 0741
35-2-420	enacted	Ch. 411	HB 0741
35-2-421	enacted	Ch. 411	HB 0741
35-2-422	enacted	Ch. 411	HB 0741
35-2-423	enacted	Ch. 411	HB 0741
35-2-424	enacted	Ch. 411	HB 0741
35-2-425	enacted	Ch. 411	HB 0741
35-2-427	enacted	Ch. 411	HB 0741
35-2-428	enacted	Ch. 411	HB 0741
35-2-429	enacted	Ch. 411	HB 0741
35-2-430	enacted	Ch. 411	HB 0741
35-2-431	enacted	Ch. 411	HB 0741
35-2-433	enacted	Ch. 411	HB 0741
35-2-435	enacted	Ch. 411	HB 0741
35-2-436	enacted	Ch. 411	HB 0741
35-2-439	enacted	Ch. 411	HB 0741
35-2-440	enacted	Ch. 411	HB 0741
35-2-441	enacted	Ch. 411	HB 0741
35-2-442	enacted	Ch. 411	HB 0741
35-2-443	enacted	Ch. 411	HB 0741
35-2-444	enacted	Ch. 411	HB 0741
35-2-446	enacted	Ch. 411	HB 0741

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35-2-447	enacted	Ch. 411	HB 0741
35-2-448	enacted	Ch. 411	HB 0741
35-2-449	enacted	Ch. 411	HB 0741
35-2-450	enacted	Ch. 411	HB 0741
35-2-451	enacted	Ch. 411	HB 0741
35-2-452	enacted	Ch. 411	HB 0741
35-2-453	enacted	Ch. 411	HB 0741
35-2-454	enacted	Ch. 411	HB 0741
35-2-501	repealed	Ch. 411	HB 0741
35-2-502	repealed	Ch. 411	HB 0741
35-2-503	repealed	Ch. 411	HB 0741
35-2-504	repealed	Ch. 411	HB 0741
35-2-505	repealed	Ch. 411	HB 0741
35-2-506	repealed	Ch. 411	HB 0741
35-2-507	repealed	Ch. 411	HB 0741
35-2-508	repealed	Ch. 411	HB 0741
35-2-509	repealed	Ch. 411	HB 0741
35-2-510	enacted	Ch. 411	HB 0741
35-2-511	enacted	Ch. 411	HB 0741
35-2-512	enacted	Ch. 411	HB 0741
35-2-513	enacted	Ch. 411	HB 0741
35-2-514	enacted	Ch. 411	HB 0741
35-2-516	enacted	Ch. 411	HB 0741
35-2-517	enacted	Ch. 411	HB 0741
35-2-518	enacted	Ch. 411	HB 0741
35-2-519	enacted	Ch. 411	HB 0741
35-2-520	enacted	Ch. 411	HB 0741
35-2-522	enacted	Ch. 411	HB 0741
35-2-524	enacted	Ch. 411	HB 0741
35-2-526	enacted	Ch. 411	HB 0741
35-2-527	enacted	Ch. 411	HB 0741
35-2-528	enacted	Ch. 411	HB 0741
35-2-529	enacted	Ch. 411	HB 0741
35-2-530	enacted	Ch. 411	HB 0741
35-2-531	enacted	Ch. 411	HB 0741
35-2-532	enacted	Ch. 411	HB 0741
35-2-533	enacted	Ch. 411	HB 0741
35-2-535	enacted	Ch. 411	HB 0741
35-2-536	enacted	Ch. 411	HB 0741
35-2-537	enacted	Ch. 411	HB 0741
35-2-538	enacted	Ch. 411	HB 0741
35-2-539	enacted	Ch. 411	HB 0741
35-2-540	enacted	Ch. 411	HB 0741
35-2-541	enacted	Ch. 411	HB 0741
35-2-542	enacted	Ch. 411	HB 0741
35-2-543	enacted	Ch. 411	HB 0741
35-2-601	repealed	Ch. 411	HB 0741
35-2-602	repealed	Ch. 411	HB 0741
35-2-603	repealed	Ch. 411	HB 0741
35-2-604	repealed	Ch. 411	HB 0741
35-2-605	repealed	Ch. 411	HB 0741
35-2-606	repealed	Ch. 411	HB 0741
35-2-607	repealed	Ch. 411	HB 0741
35-2-608	enacted	Ch. 411	HB 0741
35-2-609	enacted	Ch. 411	HB 0741

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35-2-610	enacted	Ch. 411	HB 0741
35-2-611	enacted	Ch. 411	HB 0741
35-2-612	enacted	Ch. 411	HB 0741
35-2-613	enacted	Ch. 411	HB 0741
35-2-614	enacted	Ch. 411	HB 0741
35-2-616	enacted	Ch. 411	HB 0741
35-2-617	enacted	Ch. 411	HB 0741
35-2-701	repealed	Ch. 411	HB 0741
35-2-702	repealed	Ch. 411	HB 0741
35-2-703	repealed	Ch. 411	HB 0741
35-2-704	repealed	Ch. 411	HB 0741
35-2-705	repealed	Ch. 411	HB 0741
35-2-706	repealed	Ch. 411	HB 0741
35-2-711	repealed	Ch. 411	HB 0741
35-2-712	repealed	Ch. 411	HB 0741
35-2-713	repealed	Ch. 411	HB 0741
35-2-714	repealed	Ch. 411	HB 0741
35-2-715	repealed	Ch. 411	HB 0741
35-2-716	repealed	Ch. 411	HB 0741
35-2-717	repealed	Ch. 411	HB 0741
35-2-718	repealed	Ch. 411	HB 0741
35-2-719	repealed	Ch. 411	HB 0741
35-2-720	enacted	Ch. 411	HB 0741
35-2-721	enacted	Ch. 411	HB 0741
35-2-722	enacted	Ch. 411	HB 0741
35-2-723	enacted	Ch. 411	HB 0741
35-2-724	enacted	Ch. 411	HB 0741
35-2-725	enacted	Ch. 411	HB 0741
35-2-726	enacted	Ch. 411	HB 0741
35-2-727	enacted	Ch. 411	HB 0741
35-2-728	enacted	Ch. 411	HB 0741
35-2-729	enacted	Ch. 411	HB 0741
35-2-730	enacted	Ch. 411	HB 0741
35-2-731	enacted	Ch. 411	HB 0741
35-2-732	enacted	Ch. 411	HB 0741
35-2-801	repealed	Ch. 411	HB 0741
35-2-802	repealed	Ch. 411	HB 0741
35-2-803	repealed	Ch. 411	HB 0741
35-2-804	repealed	Ch. 411	HB 0741
35-2-805	repealed	Ch. 411	HB 0741
35-2-806	repealed	Ch. 411	HB 0741
35-2-807	repealed	Ch. 411	HB 0741
35-2-808	repealed	Ch. 411	HB 0741
35-2-809	repealed	Ch. 411	HB 0741
35-2-810	repealed	Ch. 411	HB 0741
35-2-811	repealed	Ch. 411	HB 0741
35-2-812	repealed	Ch. 411	HB 0741
35-2-813	repealed	Ch. 411	HB 0741
35-2-814	repealed	Ch. 411	HB 0741
35-2-815	repealed	Ch. 411	HB 0741
35-2-816	repealed	Ch. 411	HB 0741
35-2-817	repealed	Ch. 411	HB 0741
35-2-818	repealed	Ch. 411	HB 0741
35-2-819	repealed	Ch. 411	HB 0741
35-2-820	enacted	Ch. 411	HB 0741

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35-2-821	enacted	Ch. 411	HB 0741
35-2-822	enacted	Ch. 411	HB 0741
35-2-823	enacted	Ch. 411	HB 0741
35-2-824	enacted	Ch. 411	HB 0741
35-2-826	enacted	Ch. 411	HB 0741
35-2-827	enacted	Ch. 411	HB 0741
35-2-828	enacted	Ch. 411	HB 0741
35-2-829	enacted	Ch. 411	HB 0741
35-2-830	enacted	Ch. 411	HB 0741
35-2-831	enacted	Ch. 411	HB 0741
35-2-832	enacted	Ch. 411	HB 0741
35-2-833	enacted	Ch. 411	HB 0741
35-2-834	enacted	Ch. 411	HB 0741
35-2-901	repealed	Ch. 411	HB 0741
35-2-902	repealed	Ch. 411	HB 0741
35-2-903	repealed	Ch. 411	HB 0741
35-2-904	enacted	Ch. 411	HB 0741
35-2-906	enacted	Ch. 411	HB 0741
35-2-907	enacted	Ch. 411	HB 0741
35-2-908	enacted	Ch. 411	HB 0741
35-2-909	enacted	Ch. 411	HB 0741
35-2-910	enacted	Ch. 411	HB 0741
35-2-911	enacted	Ch. 411	HB 0741
35-2-912	enacted	Ch. 411	HB 0741
35-2-1001	repealed	Ch. 411	HB 0741
35-2-1002	repealed	Ch. 411	HB 0741
35-2-1003	enacted	Ch. 411	HB 0741
35-2-1101	repealed	Ch. 411	HB 0741
35-2-1102	repealed	Ch. 411	HB 0741
35-2-1103	repealed	Ch. 411	HB 0741
35-2-1104	repealed	Ch. 411	HB 0741
35-2-1105	repealed	Ch. 411	HB 0741
35-2-1106	repealed	Ch. 411	HB 0741
35-2-1107	enacted	Ch. 411	HB 0741
35-2-1108	enacted	Ch. 411	HB 0741
35-2-1109	enacted	Ch. 411	HB 0741
35-2-1110	enacted	Ch. 411	HB 0741
35-2-1111	enacted	Ch. 411	HB 0741
35-2-1112	enacted	Ch. 411	HB 0741
35-2-1201	repealed	Ch. 411	HB 0741
35-2-1202	repealed	Ch. 411	HB 0741
35-2-1203	repealed	Ch. 411	HB 0741
35-2-1301	enacted	Ch. 411	HB 0741
35-2-1302	enacted	Ch. 411	HB 0741
35-2-1303	enacted	Ch. 411	HB 0741
35-2-1304	enacted	Ch. 411	HB 0741
35-2-1305	enacted	Ch. 411	HB 0741
35-2-1306	enacted	Ch. 411	HB 0741
35-2-1307	enacted	Ch. 411	HB 0741
35-2-1401	enacted	Ch. 411	HB 0741
35-2-1402	enacted	Ch. 411	HB 0741
35-5-201	amended	Ch. 368	HB 0552
35-6-104	amended	Ch. 368	HB 0552
35-6-104	amended	Ch. 411	HB 0741
35-6-201	amended	Ch. 368	HB 0552

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35-6-201	amended	Ch. 411	HB 0741
35-9-103	amended	Ch. 368	HB 0552
35-9-201	amended	Ch. 368	HB 0552
35-9-205	amended	Ch. 368	HB 0552
35-9-302	amended	Ch. 368	HB 0552
35-9-303	amended	Ch. 368	HB 0552
35-9-305	amended	Ch. 368	HB 0552
35-9-402	amended	Ch. 368	HB 0552
35-9-404	amended	Ch. 368	HB 0552
35-9-501	amended	Ch. 368	HB 0552
35-9-504	amended	Ch. 368	HB 0552
35-12-610	enacted	Ch. 533	HB 0629
35-12-611	enacted	Ch. 533	HB 0629
35-12-612	enacted	Ch. 533	HB 0629
35-12-613	enacted	Ch. 533	HB 0629
35-12-1204	amended	Ch. 368	HB 0552
35-15-201	amended	Ch. 368	HB 0552
35-16-202	amended	Ch. 368	HB 0552
35-17-202	amended	Ch. 368	HB 0552
35-18-203	amended	Ch. 368	HB 0552
35-18-503	amended	Ch. 676	SB 0280
35-18-504	enacted	Ch. 676	SB 0280
35-18-505	enacted	Ch. 676	SB 0280
35-18-506	enacted	Ch. 676	SB 0280
35-18-510	enacted	Ch. 676	SB 0280
35-20-103	amended	Ch. 368	HB 0552
37-1-106	amended	Ch. 112	HB 0231
37-1-131	amended	Ch. 90	SB 0244
37-2-104	amended	Ch. 445	SB 0310
37-2-311	amended	Ch. 419	HB 0570
37-3-103	amended	Ch. 550	SB 0172
37-3-203	amended	Ch. 436	HB 0667
37-3-322	amended	Ch. 164	SB 0146
37-3-323	amended	Ch. 540	HB 0870
37-4-302	amended	Ch. 66	SB 0090
37-4-401	amended	Ch. 66	SB 0090
37-4-404	amended	Ch. 66	SB 0090
37-4-405	amended	Ch. 66	SB 0090
37-4-408	amended	Ch. 66	SB 0090
37-6-106	enacted	Ch. 540	HB 0870
37-6-304	amended	Ch. 540	HB 0870
37-6-311	amended	Ch. 540	HB 0870
37-7-101	amended	Ch. 219	HB 0118
37-7-201	amended	Ch. 134	SB 0135
37-7-301	amended	Ch. 219	HB 0118
37-7-307	enacted	Ch. 219	HB 0118
37-7-308	enacted	Ch. 219	HB 0118
37-7-309	enacted	Ch. 219	HB 0118
37-7-323	amended	Ch. 219	HB 0118
37-7-406	enacted	Ch. 664	SB 0393
37-7-407	enacted	Ch. 664	SB 0393
37-7-601	enacted	Ch. 134	SB 0135
37-7-602	enacted	Ch. 134	SB 0135
37-7-603	enacted	Ch. 134	SB 0135
37-7-604	enacted	Ch. 134	SB 0135

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37-7-605	enacted	Ch. 134	SB 0135
37-7-606	enacted	Ch. 134	SB 0135
37-7-607	enacted	Ch. 134	SB 0135
37-7-608	enacted	Ch. 134	SB 0135
37-7-609	enacted	Ch. 134	SB 0135
37-7-610	enacted	Ch. 134	SB 0135
37-7-701	enacted	Ch. 664	SB 0393
37-7-702	enacted	Ch. 664	SB 0393
37-7-703	enacted	Ch. 664	SB 0393
37-7-704	enacted	Ch. 664	SB 0393
37-7-705	enacted	Ch. 664	SB 0393
37-7-706	enacted	Ch. 664	SB 0393
37-7-711	enacted	Ch. 664	SB 0393
37-8-202	amended	Ch. 290	HB 0111
37-11-101	amended	Ch. 237	HB 0341
37-11-102	amended	Ch. 237	HB 0341
37-11-106	enacted	Ch. 237	HB 0341
37-11-107	enacted	Ch. 237	HB 0341
37-11-201	amended	Ch. 115	HB 0345
37-11-304	amended	Ch. 115	HB 0345
37-13-306	amended	Ch. 540	HB 0870
37-16-202(9)	enacted	Ch. 155	SB 0200
37-16-301	amended	Ch. 155	SB 0200
37-16-303	amended	Ch. 155	SB 0200
37-16-304	enacted	Ch. 155	SB 0200
37-16-402	amended	Ch. 155	SB 0200
37-16-403	amended	Ch. 155	SB 0200
37-16-405	amended	Ch. 155	SB 0200
37-16-407	amended	Ch. 155	SB 0200
37-16-408	amended	Ch. 155	SB 0200
37-16-411	amended	Ch. 155	SB 0200
37-16-414	enacted	Ch. 155	SB 0200
37-17-202	amended	Ch. 671	SB 0174
37-17-302	amended	Ch. 671	SB 0174
37-17-306	amended	Ch. 671	SB 0174
37-17-307	amended	Ch. 671	SB 0174
37-17-318	enacted	Ch. 671	SB 0174
37-18-104	amended	Ch. 21	SB 0036
37-18-302	amended	Ch. 21	SB 0036
37-18-303	amended	Ch. 21	SB 0036
37-20-104	amended	Ch. 446	SB 0311
37-20-202	amended	Ch. 446	SB 0311
37-20-301	amended	Ch. 446	SB 0311
37-20-302	amended	Ch. 540	HB 0870
37-24-103	amended	Ch. 35	SB 0054
37-25-307	amended	Ch. 255	HB 0587
37-26-101	enacted	Ch. 306	SB 0066
37-26-102	enacted	Ch. 306	SB 0066
37-26-103	enacted	Ch. 306	SB 0066
37-26-201	enacted	Ch. 306	SB 0066
37-26-202	enacted	Ch. 306	SB 0066
37-26-301	enacted	Ch. 306	SB 0066
37-26-302	enacted	Ch. 306	SB 0066
37-26-303	enacted	Ch. 306	SB 0066
37-26-304	enacted	Ch. 306	SB 0066

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37-26-401	enacted	Ch. 306	SB 0066
37-26-402	enacted	Ch. 306	SB 0066
37-26-403	enacted	Ch. 306	SB 0066
37-26-404	enacted	Ch. 306	SB 0066
37-26-405	enacted	Ch. 306	SB 0066
37-26-408	enacted	Ch. 306	SB 0066
37-26-409	enacted	Ch. 306	SB 0066
37-26-410	enacted	Ch. 306	SB 0066
37-26-414	enacted	Ch. 306	SB 0066
37-27-101	enacted	Ch. 550	SB 0172
37-27-102	enacted	Ch. 550	SB 0172
37-27-103	amended	Ch. 524	SB 0381
37-27-103	enacted	Ch. 550	SB 0172
37-27-104	enacted	Ch. 550	SB 0172
37-27-105	enacted	Ch. 550	SB 0172
37-27-111	formerly 37-75-101	Ch. 550	SB 0172
37-27-201	enacted	Ch. 550	SB 0172
37-27-202	enacted	Ch. 550	SB 0172
37-27-203	enacted	Ch. 550	SB 0172
37-27-205	enacted	Ch. 550	SB 0172
37-27-210	enacted	Ch. 550	SB 0172
37-27-213	enacted	Ch. 550	SB 0172
37-27-216	enacted	Ch. 550	SB 0172
37-27-301	enacted	Ch. 550	SB 0172
37-27-302	enacted	Ch. 550	SB 0172
37-27-303	enacted	Ch. 550	SB 0172
37-27-310	enacted	Ch. 550	SB 0172
37-27-311	enacted	Ch. 550	SB 0172
37-27-312	enacted	Ch. 550	SB 0172
37-27-315	enacted	Ch. 550	SB 0172
37-27-320	enacted	Ch. 550	SB 0172
37-27-321	enacted	Ch. 550	SB 0172
37-27-325	enacted	Ch. 550	SB 0172
37-28-101	enacted	Ch. 532	HB 0620
37-28-102	enacted	Ch. 532	HB 0620
37-28-103	enacted	Ch. 532	HB 0620
37-28-104	enacted	Ch. 532	HB 0620
37-28-201	enacted	Ch. 532	HB 0620
37-28-202	enacted	Ch. 532	HB 0620
37-28-203	enacted	Ch. 532	HB 0620
37-28-206	enacted	Ch. 532	HB 0620
37-28-210	enacted	Ch. 532	HB 0620
37-28-301	enacted	Ch. 532	HB 0620
37-28-302	enacted	Ch. 532	HB 0620
37-28-305	enacted	Ch. 532	HB 0620
37-29-303	amended	Ch. 245	HB 0413
37-29-306	amended	Ch. 245	HB 0413
37-29-402	amended	Ch. 245	HB 0413
37-31-312	amended	Ch. 458	HB 0953
37-40-101	amended	Ch. 545	HB 0943
37-40-102	amended	Ch. 545	HB 0943
37-40-201	amended	Ch. 545	HB 0943
37-40-203	amended	Ch. 545	HB 0943
37-40-301	amended	Ch. 545	HB 0943
37-40-302	amended	Ch. 545	HB 0943

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37-40-303	amended	Ch. 545	HB 0943
37-40-304	amended	Ch. 545	HB 0943
37-40-305	amended	Ch. 545	HB 0943
37-40-306	repealed	Ch. 545	HB 0943
37-40-307	repealed	Ch. 545	HB 0943
37-40-311	amended	Ch. 545	HB 0943
37-40-312	amended	Ch. 545	HB 0943
37-41-202	amended	Ch. 392	HB 0639
37-41-205	enacted	Ch. 392	HB 0639
37-43-204	enacted	Ch. 493	HB 0418
37-43-303	amended	Ch. 769	SB 0094
37-43-307	amended	Ch. 769	SB 0094
37-47-101	amended	Ch. 16	SB 0033
37-50-403	enacted	Ch. 197	SB 0360
37-51-102	amended	Ch. 125	SB 0089
37-51-209	enacted	Ch. 270	SB 0112
37-51-306	amended	Ch. 11	SB 0045
37-54-101	enacted	Ch. 409	SB 0008
37-54-102	enacted	Ch. 409	SB 0008
37-54-105	enacted	Ch. 409	SB 0008
37-54-110	enacted	Ch. 409	SB 0008
37-54-111	enacted	Ch. 409	SB 0008
37-54-112	enacted	Ch. 409	SB 0008
37-54-201	enacted	Ch. 409	SB 0008
37-54-202	enacted	Ch. 409	SB 0008
37-54-203	enacted	Ch. 409	SB 0008
37-54-210	enacted	Ch. 409	SB 0008
37-54-211	enacted	Ch. 409	SB 0008
37-54-301	enacted	Ch. 409	SB 0008
37-54-302	enacted	Ch. 409	SB 0008
37-54-303	enacted	Ch. 409	SB 0008
37-54-304	enacted	Ch. 409	SB 0008
37-54-305	enacted	Ch. 409	SB 0008
37-54-310	enacted	Ch. 409	SB 0008
37-54-311	enacted	Ch. 409	SB 0008
37-54-401	enacted	Ch. 409	SB 0008
37-54-402	enacted	Ch. 409	SB 0008
37-54-403	enacted	Ch. 409	SB 0008
37-54-406	enacted	Ch. 409	SB 0008
37-54-411	enacted	Ch. 409	SB 0008
37-54-412	enacted	Ch. 409	SB 0008
37-54-415	enacted	Ch. 409	SB 0008
37-54-416	enacted	Ch. 409	SB 0008
37-54-417	enacted	Ch. 409	SB 0008
37-60-101	amended	Ch. 47	HB 0022
37-60-105	amended	Ch. 47	HB 0022
37-60-406	amended	Ch. 800	SB 0051
37-69-304	amended	Ch. 10	HB 0018
37-75-101	renumbered 37-27-111	Ch. 550	SB 0172
39-2-304	amended	Ch. 477	HB 0110
39-2-1001	enacted	Ch. 757	HB 0803
39-2-1002	enacted	Ch. 757	HB 0803
39-2-1003	enacted	Ch. 757	HB 0803
39-2-1004	enacted	Ch. 757	HB 0803
39-3-206	amended	Ch. 490	HB 0336

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39-3-208	amended	Ch. 490	HB 0336
39-3-212	amended	Ch. 490	HB 0336
39-3-216	amended	Ch. 490	HB 0336
39-3-402	amended	Ch. 216	HB 0060
39-3-406	amended	Ch. 276	SB 0237
39-3-409	amended	Ch. 650	HB 0152
39-3-410	repealed	Ch. 650	HB 0152
39-3-604	amended	Ch. 490	HB 0336
39-3-605	amended	Ch. 490	HB 0336
39-6-101	amended	Ch. 112	HB 0231
39-51-201	amended	Ch. 261	HB 0812
39-51-201	amended	Ch. 373	HB 0726
39-51-202	amended	Ch. 373	HB 0726
39-51-203	amended	Ch. 373	HB 0726
39-51-204	amended	Ch. 373	HB 0726
39-51-204	amended	Ch. 573	HB 0807
39-51-206	amended	Ch. 373	HB 0726
39-51-407	amended	Ch. 112	HB 0231
39-51-602	amended	Ch. 373	HB 0726
39-51-603	amended	Ch. 373	HB 0726
39-51-604	enacted	Ch. 573	HB 0807
39-51-1101	amended	Ch. 373	HB 0726
39-51-1104	amended	Ch. 373	HB 0726
39-51-1105	amended	Ch. 373	HB 0726
39-51-1110	amended	Ch. 373	HB 0726
39-51-1121	amended	Ch. 373	HB 0726
39-51-1125	amended	Ch. 373	HB 0726
39-51-1212	amended	Ch. 373	HB 0726
39-51-1213	amended	Ch. 373	HB 0726
39-51-1214	amended	Ch. 373	HB 0726
39-51-1217	amended	Ch. 373	HB 0726
39-51-1218	amended	Ch. 373	HB 0726
39-51-1301	amended	Ch. 373	HB 0726
39-51-1301	amended	Ch. 639	HB 0704
39-51-1302	amended	Ch. 373	HB 0726
39-51-1303	amended	Ch. 373	HB 0726
39-51-1304	amended	Ch. 373	HB 0726
39-51-1305	amended	Ch. 373	HB 0726
39-51-1306	amended	Ch. 373	HB 0726
39-51-2105	amended	Ch. 485	HB 0256
39-51-2107	amended	Ch. 373	HB 0726
39-51-2110	amended	Ch. 373	HB 0726
39-51-2201	amended	Ch. 485	HB 0256
39-51-2204	amended	Ch. 485	HB 0256
39-51-2302	amended	Ch. 373	HB 0726
39-51-2308	repealed	Ch. 373	HB 0726
39-51-2602	amended	Ch. 373	HB 0726
39-51-3201	amended	Ch. 373	HB 0726
39-51-3202	amended	Ch. 373	HB 0726
39-71-116	amended	Ch. 323	SB 0383
39-71-116	amended	Ch. 480	HB 0187
39-71-116	amended	Ch. 574	HB 0837
39-71-117	amended	Ch. 323	SB 0383
39-71-117	amended	Ch. 813	SB 0473
39-71-118	amended	Ch. 129	SB 0102

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39-71-118	amended	Ch. 323	SB 0383
39-71-118	amended	Ch. 813	SB 0473
39-71-123	amended	Ch. 129	SB 0102
39-71-123	amended	Ch. 261	HB 0812
39-71-201	amended	Ch. 558	HB 0465
39-71-306	amended	Ch. 558	HB 0465
39-71-318	enacted	Ch. 558	HB 0465
39-71-401	amended	Ch. 16	SB 0033
39-71-401	amended	Ch. 573	HB 0807
39-71-402	amended	Ch. 480	HB 0187
39-71-414	amended	Ch. 323	SB 0383
39-71-414	amended	Ch. 574	HB 0837
39-71-426	amended	Ch. 480	HB 0187
39-71-431	amended	Ch. 323	SB 0383
39-71-434	amended	Ch. 666	SB 0420
39-71-504	amended	Ch. 661	SB 0343
39-71-604	amended	Ch. 558	HB 0465
39-71-605	amended	Ch. 558	HB 0465
39-71-701	amended	Ch. 52	HB 0280
39-71-702	amended	Ch. 574	HB 0837
39-71-703	amended	Ch. 574	HB 0837
39-71-704	amended	Ch. 131	SB 0130
39-71-704	amended	Ch. 558	HB 0465
39-71-704	amended	Ch. 574	HB 0837
39-71-711	amended	Ch. 558	HB 0465
39-71-721	amended	Ch. 480	HB 0187
39-71-723	amended	Ch. 480	HB 0187
39-71-727	enacted	Ch. 131	SB 0130
39-71-741	amended	Ch. 574	HB 0837
39-71-905	amended	Ch. 558	HB 0465
39-71-1003	amended	Ch. 574	HB 0837
39-71-1011	amended	Ch. 574	HB 0837
39-71-1012	repealed	Ch. 574	HB 0837
39-71-1013	amended	Ch. 574	HB 0837
39-71-1015	repealed	Ch. 574	HB 0837
39-71-1016	repealed	Ch. 574	HB 0837
39-71-1017	repealed	Ch. 574	HB 0837
39-71-1018	repealed	Ch. 574	HB 0837
39-71-1019	amended	Ch. 16	SB 0033
39-71-1019	repealed	Ch. 574	HB 0837
39-71-1023	repealed	Ch. 574	HB 0837
39-71-1024	repealed	Ch. 574	HB 0837
39-71-1025	amended	Ch. 574	HB 0837
39-71-1026	repealed	Ch. 574	HB 0837
39-71-1032	amended	Ch. 574	HB 0837
39-71-1033	repealed	Ch. 574	HB 0837
39-71-2001	enacted	Ch. 574	HB 0837
39-71-2101	amended	Ch. 163	SB 0028
39-71-2103	amended	Ch. 163	SB 0028
39-71-2104	amended	Ch. 163	SB 0028
39-71-2106	amended	Ch. 120	SB 0014
39-71-2106	amended	Ch. 558	HB 0465
39-71-2109	amended	Ch. 163	SB 0028
39-71-2211	enacted	Ch. 480	HB 0187
39-71-2311	amended	Ch. 323	SB 0383

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39-71-2321	amended	Ch. 797	HB 0995
39-71-2338	repealed	Ch. 323	SB 0383
39-71-2339	amended	Ch. 323	SB 0383
39-71-2351	amended	Ch. 797	HB 0995
39-71-2352	amended	Ch. 797	HB 0995
39-71-2353	repealed	Ch. 797	HB 0995
39-71-2354	enacted	Ch. 797	HB 0995
39-71-2355	enacted	Ch. 797	HB 0995
39-71-2356	enacted	Ch. 797	HB 0995
39-71-2401	amended	Ch. 558	HB 0465
39-71-2410	amended	Ch. 558	HB 0465
39-71-2503	amended	Ch. 220	HB 0153
39-71-2503	amended	Ch. 797	HB 0995
39-71-2504	amended	Ch. 797	HB 0995
39-71-2609	amended	Ch. 163	SB 0028
39-71-2611	amended	Ch. 163	SB 0028
39-71-2907	amended	Ch. 174	HB 0197
39-72-102	amended	Ch. 480	HB 0187
39-72-304	repealed	Ch. 558	HB 0465
39-72-402	amended	Ch. 558	HB 0465
39-73-108	amended	Ch. 480	HB 0187
40-4-121	amended	Ch. 259	HB 0675
40-4-130	enacted	Ch. 795	HB 0752
40-4-131	enacted	Ch. 795	HB 0752
40-4-132	enacted	Ch. 795	HB 0752
40-4-133	enacted	Ch. 795	HB 0752
40-4-134	enacted	Ch. 795	HB 0752
40-4-135	enacted	Ch. 795	HB 0752
40-4-136	enacted	Ch. 795	HB 0752
40-4-204	amended	Ch. 266	HB 0922
40-4-204	amended	Ch. 635	HB 0923
40-4-208	amended	Ch. 342	HB 0284
40-5-201	amended	Ch. 266	HB 0922
40-5-226	amended	Ch. 266	HB 0922
40-5-226	amended	Ch. 635	HB 0923
40-5-271	enacted	Ch. 266	HB 0922
40-5-272	enacted	Ch. 266	HB 0922
40-5-273	enacted	Ch. 266	HB 0922
40-5-304	amended	Ch. 635	HB 0923
40-5-309	amended	Ch. 635	HB 0923
40-5-315	enacted	Ch. 635	HB 0923
40-5-402	amended	Ch. 635	HB 0923
40-5-403	amended	Ch. 635	HB 0923
40-5-411	amended	Ch. 635	HB 0923
40-5-412	amended	Ch. 16	SB 0033
40-5-412	amended	Ch. 635	HB 0923
40-5-413	amended	Ch. 635	HB 0923
40-5-414	amended	Ch. 635	HB 0923
40-5-415	amended	Ch. 635	HB 0923
40-5-416	amended	Ch. 635	HB 0923
40-5-417	amended	Ch. 635	HB 0923
40-5-421	amended	Ch. 635	HB 0923
40-5-425	repealed	Ch. 635	HB 0923
40-5-433	amended	Ch. 635	HB 0923
40-5-440	enacted	Ch. 635	HB 0923

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40-5-441	enacted	Ch. 635	HB 0923
40-5-442	enacted	Ch. 635	HB 0923
40-5-443	enacted	Ch. 635	HB 0923
40-6-108	amended	Ch. 265	HB 0920
40-6-116	amended	Ch. 266	HB 0922
40-6-116	amended	Ch. 635	HB 0923
40-6-125	amended	Ch. 683	HB 0025
40-6-135	amended	Ch. 683	HB 0025
40-8-103	amended	Ch. 684	HB 0026
40-8-109	amended	Ch. 683	HB 0025
40-8-109	amended	Ch. 684	HB 0026
40-8-114	enacted	Ch. 682	HB 0024
40-8-115	enacted	Ch. 684	HB 0026
40-8-116	enacted	Ch. 684	HB 0026
40-8-117	enacted	Ch. 684	HB 0026
40-8-135	amended	Ch. 684	HB 0026
40-8-136	amended	Ch. 684	HB 0026
40-9-102	amended	Ch. 18	HB 0043
41-3-107	amended	Ch. 655	SB 0205
41-3-201	amended	Ch. 785	HB 0391
41-3-205	amended	Ch. 510	HB 0948
41-3-205	amended	Ch. 655	SB 0205
41-3-208	amended	Ch. 696	HB 0993
41-3-403	amended	Ch. 696	HB 0993
41-3-406	amended	Ch. 696	HB 0993
41-3-408	amended	Ch. 696	HB 0993
41-3-410	enacted	Ch. 599	HB 0299
41-3-609	amended	Ch. 599	HB 0299
41-3-1102	amended	Ch. 559	HB 0491
41-3-1103	amended	Ch. 629	HB 0489
41-3-1103	amended	Ch. 799	SB 0037
41-3-1111	renumbered 41-5-314	Ch. 547	SB 0038
41-3-1123	repealed	Ch. 696	HB 0993
41-3-1124	repealed	Ch. 696	HB 0993
41-3-1125	repealed	Ch. 696	HB 0993
41-3-1151	enacted	Ch. 559	HB 0491
41-3-1152	enacted	Ch. 559	HB 0491
41-4-102	amended	Ch. 696	HB 0993
41-5-103	amended	Ch. 231	HB 0286
41-5-103	amended	Ch. 547	SB 0038
41-5-103	amended	Ch. 548	SB 0059
41-5-103	amended	Ch. 799	SB 0037
41-5-105	amended	Ch. 799	SB 0037
41-5-206	amended	Ch. 262	HB 0848
41-5-206	amended	Ch. 547	SB 0038
41-5-303	amended	Ch. 547	SB 0038
41-5-304	amended	Ch. 346	HB 0581
41-5-305	amended	Ch. 548	SB 0059
41-5-306	amended	Ch. 105	HB 0148
41-5-306	amended	Ch. 547	SB 0038
41-5-306	amended	Ch. 548	SB 0059
41-5-306	amended	Ch. 799	SB 0037
41-5-307	amended	Ch. 547	SB 0038
41-5-308	repealed effective 07/01/92	Ch. 547	SB 0038
41-5-308	amended	Ch. 799	SB 0037

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41-5-309	amended	Ch. 547	SB 0038
41-5-310	enacted	Ch. 548	SB 0059
41-5-311	enacted	Ch. 547	SB 0038
41-5-312	enacted	Ch. 547	SB 0038
41-5-313	enacted	Ch. 548	SB 0059
41-5-314	formerly 41-3-1111	Ch. 547	SB 0038
41-5-315	repealed	Ch. 799	SB 0037
41-5-316	repealed	Ch. 799	SB 0037
41-5-401	amended	Ch. 231	HB 0286
41-5-403	amended	Ch. 105	HB 0148
41-5-403	amended	Ch. 696	HB 0993
41-5-502	amended	Ch. 547	SB 0038
41-5-522	amended	Ch. 696	HB 0993
41-5-523	amended	Ch. 105	HB 0148
41-5-523	amended	Ch. 201	SB 0432
41-5-523	amended	Ch. 511	SB 0056
41-5-523	amended	Ch. 696	HB 0993
41-5-524	amended	Ch. 696	HB 0993
41-5-530	enacted	Ch. 696	HB 0993
41-5-602	amended	Ch. 510	HB 0948
41-5-602	amended	Ch. 655	SB 0205
41-5-603	amended	Ch. 510	HB 0948
41-5-603	amended	Ch. 655	SB 0205
41-5-802	amended	Ch. 799	SB 0037
41-5-808	repealed	Ch. 799	SB 0037
41-5-809	amended	Ch. 799	SB 0037
41-5-810	enacted	Ch. 799	SB 0037
41-5-811	enacted	Ch. 799	SB 0037
41-5-812	enacted	Ch. 799	SB 0037
41-5-813	enacted	Ch. 799	SB 0037
41-5-814	enacted	Ch. 799	SB 0037
41-5-1001	enacted	Ch. 799	SB 0037
41-5-1002	enacted	Ch. 799	SB 0037
41-5-1003	enacted	Ch. 799	SB 0037
41-5-1004	enacted	Ch. 799	SB 0037
41-5-1005	enacted	Ch. 799	SB 0037
41-5-1006	enacted	Ch. 799	SB 0037
41-5-1007	enacted	Ch. 799	SB 0037
41-5-1008	enacted	Ch. 799	SB 0037
44-1-106	amended	Ch. 529	HB 0544
44-1-401	amended	Ch. 414	HB 0301
44-1-403	repealed	Ch. 414	HB 0301
44-1-501	amended	Ch. 512	SB 0164
44-1-701	amended	Ch. 713	SB 0251
44-1-803	amended	Ch. 713	SB 0251
44-1-804	amended	Ch. 713	SB 0251
44-1-806	amended	Ch. 713	SB 0251
44-1-901	amended	Ch. 225	HB 0232
44-1-902	amended	Ch. 225	HB 0232
44-1-903	amended	Ch. 225	HB 0232
44-1-910	enacted	Ch. 713	SB 0251
44-1-1005	amended	Ch. 226	HB 0236
44-1-1005	amended	Ch. 512	SB 0164
44-2-111	amended	Ch. 280	SB 0257
44-2-112	repealed	Ch. 280	SB 0257

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44-2-113	amended	Ch. 280	SB 0257
44-2-115	amended	Ch. 280	SB 0257
44-2-304	amended	Ch. 112	HB 0231
44-2-601	enacted	Ch. 103	HB 0114
44-2-701	enacted	Ch. 808	SB 0370
44-2-702	enacted	Ch. 808	SB 0370
44-2-703	enacted	Ch. 808	SB 0370
44-2-704	enacted	Ch. 808	SB 0370
44-2-705	enacted	Ch. 808	SB 0370
44-3-403	repealed	Ch. 660	SB 0331
44-3-404	amended	Ch. 660	SB 0331
44-4-301	amended	Ch. 58	HB 0138
44-4-301	amended	Ch. 809	SB 0379
44-4-302	amended	Ch. 58	HB 0138
44-5-103	amended	Ch. 804	SB 0249
44-5-202	amended	Ch. 262	HB 0848
44-5-202	amended	Ch. 804	SB 0249
44-5-213	amended	Ch. 262	HB 0848
44-5-303	amended	Ch. 804	SB 0249
44-11-303	amended	Ch. 800	SB 0051
44-12-203	amended	Ch. 16	SB 0033
44-12-206	amended	Ch. 690	HB 0511
44-13-102	amended	Ch. 690	HB 0511
44-13-103	amended	Ch. 112	HB 0231
45-1-205	amended	Ch. 277	SB 0240
45-5-201	amended	Ch. 188	HB 0555
45-5-205	amended	Ch. 789	HB 0559
45-5-206	amended	Ch. 800	SB 0051
45-5-501	amended	Ch. 175	HB 0211
45-5-501	amended	Ch. 218	HB 0113
45-5-501	amended	Ch. 687	HB 0451
45-5-502	amended	Ch. 564	HB 0631
45-5-502	amended	Ch. 687	HB 0451
45-5-503	amended	Ch. 175	HB 0211
45-5-503	amended	Ch. 218	HB 0113
45-5-503	amended	Ch. 687	HB 0451
45-5-504	amended	Ch. 176	HB 0269
45-5-504	amended	Ch. 687	HB 0451
45-5-505	amended	Ch. 175	HB 0211
45-5-505	amended	Ch. 687	HB 0451
45-5-507	amended	Ch. 687	HB 0451
45-5-511	amended	Ch. 687	HB 0451
45-5-624	amended	Ch. 502	HB 0668
45-6-201	amended	Ch. 268	SB 0097
45-6-301	amended	Ch. 739	SB 0327
45-6-304	repealed	Ch. 188	HB 0555
45-7-306	amended	Ch. 114	HB 0310
45-7-306	amended	Ch. 554	HB 0272
45-8-101	amended	Ch. 415	HB 0487
45-8-107	enacted	Ch. 492	HB 0417
45-8-108	enacted	Ch. 492	HB 0417
45-8-109	enacted	Ch. 492	HB 0417
45-8-111	amended	Ch. 415	HB 0487
45-8-115	enacted	Ch. 743	HB 0033
45-8-209	amended	Ch. 800	SB 0051

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45-8-211	amended	Ch. 424	HB 0690
45-8-213	amended	Ch. 177	HB 0270
45-8-216	enacted	Ch. 230	HB 0279
45-8-315	amended	Ch. 759	HB 0825
45-8-317	amended	Ch. 759	HB 0825
45-8-319	repealed	Ch. 759	HB 0825
45-8-321	enacted	Ch. 759	HB 0825
45-8-322	enacted	Ch. 759	HB 0825
45-8-323	enacted	Ch. 759	HB 0825
45-8-324	enacted	Ch. 759	HB 0825
45-8-325	enacted	Ch. 759	HB 0825
45-8-326	enacted	Ch. 759	HB 0825
45-8-327	enacted	Ch. 759	HB 0825
45-8-328	enacted	Ch. 759	HB 0825
45-8-332	amended	Ch. 706	HB 0896
45-8-339	enacted	Ch. 601	HB 0467
45-8-351	amended	Ch. 759	HB 0825
45-9-102	amended	Ch. 42	SB 0140
45-9-106	amended	Ch. 179	HB 0275
45-9-109	enacted	Ch. 519	SB 0049
45-9-125	enacted	Ch. 113	HB 0276
45-9-127	enacted	Ch. 601	HB 0467
45-9-202	amended	Ch. 802	SB 0204
45-9-203	enacted	Ch. 802	SB 0204
45-9-204	enacted	Ch. 802	SB 0204
45-9-205	enacted	Ch. 802	SB 0204
46-1-101	repealed	Ch. 800	SB 0051
46-1-102	repealed	Ch. 800	SB 0051
46-1-103	enacted	Ch. 800	SB 0051
46-1-201	repealed	Ch. 800	SB 0051
46-1-202	enacted	Ch. 800	SB 0051
46-3-101	amended	Ch. 800	SB 0051
46-3-101	renumbered 46-3-111	Ch. 800	SB 0051
46-3-102	amended	Ch. 800	SB 0051
46-3-102	renumbered 46-3-112	Ch. 800	SB 0051
46-3-103	repealed	Ch. 800	SB 0051
46-3-104	amended	Ch. 800	SB 0051
46-3-104	renumbered 46-3-113	Ch. 800	SB 0051
46-3-105	amended	Ch. 800	SB 0051
46-3-105	renumbered 46-3-114	Ch. 800	SB 0051
46-3-106	amended	Ch. 800	SB 0051
46-3-106	renumbered 46-3-115	Ch. 800	SB 0051
46-3-110	enacted	Ch. 800	SB 0051
46-3-111	formerly 46-3-101	Ch. 800	SB 0051
46-3-112	formerly 46-3-102	Ch. 800	SB 0051
46-3-113	formerly 46-3-104	Ch. 800	SB 0051
46-3-114	formerly 46-3-105	Ch. 800	SB 0051
46-3-115	formerly 46-3-106	Ch. 800	SB 0051
46-3-201	repealed	Ch. 800	SB 0051
46-3-202	repealed	Ch. 800	SB 0051
46-3-203	repealed	Ch. 800	SB 0051
46-3-204	repealed	Ch. 800	SB 0051
46-3-205	repealed	Ch. 800	SB 0051
46-3-206	repealed	Ch. 800	SB 0051
46-4-101	amended	Ch. 660	SB 0331

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46-4-103	amended	Ch. 660	SB 0331
46-4-104	amended	Ch. 800	SB 0051
46-4-110	enacted	Ch. 660	SB 0331
46-4-111	enacted	Ch. 660	SB 0331
46-4-112	enacted	Ch. 660	SB 0331
46-4-113	enacted	Ch. 660	SB 0331
46-4-114	enacted	Ch. 660	SB 0331
46-4-121	enacted	Ch. 660	SB 0331
46-4-122	enacted	Ch. 660	SB 0331
46-4-123	enacted	Ch. 660	SB 0331
46-4-201	amended	Ch. 660	SB 0331
46-4-202	amended	Ch. 660	SB 0331
46-4-203	amended	Ch. 800	SB 0051
46-4-204	repealed	Ch. 660	SB 0331
46-4-205	amended	Ch. 660	SB 0331
46-4-206	amended	Ch. 660	SB 0331
46-4-301	amended	Ch. 800	SB 0051
46-4-302	amended	Ch. 800	SB 0051
46-4-303	amended	Ch. 800	SB 0051
46-4-304	amended	Ch. 800	SB 0051
46-4-305	amended	Ch. 800	SB 0051
46-4-306	amended	Ch. 800	SB 0051
46-5-101	amended	Ch. 800	SB 0051
46-5-103	amended	Ch. 800	SB 0051
46-5-104	repealed	Ch. 800	SB 0051
46-5-201	repealed	Ch. 800	SB 0051
46-5-202	amended	Ch. 800	SB 0051
46-5-202	renumbered 46-5-221	Ch. 800	SB 0051
46-5-203	amended	Ch. 800	SB 0051
46-5-203	renumbered 46-5-224	Ch. 800	SB 0051
46-5-204	amended	Ch. 800	SB 0051
46-5-204	renumbered 46-5-310	Ch. 800	SB 0051
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46-5-206	amended	Ch. 800	SB 0051
46-5-206	renumbered 46-5-227	Ch. 800	SB 0051
46-5-207	amended	Ch. 800	SB 0051
46-5-207	renumbered 46-5-225	Ch. 800	SB 0051
46-5-208	amended	Ch. 800	SB 0051
46-5-208	renumbered 46-5-228(1)	Ch. 800	SB 0051
46-5-209	amended	Ch. 800	SB 0051
46-5-209	renumbered 46-5-228(2)	Ch. 800	SB 0051
46-5-220	enacted	Ch. 800	SB 0051
46-5-221	formerly 46-5-202	Ch. 800	SB 0051
46-5-222	enacted	Ch. 800	SB 0051
46-5-223	enacted	Ch. 800	SB 0051
46-5-224	formerly 46-5-203	Ch. 800	SB 0051
46-5-225	formerly 46-5-207	Ch. 800	SB 0051
46-5-226	formerly 46-5-205	Ch. 800	SB 0051
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46-5-228(1)	formerly 46-5-208	Ch. 800	SB 0051
46-5-228(2)	formerly 46-5-209	Ch. 800	SB 0051
46-5-301	amended	Ch. 800	SB 0051
46-5-302	repealed	Ch. 800	SB 0051

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46-5-303	renumbered 46-5-311	Ch. 800	SB 0051
46-5-304	amended	Ch. 800	SB 0051
46-5-304	renumbered 46-5-312	Ch. 800	SB 0051
46-5-310	formerly 46-5-204	Ch. 800	SB 0051
46-5-311	formerly 46-5-303	Ch. 800	SB 0051
46-5-312	formerly 46-5-304	Ch. 800	SB 0051
46-5-401	amended	Ch. 800	SB 0051
46-5-402	amended	Ch. 800	SB 0051
46-5-403	enacted	Ch. 800	SB 0051
46-5-501	repealed	Ch. 800	SB 0051
46-5-502	amended	Ch. 800	SB 0051
46-5-503	repealed	Ch. 800	SB 0051
46-5-504	repealed	Ch. 800	SB 0051
46-5-505	repealed	Ch. 800	SB 0051
46-5-510	enacted	Ch. 800	SB 0051
46-6-101	repealed	Ch. 800	SB 0051
46-6-103	repealed	Ch. 800	SB 0051
46-6-104	amended	Ch. 800	SB 0051
46-6-105	amended	Ch. 800	SB 0051
46-6-106	amended	Ch. 800	SB 0051
46-6-106	renumbered 46-6-312	Ch. 800	SB 0051
46-6-202	amended	Ch. 800	SB 0051
46-6-202(1),(2)	renumbered 46-6-214	Ch. 800	SB 0051
46-6-202(3)	renumbered 46-6-215	Ch. 800	SB 0051
46-6-203	amended	Ch. 800	SB 0051
46-6-203	renumbered 46-6-216	Ch. 800	SB 0051
46-6-210	formerly 46-6-401	Ch. 800	SB 0051
46-6-211	enacted	Ch. 800	SB 0051
46-6-212(1)	formerly 46-6-303	Ch. 800	SB 0051
46-6-212(2)	formerly 46-6-304	Ch. 800	SB 0051
46-6-213	formerly 46-6-302	Ch. 800	SB 0051
46-6-214	formerly 46-6-202(1),(2)	Ch. 800	SB 0051
46-6-215	formerly 46-6-202(3)	Ch. 800	SB 0051
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46-6-301	repealed	Ch. 800	SB 0051
46-6-302	amended	Ch. 800	SB 0051
46-6-302	renumbered 46-6-213	Ch. 800	SB 0051
46-6-303	amended	Ch. 800	SB 0051
46-6-303	renumbered 46-6-212(1)	Ch. 800	SB 0051
46-6-304	amended	Ch. 800	SB 0051
46-6-304	renumbered 46-6-212(2)	Ch. 800	SB 0051
46-6-310	formerly 46-6-404	Ch. 800	SB 0051
46-6-311	enacted	Ch. 800	SB 0051
46-6-312	formerly 46-6-106	Ch. 800	SB 0051
46-6-313	formerly 46-6-403	Ch. 800	SB 0051
46-6-401	amended	Ch. 800	SB 0051
46-6-401	renumbered 46-6-210	Ch. 800	SB 0051
46-6-402	amended	Ch. 800	SB 0051
46-6-403	amended	Ch. 800	SB 0051
46-6-403	renumbered 46-6-313	Ch. 800	SB 0051
46-6-404	amended	Ch. 800	SB 0051
46-6-404	renumbered 46-6-310	Ch. 800	SB 0051
46-6-411	amended	Ch. 800	SB 0051
46-6-421	amended	Ch. 800	SB 0051

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46-6-501	repealed	Ch. 800	SB 0051
46-6-502	amended	Ch. 800	SB 0051
46-6-503	repealed	Ch. 800	SB 0051
46-6-505	enacted	Ch. 800	SB 0051
46-6-601	formerly 46-6-421	Ch. 800	SB 0051
46-6-602	formerly 46-6-422	Ch. 800	SB 0051
46-7-101	amended	Ch. 710	SB 0057
46-7-101	amended	Ch. 800	SB 0051
46-7-102	amended	Ch. 800	SB 0051
46-7-103	amended	Ch. 800	SB 0051
46-7-103	renumbered 46-10-105	Ch. 800	SB 0051
46-8-101	amended	Ch. 800	SB 0051
46-8-102	amended	Ch. 800	SB 0051
46-8-103	amended	Ch. 800	SB 0051
46-8-111	amended	Ch. 800	SB 0051
46-8-112	repealed	Ch. 800	SB 0051
46-8-113	amended	Ch. 800	SB 0051
46-8-114	amended	Ch. 800	SB 0051
46-8-115	amended	Ch. 800	SB 0051
46-8-201	amended	Ch. 704	HB 0864
46-8-201	amended	Ch. 800	SB 0051
46-8-210	enacted	Ch. 781	HB 0268
46-8-211	enacted	Ch. 781	HB 0268
46-8-212	enacted	Ch. 781	HB 0268
46-8-213	enacted	Ch. 781	HB 0268
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46-9-103	renumbered 46-9-107	Ch. 800	SB 0051
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46-9-109	enacted	Ch. 800	SB 0051
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46-9-115	formerly 46-9-202	Ch. 800	SB 0051
46-9-201	amended	Ch. 710	SB 0057
46-9-202	amended	Ch. 710	SB 0057
46-9-202	amended	Ch. 800	SB 0051
46-9-202	renumbered 46-9-115	Ch. 800	SB 0051
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46-9-205	amended	Ch. 800	SB 0051
46-9-205	renumbered 46-9-510	Ch. 800	SB 0051
46-9-206	enacted	Ch. 710	SB 0057
46-9-302	amended	Ch. 800	SB 0051
46-9-303	repealed	Ch. 800	SB 0051
46-9-401	amended	Ch. 800	SB 0051
46-9-403	amended	Ch. 800	SB 0051
46-9-404	repealed	Ch. 800	SB 0051
46-9-411	repealed	Ch. 800	SB 0051
46-9-412	amended	Ch. 800	SB 0051
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46-9-504	amended	Ch. 800	SB 0051
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46-9-511	enacted	Ch. 800	SB 0051
46-9-512	formerly 46-9-504	Ch. 800	SB 0051
46-10-101	repealed	Ch. 800	SB 0051
46-10-102	amended	Ch. 800	SB 0051
46-10-102	renumbered 46-10-106	Ch. 800	SB 0051
46-10-105	formerly 46-7-103	Ch. 800	SB 0051
46-10-106	formerly 46-10-102	Ch. 800	SB 0051
46-10-201	amended	Ch. 800	SB 0051
46-10-202	amended	Ch. 710	SB 0057
46-10-202	amended	Ch. 800	SB 0051
46-10-203	amended	Ch. 800	SB 0051
46-10-204	amended	Ch. 800	SB 0051
46-11-101	amended	Ch. 800	SB 0051
46-11-102	amended	Ch. 800	SB 0051
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46-11-201	amended	Ch. 800	SB 0051
46-11-202	repealed	Ch. 800	SB 0051
46-11-203	amended	Ch. 800	SB 0051
46-11-204	repealed	Ch. 800	SB 0051
46-11-205	formerly 46-11-403	Ch. 800	SB 0051
46-11-301	amended	Ch. 800	SB 0051
46-11-302	amended	Ch. 800	SB 0051
46-11-303	amended	Ch. 800	SB 0051
46-11-304	enacted	Ch. 800	SB 0051
46-11-307	enacted	Ch. 800	SB 0051
46-11-308	enacted	Ch. 800	SB 0051
46-11-310	enacted	Ch. 800	SB 0051
46-11-311	amended	Ch. 800	SB 0051
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46-11-315	amended	Ch. 800	SB 0051
46-11-316	amended	Ch. 800	SB 0051
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46-11-318	amended	Ch. 800	SB 0051
46-11-319	amended	Ch. 800	SB 0051
46-11-331	amended	Ch. 800	SB 0051
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46-11-402	repealed	Ch. 800	SB 0051
46-11-403	amended	Ch. 800	SB 0051
46-11-403	renumbered 46-11-205	Ch. 800	SB 0051
46-11-404	amended	Ch. 800	SB 0051
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46-11-502	amended	Ch. 800	SB 0051
46-11-502	renumbered 46-11-410	Ch. 800	SB 0051
46-11-503	amended	Ch. 800	SB 0051

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46-12-102	amended	Ch. 800	SB 0051
46-12-103	amended	Ch. 710	SB 0057
46-12-103	repealed	Ch. 800	SB 0051
46-12-201	amended	Ch. 710	SB 0057
46-12-201	amended	Ch. 800	SB 0051
46-12-202	amended	Ch. 73	HB 0439
46-12-202	amended	Ch. 800	SB 0051
46-12-202	renumbered 46-12-210	Ch. 800	SB 0051
46-12-204	amended	Ch. 800	SB 0051
46-12-206	amended	Ch. 800	SB 0051
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46-12-210	formerly 46-12-202	Ch. 800	SB 0051
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46-13-101	amended	Ch. 800	SB 0051
46-13-102	repealed	Ch. 800	SB 0051
46-13-103	repealed	Ch. 800	SB 0051
46-13-104	amended	Ch. 800	SB 0051
46-13-105	repealed	Ch. 800	SB 0051
46-13-106	amended	Ch. 800	SB 0051
46-13-106	renumbered 46-13-402	Ch. 800	SB 0051
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46-13-203	amended	Ch. 800	SB 0051
46-13-205	enacted	Ch. 800	SB 0051
46-13-210	enacted	Ch. 800	SB 0051
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46-13-301	amended	Ch. 800	SB 0051
46-13-302	amended	Ch. 800	SB 0051
46-13-401	formerly 46-13-201	Ch. 800	SB 0051
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46-14-101	amended	Ch. 800	SB 0051
46-14-102	amended	Ch. 800	SB 0051
46-14-103	amended	Ch. 800	SB 0051
46-14-201	amended	Ch. 800	SB 0051
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46-14-202	amended	Ch. 800	SB 0051
46-14-203	amended	Ch. 800	SB 0051
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46-14-204	enacted	Ch. 800	SB 0051
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46-14-206	formerly 46-14-203	Ch. 800	SB 0051
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46-14-222	amended	Ch. 800	SB 0051
46-14-301	amended	Ch. 800	SB 0051
46-14-302	amended	Ch. 800	SB 0051
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46-14-311	amended	Ch. 800	SB 0051
46-14-312	amended	Ch. 262	HB 0848
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46-14-313	amended	Ch. 800	SB 0051
46-14-401	amended	Ch. 800	SB 0051
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46-15-101	amended	Ch. 800	SB 0051
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46-15-103	amended	Ch. 800	SB 0051
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46-15-112	amended	Ch. 800	SB 0051
46-15-113	amended	Ch. 800	SB 0051
46-15-114	amended	Ch. 800	SB 0051
46-15-114	renumbered 46-15-120	Ch. 800	SB 0051
46-15-115	formerly 46-15-103	Ch. 800	SB 0051
46-15-116	formerly 46-15-104	Ch. 800	SB 0051
46-15-120	formerly 46-15-114	Ch. 800	SB 0051
46-15-201	amended	Ch. 800	SB 0051
46-15-202	amended	Ch. 800	SB 0051
46-15-203	repealed	Ch. 800	SB 0051
46-15-204	amended	Ch. 800	SB 0051
46-15-321	repealed	Ch. 800	SB 0051
46-15-322	amended	Ch. 800	SB 0051
46-15-323	amended	Ch. 800	SB 0051
46-15-324	amended	Ch. 800	SB 0051
46-15-325	amended	Ch. 800	SB 0051
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46-15-330	enacted	Ch. 800	SB 0051
46-15-331	amended	Ch. 800	SB 0051
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46-16-102	amended	Ch. 800	SB 0051
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46-16-103	amended	Ch. 800	SB 0051
46-16-108	repealed	Ch. 800	SB 0051
46-16-110	formerly 46-16-102	Ch. 800	SB 0051
46-16-111	formerly 46-16-301	Ch. 800	SB 0051
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46-16-117	formerly 46-16-306	Ch. 800	SB 0051
46-16-118	formerly 46-16-307	Ch. 800	SB 0051
46-16-120	enacted	Ch. 800	SB 0051
46-16-121	enacted	Ch. 800	SB 0051
46-16-122	enacted	Ch. 800	SB 0051
46-16-123	enacted	Ch. 800	SB 0051
46-16-130	enacted	Ch. 800	SB 0051
46-16-201	amended	Ch. 800	SB 0051
46-16-204	formerly 46-16-601	Ch. 800	SB 0051
46-16-212	amended	Ch. 800	SB 0051
46-16-213	amended	Ch. 800	SB 0051
46-16-215	enacted	Ch. 800	SB 0051
46-16-216	amended	Ch. 288	SB 0364
46-16-216	enacted	Ch. 800	SB 0051
46-16-301	amended	Ch. 800	SB 0051
46-16-301	renumbered 46-16-111	Ch. 800	SB 0051
46-16-302	amended	Ch. 800	SB 0051
46-16-302	renumbered 46-16-112	Ch. 800	SB 0051
46-16-303	amended	Ch. 800	SB 0051
46-16-303	renumbered 46-16-114	Ch. 800	SB 0051
46-16-304	amended	Ch. 800	SB 0051
46-16-304	renumbered 46-16-115	Ch. 800	SB 0051
46-16-305	amended	Ch. 800	SB 0051
46-16-305	renumbered 46-16-116	Ch. 800	SB 0051
46-16-306	renumbered 46-16-117	Ch. 800	SB 0051
46-16-307	amended	Ch. 800	SB 0051
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46-16-503	amended	Ch. 800	SB 0051
46-16-504	amended	Ch. 800	SB 0051
46-16-505	amended	Ch. 800	SB 0051
46-16-601	amended	Ch. 800	SB 0051
46-16-601	renumbered 46-16-204	Ch. 800	SB 0051
46-16-602	renumbered 46-16-606	Ch. 800	SB 0051
46-16-603	amended	Ch. 800	SB 0051
46-16-605	amended	Ch. 800	SB 0051
46-16-606	formerly 46-16-602	Ch. 800	SB 0051
46-16-607	enacted	Ch. 800	SB 0051
46-16-701	amended	Ch. 800	SB 0051
46-16-702	amended	Ch. 800	SB 0051
46-17-201	amended	Ch. 800	SB 0051
46-17-202	amended	Ch. 800	SB 0051
46-17-311	amended	Ch. 800	SB 0051
46-18-101	amended	Ch. 794	HB 0747
46-18-104	enacted	Ch. 794	HB 0747
46-18-105	enacted	Ch. 794	HB 0747
46-18-111	amended	Ch. 192	SB 0170
46-18-111	amended	Ch. 262	HB 0848

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46-18-111	amended	Ch. 800	SB 0051
46-18-112	amended	Ch. 800	SB 0051
46-18-113	amended	Ch. 800	SB 0051
46-18-115	enacted	Ch. 800	SB 0051
46-18-116	enacted	Ch. 800	SB 0051
46-18-117	enacted	Ch. 800	SB 0051
46-18-201	amended	Ch. 42	SB 0140
46-18-201	amended	Ch. 105	HB 0148
46-18-201	amended	Ch. 554	HB 0272
46-18-201	amended	Ch. 564	HB 0631
46-18-201	amended	Ch. 794	HB 0747
46-18-201	amended	Ch. 802	SB 0204
46-18-203	amended	Ch. 262	HB 0848
46-18-203	amended	Ch. 800	SB 0051
46-18-222	amended	Ch. 564	HB 0631
46-18-225	enacted	Ch. 794	HB 0747
46-18-231	amended	Ch. 42	SB 0140
46-18-231	amended	Ch. 519	SB 0049
46-18-235	amended	Ch. 296	HB 0311
46-18-235	amended	Ch. 704	HB 0864
46-18-236	amended	Ch. 667	HB 0155
46-18-256	enacted	Ch. 504	HB 0761
46-18-503	amended	Ch. 800	SB 0051
46-18-503	renumbered 46-13-108	Ch. 800	SB 0051
46-18-1001	enacted	Ch. 105	HB 0148
46-18-1002	enacted	Ch. 105	HB 0148
46-18-1003	enacted	Ch. 105	HB 0148
46-18-1004	enacted	Ch. 105	HB 0148
46-18-1005	enacted	Ch. 105	HB 0148
46-18-1006	enacted	Ch. 105	HB 0148
46-19-202	amended	Ch. 262	HB 0848
46-19-303	amended	Ch. 262	HB 0848
46-19-305	amended	Ch. 262	HB 0848
46-19-402	amended	Ch. 262	HB 0848
46-21-101	amended	Ch. 800	SB 0051
46-21-102	amended	Ch. 800	SB 0051
46-21-103	amended	Ch. 800	SB 0051
46-21-104	amended	Ch. 800	SB 0051
46-21-105	amended	Ch. 800	SB 0051
46-21-201	amended	Ch. 800	SB 0051
46-21-202	amended	Ch. 800	SB 0051
46-21-203	amended	Ch. 800	SB 0051
46-22-101	amended	Ch. 800	SB 0051
46-22-102	amended	Ch. 800	SB 0051
46-22-201	amended	Ch. 800	SB 0051
46-22-202	amended	Ch. 800	SB 0051
46-22-203	amended	Ch. 800	SB 0051
46-22-204	amended	Ch. 800	SB 0051
46-22-205	amended	Ch. 800	SB 0051
46-22-206	amended	Ch. 800	SB 0051
46-22-301	amended	Ch. 800	SB 0051
46-22-302	amended	Ch. 800	SB 0051
46-22-303	amended	Ch. 800	SB 0051
46-22-304	amended	Ch. 800	SB 0051
46-22-305	amended	Ch. 800	SB 0051

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46-22-306	amended	Ch. 800	SB 0051
46-22-307	amended	Ch. 800	SB 0051
46-23-103	amended	Ch. 262	HB 0848
46-23-201	amended	Ch. 248	HB 0429
46-23-201	amended	Ch. 262	HB 0848
46-23-201	amended	Ch. 315	HB 0333
46-23-201	amended	Ch. 519	SB 0049
46-23-210	enacted	Ch. 248	HB 0429
46-23-316	amended	Ch. 112	HB 0231
46-23-401	amended	Ch. 262	HB 0848
46-23-502	amended	Ch. 262	HB 0848
46-23-503	amended	Ch. 262	HB 0848
46-23-1001	amended	Ch. 262	HB 0848
46-23-1003	amended	Ch. 809	SB 0379
46-24-207	enacted	Ch. 170	HB 0109
46-30-101	amended	Ch. 379	HB 0915
46-30-301	amended	Ch. 379	HB 0915
49-1-102	amended	Ch. 682	HB 0024
49-2-101	amended	Ch. 241	HB 0389
49-2-303	amended	Ch. 506	HB 0882
49-2-304	amended	Ch. 454	HB 0596
49-2-305	amended	Ch. 328	SB 0198
49-2-305	amended	Ch. 454	HB 0596
49-2-305	amended	Ch. 801	SB 0199
49-2-308	amended	Ch. 682	HB 0024
49-2-401	repealed	Ch. 801	SB 0199
49-2-403	amended	Ch. 506	HB 0882
49-2-501	amended	Ch. 801	SB 0199
49-2-503	amended	Ch. 801	SB 0199
49-2-506	amended	Ch. 801	SB 0199
49-2-509	amended	Ch. 801	SB 0199
49-2-510	enacted	Ch. 801	SB 0199
49-2-602	enacted	Ch. 801	SB 0199
49-3-101	amended	Ch. 241	HB 0389
49-3-103	amended	Ch. 506	HB 0882
49-3-105	repealed	Ch. 801	SB 0199
49-3-106	amended	Ch. 801	SB 0199
49-3-204	amended	Ch. 682	HB 0024
49-3-205	amended	Ch. 682	HB 0024
49-3-306	amended	Ch. 801	SB 0199
49-4-212	amended	Ch. 801	SB 0199
49-4-302	amended	Ch. 724	SB 0191
49-4-304	amended	Ch. 456	HB 0646
49-4-304	amended	Ch. 724	SB 0191
50-1-202	amended	Ch. 262	HB 0848
50-2-116	amended	Ch. 479	HB 0162
50-2-118	amended	Ch. 708	HB 0994
50-3-101	amended	Ch. 706	HB 0896
50-3-102	amended	Ch. 262	HB 0848
50-3-102	amended	Ch. 706	HB 0896
50-3-103	amended	Ch. 706	HB 0896
50-3-104	repealed	Ch. 706	HB 0896
50-3-105	repealed	Ch. 706	HB 0896
50-3-106	amended	Ch. 706	HB 0896
50-3-107	repealed	Ch. 706	HB 0896

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50-3-108	repealed	Ch. 706	HB 0896
50-3-109	amended	Ch. 703	HB 0809
50-5-101	amended	Ch. 262	HB 0848
50-5-101	amended	Ch. 764	HB 0977
50-5-103	amended	Ch. 279	SB 0254
50-5-201	amended	Ch. 405	HB 0700
50-5-203	amended	Ch. 405	HB 0700
50-5-204	amended	Ch. 405	HB 0700
50-5-301	amended	Ch. 244	HB 0410
50-5-301	amended	Ch. 262	HB 0848
50-5-301	amended	Ch. 764	HB 0977
50-5-317	repealed	Ch. 764	HB 0977
50-5-1104	amended	Ch. 16	SB 0033
50-6-202	amended	Ch. 377	HB 0881
50-6-203	amended	Ch. 377	HB 0881
50-6-204	repealed	Ch. 377	HB 0881
50-6-205	repealed	Ch. 377	HB 0881
50-6-207	amended	Ch. 377	HB 0881
50-6-302	amended	Ch. 304	HB 0938
50-6-317	enacted	Ch. 304	HB 0938
50-8-101	amended	Ch. 262	HB 0848
50-9-101	amended	Ch. 391	HB 0635
50-9-102	amended	Ch. 391	HB 0635
50-9-103	amended	Ch. 391	HB 0635
50-9-104	amended	Ch. 391	HB 0635
50-9-105	enacted	Ch. 391	HB 0635
50-9-106	enacted	Ch. 391	HB 0635
50-9-107	enacted	Ch. 391	HB 0635
50-9-108	enacted	Ch. 391	HB 0635
50-9-201	amended	Ch. 391	HB 0635
50-9-202	amended	Ch. 391	HB 0635
50-9-203	amended	Ch. 391	HB 0635
50-9-204	amended	Ch. 391	HB 0635
50-9-205	amended	Ch. 391	HB 0635
50-9-206	amended	Ch. 391	HB 0635
50-10-101	enacted	Ch. 581	HB 0968
50-10-102	enacted	Ch. 581	HB 0968
50-10-103	enacted	Ch. 581	HB 0968
50-10-104	enacted	Ch. 581	HB 0968
50-10-105	enacted	Ch. 581	HB 0968
50-10-106	enacted	Ch. 581	HB 0968
50-15-101	amended	Ch. 402	HB 0640
50-15-112	amended	Ch. 384	SB 0392
50-15-114	amended	Ch. 384	SB 0392
50-16-529	amended	Ch. 544	HB 0917
50-16-536	amended	Ch. 16	SB 0033
50-16-606	enacted	Ch. 432	SB 0336
50-16-702	amended	Ch. 544	HB 0917
50-16-1003	amended	Ch. 544	HB 0917
50-16-1007	amended	Ch. 544	HB 0917
50-16-1008	amended	Ch. 544	HB 0917
50-16-1009	amended	Ch. 544	HB 0917
50-16-1013	amended	Ch. 544	HB 0917
50-19-311	amended	Ch. 634	HB 0876
50-19-312	amended	Ch. 634	HB 0876

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50-21-103	amended	Ch. 262	HB 0848
50-31-103	amended	Ch. 133	SB 0134
50-31-208	amended	Ch. 133	SB 0134
50-32-222	amended	Ch. 36	SB 0068
50-32-224	amended	Ch. 36	SB 0068
50-32-226	amended	Ch. 36	SB 0068
50-32-226	amended	Ch. 42	SB 0140
50-32-229	amended	Ch. 36	SB 0068
50-32-232	amended	Ch. 36	SB 0068
50-37-107	amended	Ch. 706	HB 0896
50-37-108	amended	Ch. 706	HB 0896
50-37-109	amended	Ch. 706	HB 0896
50-39-101	amended	Ch. 706	HB 0896
50-39-102	amended	Ch. 706	HB 0896
50-39-103	amended	Ch. 706	HB 0896
50-39-104	amended	Ch. 706	HB 0896
50-39-105	amended	Ch. 706	HB 0896
50-39-201	repealed	Ch. 706	HB 0896
50-39-202	repealed	Ch. 706	HB 0896
50-39-203	repealed	Ch. 706	HB 0896
50-40-104(4)	enacted	Ch. 281	SB 0260
50-40-105	amended	Ch. 281	SB 0260
50-40-107	amended	Ch. 539	HB 0860
50-40-201	amended	Ch. 539	HB 0860
50-40-202	enacted	Ch. 539	HB 0860
50-40-203	enacted	Ch. 539	HB 0860
50-40-204	enacted	Ch. 539	HB 0860
50-40-205	enacted	Ch. 539	HB 0860
50-49-101	enacted	Ch. 569	HB 0728
50-49-102	enacted	Ch. 569	HB 0728
50-49-103	enacted	Ch. 569	HB 0728
50-49-104	enacted	Ch. 569	HB 0728
50-49-105	enacted	Ch. 569	HB 0728
50-49-106	enacted	Ch. 569	HB 0728
50-49-107	enacted	Ch. 569	HB 0728
50-49-108	enacted	Ch. 569	HB 0728
50-50-102	amended	Ch. 732	HB 0989
50-50-109	enacted	Ch. 732	HB 0989
50-50-110	enacted	Ch. 732	HB 0989
50-50-205	amended	Ch. 732	HB 0989
50-50-216	enacted	Ch. 732	HB 0989
50-50-301	amended	Ch. 732	HB 0989
50-50-302	amended	Ch. 732	HB 0989
50-50-305	amended	Ch. 732	HB 0989
50-51-102	amended	Ch. 730	HB 0987
50-51-110	enacted	Ch. 730	HB 0987
50-51-201	amended	Ch. 730	HB 0987
50-51-204	amended	Ch. 730	HB 0987
50-51-301	amended	Ch. 730	HB 0987
50-51-302	amended	Ch. 730	HB 0987
50-51-303	amended	Ch. 730	HB 0987
50-51-401	enacted	Ch. 730	HB 0987
50-51-402	enacted	Ch. 730	HB 0987
50-51-403	enacted	Ch. 730	HB 0987
50-52-107	enacted	Ch. 731	HB 0988

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50-52-108	enacted	Ch. 731	HB 0988
50-52-202	amended	Ch. 731	HB 0988
50-52-210	enacted	Ch. 731	HB 0988
50-52-301	amended	Ch. 731	HB 0988
50-52-302	amended	Ch. 731	HB 0988
50-52-303	enacted	Ch. 731	HB 0988
50-53-102	amended	Ch. 708	HB 0994
50-53-103	amended	Ch. 708	HB 0994
50-53-104	amended	Ch. 708	HB 0994
50-53-201	enacted	Ch. 708	HB 0994
50-53-202	enacted	Ch. 708	HB 0994
50-53-203	enacted	Ch. 708	HB 0994
50-53-204	enacted	Ch. 708	HB 0994
50-53-206	enacted	Ch. 708	HB 0994
50-53-207	enacted	Ch. 708	HB 0994
50-53-209	enacted	Ch. 708	HB 0994
50-53-211	enacted	Ch. 708	HB 0994
50-53-212	enacted	Ch. 708	HB 0994
50-53-213	enacted	Ch. 708	HB 0994
50-53-214	enacted	Ch. 708	HB 0994
50-53-216	enacted	Ch. 708	HB 0994
50-53-217	enacted	Ch. 708	HB 0994
50-53-218	enacted	Ch. 708	HB 0994
50-60-202	amended	Ch. 706	HB 0896
50-60-203	amended	Ch. 350	HB 0655
50-60-204	amended	Ch. 706	HB 0896
50-61-101	amended	Ch. 706	HB 0896
50-61-102	amended	Ch. 706	HB 0896
50-61-104	repealed	Ch. 706	HB 0896
50-61-105	repealed	Ch. 706	HB 0896
50-61-106	amended	Ch. 706	HB 0896
50-61-107	repealed	Ch. 706	HB 0896
50-61-108	repealed	Ch. 706	HB 0896
50-61-109	repealed	Ch. 706	HB 0896
50-61-110	repealed	Ch. 706	HB 0896
50-61-111	repealed	Ch. 706	HB 0896
50-61-112	amended	Ch. 706	HB 0896
50-61-113	amended	Ch. 706	HB 0896
50-61-114	amended	Ch. 706	HB 0896
50-61-115	amended	Ch. 706	HB 0896
50-61-117	amended	Ch. 706	HB 0896
50-61-118	amended	Ch. 706	HB 0896
50-61-121	amended	Ch. 706	HB 0896
50-62-101	amended	Ch. 706	HB 0896
50-62-102	amended	Ch. 706	HB 0896
50-62-103	amended	Ch. 706	HB 0896
50-62-104	amended	Ch. 706	HB 0896
50-62-105	amended	Ch. 706	HB 0896
50-62-106	amended	Ch. 706	HB 0896
50-62-107	amended	Ch. 706	HB 0896
50-62-108	repealed	Ch. 706	HB 0896
50-62-109	repealed	Ch. 706	HB 0896
50-62-110	amended	Ch. 706	HB 0896
50-62-111	amended	Ch. 706	HB 0896
50-63-101	amended	Ch. 706	HB 0896

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50-63-201	amended	Ch. 706	HB 0896
50-63-203	amended	Ch. 706	HB 0896
50-63-301	repealed	Ch. 706	HB 0896
50-63-302	repealed	Ch. 706	HB 0896
50-63-303	repealed	Ch. 706	HB 0896
50-63-304	repealed	Ch. 706	HB 0896
50-63-305	repealed	Ch. 706	HB 0896
50-63-306	repealed	Ch. 706	HB 0896
50-63-307	repealed	Ch. 706	HB 0896
50-63-308	repealed	Ch. 706	HB 0896
50-71-201	amended	Ch. 298	HB 0712
50-71-203	amended	Ch. 298	HB 0712
50-78-301	amended	Ch. 706	HB 0896
52-1-103	amended	Ch. 655	SB 0205
52-2-201	enacted	Ch. 655	SB 0205
52-2-202	enacted	Ch. 655	SB 0205
52-2-203	enacted	Ch. 655	SB 0205
52-2-211	enacted	Ch. 510	HB 0948
52-2-521	enacted	Ch. 274	SB 0217
52-2-522	enacted	Ch. 274	SB 0217
52-2-523	enacted	Ch. 274	SB 0217
52-2-524	enacted	Ch. 274	SB 0217
52-2-525	enacted	Ch. 274	SB 0217
52-2-526	enacted	Ch. 274	SB 0217
52-2-527	enacted	Ch. 274	SB 0217
52-2-528	enacted	Ch. 274	SB 0217
52-2-703	amended	Ch. 404	HB 0642
52-2-712	repealed	Ch. 618	HB 0937
52-2-733	amended	Ch. 706	HB 0896
52-2-734	amended	Ch. 706	HB 0896
52-2-735	amended	Ch. 165	SB 0372
52-3-815	enacted	Ch. 716	SB 0348
52-5-120	enacted	Ch. 434	SB 0385
52-5-121	enacted	Ch. 434	SB 0385
53-1-101	amended	Ch. 262	HB 0848
53-1-105	amended	Ch. 262	HB 0848
53-1-106	amended	Ch. 262	HB 0848
53-1-201	amended	Ch. 262	HB 0848
53-1-202	amended	Ch. 262	HB 0848
53-1-202	amended	Ch. 305	HB 0957
53-1-202	amended	Ch. 651	HB 0528
53-1-203	amended	Ch. 262	HB 0848
53-1-304	amended	Ch. 262	HB 0848
53-1-401	amended	Ch. 262	HB 0848
53-1-402	amended	Ch. 305	HB 0957
53-1-413	amended	Ch. 819	HB 0963
53-1-501	amended	Ch. 262	HB 0848
53-2-1107	amended	Ch. 112	HB 0231
53-3-109	amended	Ch. 442	SB 0269
53-3-109	amended	Ch. 578	HB 0927
53-3-206	amended	Ch. 442	SB 0269
53-3-310	amended	Ch. 442	SB 0269
53-3-318	enacted	Ch. 442	SB 0269
53-3-321	amended	Ch. 16	SB 0033
53-3-328	enacted	Ch. 578	HB 0927

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53-4-101	amended	Ch. 249	HB 0436
53-4-118	amended	Ch. 262	HB 0848
53-5-304	amended	Ch. 706	HB 0896
53-5-401	amended	Ch. 324	SB 0007
53-5-503	amended	Ch. 716	SB 0348
53-5-504	amended	Ch. 716	SB 0348
53-6-101	amended	Ch. 310	SB 0306
53-6-101	amended	Ch. 388	HB 0545
53-6-101	amended	Ch. 460	SB 0391
53-6-101	amended	Ch. 634	HB 0876
53-6-101	amended	Ch. 663	SB 0366
53-6-101	amended	Ch. 764	HB 0977
53-6-110	amended	Ch. 112	HB 0231
53-6-113	amended	Ch. 460	SB 0391
53-6-116	enacted	Ch. 460	SB 0391
53-6-117	enacted	Ch. 460	SB 0391
53-6-131	amended	Ch. 388	HB 0545
53-6-131	amended	Ch. 634	HB 0876
53-6-161	enacted	Ch. 614	HB 0978
53-6-162	enacted	Ch. 614	HB 0978
53-6-163	enacted	Ch. 614	HB 0978
53-6-164	enacted	Ch. 614	HB 0978
53-6-301	amended	Ch. 262	HB 0848
53-6-303	amended	Ch. 262	HB 0848
53-8-101	repealed	Ch. 16	SB 0033
53-8-102	repealed	Ch. 16	SB 0033
53-8-103	repealed	Ch. 16	SB 0033
53-8-104	repealed	Ch. 16	SB 0033
53-9-102	amended	Ch. 354	HB 0798
53-9-102	amended	Ch. 397	SB 0321
53-9-103	amended	Ch. 397	SB 0321
53-9-104	amended	Ch. 354	HB 0798
53-9-109	amended	Ch. 354	HB 0798
53-9-125	amended	Ch. 235	HB 0307
53-9-125	amended	Ch. 397	SB 0321
53-18-103	amended	Ch. 262	HB 0848
53-19-204	amended	Ch. 706	HB 0896
53-19-205	amended	Ch. 706	HB 0896
53-20-102	amended	Ch. 262	HB 0848
53-20-102	amended	Ch. 381	SB 0250
53-20-104	amended	Ch. 112	HB 0231
53-20-104	amended	Ch. 262	HB 0848
53-20-104	amended	Ch. 381	SB 0250
53-20-106	amended	Ch. 262	HB 0848
53-20-106	amended	Ch. 381	SB 0250
53-20-111	amended	Ch. 381	SB 0250
53-20-112	amended	Ch. 381	SB 0250
53-20-113	amended	Ch. 381	SB 0250
53-20-115	repealed	Ch. 381	SB 0250
53-20-116	amended	Ch. 381	SB 0250
53-20-117	repealed	Ch. 381	SB 0250
53-20-120	repealed	Ch. 381	SB 0250
53-20-121	amended	Ch. 381	SB 0250
53-20-122	repealed	Ch. 381	SB 0250
53-20-123	amended	Ch. 262	HB 0848

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53-20-123	repealed	Ch. 381	SB 0250
53-20-124	repealed	Ch. 381	SB 0250
53-20-125	amended	Ch. 381	SB 0250
53-20-127	amended	Ch. 381	SB 0250
53-20-128	amended	Ch. 381	SB 0250
53-20-129	amended	Ch. 381	SB 0250
53-20-131	amended	Ch. 381	SB 0250
53-20-132	amended	Ch. 381	SB 0250
53-20-133	enacted	Ch. 381	SB 0250
53-20-141	amended	Ch. 381	SB 0250
53-20-142	amended	Ch. 381	SB 0250
53-20-145	amended	Ch. 381	SB 0250
53-20-146	amended	Ch. 381	SB 0250
53-20-148	amended	Ch. 381	SB 0250
53-20-161	amended	Ch. 381	SB 0250
53-20-162	amended	Ch. 381	SB 0250
53-20-163	amended	Ch. 381	SB 0250
53-20-164	amended	Ch. 381	SB 0250
53-20-213	amended	Ch. 262	HB 0848
53-20-214	amended	Ch. 262	HB 0848
53-20-307	amended	Ch. 706	HB 0896
53-20-504	amended	Ch. 262	HB 0848
53-20-505	amended	Ch. 262	HB 0848
53-21-102	amended	Ch. 262	HB 0848
53-21-104	amended	Ch. 112	HB 0231
53-21-114	amended	Ch. 537	HB 0773
53-21-120	amended	Ch. 636	HB 0103
53-21-124	amended	Ch. 312	SB 0408
53-21-124	amended	Ch. 636	HB 0103
53-21-138	enacted	Ch. 636	HB 0103
53-21-139	enacted	Ch. 636	HB 0103
53-21-141	amended	Ch. 579	HB 0930
53-21-142	amended	Ch. 579	HB 0930
53-21-144	amended	Ch. 579	HB 0930
53-21-146	amended	Ch. 579	HB 0930
53-21-147	amended	Ch. 579	HB 0930
53-21-162	amended	Ch. 579	HB 0930
53-21-166	amended	Ch. 579	HB 0930
53-21-169	enacted	Ch. 579	HB 0930
53-21-181	amended	Ch. 579	HB 0930
53-21-201	amended	Ch. 262	HB 0848
53-21-201	amended	Ch. 312	SB 0408
53-21-202	amended	Ch. 312	SB 0408
53-21-204	amended	Ch. 806	SB 0326
53-21-212	amended	Ch. 262	HB 0848
53-21-212	amended	Ch. 312	SB 0408
53-21-402	amended	Ch. 262	HB 0848
53-21-411	amended	Ch. 262	HB 0848
53-21-412	amended	Ch. 262	HB 0848
53-21-413	amended	Ch. 262	HB 0848
53-22-102	amended	Ch. 262	HB 0848
53-22-104	amended	Ch. 262	HB 0848
53-24-103	amended	Ch. 262	HB 0848
53-24-204	amended	Ch. 112	HB 0231
53-24-204	amended	Ch. 186	HB 0521

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53-24-208	amended	Ch. 393	HB 0831
53-24-210	amended	Ch. 112	HB 0231
53-24-211	amended	Ch. 393	HB 0831
53-24-215	enacted	Ch. 508	HB 0909
53-24-216	enacted	Ch. 508	HB 0909
53-24-217	enacted	Ch. 508	HB 0909
53-30-101	amended	Ch. 651	HB 0528
53-30-102	amended	Ch. 651	HB 0528
53-30-105	amended	Ch. 240	HB 0379
53-30-105	amended	Ch. 262	HB 0848
53-30-106	amended	Ch. 262	HB 0848
53-30-106	amended	Ch. 736	SB 0196
53-30-110	amended	Ch. 262	HB 0848
53-30-111	amended	Ch. 262	HB 0848
53-30-131	amended	Ch. 262	HB 0848
53-30-132	amended	Ch. 262	HB 0848
53-30-133	amended	Ch. 112	HB 0231
53-30-133	amended	Ch. 262	HB 0848
53-30-141	amended	Ch. 262	HB 0848
53-30-202	amended	Ch. 548	SB 0059
53-30-203	amended	Ch. 253	HB 0515
53-30-206	amended	Ch. 117	HB 0516
53-30-209	amended	Ch. 253	HB 0515
53-30-212	amended	Ch. 262	HB 0848
53-30-225	repealed effective 07/01/92	Ch. 511	SB 0056
53-30-226	amended	Ch. 201	SB 0432
53-30-229	amended	Ch. 547	SB 0038
53-30-301	enacted	Ch. 554	HB 0272
53-30-302	enacted	Ch. 554	HB 0272
53-30-303	enacted	Ch. 554	HB 0272
53-30-311	enacted	Ch. 554	HB 0272
53-30-312	enacted	Ch. 554	HB 0272
53-30-313	enacted	Ch. 554	HB 0272
53-30-314	enacted	Ch. 554	HB 0272
53-30-315	enacted	Ch. 554	HB 0272
53-30-321	enacted	Ch. 554	HB 0272
53-30-322	enacted	Ch. 554	HB 0272
53-30-323	enacted	Ch. 554	HB 0272
53-30-324	enacted	Ch. 554	HB 0272
53-30-325	enacted	Ch. 554	HB 0272
53-30-326	enacted	Ch. 554	HB 0272
60-1-102	amended	Ch. 512	SB 0164
60-1-103	amended	Ch. 512	SB 0164
60-2-202	amended	Ch. 82	SB 0092
60-2-210	amended	Ch. 512	SB 0164
60-2-213	enacted	Ch. 167	HB 0087
60-3-201	amended	Ch. 512	SB 0164
60-3-201	amended	Ch. 698	HB 0309
60-3-212	amended	Ch. 512	SB 0164
60-3-213	amended	Ch. 512	SB 0164
60-3-216	amended	Ch. 191	SB 0122
60-3-304	amended	Ch. 512	SB 0164
60-4-102	amended	Ch. 512	SB 0164
60-5-104	amended	Ch. 512	SB 0164
60-5-108	amended	Ch. 512	SB 0164

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60-5-502	amended	Ch. 512	SB 0164
60-6-101	amended	Ch. 287	SB 0356
60-6-101	amended	Ch. 512	SB 0164
60-7-202	amended	Ch. 512	SB 0164
60-11-101	amended	Ch. 512	SB 0164
60-11-111	amended	Ch. 509	HB 0924
60-11-111	amended	Ch. 512	SB 0164
60-11-112	enacted	Ch. 509	HB 0924
60-11-121	enacted	Ch. 513	SB 0274
60-11-122	enacted	Ch. 513	SB 0274
60-11-123	enacted	Ch. 513	SB 0274
60-11-1102	amended	Ch. 512	SB 0164
60-11-1202	amended	Ch. 512	SB 0164
60-21-101	amended	Ch. 512	SB 0164
61-1-102	amended	Ch. 715	SB 0318
61-1-117	amended	Ch. 383	SB 0323
61-1-129	amended	Ch. 715	SB 0318
61-1-130	amended	Ch. 724	SB 0191
61-1-134	amended	Ch. 127	SB 0095
61-1-135	amended	Ch. 563	HB 0572
61-1-138	enacted	Ch. 791	HB 0597
61-1-206	amended	Ch. 169	HB 0099
61-1-314	amended	Ch. 383	SB 0323
61-1-319	enacted	Ch. 383	SB 0323
61-1-411	amended	Ch. 512	SB 0164
61-1-412	amended	Ch. 512	SB 0164
61-1-413	enacted	Ch. 338	HB 0117
61-1-414	enacted	Ch. 338	HB 0117
61-1-415	enacted	Ch. 338	HB 0117
61-2-103	amended	Ch. 126	SB 0091
61-2-106	amended	Ch. 751	HB 0494
61-2-107	amended	Ch. 751	HB 0494
61-2-108	amended	Ch. 751	HB 0494
61-2-401	renumbered 20-7-510	Ch. 701	HB 0763
61-2-402	renumbered 20-7-511	Ch. 701	HB 0763
61-2-403	renumbered 20-7-512	Ch. 701	HB 0763
61-2-404	amended	Ch. 701	HB 0763
61-2-404	renumbered 20-7-513	Ch. 701	HB 0763
61-2-405	amended	Ch. 383	SB 0323
61-2-405	amended	Ch. 701	HB 0763
61-2-405	renumbered 20-7-514	Ch. 701	HB 0763
61-2-406	repealed	Ch. 701	HB 0763
61-3-101	amended	Ch. 236	HB 0331
61-3-101	amended	Ch. 604	HB 0579
61-3-101	amended	Ch. 724	SB 0191
61-3-102	repealed	Ch. 107	HB 0177
61-3-103	amended	Ch. 463	HB 0209
61-3-106	amended	Ch. 272	SB 0169
61-3-107	amended	Ch. 272	SB 0169
61-3-107	amended	Ch. 715	SB 0318
61-3-201	amended	Ch. 604	HB 0579
61-3-201	amended	Ch. 724	SB 0191
61-3-202	amended	Ch. 604	HB 0579
61-3-202	amended	Ch. 725	SB 0232
61-3-205	amended	Ch. 724	SB 0191

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61-3-206	amended	Ch. 383	SB 0323
61-3-206	amended	Ch. 724	SB 0191
61-3-210	enacted	Ch. 725	SB 0232
61-3-211	enacted	Ch. 725	SB 0232
61-3-212	enacted	Ch. 725	SB 0232
61-3-303	amended	Ch. 724	SB 0191
61-3-304	repealed	Ch. 724	SB 0191
61-3-305	amended	Ch. 724	SB 0191
61-3-313	amended	Ch. 724	SB 0191
61-3-314	amended	Ch. 337	HB 0065
61-3-314	amended	Ch. 604	HB 0579
61-3-321	amended	Ch. 567	HB 0711
61-3-321	amended	Ch. 735	SB 0192
61-3-322	amended	Ch. 512	SB 0164
61-3-324	amended	Ch. 512	SB 0164
61-3-325	amended	Ch. 512	SB 0164
61-3-332	amended	Ch. 632	HB 0723
61-3-333	amended	Ch. 724	SB 0191
61-3-342	amended	Ch. 604	HB 0579
61-3-345	enacted	Ch. 604	HB 0579
61-3-346	enacted	Ch. 604	HB 0579
61-3-347	enacted	Ch. 604	HB 0579
61-3-444	repealed	Ch. 724	SB 0191
61-3-445	repealed	Ch. 724	SB 0191
61-3-446	amended	Ch. 724	SB 0191
61-3-447	repealed	Ch. 724	SB 0191
61-3-451	repealed	Ch. 724	SB 0191
61-3-452	amended	Ch. 724	SB 0191
61-3-453	amended	Ch. 500	HB 0557
61-3-453	amended	Ch. 724	SB 0191
61-3-454	amended	Ch. 724	SB 0191
61-3-455	amended	Ch. 500	HB 0557
61-3-455	amended	Ch. 724	SB 0191
61-3-465	amended	Ch. 724	SB 0191
61-3-503	amended	Ch. 604	HB 0579
61-3-504	amended	Ch. 724	SB 0191
61-3-505	repealed	Ch. 724	SB 0191
61-3-506	amended	Ch. 512	SB 0164
61-3-507	amended	Ch. 724	SB 0191
61-3-508	amended	Ch. 383	SB 0323
61-3-509	amended	Ch. 16	SB 0033
61-3-510	amended	Ch. 724	SB 0191
61-3-511	enacted	Ch. 604	HB 0579
61-3-512	enacted	Ch. 718	SB 0415
61-3-518	enacted	Ch. 715	SB 0318
61-3-519	enacted	Ch. 715	SB 0318
61-3-524	amended	Ch. 715	SB 0318
61-3-525	amended	Ch. 450	HB 0150
61-3-525	amended	Ch. 715	SB 0318
61-3-526	amended	Ch. 450	HB 0150
61-3-535	amended	Ch. 450	HB 0150
61-3-535	amended	Ch. 604	HB 0579
61-3-537	amended	Ch. 749	HB 0312
61-3-601	amended	Ch. 724	SB 0191
61-3-604	amended	Ch. 272	SB 0169

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61-3-604	amended	Ch. 724	SB 0191
61-3-607	amended	Ch. 272	SB 0169
61-3-712	amended	Ch. 512	SB 0164
61-3-713	amended	Ch. 512	SB 0164
61-3-714	amended	Ch. 512	SB 0164
61-3-716	amended	Ch. 512	SB 0164
61-3-725	amended	Ch. 512	SB 0164
61-4-101	amended	Ch. 383	SB 0323
61-4-101	amended	Ch. 724	SB 0191
61-4-102	amended	Ch. 383	SB 0323
61-4-103	amended	Ch. 383	SB 0323
61-4-104	amended	Ch. 383	SB 0323
61-4-105	amended	Ch. 383	SB 0323
61-4-106	amended	Ch. 383	SB 0323
61-4-119	amended	Ch. 383	SB 0323
61-4-120	enacted	Ch. 383	SB 0323
61-4-121	enacted	Ch. 383	SB 0323
61-4-204	amended	Ch. 229	HB 0258
61-4-205	amended	Ch. 383	SB 0323
61-4-208	amended	Ch. 202	SB 0433
61-4-210	amended	Ch. 229	HB 0258
61-4-303	amended	Ch. 512	SB 0164
61-4-308	amended	Ch. 512	SB 0164
61-4-501	amended	Ch. 300	HB 0816
61-5-104	amended	Ch. 536	HB 0705
61-5-107	amended	Ch. 406	HB 0765
61-5-108	amended	Ch. 419	HB 0570
61-5-110	amended	Ch. 297	HB 0588
61-5-111	amended	Ch. 726	HB 0568
61-5-121	amended	Ch. 584	HB 0560
61-5-121	amended	Ch. 701	HB 0763
61-5-121	amended	Ch. 726	HB 0568
61-5-206	amended	Ch. 471	HB 0751
61-5-207	amended	Ch. 419	HB 0570
61-5-208	amended	Ch. 563	HB 0572
61-5-213	amended	Ch. 369	HB 0573
61-5-302	amended	Ch. 471	HB 0751
61-5-405	amended	Ch. 419	HB 0570
61-8-104	amended	Ch. 40	SB 0039
61-8-201	amended	Ch. 338	HB 0117
61-8-202	amended	Ch. 512	SB 0164
61-8-203	amended	Ch. 512	SB 0164
61-8-205	amended	Ch. 512	SB 0164
61-8-207	amended	Ch. 16	SB 0033
61-8-309	amended	Ch. 512	SB 0164
61-8-310	amended	Ch. 686	HB 0306
61-8-311	amended	Ch. 512	SB 0164
61-8-312	amended	Ch. 16	SB 0033
61-8-313	amended	Ch. 512	SB 0164
61-8-326	amended	Ch. 512	SB 0164
61-8-327	amended	Ch. 512	SB 0164
61-8-332	amended	Ch. 512	SB 0164
61-8-342	amended	Ch. 512	SB 0164
61-8-344	amended	Ch. 512	SB 0164
61-8-348	amended	Ch. 512	SB 0164

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61-8-349	amended	Ch. 449	HB 0133
61-8-354	amended	Ch. 512	SB 0164
61-8-355	amended	Ch. 512	SB 0164
61-8-370	enacted	Ch. 374	HB 0732
61-8-371	enacted	Ch. 491	HB 0359
61-8-380	enacted	Ch. 338	HB 0117
61-8-381	enacted	Ch. 338	HB 0117
61-8-382	enacted	Ch. 338	HB 0117
61-8-383	enacted	Ch. 338	HB 0117
61-8-384	enacted	Ch. 338	HB 0117
61-8-401	amended	Ch. 789	HB 0559
61-8-402	amended	Ch. 789	HB 0559
61-8-403	amended	Ch. 789	HB 0559
61-8-404	amended	Ch. 789	HB 0559
61-8-405	amended	Ch. 789	HB 0559
61-8-406	amended	Ch. 789	HB 0559
61-8-605	amended	Ch. 169	HB 0099
61-8-711	amended	Ch. 109	HB 0221
61-8-714	amended	Ch. 101	HB 0101
61-8-714	amended	Ch. 102	HB 0102
61-8-714	amended	Ch. 105	HB 0148
61-8-714	amended	Ch. 262	HB 0848
61-8-714	amended	Ch. 789	HB 0559
61-8-722	amended	Ch. 101	HB 0101
61-8-722	amended	Ch. 105	HB 0148
61-8-722	amended	Ch. 262	HB 0848
61-8-722	amended	Ch. 789	HB 0559
61-8-805	amended	Ch. 563	HB 0572
61-8-805	amended	Ch. 789	HB 0559
61-8-806	amended	Ch. 563	HB 0572
61-8-806	amended	Ch. 789	HB 0559
61-8-809	enacted	Ch. 563	HB 0572
61-8-810	enacted	Ch. 563	HB 0572
61-8-811	enacted	Ch. 563	HB 0572
61-9-104	amended	Ch. 40	SB 0039
61-9-405	amended	Ch. 777	HB 0029
61-9-406	amended	Ch. 448	HB 0062
61-9-406	amended	Ch. 512	SB 0164
61-9-407	amended	Ch. 791	HB 0597
61-9-416	amended	Ch. 27	HB 0048
61-9-428	enacted	Ch. 777	HB 0029
61-9-429	enacted	Ch. 777	HB 0029
61-9-511	amended	Ch. 40	SB 0039
61-9-511	amended	Ch. 109	HB 0221
61-9-515	amended	Ch. 40	SB 0039
61-9-518	amended	Ch. 40	SB 0039
61-9-519	amended	Ch. 40	SB 0039
61-9-520	enacted	Ch. 448	HB 0062
61-10-104	amended	Ch. 327	SB 0132
61-10-104	amended	Ch. 672	SB 0178
61-10-107	amended	Ch. 16	SB 0033
61-10-107	amended	Ch. 512	SB 0164
61-10-108	amended	Ch. 512	SB 0164
61-10-109	amended	Ch. 512	SB 0164
61-10-110	amended	Ch. 512	SB 0164

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61-10-113	enacted	Ch. 24	HB 0084
61-10-121	amended	Ch. 166	HB 0083
61-10-121	amended	Ch. 512	SB 0164
61-10-122	amended	Ch. 512	SB 0164
61-10-124	amended	Ch. 320	SB 0297
61-10-124	amended	Ch. 512	SB 0164
61-10-124	amended	Ch. 672	SB 0178
61-10-128	amended	Ch. 476	HB 0037
61-10-128	amended	Ch. 512	SB 0164
61-10-129	amended	Ch. 512	SB 0164
61-10-129	amended	Ch. 672	SB 0178
61-10-130	amended	Ch. 512	SB 0164
61-10-141	amended	Ch. 512	SB 0164
61-10-142	amended	Ch. 512	SB 0164
61-10-143	amended	Ch. 512	SB 0164
61-10-145	amended	Ch. 122	SB 0080
61-10-146	amended	Ch. 16	SB 0033
61-10-146	amended	Ch. 122	SB 0080
61-10-155	amended	Ch. 512	SB 0164
61-10-203	amended	Ch. 183	HB 0425
61-10-214	amended	Ch. 311	SB 0319
61-10-214	amended	Ch. 383	SB 0323
61-10-225	amended	Ch. 512	SB 0164
61-10-231	amended	Ch. 512	SB 0164
61-11-101	amended	Ch. 789	HB 0559
61-11-105	amended	Ch. 525	HB 0059
61-11-211	amended	Ch. 390	HB 0571
61-11-212	amended	Ch. 390	HB 0571
61-11-213	amended	Ch. 390	HB 0571
61-11-214	repealed	Ch. 390	HB 0571
61-12-201	amended	Ch. 512	SB 0164
61-12-204	amended	Ch. 333	SB 0329
61-12-206	amended	Ch. 100	HB 0082
61-12-303	amended	Ch. 798	SB 0016
61-12-304	amended	Ch. 798	SB 0016
61-12-305	amended	Ch. 798	SB 0016
67-1-101	amended	Ch. 512	SB 0164
67-1-211	amended	Ch. 789	HB 0559
67-1-303	amended	Ch. 512	SB 0164
67-3-204	amended	Ch. 773	SB 0436
67-3-421	repealed	Ch. 422	HB 0638
67-3-422	repealed	Ch. 422	HB 0638
67-3-423	repealed	Ch. 422	HB 0638
67-3-424	repealed	Ch. 422	HB 0638
67-3-425	repealed	Ch. 422	HB 0638
67-3-426	repealed	Ch. 422	HB 0638
67-3-427	repealed	Ch. 422	HB 0638
67-3-428	repealed	Ch. 422	HB 0638
67-3-429	repealed	Ch. 422	HB 0638
67-10-211	amended	Ch. 512	SB 0164
69-1-225	amended	Ch. 676	SB 0280
69-1-225	amended	Ch. 811	SB 0445
69-1-226	amended	Ch. 676	SB 0280
69-1-226	amended	Ch. 811	SB 0445
69-1-228	enacted	Ch. 676	SB 0280

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69-1-230	enacted	Ch. 676	SB 0280
69-1-404	amended	Ch. 112	HB 0231
69-3-305	amended	Ch. 210	HB 0610
69-3-310	enacted	Ch. 210	HB 0610
69-3-802	amended	Ch. 210	HB 0610
69-3-807	amended	Ch. 210	HB 0610
69-3-808	amended	Ch. 210	HB 0610
69-3-809	enacted	Ch. 210	HB 0610
69-3-810	enacted	Ch. 210	HB 0610
69-3-811	enacted	Ch. 210	HB 0610
69-4-501	amended	Ch. 286	SB 0335
69-4-502	amended	Ch. 286	SB 0335
69-4-503	amended	Ch. 286	SB 0335
69-4-504	amended	Ch. 286	SB 0335
69-4-507	enacted	Ch. 286	SB 0335
69-7-111	amended	Ch. 645	SB 0407
69-12-101	amended	Ch. 341	HB 0263
69-12-101	amended	Ch. 481	HB 0192
69-12-102	amended	Ch. 322	SB 0322
69-12-102	amended	Ch. 481	HB 0192
69-12-103	amended	Ch. 106	HB 0156
69-12-201	amended	Ch. 481	HB 0192
69-12-205	amended	Ch. 481	HB 0192
69-12-301	amended	Ch. 341	HB 0263
69-12-301	amended	Ch. 481	HB 0192
69-12-302	amended	Ch. 203	HB 0063
69-12-302	amended	Ch. 341	HB 0263
69-12-315	enacted	Ch. 481	HB 0192
69-12-321	amended	Ch. 481	HB 0192
69-12-321	amended	Ch. 512	SB 0164
69-12-322	amended	Ch. 481	HB 0192
69-12-331	amended	Ch. 173	HB 0167
69-12-333	enacted	Ch. 481	HB 0192
69-12-334	enacted	Ch. 481	HB 0192
69-12-335	enacted	Ch. 481	HB 0192
69-12-406	amended	Ch. 341	HB 0263
69-12-407	amended	Ch. 481	HB 0192
69-12-408	amended	Ch. 160	HB 0168
69-12-611	amended	Ch. 481	HB 0192
69-14-116	amended	Ch. 487	HB 0271
69-14-501	amended	Ch. 368	HB 0552
69-14-553	amended	Ch. 814	HB 0233
69-14-931	enacted	Ch. 814	HB 0233
69-14-932	enacted	Ch. 814	HB 0233
70-1-601	repealed	Ch. 410	SB 0001
70-1-602	repealed	Ch. 410	SB 0001
70-1-603	repealed	Ch. 410	SB 0001
70-1-604	repealed	Ch. 410	SB 0001
70-1-605	repealed	Ch. 410	SB 0001
70-1-606	repealed	Ch. 410	SB 0001
70-1-607	repealed	Ch. 410	SB 0001
70-1-608	repealed	Ch. 410	SB 0001
70-1-609	repealed	Ch. 410	SB 0001
70-1-610	repealed	Ch. 410	SB 0001
70-1-611	repealed	Ch. 410	SB 0001

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70-1-802	amended	Ch. 26	SB 0006
70-6-420	enacted	Ch. 472	HB 0776
70-8-101	repealed	Ch. 410	SB 0001
70-8-102	repealed	Ch. 410	SB 0001
70-8-103	repealed	Ch. 410	SB 0001
70-8-104	repealed	Ch. 410	SB 0001
70-9-210	enacted	Ch. 654	SB 0177
70-9-301	amended	Ch. 654	SB 0177
70-9-302	amended	Ch. 654	SB 0177
70-9-303	amended	Ch. 654	SB 0177
70-9-307	amended	Ch. 654	SB 0177
70-9-313	repealed	Ch. 654	SB 0177
70-20-113	enacted	Ch. 30	HB 0181
70-21-309	amended	Ch. 284	SB 0304
70-23-305	amended	Ch. 85	SB 0144
70-24-303	amended	Ch. 706	HB 0896
70-25-101	amended	Ch. 505	HB 0767
70-25-201	amended	Ch. 505	HB 0767
70-25-202	amended	Ch. 505	HB 0767
70-25-204	amended	Ch. 505	HB 0767
70-25-206	amended	Ch. 505	HB 0767
70-30-302	amended	Ch. 512	SB 0164
70-32-221	amended	Ch. 294	HB 0203
71-1-315	amended	Ch. 212	HB 0779
71-3-531	amended	Ch. 484	HB 0252
71-3-532	amended	Ch. 484	HB 0252
71-3-802	amended	Ch. 427	HB 0893
71-3-1113	amended	Ch. 469	HB 0405
71-3-1118	amended	Ch. 469	HB 0405
72-2-901	enacted	Ch. 62	HB 0178
72-2-902	enacted	Ch. 62	HB 0178
72-2-903	enacted	Ch. 62	HB 0178
72-2-904	enacted	Ch. 62	HB 0178
72-2-905	enacted	Ch. 62	HB 0178
72-2-906	enacted	Ch. 62	HB 0178
72-2-907	enacted	Ch. 62	HB 0178
72-2-908	enacted	Ch. 62	HB 0178
72-2-909	enacted	Ch. 62	HB 0178
72-2-910	enacted	Ch. 62	HB 0178
72-5-101	amended	Ch. 382	SB 0308
72-16-202	amended	Ch. 112	HB 0231
72-16-313	amended	Ch. 223	HB 0193
72-16-1001	enacted	Ch. 273	SB 0194
72-16-1002	enacted	Ch. 273	SB 0194
72-16-1003	enacted	Ch. 273	SB 0194
72-16-1004	enacted	Ch. 273	SB 0194
72-16-1005	enacted	Ch. 273	SB 0194
72-16-1006	enacted	Ch. 273	SB 0194
72-16-1007	enacted	Ch. 273	SB 0194
72-31-201	enacted	Ch. 580	HB 0942
72-31-202	enacted	Ch. 580	HB 0942
72-31-203	enacted	Ch. 580	HB 0942
72-31-204	enacted	Ch. 580	HB 0942
72-31-205	enacted	Ch. 580	HB 0942
72-31-206	enacted	Ch. 580	HB 0942

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72-31-207	enacted	Ch. 580	HB 0942
72-31-208	enacted	Ch. 580	HB 0942
72-31-209	enacted	Ch. 580	HB 0942
72-31-210	enacted	Ch. 580	HB 0942
72-31-211	enacted	Ch. 580	HB 0942
72-31-212	enacted	Ch. 580	HB 0942
72-31-213	enacted	Ch. 580	HB 0942
72-31-214	enacted	Ch. 580	HB 0942
72-31-215	enacted	Ch. 580	HB 0942
72-31-216	enacted	Ch. 580	HB 0942
72-33-108	amended	Ch. 688	HB 0471
72-36-206	amended	Ch. 688	HB 0471
75-1-203	amended	Ch. 112	HB 0231
75-1-1101	amended	Ch. 112	HB 0231
75-2-111	amended	Ch. 652	HB 0781
75-2-211	amended	Ch. 652	HB 0781
75-2-215	amended	Ch. 605	HB 0607
75-2-301	amended	Ch. 141	SB 0224
75-2-302	amended	Ch. 141	SB 0224
75-2-503	amended	Ch. 16	SB 0033
75-2-508	enacted	Ch. 596	SB 0288
75-2-512	repealed	Ch. 596	SB 0288
75-2-514	amended	Ch. 596	SB 0288
75-5-106	amended	Ch. 357	SB 0136
75-5-305	amended	Ch. 479	HB 0162
75-5-311	enacted	Ch. 357	SB 0136
75-5-401	amended	Ch. 412	HB 0926
75-5-402	amended	Ch. 412	HB 0926
75-5-405	enacted	Ch. 412	HB 0926
75-5-507	enacted	Ch. 600	HB 0414
75-5-601	amended	Ch. 292	HB 0161
75-5-631	amended	Ch. 644	SB 0211
75-5-633	amended	Ch. 644	SB 0211
75-5-634	amended	Ch. 600	HB 0414
75-5-635	amended	Ch. 600	HB 0414
75-5-1106	amended	Ch. 788	HB 0551
75-5-1113	amended	Ch. 788	HB 0551
75-5-1121	amended	Ch. 788	HB 0551
75-6-102	amended	Ch. 645	SB 0407
75-6-103	amended	Ch. 645	SB 0407
75-6-104	amended	Ch. 645	SB 0407
75-6-108	enacted	Ch. 645	SB 0407
75-6-109	enacted	Ch. 645	SB 0407
75-6-111	amended	Ch. 645	SB 0407
75-6-114	enacted	Ch. 645	SB 0407
75-6-115	enacted	Ch. 645	SB 0407
75-7-210	amended	Ch. 648	SB 0437
75-7-304	amended	Ch. 112	HB 0231
75-10-102	amended	Ch. 215	SB 0357
75-10-102	amended	Ch. 643	SB 0209
75-10-103	amended	Ch. 213	HB 0918
75-10-104	amended	Ch. 222	HB 0160
75-10-104	amended	Ch. 398	SB 0346
75-10-104	amended	Ch. 643	SB 0209
75-10-105	amended	Ch. 398	SB 0346

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75-10-110	repealed effective 07/01/93	Ch. 398	SB 0346
75-10-115	amended	Ch. 643	SB 0209
75-10-116	amended	Ch. 398	SB 0346
75-10-117	amended	Ch. 398	SB 0346
75-10-118	enacted	Ch. 398	SB 0346
75-10-203	amended	Ch. 407	HB 0858
75-10-204	amended	Ch. 643	SB 0209
75-10-209	amended	Ch. 649	HB 0139
75-10-212	amended	Ch. 461	SB 0400
75-10-214	amended	Ch. 565	HB 0660
75-10-215	enacted	Ch. 407	HB 0858
75-10-221	amended	Ch. 643	SB 0209
75-10-228(3)	enacted	Ch. 565	HB 0660
75-10-233	amended	Ch. 461	SB 0400
75-10-405	amended	Ch. 400	HB 0383
75-10-405	amended	Ch. 706	HB 0896
75-10-501	amended	Ch. 572	HB 0782
75-10-503	amended	Ch. 572	HB 0782
75-10-505	enacted	Ch. 572	HB 0782
75-10-512	amended	Ch. 725	SB 0232
75-10-516	enacted	Ch. 607	HB 0706
75-10-521	amended	Ch. 572	HB 0782
75-10-533	amended	Ch. 112	HB 0231
75-10-534	amended	Ch. 572	HB 0782
75-10-541	amended	Ch. 572	HB 0782
75-10-541	amended	Ch. 725	SB 0232
75-10-621	amended	Ch. 787	HB 0454
75-10-701	amended	Ch. 16	SB 0033
75-10-704	amended	Ch. 16	SB 0033
75-10-704	amended	Ch. 112	HB 0231
75-10-704	amended	Ch. 752	HB 0539
75-10-711	amended	Ch. 752	HB 0539
75-10-713	amended	Ch. 752	HB 0539
75-10-716	enacted	Ch. 464	HB 0228
75-10-717	enacted	Ch. 464	HB 0228
75-10-718	amended	Ch. 16	SB 0033
75-10-719	amended	Ch. 752	HB 0539
75-10-721	amended	Ch. 752	HB 0539
75-10-801	enacted	Ch. 222	HB 0160
75-10-802	enacted	Ch. 222	HB 0160
75-10-803	enacted	Ch. 222	HB 0160
75-10-804	enacted	Ch. 222	HB 0160
75-10-805	enacted	Ch. 222	HB 0160
75-10-806	enacted	Ch. 222	HB 0160
75-10-807	enacted	Ch. 222	HB 0160
75-10-901	enacted	Ch. 468	HB 0377
75-10-902	enacted	Ch. 468	HB 0377
75-10-903	enacted	Ch. 468	HB 0377
75-10-906	enacted	Ch. 468	HB 0377
75-10-907	enacted	Ch. 468	HB 0377
75-10-908	enacted	Ch. 468	HB 0377
75-10-909	enacted	Ch. 468	HB 0377
75-10-910	enacted	Ch. 468	HB 0377
75-10-913	enacted	Ch. 468	HB 0377
75-10-914	enacted	Ch. 468	HB 0377

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75-10-916	enacted	Ch. 468	HB 0377
75-10-917	enacted	Ch. 468	HB 0377
75-10-918	enacted	Ch. 468	HB 0377
75-10-919	enacted	Ch. 468	HB 0377
75-10-920	enacted	Ch. 468	HB 0377
75-10-921	enacted	Ch. 468	HB 0377
75-10-922	enacted	Ch. 468	HB 0377
75-10-923	enacted	Ch. 468	HB 0377
75-10-924	enacted	Ch. 468	HB 0377
75-10-925	enacted	Ch. 468	HB 0377
75-10-926	enacted	Ch. 468	HB 0377
75-10-927	enacted	Ch. 468	HB 0377
75-10-928	enacted	Ch. 468	HB 0377
75-10-929	enacted	Ch. 468	HB 0377
75-10-930	enacted	Ch. 468	HB 0377
75-10-933	enacted	Ch. 468	HB 0377
75-10-934	enacted	Ch. 468	HB 0377
75-10-935	enacted	Ch. 468	HB 0377
75-10-938	enacted	Ch. 468	HB 0377
75-10-939	enacted	Ch. 468	HB 0377
75-10-940	enacted	Ch. 468	HB 0377
75-10-941	enacted	Ch. 468	HB 0377
75-10-942	enacted	Ch. 468	HB 0377
75-10-943	enacted	Ch. 468	HB 0377
75-10-944	enacted	Ch. 468	HB 0377
75-10-945	enacted	Ch. 468	HB 0377
75-10-950	enacted	Ch. 541	HB 0891
75-10-951	enacted	Ch. 541	HB 0891
75-10-952	enacted	Ch. 541	HB 0891
75-10-953	enacted	Ch. 541	HB 0891
75-10-954	enacted	Ch. 541	HB 0891
75-10-1001	enacted	Ch. 483	HB 0239
75-10-1002	enacted	Ch. 483	HB 0239
75-10-1003	enacted	Ch. 483	HB 0239
75-10-1004	enacted	Ch. 483	HB 0239
75-10-1005	enacted	Ch. 483	HB 0239
75-10-1006	enacted	Ch. 483	HB 0239
75-10-1101	enacted	Ch. 623	HB 0145
75-11-223	amended	Ch. 433	SB 0377
75-11-301	amended	Ch. 763	HB 0973
75-11-302	amended	Ch. 389	HB 0485
75-11-302	amended	Ch. 763	HB 0973
75-11-307	amended	Ch. 389	HB 0485
75-11-307	amended	Ch. 763	HB 0973
75-11-308	amended	Ch. 389	HB 0485
75-11-308	amended	Ch. 763	HB 0973
75-11-309	amended	Ch. 389	HB 0485
75-11-318	amended	Ch. 763	HB 0973
75-15-103	amended	Ch. 512	SB 0164
75-15-111	amended	Ch. 512	SB 0164
75-15-113	amended	Ch. 512	SB 0164
75-15-204	amended	Ch. 512	SB 0164
75-15-205	amended	Ch. 512	SB 0164
75-15-214	amended	Ch. 512	SB 0164
75-15-215	amended	Ch. 512	SB 0164

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75-15-222	amended	Ch. 512	SB 0164
75-15-223	amended	Ch. 512	SB 0164
75-20-211	amended	Ch. 512	SB 0164
75-20-216	amended	Ch. 512	SB 0164
75-20-226	amended	Ch. 512	SB 0164
75-20-501	amended	Ch. 512	SB 0164
76-1-113	amended	Ch. 408	HB 0952
76-2-209	amended	Ch. 408	HB 0952
76-4-105	amended	Ch. 645	SB 0407
76-5-1109	amended	Ch. 512	SB 0164
76-9-101	enacted	Ch. 415	HB 0487
76-9-102	enacted	Ch. 415	HB 0487
76-9-103	enacted	Ch. 415	HB 0487
76-9-104	enacted	Ch. 415	HB 0487
76-9-105	enacted	Ch. 415	HB 0487
76-11-203	amended	Ch. 112	HB 0231
76-12-109	amended	Ch. 112	HB 0231
76-13-201	amended	Ch. 360	SB 0165
76-13-408	amended	Ch. 577	HB 0906
76-13-414	amended	Ch. 577	HB 0906
76-13-415	enacted	Ch. 577	HB 0906
76-13-601	amended	Ch. 512	SB 0164
76-14-112	amended	Ch. 16	SB 0033
76-15-508	amended	Ch. 135	SB 0139
77-1-101	amended	Ch. 609	HB 0778
77-1-202	amended	Ch. 609	HB 0778
77-1-203	amended	Ch. 609	HB 0778
77-1-204	amended	Ch. 609	HB 0778
77-1-402	amended	Ch. 609	HB 0778
77-1-702	amended	Ch. 512	SB 0164
77-1-706	amended	Ch. 512	SB 0164
77-1-801	enacted	Ch. 609	HB 0778
77-1-802	enacted	Ch. 609	HB 0778
77-1-804	enacted	Ch. 609	HB 0778
77-1-805	enacted	Ch. 609	HB 0778
77-1-806	enacted	Ch. 609	HB 0778
77-1-808	enacted	Ch. 609	HB 0778
77-1-809	enacted	Ch. 609	HB 0778
77-1-810	enacted	Ch. 609	HB 0778
77-2-306	amended	Ch. 313	SB 0422
77-2-329	amended	Ch. 488	HB 0300
77-2-351	enacted	Ch. 264	HB 0902
77-3-208	amended	Ch. 512	SB 0164
77-5-104	amended	Ch. 662	SB 0362
77-5-206	amended	Ch. 110	HB 0223
77-5-301	enacted	Ch. 608	HB 0731
77-5-302	enacted	Ch. 608	HB 0731
77-5-303	enacted	Ch. 608	HB 0731
77-5-304	enacted	Ch. 608	HB 0731
77-5-305	enacted	Ch. 608	HB 0731
77-5-306	enacted	Ch. 608	HB 0731
77-5-307	enacted	Ch. 608	HB 0731
77-6-205	amended	Ch. 43	HB 0207
77-6-403	amended	Ch. 679	SB 0409
77-6-506	amended	Ch. 140	SB 0181

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77-6-507	amended	Ch. 38	SB 0150
80-4-402	amended	Ch. 299	HB 0771
80-4-422	amended	Ch. 518	SB 0019
80-4-429	amended	Ch. 299	HB 0771
80-4-525	amended	Ch. 299	HB 0771
80-4-527	amended	Ch. 299	HB 0771
80-4-538	amended	Ch. 299	HB 0771
80-4-604	amended	Ch. 299	HB 0771
80-4-612	enacted	Ch. 299	HB 0771
80-4-613	enacted	Ch. 299	HB 0771
80-4-614	enacted	Ch. 299	HB 0771
80-6-101	amended	Ch. 9	HB 0066
80-6-201	amended	Ch. 9	HB 0066
80-6-202	amended	Ch. 9	HB 0066
80-7-102	amended	Ch. 151	HB 0756
80-7-508	amended	Ch. 440	SB 0123
80-7-701	amended	Ch. 303	HB 0840
80-7-702	amended	Ch. 303	HB 0840
80-7-713	amended	Ch. 112	HB 0231
80-7-810	amended	Ch. 588	HB 0964
80-7-812	amended	Ch. 588	HB 0964
80-7-814	amended	Ch. 440	SB 0123
80-7-815	amended	Ch. 588	HB 0964
80-8-102	amended	Ch. 51	SB 0161
80-8-111	enacted	Ch. 51	SB 0161
80-8-116	amended	Ch. 588	HB 0964
80-8-201	amended	Ch. 588	HB 0964
80-8-212	amended	Ch. 588	HB 0964
80-8-305	amended	Ch. 588	HB 0964
80-9-206	amended	Ch. 16	SB 0033
80-11-202	amended	Ch. 507	HB 0888
80-11-205	amended	Ch. 507	HB 0888
80-11-310	amended	Ch. 575	HB 0841
80-12-102	amended	Ch. 168	HB 0090
80-12-203	amended	Ch. 368	HB 0552
80-12-401	repealed	Ch. 39	SB 0155
80-12-402	amended	Ch. 112	HB 0231
80-15-302	amended	Ch. 588	HB 0964
81-1-105	enacted	Ch. 234	HB 0304
81-2-702	amended	Ch. 531	HB 0556
81-3-102	amended	Ch. 6	SB 0009
81-3-103	amended	Ch. 6	SB 0009
81-3-104	amended	Ch. 6	SB 0009
81-3-105	amended	Ch. 6	SB 0009
81-3-106	amended	Ch. 6	SB 0009
81-3-108	amended	Ch. 6	SB 0009
81-3-201	amended	Ch. 6	SB 0009
81-30-101	enacted	Ch. 205	HB 0120
81-30-102	enacted	Ch. 205	HB 0120
81-30-103	enacted	Ch. 205	HB 0120
81-30-104	enacted	Ch. 205	HB 0120
81-30-105	enacted	Ch. 205	HB 0120
82-2-102	amended	Ch. 137	SB 0162
82-4-203	amended	Ch. 147	HB 0266
82-4-222	amended	Ch. 16	SB 0033

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82-4-303	amended	Ch. 283	SB 0283
82-4-303	amended	Ch. 637	HB 0448
82-4-305	amended	Ch. 637	HB 0448
82-4-306	amended	Ch. 637	HB 0448
82-4-332	amended	Ch. 137	SB 0162
82-4-335	amended	Ch. 227	HB 0237
82-4-335	amended	Ch. 403	HB 0641
82-4-335	amended	Ch. 637	HB 0448
82-4-337	amended	Ch. 637	HB 0448
82-4-338	amended	Ch. 637	HB 0448
82-4-339	amended	Ch. 227	HB 0237
82-4-339	amended	Ch. 637	HB 0448
82-4-355	amended	Ch. 637	HB 0448
82-4-357	enacted	Ch. 637	HB 0448
82-4-361	amended	Ch. 283	SB 0283
82-4-362	amended	Ch. 283	SB 0283
82-4-424	amended	Ch. 431	SB 0253
82-4-431	amended	Ch. 408	HB 0952
82-4-431	amended	Ch. 431	SB 0253
82-4-432	amended	Ch. 408	HB 0952
82-4-433	amended	Ch. 431	SB 0253
82-4-434	amended	Ch. 16	SB 0033
82-4-441	amended	Ch. 431	SB 0253
82-11-101	amended	Ch. 734	SB 0018
82-11-103	amended	Ch. 734	SB 0018
82-11-104	amended	Ch. 734	SB 0018
82-11-143	amended	Ch. 363	SB 0225
82-11-149	amended	Ch. 363	SB 0225
82-11-161	amended	Ch. 112	HB 0231
82-11-161	amended	Ch. 734	SB 0018
82-11-164	amended	Ch. 734	SB 0018
82-15-105	amended	Ch. 56	HB 0053
85-1-211	amended	Ch. 425	HB 0814
85-1-220	enacted	Ch. 370	HB 0586
85-1-401	repealed	Ch. 61	HB 0171
85-1-402	repealed	Ch. 61	HB 0171
85-1-403	repealed	Ch. 61	HB 0171
85-1-404	repealed	Ch. 61	HB 0171
85-1-405	repealed	Ch. 61	HB 0171
85-1-406	repealed	Ch. 61	HB 0171
85-1-407	repealed	Ch. 61	HB 0171
85-1-407	amended	Ch. 112	HB 0231
85-1-408	repealed	Ch. 61	HB 0171
85-1-409	repealed	Ch. 61	HB 0171
85-1-510	amended	Ch. 370	HB 0586
85-1-602	amended	Ch. 543	HB 0908
85-1-604	amended	Ch. 543	HB 0908
85-1-604	amended	Ch. 659	SB 0313
85-1-621	amended	Ch. 112	HB 0231
85-1-631	enacted	Ch. 659	SB 0313
85-1-701	enacted	Ch. 659	SB 0313
85-1-702	enacted	Ch. 659	SB 0313
85-1-703	enacted	Ch. 659	SB 0313
85-1-704	enacted	Ch. 659	SB 0313
85-2-102	amended	Ch. 28	HB 0089

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85-2-102	amended	Ch. 308	SB 0265
85-2-102	amended	Ch. 543	HB 0908
85-2-102	amended	Ch. 805	SB 0266
85-2-105	amended	Ch. 112	HB 0231
85-2-113	amended	Ch. 543	HB 0908
85-2-113	amended	Ch. 805	SB 0266
85-2-114	amended	Ch. 677	SB 0368
85-2-117	enacted	Ch. 805	SB 0266
85-2-122	amended	Ch. 677	SB 0368
85-2-123	amended	Ch. 677	SB 0368
85-2-150	enacted	Ch. 543	HB 0908
85-2-217	amended	Ch. 784	HB 0360
85-2-228	enacted	Ch. 343	HB 0361
85-2-236	amended	Ch. 805	SB 0266
85-2-302	amended	Ch. 769	SB 0094
85-2-306	amended	Ch. 769	SB 0094
85-2-306	amended	Ch. 805	SB 0266
85-2-308	amended	Ch. 805	SB 0266
85-2-310	amended	Ch. 659	SB 0313
85-2-312	amended	Ch. 805	SB 0266
85-2-315	amended	Ch. 805	SB 0266
85-2-316	amended	Ch. 515	SB 0314
85-2-317	amended	Ch. 805	SB 0266
85-2-327	enacted	Ch. 352	HB 0745
85-2-328	enacted	Ch. 352	HB 0745
85-2-335	enacted	Ch. 741	SB 0434
85-2-336	enacted	Ch. 741	SB 0434
85-2-337	enacted	Ch. 741	SB 0434
85-2-338	enacted	Ch. 741	SB 0434
85-2-402	amended	Ch. 308	SB 0265
85-2-402	amended	Ch. 805	SB 0266
85-2-404	amended	Ch. 435	SB 0386
85-2-407	enacted	Ch. 435	SB 0386
85-2-419	enacted	Ch. 308	SB 0265
85-2-424	amended	Ch. 805	SB 0266
85-2-436	amended	Ch. 740	SB 0425
85-2-437	amended	Ch. 740	SB 0425
85-2-438	enacted	Ch. 740	SB 0425
85-2-501	amended	Ch. 805	SB 0266
85-2-702	amended	Ch. 784	HB 0360
85-2-901	enacted	Ch. 769	SB 0094
85-2-902	enacted	Ch. 769	SB 0094
85-2-903	enacted	Ch. 769	SB 0094
85-2-904	enacted	Ch. 769	SB 0094
85-2-905	enacted	Ch. 769	SB 0094
85-2-906	enacted	Ch. 769	SB 0094
85-2-907	enacted	Ch. 769	SB 0094
85-3-213	amended	Ch. 630	HB 0508
85-5-110	amended	Ch. 108	HB 0189
85-6-109	amended	Ch. 425	HB 0814
85-7-102	amended	Ch. 16	SB 0033
85-7-1702	amended	Ch. 269	SB 0108
85-15-106	amended	Ch. 366	HB 0382
85-15-107	amended	Ch. 366	HB 0382
85-20-301	enacted	Ch. 812	SB 0472

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87-1-101	amended	Ch. 28	HB 0089
87-1-102	amended	Ch. 277	SB 0240
87-1-102	amended	Ch. 609	HB 0778
87-1-108	enacted	Ch. 277	SB 0240
87-1-109	enacted	Ch. 277	SB 0240
87-1-111	amended	Ch. 329	SB 0239
87-1-212	enacted	Ch. 234	HB 0304
87-1-215	enacted	Ch. 401	HB 0390
87-1-242	amended	Ch. 319	SB 0252
87-1-301	amended	Ch. 22	HB 0017
87-1-502	amended	Ch. 609	HB 0778
87-1-502	amended	Ch. 662	SB 0362
87-1-503	amended	Ch. 662	SB 0362
87-1-504	amended	Ch. 609	HB 0778
87-1-506	amended	Ch. 336	SB 0449
87-1-601	amended	Ch. 41	SB 0083
87-1-601	amended	Ch. 339	HB 0164
87-1-601	amended	Ch. 609	HB 0778
87-2-101	amended	Ch. 28	HB 0089
87-2-102	amended	Ch. 321	SB 0298
87-2-105	amended	Ch. 217	HB 0107
87-2-106	amended	Ch. 277	SB 0240
87-2-106	amended	Ch. 321	SB 0298
87-2-109	amended	Ch. 321	SB 0298
87-2-113	amended	Ch. 592	SB 0171
87-2-202	amended	Ch. 321	SB 0298
87-2-202	amended	Ch. 592	SB 0171
87-2-301	amended	Ch. 592	SB 0171
87-2-302	amended	Ch. 592	SB 0171
87-2-304	amended	Ch. 592	SB 0171
87-2-306	amended	Ch. 592	SB 0171
87-2-402	amended	Ch. 592	SB 0171
87-2-403	amended	Ch. 592	SB 0171
87-2-404	enacted	Ch. 371	HB 0615
87-2-501	amended	Ch. 418	HB 0563
87-2-501	amended	Ch. 592	SB 0171
87-2-505	amended	Ch. 592	SB 0171
87-2-508	amended	Ch. 592	SB 0171
87-2-510	amended	Ch. 592	SB 0171
87-2-701	amended	Ch. 401	HB 0390
87-2-701	amended	Ch. 592	SB 0171
87-2-702	amended	Ch. 57	HB 0091
87-2-704	amended	Ch. 358	SB 0142
87-2-704	amended	Ch. 592	SB 0171
87-2-705	amended	Ch. 418	HB 0563
87-2-708	amended	Ch. 592	SB 0171
87-2-711	amended	Ch. 592	SB 0171
87-2-723	repealed	Ch. 401	HB 0390
87-2-724	amended	Ch. 112	HB 0231
87-2-802	amended	Ch. 262	HB 0848
87-2-903	amended	Ch. 592	SB 0171
87-3-102	amended	Ch. 277	SB 0240
87-3-103	amended	Ch. 277	SB 0240
87-3-104	amended	Ch. 277	SB 0240
87-3-109	enacted	Ch. 309	SB 0291

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87-3-111	amended	Ch. 277	SB 0240
87-3-111	amended	Ch. 329	SB 0239
87-3-117	enacted	Ch. 329	SB 0239
87-3-118	enacted	Ch. 329	SB 0239
87-3-122	repealed	Ch. 206	HB 0166
87-3-135	enacted	Ch. 22	HB 0017
87-3-204	amended	Ch. 28	HB 0089
87-3-224	amended	Ch. 512	SB 0164
87-4-304	amended	Ch. 16	SB 0033
87-4-408	amended	Ch. 531	HB 0556
87-4-414	amended	Ch. 531	HB 0556
87-4-415	amended	Ch. 531	HB 0556
87-4-417	amended	Ch. 531	HB 0556
87-4-423	amended	Ch. 531	HB 0556
87-4-424	enacted	Ch. 531	HB 0556
87-4-504	amended	Ch. 371	HB 0615
87-4-521	amended	Ch. 371	HB 0615
87-4-527	amended	Ch. 371	HB 0615
87-4-601	amended	Ch. 28	HB 0089
87-4-601	amended	Ch. 68	HB 0115
87-5-121	amended	Ch. 16	SB 0033
87-5-123	amended	Ch. 112	HB 0231
87-5-204	amended	Ch. 243	HB 0403
87-5-206	repealed	Ch. 243	HB 0403
87-5-208	amended	Ch. 243	HB 0403
87-5-210	amended	Ch. 243	HB 0403
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87-5-721	amended	Ch. 501	HB 0576
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90-1-105	amended	Ch. 301	HB 0819
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90-2-111	amended	Ch. 780	HB 0240
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90-3-102	amended	Ch. 566	HB 0703
90-3-102	amended	Ch. 594	SB 0242
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90-3-305	amended	Ch. 594	SB 0242
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90-4-613	amended	Ch. 571	HB 0777
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90-4-902	enacted	Ch. 722	HB 0701
90-4-903	enacted	Ch. 722	HB 0701

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90-4-906	enacted	Ch. 722	HB 0701
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90-6-205	amended	Ch. 512	SB 0164
90-6-210	amended	Ch. 512	SB 0164
90-6-302	amended	Ch. 227	HB 0237
90-6-304	amended	Ch. 616	HB 1010
90-6-305	amended	Ch. 376	HB 0749
90-6-307	amended	Ch. 227	HB 0237
90-6-310	amended	Ch. 227	HB 0237
90-6-311	amended	Ch. 227	HB 0237
90-6-331	amended	Ch. 376	HB 0749
90-6-331	amended	Ch. 616	HB 1010
90-6-404	amended	Ch. 760	HB 0832
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90-7-220	enacted	Ch. 819	HB 0963
90-7-317	enacted	Ch. 673	SB 0215
90-7-318	enacted	Ch. 673	SB 0215
90-7-319	enacted	Ch. 673	SB 0215
90-7-320	enacted	Ch. 673	SB 0215
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90-8-313	amended	Ch. 576	HB 0901
90-8-321	amended	Ch. 263	HB 0863
90-8-321	amended	Ch. 576	HB 0901
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90-9-302	repealed	Ch. 189	HB 0622

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90-15-102	amended	Ch. 512	SB 0164

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Laws of 1985		
Ch. 681, sec. 10	amended	172, L. 1991
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	amended	783, L. 1991
Ch. 705, sec. 3	amended	172, L. 1991
Laws of 1987		
Ch. 228, sec. 1	amended	803, L. 1991
Ch. 477, sec. 9	repealed	184, L. 1991
Ch. 516, sec. 7	amended	530, L. 1991
Ch. 528, sec. 14	repealed	143, L. 1991
Ch. 554, sec. 7	repealed	638, L. 1991
Ch. 598, sec. 12	amended	319, L. 1991
Laws of 1989		
Ch. 14, sec. 3	amended	654, L. 1991
Ch. 155, sec. 2, 5	repealed	638, L. 1991
Ch. 237, sec. 1	amended	476, L. 1991
Ch. 269, sec. 8	amended	190, L. 1991
Ch. 324, sec. 10	repealed	701, L. 1991
Ch. 377, sec. 3	repealed	184, L. 1991
Ch. 400, sec. 13	repealed	19, L. 1991
Ch. 434, sec. 14, 17	amended	547, L. 1991
	amended	799, L. 1991
Ch. 446, sec. 5	repealed	149, L. 1991
Ch. 600, sec. 1	amended	639, L. 1991
Ch. 631, sec. 17	repealed	77, L. 1991
Ch. 634, sec. 1	amended	429, L. 1991
Ch. 646, sec. 19	repealed	12, L. 1991
Ch. 649, sec. 15	amended	388, L. 1991
	repealed	634, L. 1991
Ch. 658, sec. 11	amended	740, L. 1991
Ch. 692, sec. 18	repealed	618, L. 1991
HB 100, sec. 16	amended	96, L. 1991
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EFFECTIVE DATES

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and

By Effective Date

Section 1-2-201, MCA, as amended by Ch. 466, Laws of 1981, provides that:

"Every statute adopted after January 1, 1981, except those that provide for appropriation by the legislature of public funds for a public purpose, takes effect on the first day of October following its passage and approval unless a different time is prescribed therein. Every statute providing for appropriation as specified in this subsection takes effect on the first day of July following its passage and approval unless a different time is prescribed therein."

The following is a list of specially designated effective dates for the 52nd Legislature in regular session.

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(§ 2(1))	HB 225	07/01/92
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Ch. 115	HB 345	03/20/91
Ch. 116	HB 432	07/01/91
Ch. 117	HB 516	03/20/91
Ch. 118	HB 585	03/20/91
Ch. 120	SB 14	03/20/91
Ch. 123	SB 85	03/20/91
Ch. 124	SB 88	03/20/91
Ch. 130	SB 116	07/01/91
Ch. 131	SB 130	07/01/91
Ch. 132	SB 131	03/20/91
Ch. 133	SB 134	03/20/91
Ch. 134	SB 135	07/01/91
Ch. 135	SB 139	07/01/91
Ch. 136	SB 141	07/01/91
Ch. 138	SB 167	07/01/91
Ch. 139	SB 180	07/01/91
Ch. 141	SB 224	03/20/91
Ch. 143	HB 149	03/25/91
Ch. 148	HB 648	03/25/91
Ch. 149	HB 682	03/25/91
Ch. 151	HB 756	03/25/91
Ch. 153	SB 160	07/01/91
Ch. 154	SB 179	03/25/91
Ch. 160	HB 168	03/25/91
Ch. 161	HB 262	03/25/91
Ch. 162	HB 769	07/01/91
Ch. 165 (§§ 3, 4)	SB 372	03/26/91
(§§ 1, 2)	SB 372	07/01/91
Ch. 168	HB 90	03/26/91
Ch. 170	HB 109	07/01/91
Ch. 172	HB 137	03/26/91
Ch. 173	HB 167	03/26/91
Ch. 178	HB 274	03/26/91
Ch. 183	HB 425	03/26/91
Ch. 184	HB 445	07/01/91
Ch. 185	HB 481	03/26/91
Ch. 187	HB 529	03/26/91
Ch. 188	HB 555	03/26/91
Ch. 190	SB 3	03/27/91
Ch. 191	SB 122	03/27/91
Ch. 192	SB 170	07/01/91
Ch. 198	SB 367	03/27/91
Ch. 201	SB 432	07/01/91
Ch. 203	HB 63	03/27/91
Ch. 205	HB 120	03/27/91
Ch. 208	HB 424	03/27/91
Ch. 209	HB 537	03/27/91
Ch. 210	HB 610	03/27/91
Ch. 211	HB 774	03/27/91
Ch. 214	HB 941	07/01/91

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Ch. 216	HB 60	03/29/91
Ch. 217	HB 107	03/01/92
Ch. 219 (§§ 7, 8)	HB 118	03/29/91
(§§ 1-6)	HB 118	01/01/92
Ch. 220	HB 153	07/01/91
Ch. 221	HB 158	03/29/91
Ch. 223	HB 193	10/01/90
Ch. 224	HB 230	03/29/91
Ch. 227	HB 237	03/29/91
Ch. 238	HB 347	03/29/91
Ch. 240	HB 379	07/01/91
Ch. 242	HB 392	03/29/91
Ch. 247	HB 422	03/29/91
Ch. 250	HB 462	03/29/91
Ch. 251	HB 479	03/29/91
Ch. 253	HB 515	03/29/91
Ch. 258	HB 663	03/29/91
Ch. 262	HB 848	07/01/91
Ch. 263	HB 863	03/29/91
Ch. 265	HB 920	03/29/91
Ch. 267	SB 86	03/29/91
Ch. 270	SB 112	07/01/91
Ch. 272 (§ 2)	SB 169	01/01/92
Ch. 274	SB 217	03/29/91
Ch. 275	SB 231	03/29/91
Ch. 277	SB 240	07/01/91
Ch. 279	SB 254	07/01/91
Ch. 281	SB 260	07/01/91
Ch. 283	SB 283	07/01/91
Ch. 290	HB 111	04/01/91
Ch. 291	HB 146	04/01/91
Ch. 297	HB 588	04/01/91
Ch. 302	HB 829	04/01/91
Ch. 304	HB 938	04/01/91
Ch. 306 (§§ 9-11, 22)	SB 66	04/01/91
Ch. 309	SB 291	07/01/91
Ch. 310	SB 306	07/01/91
Ch. 312	SB 408	07/01/91
Ch. 317	HB 421	04/02/91
Ch. 319	SB 252	03/01/91
Ch. 321	SB 298	07/01/91
Ch. 323	SB 383	07/01/91
Ch. 325	SB 84	04/04/91
Ch. 328	SB 198	04/04/91
Ch. 329	SB 239	07/01/91
Ch. 331	SB 307	03/29/92
Ch. 332	SB 320	(effective upon certification of regents)
Ch. 336	SB 449	04/04/91
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Ch. 347	HB 602	04/04/91
Ch. 352	HB 745	04/04/91
Ch. 355	HB 813	07/01/91
Ch. 356	HB 817	04/04/91
Ch. 358	SB 142	04/06/91
Ch. 360	SB 165	04/06/91
Ch. 361	SB 173	04/06/91
Ch. 363	SB 225	04/06/91
Ch. 364	SB 243	07/01/91
Ch. 365	SB 264	04/06/91
Ch. 366	HB 382	04/06/91
Ch. 368	HB 552	01/01/92
Ch. 370	HB 586	07/01/91
Ch. 373	HB 726	07/01/91
Ch. 376	HB 749	04/06/91
Ch. 377	HB 881	04/06/91
Ch. 378	HB 897	07/01/91
Ch. 379	HB 915	04/06/91
Ch. 380	HB 962	04/06/91
Ch. 382	SB 308	04/08/91
Ch. 385	HB 116	07/01/91
Ch. 386	HB 173	07/01/91
Ch. 387	HB 260	01/01/92
Ch. 388	HB 545	07/01/91
Ch. 389	HB 485	07/01/91
Ch. 391	HB 635	04/08/91
Ch. 394	HB 974	07/01/91
Ch. 397	SB 321	07/01/91
Ch. 398	SB 346	07/01/93
Ch. 399	HB 175	07/01/92
Ch. 400	HB 383	04/09/91
Ch. 401	HB 390	04/09/91
Ch. 404	HB 642	07/01/91
Ch. 408	HB 952	04/09/91
Ch. 409	SB 8	04/09/91
Ch. 411	HB 741	01/01/92
Ch. 412 (§§ 3, 5)	HB 926	04/10/91
Ch. 413	HB 404	(contingent upon voter approval)
Ch. 414	HB 301	04/15/91
Ch. 415	HB 487	04/15/91
Ch. 416	HB 543	04/15/91
Ch. 417	HB 547	04/15/91
Ch. 420	HB 591	07/01/91
Ch. 425	HB 814	04/15/91
Ch. 429	SB 105	04/15/91
Ch. 432	SB 336	04/15/91
Ch. 434	SB 385	07/01/91
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Ch. 437	HB 785	07/01/91
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Ch. 441	SB 236	04/16/91
Ch. 442	SB 269	07/01/91
Ch. 446	SB 311	04/16/91
Ch. 447	SB 330	04/16/91
Ch. 451	HB 176	07/01/91
Ch. 452	HB 303	04/16/91
Ch. 457	HB 877	04/16/91
Ch. 458	HB 953	07/01/91
Ch. 460	SB 391	07/01/91
Ch. 465	HB 251	04/17/91
Ch. 467	HB 338	04/17/91
Ch. 468	HB 377	04/17/91
Ch. 469	HB 405	04/17/91
Ch. 476	HB 37	04/20/91
Ch. 477	HB 110	04/20/91
Ch. 480	HB 187	07/01/92
Ch. 481 (§§ 1, 3-16)	HB 192	04/20/91
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Ch. 484	HB 252	04/20/91
Ch. 485	HB 256	07/07/91
Ch. 489	HB 328	07/01/92
Ch. 490	HB 336	07/01/91
Ch. 493	HB 418	04/20/91
Ch. 494	HB 419	04/20/91
Ch. 495	HB 431	07/01/91
Ch. 496	HB 446	04/20/91
Ch. 497	HB 470	07/01/91
Ch. 499	HB 538	04/19/91
Ch. 500	HB 557	04/20/91
Ch. 504	HB 761	04/20/91
Ch. 507	HB 888	07/01/91
Ch. 508	HB 909	07/01/91
Ch. 510	HB 948	07/01/91
Ch. 511	SB 56	07/01/92
Ch. 512	SB 164	07/01/91
Ch. 513	SB 274	04/20/91
Ch. 515	SB 314	04/20/91
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Ch. 522	SB 158	04/22/91
Ch. 523	SB 270	04/22/91
Ch. 524	SB 381	04/22/91
Ch. 526	HB 142	04/22/91
Ch. 527	HB 497	04/22/91
Ch. 529	HB 544	07/01/91
Ch. 530	HB 549	07/01/91
Ch. 532 (§§ 3-5, 14-17)	HB 620	04/22/91
Ch. 536	HB 705	04/22/91
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Ch. 539	HB 860	05/01/91
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Ch. 545		HB 943	07/01/91
Ch. 546	(§§ 1, 3)	HB 966	04/22/91
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Ch. 547	(§§ 12, 13, 15-17)	SB 38	07/01/91
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Ch. 548	(§§ 1-4, 6-9)	SB 59	04/23/91
	(§ 5)	SB 59	07/01/92
Ch. 549		SB 128	07/01/91
Ch. 550	(§§ 5, 6, 26, 27)	SB 172	04/23/91
	(§§ 1-4, 7-25)	SB 172	07/01/91
Ch. 551		HB 6	04/23/91
Ch. 552		HB 8	07/01/91
Ch. 553		HB 10	07/01/91
Ch. 554		HB 272	07/01/91
Ch. 555		HB 335	07/01/91
Ch. 556		HB 371	07/01/91
Ch. 558		HB 465	07/01/91
Ch. 559		HB 491	07/01/91
Ch. 560		HB 513	04/23/91
Ch. 562		HB 524	07/01/91
Ch. 565		HB 660	04/23/91
Ch. 566		HB 703	07/01/91
Ch. 567		HB 711	07/01/91
Ch. 568	(§§ 1-5, 7-12)	HB 715	04/23/91
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Ch. 569		HB 728	07/01/91
Ch. 571		HB 777	04/23/91
Ch. 572		HB 782	07/01/91
Ch. 573		HB 807	07/01/91
Ch. 574		HB 837	07/01/91
Ch. 575		HB 841	07/01/91
Ch. 576		HB 901	04/23/91
Ch. 577		HB 906	04/23/91
Ch. 578		HB 927	07/01/91
Ch. 580		HB 942	04/23/91
Ch. 581		HB 968	04/23/91
Ch. 582		HB 9	07/01/91
Ch. 583	(§§ 1, 2, 4)	HB 498	04/23/91
	(§ 3)	HB 498	07/01/91
Ch. 584		HB 560	07/01/91
Ch. 585		HB 645	04/23/91
Ch. 586		HB 651	01/01/92
Ch. 588	(§§ 1-4, 6-10)	HB 964	07/01/91
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Ch. 589		SB 26	07/01/91
Ch. 590		SB 69	04/24/91
Ch. 592		SB 171	03/01/92
Ch. 593		SB 238	07/01/91
Ch. 594		SB 242	04/24/91
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Ch. 598		HB 4	04/24/91
Ch. 599		HB 299	07/01/91
Ch. 600		HB 414	07/01/91
Ch. 602	(§§ 1-9, 13, 14)	HB 477	04/24/91
	(§§ 10-12)	HB 477	07/01/91
Ch. 603		HB 558	04/24/91
Ch. 604		HB 579	07/01/91
Ch. 605		HB 607	04/24/91
Ch. 606	(§§ 4, 8-10)	HB 693	04/24/91
	(§§ 1-3, 5-7)	HB 693	07/01/91
Ch. 609		HB 778	03/01/92
Ch. 610		HB 793	07/01/91
Ch. 612		HB 904	04/24/91
Ch. 613		HB 949	04/24/91
Ch. 614	(§§ 1-4, 6-8)	HB 978	07/01/91
	(§ 5)	HB 978	(contingent upon approval of federal waiver) 07/01/92
Ch. 615		HB 1008	07/01/91
Ch. 616		HB 1010	04/24/91
Ch. 617		HB 760	07/01/91
Ch. 618		HB 937	06/29/91
Ch. 621		SB 438	04/24/91
Ch. 622		HB 30	04/24/91
Ch. 625		HB 298	07/01/91
Ch. 626		HB 321	07/01/91
Ch. 627		HB 334	04/24/91
Ch. 628		HB 393	07/01/91
Ch. 629		HB 489	07/01/91
Ch. 630	(§§ 1-6, 8, 9)	HB 508	04/24/91
	(§ 7)	HB 508	07/01/91
Ch. 631		HB 595	07/01/91
Ch. 632		HB 723	01/01/92
Ch. 633		HB 830	04/24/91
Ch. 634		HB 876	06/30/91
Ch. 635		HB 923	04/24/91
Ch. 636	(§§ 6, 8)	HB 103	04/25/91
	(§§ 1-5, 7)	HB 103	07/01/93
Ch. 637		HB 448	07/01/91
Ch. 638	(§§ 1, 2, 3(1))	HB 696	07/01/91
	(§ 3(2))	HB 696	06/30/93
Ch. 639		HB 704	04/25/91
Ch. 641		HB 868	07/01/91
Ch. 643		SB 209	07/01/91
Ch. 646		SB 416	04/26/91
Ch. 647	(§§ 4, 26, 58)	SB 427	04/26/91
	(§§ 1-3, 5-25, 27-57)	SB 427	07/01/91
Ch. 650		HB 152	04/26/91
Ch. 651		HB 528	04/26/91
Ch. 652	(§ 2(2))	HB 781	11/01/92
Ch. 653		SB 384	(contingent upon voter approval) 12/31/92
Ch. 654	(§§ 2-4, 6, 8, 9)	SB 177	04/26/91

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Ch. 656	(§§ 1-3, 5, 6)	SB 228	07/01/91
	(§ 4)	SB 228	07/01/91
Ch. 658	(§§ 1, 2, 4, 5)	SB 275	04/26/91
	(§ 3)	SB 275	12/31/91
Ch. 659		SB 313	07/01/91
Ch. 662		SB 362	04/26/91
Ch. 666		SB 420	07/01/91
Ch. 667		HB 155	07/01/91
Ch. 668		HB 738	04/26/91
Ch. 669		HB 753	04/26/91
Ch. 670		HB 790	04/26/91
Ch. 671	(§§ 2, 3, 7-10)	SB 174	07/01/91
	(§§ 1, 4-6)	SB 174	01/01/91
Ch. 672	(§ 2)	SB 178	01/01/92
Ch. 673		SB 215	07/01/91
Ch. 674		SB 262	07/01/91
Ch. 675		SB 263	07/01/91
Ch. 676		SB 280	04/27/91
Ch. 677		SB 368	04/27/91
Ch. 678		SB 389	07/01/91
Ch. 680	(§§ 1-5, 11-15)	SB 412	04/27/91
	(§§ 6-10)	SB 412	01/01/93
Ch. 682		HB 24	07/01/91
Ch. 683		HB 25	07/01/91
Ch. 684		HB 26	07/01/91
Ch. 685		HB 244	04/27/91
Ch. 686		HB 306	04/27/91
Ch. 687		HB 451	04/27/91
Ch. 688		HB 471	04/27/91
Ch. 690		HB 511	07/01/91
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Ch. 694		HB 970	04/27/91
Ch. 695		HB 976	04/27/91
Ch. 696		HB 993	07/01/91
Ch. 697		HB 1012	04/27/91
Ch. 698		HB 309	07/01/91
Ch. 700		HB 699	04/26/91
Ch. 701		HB 763	07/01/91
Ch. 702		HB 787	04/27/91
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Ch. 704		HB 864	07/01/91
Ch. 705		HB 869	04/29/91
Ch. 706		HB 896	04/29/91
Ch. 707		HB 903	04/29/91
Ch. 708	(§§ 2, 6, 20)	HB 994	04/27/91
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Ch. 711		SB 82	07/01/91
Ch. 712		SB 111	12/31/91
Ch. 714		SB 256	04/29/91
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Ch. 718	(§ 1)	SB 415	01/01/92
Ch. 719		SB 456	04/29/91

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(§ 15)	HB 509	07/01/91
Ch. 722	HB 701	07/01/91
Ch. 723	SB 77	04/29/91
Ch. 725 (§ 2)	SB 232	01/01/92
(§ 7)	SB 232	07/01/91
Ch. 726	HB 568	07/01/91
Ch. 725 (§ 2)	SB 232	01/01/92
Ch. 727	HB 719	07/01/91
Ch. 728 (§§ 1-10, 12-14)	HB 833	04/29/91
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Ch. 729	HB 913	07/01/91
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Ch. 746 (§§ 15, 17-22)	HB 93	05/15/91
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Ch. 747	HB 125	07/01/91
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Ch. 749	HB 312	07/01/91
Ch. 750	HB 365	07/01/91
Ch. 753	HB 569	07/01/91
Ch. 754	HB 589	07/01/91
Ch. 755	HB 746	07/01/91
Ch. 757	HB 803	07/01/91
Ch. 758	HB 804	07/01/91
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Ch. 762	HB 857	07/01/91
Ch. 763	HB 973	05/15/91
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Ch. 767 (§§ 1-46, 48-54, 56-60)	SB 17	05/15/91
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Ch. 769 (§§ 1-4, 6-13, 18-22)	SB 94	07/01/91
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Ch. 770	SB 189	07/01/91
Ch. 771	SB 359	05/15/91
Ch. 772	SB 428	07/01/91
Ch. 773 (§§ 1-14, 15(1) (3), 16-18)	SB 436	05/15/91
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Ch. 774	HB 5	05/17/91
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Ch. 783	(§§ 6, 11, 13, 18)	HB 340	05/17/91
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Ch. 784		HB 360	05/17/91
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Ch. 788		HB 551	05/17/91
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Ch. 796	(§§ 1, 3-5)	HB 959	05/17/91
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Ch. 797		HB 995	07/01/91
Ch. 799	(§§ 29, 30)	SB 37	07/01/91
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Ch. 813		SB 473	07/01/91
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Ch. 816		HB 77	07/01/91
Ch. 817		HB 518	05/23/91
Ch. 818		HB 691	05/24/91
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Ch. 820		HB 990	07/01/91
Ch. 821		SB 154	05/24/91
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	9	7-6-4202
	10	7-7-2402
	11	15-24-1701
	12	15-31-702
	13	15-35-108
	14	17-6-305
	15	17-7-401
	16	17-7-502
	17	19-3-513
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	20	22-1-501
	21	22-3-522
	22	23-2-508
	23	23-2-611
	24	25-30-101
	25	25-31-402
	26	25-31-406
	27	25-31-407
	28	25-31-702
	29	Rendered ineffective by sec. 63 (repealer)
	30	Rendered ineffective by sec. 63 (repealer)
	31	Rendered ineffective by sec. 63 (repealer)
	32	Rendered ineffective by sec. 63 (repealer)
	33	27-1-221
	34	31-1-233
	35	31-3-141
	36	33-17-208
	37	33-21-207
	38	37-47-101
	39	39-71-401
	40	39-71-1019
	41	40-5-412
	42	44-12-203
	43	50-5-1104
	44	50-16-536
	45	53-3-321
	46	61-3-509
	47	61-8-207
	48	61-8-312
	49	61-10-107
	50	61-10-146
	51	75-2-503
	52	75-10-701
	53	75-10-704
	54	75-10-718
	55	76-14-112
	56	80-9-206
	57	82-4-222
	58	82-4-434

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	60	87-4-304
	61	87-5-121
	62	Code commissioner instruction
	63	Repealer
17	1	1-1-216
	2	Repealer
18	1	40-9-102
19	1	Repealer
	2	Effective date
20	1	15-30-117
	2	Effective date
	3	Retroactive applicability
21	1	37-18-104
	2	37-18-302
	3	37-18-303
	4	Effective date
22	1	87-1-301
	2	87-3-135
	3	Codification instruction
23	1	13-35-225
	2	Effective date
24	1	61-10-113
	2	Codification instruction
25	1	2-18-618
	2	Repealer
26	1	70-1-802
27	1	61-9-416
	2	Effective date
28	1	2-15-3402
	2	Name change — directions to code commissioner
		2-15-3404
		23-1-108
		23-1-110
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		87-2-101
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29	1	Repealer
	2	Retroactive applicability
30	1	70-20-113
	2	Codification instruction
31	1	Voided by sec. 15, Ch. 724 (coordination section)
	2	Voided by sec. 15, Ch. 724 (coordination section)
	3	Voided by sec. 15, Ch. 724 (coordination section)
32	1	18-1-102
	2	Effective date
33	1	15-30-203
	2	Effective date
	3	Retroactive applicability
34	1	23-2-715
	2	Applicability
	3	Effective date
35	1	37-24-103
	2	Construction of law
	3	Effective date — termination
36	1	50-32-222
	2	50-32-224
	3	50-32-226
	4	50-32-229
	5	50-32-232
37	1	15-8-601
	2	Effective date — retroactive applicability
38	1	77-6-507
39	1	Repealer
40	1	61-8-104
	2	61-9-104
	3	61-9-511
	4	61-9-515
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	6	61-9-519
41	1	87-1-601
	2	Effective date
42	1	45-9-102
	2	46-18-201
	3	46-18-231
	4	50-32-226
43	1	77-6-205
44	1	19-13-503
	2	Effective date
45	1	22-3-701
	2	Codification instruction
46	1	30-10-105
47	1	37-60-101
	2	37-60-105
	3	Effective date
48	1	5-13-303
	2	Transition
49	1	19-3-1002
	2	19-3-1008
	3	Effective date
50	1	19-5-403
	2	19-6-403
	3	19-7-304
	4	19-7-705
	5	19-8-503
	6	19-9-304
	7	Repealer
	8	Effective date

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51	1	80-8-102
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	4	Effective date
52	1	39-71-701
	2	Applicability
	3	Effective date
53	1	18-7-107
54	1	7-12-4102
55	1	2-2-302
56	1	82-15-105
	2	Effective date — applicability
57	1	87-2-702
	2	Effective date
58	1	7-31-201
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	3	7-31-203
	4	44-4-301
	5	44-4-302
	6	Effective date
59	1	2-2-121
60	1	7-32-4120
61	1	Repealer
	2	Effective date
62	1	72-2-901
	2	72-2-902
	3	72-2-903
	4	72-2-904
	5	72-2-905
	6	72-2-906
	7	72-2-907
	8	72-2-910
	9	72-2-908
	10	72-2-909
	11	Codification instruction
63	1	25-33-104
	2	25-33-201
64	1	19-3-511
	2	19-4-409
	3	Retroactive applicability
	4	Effective date
65	1	2-2-201
	2	Effective date
66	1	37-4-302
	2	37-4-401
	3	37-4-404
	4	37-4-405
	5	37-4-408
	6	Effective date
67	1	15-70-223
	2	Effective date
68	1	87-4-601
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69	1	20-10-147

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70	1	10-2-101
	2	10-2-501
	3	10-2-503
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71	1	15-6-201
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72	1	15-1-504
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	3	Effective date
73	1	46-12-202
	2	Voided by sec. 3 (coordination section)
	3	Coordination instruction
74	1	19-5-402
	2	19-5-704
	3	Effective date
75	1	13-37-226
	2	13-37-228
	3	13-37-229
76	1	20-3-201
	2	Effective date
77	1	15-24-1701
	2	Repealer
78	1	19-7-503
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	3	Effective date
79	1	7-12-1111
	2	7-12-1112
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80	1	10-1-604
81	1	19-12-202(3)
	2	19-12-404
	3	Codification instruction
	4	Effective date
82	1	15-70-101
	2	60-2-202
	3	Effective date
83	1	7-11-107
	2	Repealer
84	1	15-1-207
	2	Codification instruction
85	1	70-23-305
86	1	15-31-141
	2	Retroactive applicability
	3	Effective date
87	1	7-4-502
	2	7-4-501
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	4	7-4-504
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	7	Effective date

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88	1	7-4-2711
89	1	15-30-301
	2	Retroactive applicability
	3	Effective date
90	1	37-1-131
91	1	5-7-103
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	7	Codification instruction
92	1	15-38-121
	2	Effective date — retroactive applicability
93	1	7-6-2207
94	1	15-71-101
95	1	Department to amend rule
	2	Department to amend rule
	3	Effective date
96	1	Time limits
	2	Governor's power to reduce appropriations
	3	Totals not appropriations
	4	Appropriations
	5	Sec. 16, HB 100, L. 1989
	6	Sec. 16, HB 100, L. 1989
	7	Effective date
97	1	17-4-103
	2	17-4-106
	3	Effective date
98	1	7-5-2301
	2	7-5-2302
	3	7-5-2303
99	1	3-6-101
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	4	3-6-203
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	7	Codification instruction
	8	Effective date
100	1	61-12-206
101	1	61-8-714
	2	61-8-722
102	1	61-8-714
103	1	44-2-601
104	1	15-18-411
	2	15-18-412
105	1	46-18-1001
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	4	46-18-1004
	5	46-18-1005
	6	46-18-1006
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	9	41-5-523
	10	46-18-201
	11	61-8-714
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	13	Codification instruction
	14	Severability
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106	1	69-12-103
	2	Effective date
107	1	Repealer
	2	Effective date
108	1	85-5-110
109	1	61-8-711
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110	1	77-5-206
111	1	13-13-276
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	5	Codification instruction
112	1	5-11-210
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	59	85-2-105
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	62	90-3-203
	63	90-4-111
	64	Codification instruction
	65	Effective date
113	1	45-9-125
	2	Codification instruction
114	1	45-7-306
115	1	37-11-201
	2	37-11-304
	3	Effective date
116	1	19-7-504
	2	Applicability
	3	Effective date
117	1	53-30-206
	2	Effective date
118	1	17-8-306
	2	Effective date
119	1	2-15-122
120	1	39-71-2106
	2	Saving clause
	3	Effective date
121	1	15-70-304
122	1	61-10-145
	2	61-10-146
123	1	15-6-201
	2	Effective date
	3	Retroactive applicability

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	2	20-4-131
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	4	Effective date
125	1	37-51-102
126	1	61-2-103
127	1	61-1-134
128	1	2-7-515
129	1	39-71-118
	2	39-71-123
	3	19-12-501
130	1	16-11-102
	2	16-11-111
	3	16-11-113
	4	16-11-115
	5	16-11-116
	6	16-11-118
	7	Repealer
	8	Saving clause
	9	Effective date
131	1	39-71-704
	2	39-71-727
	3	Codification instruction
	4	Effective date
132	1	33-2-126
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	4	Codification instruction
	5	Effective date — retroactive applicability
133	1	50-31-103
	2	50-31-208
	3	Effective date
134	1	37-7-201
	2	37-7-601
	3	37-7-602
	4	37-7-603
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	6	37-7-605
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	8	37-7-607
	9	37-7-608
	10	37-7-609
	11	37-7-610
	12	Codification instruction
	13	Applicability
	14	Effective date
135	1	76-15-508
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136	1	20-7-451
	2	20-7-452
	3	20-7-454
	4	20-7-455
	5	20-7-456

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	7	20-7-458
	8	Effective date
137	1	82-2-102
	2	82-4-332
138	1	19-3-802
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	3	19-5-408
		19-6-409
		19-7-409
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	4	Codification instruction
	5	Effective date
139	1	2-18-702
	2	Effective date
140	1	77-6-506
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141	1	75-2-301
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	3	Effective date
142	1	19-6-306
	2	Codification instruction
143	1	Repealer
	2	Effective date
144	1	7-33-2105
145	1	20-6-213
146	1	7-33-2106
147	1	82-4-203
148	1	Evergreen wastewater facilities project loan reauthorization — transfer of authority
	2	Conditions of loan
	3	Effective date
149	1	Repealer
	2	Effective date
150	1	32-5-302
151	1	80-7-102
	2	Effective date
152	1	33-1-208
	2	33-22-1107
	3	33-20-127
	4	33-20-128
	5	Codification instruction
153	1	10-4-302
	2	Effective date
154	1	20-9-204
	2	20-3-322
	3	Effective date
155	1	37-16-301
	2	37-16-303
	3	37-16-402
	4	37-16-403
	5	37-16-405
	6	37-16-407
	7	37-16-408
	8	37-16-411
	9	37-16-414
	10	37-16-304
	11	37-16-202(9)
	12	Severability
	13	Codification instruction
156	1	16-4-412
	2	16-4-413
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	8	16-4-405
	9	16-4-406
	10	Codification instruction
157	1	15-70-302
158	1	13-27-208
	2	Codification instruction
159	1	3-15-402
160	1	69-12-408
	2	Effective date
161	1	7-1-2111
	2	Retroactive applicability
	3	Effective date
162	1	19-3-401
	2	19-3-901
	3	Effective date
163	1	39-71-2101
	2	39-71-2103
	3	39-71-2104
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	5	39-71-2609
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164	1	37-3-322
165	1	20-5-403
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	3	52-2-735
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166	1	61-10-121
167	1	60-2-213
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168	1	17-5-1302
	2	17-5-1312
	3	17-5-1325
	4	80-12-102
	5	Repealer
	6	Codification instruction
	7	Effective date
169	1	61-1-206
	2	61-8-605
170	1	46-24-207

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	3	Effective date
171	1	2-18-703
172	1	15-7-201
	2	Sec. 10, Ch. 681, L. 1985
	3	Sec. 3, Ch. 705, L. 1985
	4	Effective date
	5	Retroactive applicability
173	1	69-12-331
	2	Effective date
174	1	39-71-2907
	2	Applicability
175	1	45-5-503
	2	45-5-505
	3	45-5-501
176	1	45-5-504
177	1	45-8-213
178	1	19-9-104
	2	19-9-403
	3	19-9-801
	4	Retroactive applicability
	5	Effective date
179	1	45-9-106
180	1	33-2-305
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	4	33-15-1102
	5	Severability
181	1	15-18-212
	2	Applicability
182	1	30-14-602
183	1	61-10-203
	2	Effective date
184	1	Repealer
	2	Effective date
185	1	7-8-2301
	2	Effective date
186	1	53-24-204
187	1	17-5-205
	2	Effective date
188	1	45-5-201
	2	Repealer
	3	Effective date
189	1	90-9-103
	2	Repealer
190	1	Sec. 8, Ch. 269, L. 1989
	2	Effective date
191	1	Sec. 7, Ch. 541, L. 1983
	2	60-3-216
	3	15-35-108
	4	Effective date — applicability — termination date
192	1	Voided by sec. 2 (coordination section)
	2	Coordination instruction
	3	Effective date
193	1	7-11-1102
194	1	7-6-2323
195	1	2-8-205
	2	2-8-206
	3	2-8-207
	4	5-4-207
	5	Repealer
196	1	13-10-601
197	1	37-50-403
	2	Codification instruction
198	1	Property donation authorization
	2	Effective date — termination
199	1	33-22-303
	2	33-22-512
	3	33-30-1014
	4	Codification instruction
	5	Severability
	6	Applicability
200	1	33-22-508
	2	33-30-1007
	3	33-22-513
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	5	Codification instruction
	6	Saving clause
201	1	41-5-523
	2	53-30-226
	3	Effective date
202	1	61-4-208
203	1	69-12-302
	2	Effective date
204	1	20-4-203
	2	20-4-208
	3	Codification instruction
	4	Applicability
205	1	81-30-101
	2	81-30-102
	3	81-30-103
	4	81-30-104
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	6	Effective date
206	1	Repealer
207	1	16-3-235
	2	16-3-405
	3	16-11-104
	4	Coordination instruction
208	1	2-15-108(1), (2)
	2	2-15-108(3)
	3	Codification instruction
	4	Effective date
209	1	2-15-3308
	2	Codification instruction

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	3	Effective date
210	1	69-3-802
	2	69-3-809
	3	69-3-807
	4	69-3-808
	5	69-3-810
	6	69-3-305
	7	69-3-811
	8	69-3-310
	9	Severability
	10	Codification instruction
	11	Effective date
211	1	23-5-152
	2	Effective date
212	1	71-1-315
213	1	75-10-103
214	1	19-7-311
	2	19-7-310
	3	Codification instruction
	4	Effective date
215	1	75-10-102
216	1	39-3-402
	2	Effective date
217	1	87-2-105
	2	Effective date
218	1	45-5-501
	2	45-5-503
219	1	37-7-101
	2	37-7-301
	3	37-7-307
	4	37-7-308
	5	37-7-309
	6	37-7-323
	7	Codification instruction
	8	Effective dates
220	1	39-71-2503
	2	Effective date
221	1	19-3-602
	2	19-6-405
	3	19-7-405
	4	19-8-403
	5	Effective date
222	1	75-10-801
	2	75-10-802
	3	75-10-803
	4	75-10-804
	5	75-10-805
	6	75-10-806
	7	75-10-807
	8	75-10-104
	9	Codification instruction
223	1	72-16-313
	2	Retroactive applicability
224	1	7-33-2111
	2	Codification instruction
	3	Effective date
225	1	44-1-901
	2	44-1-902
	3	44-1-903
226	1	44-1-1005
227	1	90-6-302
	2	90-6-310
	3	15-16-201
	4	82-4-335
	5	82-4-339
	6	90-6-311
	7	90-6-307
	8	Effective date
228	1	30-10-103
	2	30-10-104
229	1	61-4-204
	2	61-4-210
230	1	45-8-216
	2	Codification instruction
231	1	41-5-103
	2	41-5-401
232	1	7-4-2208
233	1	7-5-2306
234	1	87-1-212
	2	18-6-101
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	4	81-1-105
	5	Codification instruction
	6	Termination
235	1	53-9-125
236	1	61-3-101
237	1	37-11-101
	2	37-11-106
	3	37-11-107
	4	37-11-102
	5	Codification instruction
238	1	2-2-302
	2	Effective date
239	1	2-15-1705
	2	Applicability
240	1	53-30-105
	2	Applicability
	3	Effective date
241	1	49-2-101
	2	49-3-101
242	1	15-15-101
	2	Effective date
243	1	87-5-204
	2	87-5-210
	3	87-5-208
	4	Repealer
244	1	50-5-301
245	1	37-29-303
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	3	37-29-402

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250	1	20-9-311
	2	Effective date
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251	1	17-6-308
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252	1	20-3-210
253	1	53-30-203
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254	1	2-6-110
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298	1	50-71-201
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303	1	7-22-2101
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322	1	69-12-102
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343	1	85-2-228(1)
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446	1	37-20-104
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	3	37-20-202
	4	Effective date
447	1	23-4-106
	2	2-18-103
	3	Effective date
448	1	61-9-406
	2	61-9-520
	3	Codification instruction
449	1	61-8-349
450	1	61-3-525
	2	61-3-526
	3	61-3-535
451	1	7-4-2631
	2	Effective date
452	1	27-1-735
	2	Codification instruction
	3	Effective date
453	1	7-34-2101
	2	7-34-2102
	3	7-34-2122
454	1	49-2-304
	2	49-2-305
455	1	1-1-226
	2	Codification instruction
456	1	49-4-304
457	1	90-5-112
	2	Effective date

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458	1	37-31-312
	2	Appropriation
	3	Effective date
459	1	7-33-2109
	2	7-33-2129
460	1	53-6-116
	2	53-6-117
	3	53-6-101
	4	53-6-113
	5	Voided by sec. 7 (coordination section)
	6	Codification instruction
	7	Coordination instruction
	8	Effective date
461	1	75-10-212
	2	75-10-233
462	1	2-17-414
463	1	61-3-103
	2	23-2-508
	3	23-2-611
	4	23-2-811
464	1	75-10-716
	2	75-10-717
	3	Codification instruction
465	1	Provision of professional actuarial consulting services
	2	Appropriation
	3	Sec. 10, Ch. 12, Sp. L. June 1989
	4	Effective date
466	1	25-10-405
467	1	15-6-201
	2	15-32-102
	3	15-32-201
	4	90-8-104
	5	Applicability
	6	Effective date
468	1	75-10-901
	2	75-10-902
	3	75-10-903
	4	75-10-906
	5	75-10-907
	6	75-10-908
	7	75-10-909
	8	75-10-910
	9	75-10-913
	10	75-10-914
	11	75-10-916
	12	75-10-917
	13	75-10-918
	14	75-10-919
	15	75-10-920
	16	75-10-921
	17	75-10-922
	18	75-10-923
	19	75-10-924
	20	75-10-925
	21	75-10-926
	22	75-10-927
	23	75-10-928
	24	75-10-929
	25	75-10-930
	26	75-10-933
	27	75-10-934
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	30	75-10-939
	31	75-10-940
	32	75-10-941
	33	75-10-942
	34	75-10-943
	35	75-10-944
	36	75-10-945
	37	Codification instruction
	38	Effective date
469	1	71-3-1113
	2	71-3-1118
	3	Effective date
	4	Termination
470	1	Voided by sec. 2 (coordination section)
	2	Coordination instruction
471	1	61-5-206
	2	61-5-302
472	1	70-6-420
	2	Codification instruction
473	1	23-5-112
	2	23-5-310
	3	23-5-410
	4	23-5-177
	5	Codification instruction
474	1	15-16-118
	2	15-10-406
	3	Codification instruction
	4	Applicability
475	1	Art. VII, sec. 8, Mont. Const.
	2	Effective date
	3	Submission to electorate
476	1	61-10-128
	2	Sec. 1, Ch. 237, L. 1989
	3	Effective date
477	1	39-2-304
	2	Effective date
	3	Coordination instruction
478	1	27-1-520
479	1	75-5-305
	2	50-2-116
	3	Applicability
480	1	33-16-1004

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	2	39-71-116
	3	39-71-2211
	4	39-71-402
	5	39-71-426
	6	39-71-721
	7	39-71-723
	8	39-72-102
	9	39-73-108
	10	Codification instruction
	11	Coordination instruction
	12	Effective date
481	1	69-12-101
	2	69-12-102
	3	69-12-201
	4	69-12-205
	5	69-12-301
	6	69-12-315
	7	69-12-333
	8	69-12-334
	9	69-12-315(3)
	10	69-12-335
	11	69-12-321
	12	69-12-322
	13	69-12-407
	14	69-12-611
	15	Codification instruction
	16	Effective dates — termination
482	1	13-35-225
483	1	75-10-1001
	2	75-10-1002
	3	75-10-1003
	4	75-10-1004
	5	75-10-1005
	6	75-10-1006
484	1	71-3-531
	2	71-3-532
	3	Saving clause
	4	Effective date
485	1	39-51-2105
	2	39-51-2201
	3	39-51-2204
	4	Effective date
486	1	30-14-901
	2	30-14-902
	3	30-14-903
	4	30-14-904
	5	30-14-905
	6	30-14-906
	7	Codification instruction
	8	Saving clause
	9	Severability
	10	Applicability
487	1	69-14-116
	2	Coordination instruction
	3	Severability
488	1	77-2-329
	2	17-6-207
	3	Codification instruction
489	1	2-7-501
	2	2-7-502
	3	2-7-503
	4	2-7-504
	5	2-7-505
	6	2-7-506
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	11	2-7-513
	12	2-7-514
	13	2-7-515
	14	2-7-516
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	18	2-7-522
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	20	7-6-2352
	21	7-6-4113
	22	19-11-204
	23	19-11-205
	24	20-9-203
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	26	20-10-202
	27	Estimate of cost savings
	28	Interfund loan from the general fund
	29	Codification instruction
	30	Effective date — applicability
	31	Termination date
490	1	39-3-206
	2	39-3-208
	3	39-3-212
	4	39-3-216
	5	39-3-604
	6	39-3-605
	7	Effective date
	8	Applicability
491	1	61-8-371
	2	Codification instruction
492	1	45-8-107
	2	45-8-108
	3	45-8-109
	4	Severability
493	1	37-43-204
	2	17-7-502
	3	Codification instruction
	4	Effective date

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494	1	2-9-301
	2	Effective date — applicability
495	1	17-7-502
	2	20-4-109
	3	20-4-111
	4	Effective date
496	1	7-8-2301
	2	Effective date
497	1	20-6-410
	2	Codification instruction
	3	Effective date
498	1	5-7-101
	2	5-7-102
	3	5-7-103
	4	5-7-208
	5	5-7-212
499	1	30-14-801
	2	30-14-802
	3	30-14-803
	4	30-14-804
	5	30-14-805
	6	30-14-806
	7	Saving clause
	8	Severability
	9	Effective date — termination
500	1	Voided by sec. 5 (coordination section)
	2	Voided by sec. 5 (coordination section)
	3	61-3-453
	4	61-3-455
	5	Coordination instruction
	6	Effective date
501	1	87-5-711
	2	87-5-721
502	1	45-5-624
	2	Coordination instruction
503	1	25-13-802
	2	25-13-803
	3	25-13-804
	4	25-13-805
	5	25-13-822
504	1	46-18-256
	2	Retroactive applicability
	3	Effective date
505	1	70-25-101
	2	70-25-201
	3	70-25-202
	4	70-25-204
	5	70-25-206
	6	Applicability
506	1	2-18-111
	2	18-1-110
	3	49-2-303
	4	49-2-403
	5	49-3-103
	6	Codification instruction
	7	Applicability
507	1	2-15-3002
	2	2-18-103
	3	80-11-202
	4	80-11-205
	5	Effective date
508	1	53-24-215
	2	53-24-216
	3	53-24-217
	4	Certification of gambling addiction counselors — treatment resources — study and report to legislature — appropriation
	5	Codification instruction
	6	Applicability
	7	Effective date
509	1	60-11-112
	2	60-11-111
	3	Coordination instruction
510	1	52-2-211
	2	41-3-205
	3	41-5-602
	4	41-5-603
	5	Codification instruction — coordination
	6	Effective date
511	1	41-5-523
	2	Repealer
	3	Effective date
	4	Coordination instruction
512	1	2-15-2505
	2	2-15-104
	3	Department of highways abolished — functions transferred to department of transportation
		2-17-105
		2-17-402
		2-17-411
		2-17-412
		2-17-413
		2-17-422
		2-17-423
		2-17-431
		2-18-1001
		2-18-1002
		7-14-303
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		7-22-2153
		10-3-107
		15-70-101
		15-70-102
		15-70-122
		15-70-302
		15-70-308
		15-70-309
		15-70-312
		15-71-101
		15-71-102
		15-71-104
		17-5-501
		17-5-502
		17-5-903
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		18-6-103
		20-7-504
		23-1-102
		23-1-104
		44-1-501
		44-1-1005
		60-1-102
		60-1-103
		60-2-210
		60-3-212
		60-3-213
		60-3-304
		60-4-102
		60-5-104
		60-5-108
		60-5-502
		60-6-101
		60-7-202
		61-1-411
		61-1-412
		61-3-322
		61-3-324
		61-3-325
		61-3-506
		61-3-712
		61-3-713
		61-3-714
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		61-3-725
		61-4-303
		61-4-308
		61-8-202
		61-8-203
		61-8-205
		61-8-309
		61-8-311
		61-8-313
		61-8-326
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		61-8-348
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		61-10-108
		61-10-109
		61-10-110
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	4	2-15-2501
	5	2-15-2502
	6	Transportation functions of department of commerce transferred
		7-14-120
		60-11-101
		60-11-111
		60-11-1102
		60-11-1202
		60-21-101
		67-1-101
		67-1-303
	7	2-15-1812 (renum. 2-15-2506)
	8	Department of revenue — motor fuels tax functions transferred
		15-70-104
		15-70-111
		15-70-121
		15-70-122
		15-70-202
		15-70-203
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		15-70-205
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		15-70-209
		15-70-210
		15-70-211
		15-70-222
		15-70-223
		15-70-225
		15-70-226
		15-70-301
		15-70-311
		15-70-503
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	9	Department of transportation to issue warrants for distraint
	10	60-3-201
	11	15-1-701
	12	Transfer of rulemaking authority
	13	Application of transfer provisions
	14	Governor to implement
	15	Coordination instruction
	16	Severability
	17	Codification instruction
	18	Effective date
513	1	60-11-121
	2	60-11-122
	3	60-11-123
	4	Codification instruction
	5	Effective date — applicability
514	1	2-15-2402
515	1	85-2-316
	2	Retroactive applicability
	3	Effective date
516	1	23-4-301
	2	23-4-302
	3	Effective date
517	1	20-6-213
	2	20-6-320
	3	Effective date
518	1	80-4-422
	2	Effective date — applicability
519	1	45-9-109
	2	46-18-231
	3	46-23-201
	4	Codification instruction
520	1	15-38-103
	2	15-38-104
	3	15-38-125
	4	Codification instruction
	5	Retroactive applicability
	6	Effective date
521	1	15-70-205
	2	15-70-209
522	1	30-11-801
	2	30-11-804
	3	30-11-805
	4	30-11-806
	5	30-11-807
	6	30-11-808
	7	30-11-809
	8	30-11-702
	9	Severability
	10	Codification instruction
	11	Effective date
523	1	23-6-101
	2	23-6-102
	3	23-6-103
	4	23-6-104
	5	23-6-105
	6	23-6-106
	7	23-6-107
	8	23-5-112
	9	Effective date
524	1	2-15-1840
	2	Initial appointments
	3	Coordination instruction

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	5	Effective date
525	1	61-11-105
526	1	Definitions
	2	Joint committee on postsecondary education policy and budget — appointment and composition
	3	Term of office
	4	Vacancies
	5	Officers — quorum — meetings
	6	Compensation
	7	Staff assistance
	8	Powers and duties of committee
	9	Appropriation
	10	Effective date
	11	Termination
527	1	7-4-2107
	2	7-4-2503
	3	7-4-2504
	4	Payment of county assessor salary
	5	Effective date
528	1	20-3-352
	2	20-3-302
	3	20-3-351
529	1	44-1-106
	2	Effective date
530	1	7-22-2130
	2	7-22-2121
	3	7-22-2142
	4	7-22-2143
	5	7-22-2145
	6	7-22-2148
	7	Codification instruction
	8	Sec. 7, Ch. 516, L. 1987
	9	Effective date
531	1	87-4-408
	2	87-4-414
	3	87-4-415
	4	87-4-417
	5	87-4-423
	6	81-2-702
	7	87-4-424
	8	Codification instruction
532	1	37-28-101
	2	37-28-102
	3	2-15-1860
	4	37-28-103
	5	37-28-104
	6	37-28-201
	7	37-28-202
	8	37-28-203
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	10	37-28-210
	11	37-28-301
	12	37-28-302
	13	37-28-305
	14	Licensure — grandfather provision
	15	Severability
	16	Codification instruction
	17	Effective dates
533	1	35-12-610
	2	35-12-611
	3	35-12-612
	4	35-12-613
	5	Codification instruction
534	1	20-7-1101
	2	Codification instruction
535	1	2-17-402
	2	2-17-411
	3	2-17-412
	4	2-17-413
	5	2-17-421
	6	2-17-422
	7	2-17-423
	8	2-17-431
	9	2-17-432
536	1	61-5-104
	2	Effective date
537	1	53-21-114
538	1	7-13-2529
	2	Effective date
539	1	50-40-202
	2	50-40-203
	3	50-40-204
	4	50-40-205
	5	50-40-107
	6	50-40-201
	7	Codification instruction
	8	Effective date
540	1	37-3-323
	2	37-6-304
	3	37-6-311
	4	37-13-306
	5	37-20-302
	6	37-6-106
	7	Codification instruction
541	1	75-10-950
	2	75-10-951
	3	75-10-952
	4	75-10-953
	5	75-10-954
	6	Codification instruction
	7	Effective date
542	1	15-30-163

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	3	15-31-136
	4	Codification instruction
	5	Effective date — retroactive applicability
543	1	85-2-102
	2	85-2-113
	3	85-2-150
	4	85-1-602
	5	85-1-604
	6	Codification instruction
544	1	50-16-1003
	2	50-16-1007
	3	50-16-1008
	4	50-16-1009
	5	50-16-1013
	6	50-16-529
	7	50-16-702
	8	Severability
	9	Effective date
545	1	37-40-101
	2	37-40-102
	3	37-40-201
	4	37-40-203
	5	37-40-301
	6	37-40-302
	7	37-40-303
	8	37-40-304
	9	37-40-305
	10	37-40-311
	11	37-40-312
	12	Repealer
	13	Effective date
546	1	Committee on Montana state hospital — composition — duties
	2	Appropriation
	3	Effective dates
547	1	41-5-311
	2	41-5-103
	3	41-5-303
	4	41-5-312
	5	41-5-306
	6	41-5-206
	7	41-5-307
	8	41-5-309
	9	41-5-502
	10	7-32-2244
	11	53-30-229
	12	Sec. 14, Ch. 434, L. 1989
	13	Sec. 17, Ch. 434, L. 1989
	14	Repealer
	15	Codification instruction
	16	Effective dates
	17	Coordination instruction
548	1	41-5-310
	2	41-5-103
	3	41-5-305
	4	41-5-306
	5	41-5-306
	6	53-30-202
	7	41-5-313
	8	Codification instruction
	9	Effective dates
	10	Coordination instruction
549	1	7-6-4461
	2	7-6-4468
	3	7-6-4463
	4	7-6-4464
	5	7-6-4465
	6	7-6-4469
	7	Codification instruction
	8	Effective date
550	1	37-27-101
	2	37-27-102
	3	37-27-103
	4	37-27-104
	5	Voided by sec. 3, Ch. 524 (coordination section)
	6	37-27-105
	7	37-27-201
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	9	37-27-205
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	18	37-27-311
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	21	37-27-315
	22	37-27-321
	23	37-27-325
	24	27-1-734
	25	37-3-103
	26	Codification instruction
	27	Effective dates
551	1	Appropriations from the water development state special revenue account
	2	Appropriations under renewable resource development program — eligibility

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	4	Approval of loans from bond proceeds and completion of appropriation
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	6	Reallocation of resource indemnity trust account interest income
	7	Emergency grants
	8	Conditions of loans and grants
	9	Conditions for grants
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	11	Private and discount purchase of loans
	12	Appropriations established
	13	Funds available
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552	1	Appropriations for reclamation and development grants
	2	Approved grant projects
	3	Coordination of fund sources for grants program projects
	4	Conditions of grants
	5	Appropriations established
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553	1	Policy
	2	Definitions
	3	Deposit of oil overcharge revenue
	4	Low-income home weatherization — appropriation
	5	Matching funds for low-income energy assistance — appropriation
	6	Biological agents for weed control — findings — appropriation
	7	Safflower oil as diesel fuel substitute or extender — appropriation
	8	Technical assistance to local governments — appropriation
	9	Agricultural energy conservation program — appropriation
	10	Low-income leaking underground home heating oil tank replacement assistance program — appropriation
	11	Institutional conservation program — appropriation
	12	Conditions applied to appropriations
	13	Appropriations prioritized
	14	Effective date
554	1	53-30-301
	2	53-30-302
	3	53-30-303
	4	53-30-311
	5	53-30-312
	6	53-30-313
	7	53-30-314
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	9	53-30-321
	10	53-30-322
	11	53-30-323
	12	53-30-324
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	14	Report to legislature
	15	53-30-326
	16	45-7-306
	17	46-18-201
	18	Codification instructions
	19	Effective date
555	1	20-6-701
	2	20-6-702
	3	20-6-703
	4	20-6-711
	5	20-6-712
	6	20-6-101
	7	20-9-406
	8	20-9-502
	9	20-7-705
	10	20-9-314
	11	Codification instruction
	12	Coordination instruction
	13	Effective date
556	1	Appropriation
557	1	15-24-202
	2	15-24-206
	3	15-24-209

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	4	15-24-210
	5	Codification instruction
558	1	39-71-318
	2	39-71-201
	3	39-71-306
	4	39-71-604
	5	39-71-605
	6	39-71-704
	7	39-71-711
	8	39-71-905
	9	39-71-2106
	10	39-71-2401
	11	39-71-2410
	12	39-72-402
	13	Repealer
	14	Codification instruction
	15	Applicability
	16	Effective date
559	1	41-3-1102
	2	41-3-1151
	3	41-3-1152
	4	Appropriation
	5	Codification instruction
	6	Effective date
560	1	15-16-601
	2	Effective date — applicability
561	1	2-18-501
562	1	Policy
	2	Definitions
	3	Deposit of oil overcharge revenue
	4	Wind farm transmission study — appropriation
	5	Conditions applied to appropriations
	6	Appropriations prioritized
	7	Effective date
563	1	61-1-135
	2	61-5-208
	3	61-8-805
	4	61-8-806
	5	61-8-809
	6	61-8-810
	7	61-8-811
	8	Codification instruction
564	1	45-5-502
	2	46-18-201
	3	46-18-222
565	1	75-10-214
	2	Civil penalties 75-10-228(3)
	3	Codification instruction
	4	Applicability
	5	Effective date

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566	1	90-3-102
	2	90-3-501
	3	90-3-522
	4	90-3-523
	5	90-3-519
	6	90-3-520
	7	Effective date
567	1	19-6-709
	2	17-7-502
	3	61-3-321
	4	Codification instruction
	5	Coordination instruction
	6	Effective date
	7	Termination — disposition of funds
568	1	2-9-212
	2	20-3-331
	3	20-6-604
	4	20-7-457
	5	20-7-705
	6	20-7-713
	7	20-9-133
	8	20-9-201
	9	20-9-435
	10	20-9-512
	11	20-10-147
	12	Effective dates
569	1	50-49-102
	2	50-49-101
	3	50-49-103
	4	2-15-2210
	5	50-49-104
	6	50-49-105
	7	50-49-106
	8	50-49-107
	9	50-49-108
	10	Appropriations
	11	Effective date
570	1	15-16-203
	2	15-8-201
	3	Codification instruction
	4	Applicability
571	1	Stripper-well payments — definition — appropriation — priority
	2	Approval of energy conservation projects
	3	Bond authorization — appropriation of bond proceeds
	4	17-7-502
	5	90-4-613

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	6	Withdrawal of authorization for previously authorized bonds
	7	Requirements for approval of state debt
	8	Effective date
572	1	75-10-501
	2	75-10-503
	3	75-10-521
	4	75-10-534
	5	75-10-541
	6	75-10-505
	7	Codification instruction
	8	Effective date
573	1	39-51-204
	2	39-71-401
	3	39-51-604
	4	Codification instruction
	5	Applicability date
	6	Effective date
574	1	39-71-116
	2	39-71-414
	3	39-71-702
	4	39-71-703
	5	39-71-704
	6	39-71-741
	7	39-71-1003
	8	39-71-1011
	9	39-71-1013
	10	39-71-2001
	11	39-71-1025
	12	39-71-1032
	13	Codification instruction
	14	Repealer
	15	Severability
	16	Effective date
575	1	17-7-502
	2	80-11-310
	3	Effective date
576	1	90-8-104
	2	90-8-105
	3	90-8-201
	4	90-8-202
	5	90-8-203
	6	90-8-301
	7	90-8-303
	8	90-8-311
	9	90-8-312
	10	90-8-313
	11	90-8-321
	12	90-8-106
	13	Coordination instruction
	14	Codification instruction
	15	Effective date
577	1	76-13-408
	2	76-13-414
	3	76-13-415
	4	Effective date
	5	Applicability
578	1	53-3-109
	2	53-3-328
	3	Codification instruction
	4	Effective date
579	1	53-21-169
	2	53-21-141
	3	53-21-142
	4	53-21-144
	5	53-21-146
	6	53-21-147
	7	53-21-162
	8	53-21-166
	9	53-21-181
	10	Report to legislature
	11	Codification instruction
580	1	72-31-201
	2	72-31-202
	3	72-31-203
	4	72-31-204
	5	72-31-205
	6	72-31-206
	7	72-31-207
	8	72-31-208
	9	72-31-209
	10	72-31-210
	11	72-31-211
	12	72-31-212
	13	72-31-213
	14	72-31-214
	15	72-31-215
	16	72-31-216
	17	Effective date
581	1	50-10-101
	2	50-10-102
	3	50-10-103
	4	50-10-104
	5	50-10-105
	6	50-10-106
	7	Effective date
582	1	Appropriation of cultural and aesthetic grant money — priority of disbursement
	2	Reversion of granted money
	3	Pro rata reduction of grant awards
	4	Effective date
583	1	Authorization to use unexpended proceeds of renewable resource development bonds

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	2	Loan repayments
	3	90-2-108
	4	Effective dates
584	1	Voided by sec. 9, Ch. 701 (coordination section)
	2	61-5-121
	3	Effective date
585	1	20-6-640
	2	Effective date
586	1	33-7-105
	2	33-7-106
	3	33-7-107
	4	33-7-108
	5	33-7-109
	6	33-7-110
	7	33-7-306
	8	33-7-307
	9	33-7-308
	10	33-7-208
	11	33-7-209
	12	33-7-210
	13	33-7-214
	14	33-7-215
	15	33-7-216
	16	33-7-520
	17	33-7-521
	18	33-7-522
	19	33-7-523
	20	33-7-524
	21	33-7-408
	22	33-7-409
	23	33-7-117
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	26	33-7-118
	27	33-7-217
	28	33-7-119
	29	33-7-531
	30	33-7-120
	31	33-7-121
	32	33-7-122
	33	33-7-532
	34	33-7-533
	35	33-7-123
	36	33-7-124
	37	33-7-125
	38	33-7-126
	39	31-2-106
	40	33-22-1703
	41	Repealer
	42	Severability
	43	Codification instruction
	44	Effective date
587	1	22-2-301
	2	22-2-308

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588	1	80-8-116
	2	80-8-201
	3	80-8-212
	4	80-8-305
	5	80-15-302
	6	80-7-812
	7	80-7-810
	8	80-7-815
	9	Severability
	10	Effective dates
589	1	17-5-1506
	2	17-5-1525
	3	17-5-1526
	4	17-5-1527
	5	17-6-302
	6	17-6-305
	7	17-6-308
	8	17-6-310
	9	17-6-311
	10	17-6-314
	11	17-6-322
	12	90-3-101
	13	90-3-525
	14	90-6-104
	15	90-8-102
	16	90-8-305
	17	17-6-318
	18	17-6-319
	19	Repealer
	20	Saving clause
	21	Severability
	22	Codification instruction
	23	Effective date
590	1	15-7-202
	2	Effective date — retroactive applicability
591	1	7-4-2611
	2	7-13-2214
	3	7-13-2225
	4	7-13-2241
	5	7-13-2247
	6	7-33-2106
	7	13-4-106
	8	13-10-503
	9	13-10-507
	10	13-13-114
	11	13-13-115
	12	13-13-212
	13	13-14-115
	14	13-15-111
	15	13-15-403
	16	13-16-420
	17	13-19-106
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	20	13-19-308
	21	13-19-311
	22	13-19-312
	23	13-37-201
	24	13-37-225
	25	Repealer
	26	Codification instruction
592	1	87-2-113
	2	87-2-202
	3	87-2-301
	4	87-2-302
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	13	87-2-701
	14	87-2-704
	15	87-2-708
	16	87-2-711
	17	87-2-903
	18	Effective date
593	1	17-5-1604
	2	Effective date
594	1	2-15-1818
	2	17-6-308
	3	Allocation of funds
	4	17-6-310
	5	90-3-101
	6	90-3-102
	7	90-3-301
	8	90-3-305
	9	90-3-524
	10	90-3-525
	11	Intellectual property assessment
	12	Coordination instruction
	13	Severability
	14	Effective date
595	1	Repealer of express company license tax
	2	Repealer of sleeping car company license tax
	3	Applicability — postrepeal payment
	4	Effective date
596	1	75-2-508
	2	75-2-514
	3	Repealer
	4	Codification instruction
	5	Effective date
597	1	15-36-101
	2	15-36-105
	3	15-36-107
	4	15-36-108
	5	15-36-113
	6	15-36-114
	7	15-36-121
	8	15-23-603
	9	Effective date
	10	Retroactive applicability
598	1	Time limits
	2	Governor's power to reduce appropriations
	3	Direction concerning certain fiscal year 1993 budget amendments
	4	Totals not appropriations
	5	Appropriations
	6	Effective date
599	1	41-3-410
	2	41-3-609
	3	Permanency planning project
	4	Codification instruction
	5	Effective date
600	1	75-5-507
	2	17-7-502
	3	75-5-634
	4	75-5-635
	5	Codification instruction
	6	Effective date
601	1	45-8-339
	2	45-9-127(1)
	3	45-9-127(2)
	4	Codification instruction
602	1	17-6-401
	2	17-6-402
	3	17-6-403
	4	17-6-406
	5	17-6-407
	6	17-6-408
	7	17-6-411
	8	17-6-409
	9	Audit and evaluation of microbusiness finance program — report to legislature
	10	17-7-502
	11	Appropriation — approval of three-fourths of members required — severability
	12	Appropriation
	13	Coordination instruction
	14	Effective dates
603	1	5-18-107

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	2	Effective date
604	1	1-2-201
	2	61-3-101
	3	61-3-201
	4	61-3-202
	5	61-3-314
	6	61-3-342
	7	61-3-503
	8	61-3-535
	9	23-2-520
	10	23-2-620
	11	23-2-810
	12	61-3-345
	13	61-3-346
	14	61-3-347
	15	61-3-511
	16	Appropriation
	17	Effective date — applicability
	18	Codification instruction
605	1	75-2-215
	2	Effective date
606	1	33-22-1201
	2	33-22-1202
	3	33-22-1203
	4	33-22-1204
	5	33-22-1205
	6	15-31-132
	7	15-30-129
	8	Codification instruction
	9	Retroactive applicability
	10	Effective dates
607	1	75-10-516
	2	Codification instruction
	3	Saving clause
608	1	77-5-301
	2	77-5-302
	3	77-5-303
	4	77-5-304
	5	77-5-305
	6	77-5-306
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609	1	19-8-504
	2	77-1-101
	3	77-1-202
	4	77-1-203
	5	77-1-204
	6	77-1-402
	7	87-1-102
	8	87-1-502
	9	87-1-504
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	11	77-1-801
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	14	77-1-805
	15	77-1-806
	16	77-1-808
	17	77-1-809
	18	77-1-810
	19	17-7-502
	20	Codification instruction
	21	Severability
	22	Applicability
	23	Effective date
610	1	15-23-703
	2	15-36-112
	3	Effective date
611	1	15-16-402
612	1	15-6-134
	2	15-6-142
	3	15-30-171
	4	Effective date — retroactive applicability
613	1	15-30-121
	2	Effective date — retroactive applicability
614	1	53-6-161
	2	53-6-162
	3	53-6-163
	4	53-6-164
	5	Appropriation
	6	Codification instruction
	7	Effective dates
	8	Termination
615	1	15-35-108
	2	Transfer of funds
	3	Effective date — termination
616	1	90-6-304
	2	90-6-331
	3	Appropriation
	4	One-time reservation of funds
	5	Effective date
617	1	19-13-604
	2	19-13-803
	3	Effective date
618	1	Repealer
	2	Effective date
619	1	15-1-221
	2	15-1-222
	3	15-1-223
	4	Codification instruction
620	1	15-2-304
	2	15-2-305
621	1	15-24-1203
	2	Effective date — retroactive applicability
622	1	20-32-101

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	4	20-32-104
	5	20-9-343
	6	20-9-344
	7	Appropriations
	8	Repealer
	9	Effective date
623	1	75-10-1101
624	1	Appropriation for veterans' home project
625	1	2-17-111
	2	Effective date
626	1	15-1-501
	2	15-31-702
	3	Effective date — applicability
627	1	15-24-920
	2	15-24-921
	3	15-24-922
	4	15-24-926
	5	Codification instruction
	6	Retroactive applicability
	7	Effective date
628	1	17-2-107
	2	Severability
	3	Effective date
629	1	41-3-1103
	2	Appropriation
	3	Effective date
630	1	5-11-701
	2	5-11-702
	3	5-11-703
	4	5-11-704
	5	5-11-301
	6	85-3-213
	7	Appropriation
	8	Codification instruction
	9	Effective dates
631	1	19-9-104
	2	19-9-601
	3	19-9-702
	4	19-9-703
	5	19-9-801
	6	19-9-802
	7	19-9-804
	8	19-9-903
	9	Effective date
632	1	Voided by sec. 2 (coordination section)
	2	Coordination instruction
	3	Voided by sec. 2 (coordination section)
	4	Voided by sec. 2 (coordination section)
633	1	19-9-1007
	2	Effective date
634	1	2-15-2109
	2	50-19-311
	3	50-19-312
	4	53-6-101
	5	53-6-131
	6	Appropriation
	7	Repealer
	8	Effective date
635	1	40-4-204
	2	40-6-116
	3	40-5-226
	4	40-5-304
	5	40-5-402
	6	40-5-403
	7	40-5-411
	8	40-5-412
	9	40-5-413
	10	40-5-414
	11	40-5-415
	12	40-5-416
	13	40-5-417
	14	40-5-421
	15	40-5-433
	16	40-5-315
	17	40-5-309
	18	40-5-440
	19	40-5-441
	20	40-5-442
	21	40-5-443
	22	Repealer
	23	Codification instruction
	24	Severability
	25	Effective date
636	1	53-21-120
	2	53-21-124
	3	53-21-138
	4	53-21-139
	5	Voided by sec. 7, Ch. 460 (coordination section)
	6	Development of county plans for alternatives to placement in jail of seriously mentally ill
	7	Codification instruction
	8	Effective dates — termination
637	1	82-4-303
	2	32-4-305
	3	82-4-306
	4	82-4-335
	5	82-4-337
	6	82-4-338
	7	82-4-339

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	8	82-4-355
	9	82-4-357
	10	Codification instruction
	11	Effective date
638	1	33-2-712
	2	Appropriation
	3	Repealer
	4	Effective dates
639	1	Appropriation
	2	39-51-1301
	3	Sec. 1, Ch. 600, L. 1989
	4	Effective date
640	1	7-14-1101
	2	7-14-1106
	3	7-14-1103
	4	7-14-1104
	5	7-14-1111
	6	7-14-1112
	7	7-14-1125
	8	7-14-1126
	9	7-14-1131
	10	7-14-1133
641	1	15-23-705
	2	15-23-703
	3	15-23-706
	4	15-23-707
	5	17-7-502
	6	Codification instruction
	7	Effective date — applicability
642	1	3-5-101
	2	Applicability
643	1	7-13-231
	2	75-10-102
	3	75-10-104
	4	75-10-115
	5	75-10-204
	6	75-10-221
	7	Voided by sec. 9 (coordination section)
	8	Codification instruction
	9	Coordination instruction
	10	Retroactive applicability
	11	Effective date
644	1	75-5-631
	2	75-5-633
645	1	75-6-102
	2	75-6-103
	3	75-6-104
	4	75-6-108
	5	75-6-111
	6	75-6-109
	7	75-6-114
	8	75-6-115
	9	76-4-105
	10	69-7-111
	11	7-13-2218
	12	Codification instruction
	13	Termination
646	1	15-32-102
	2	15-32-115
	3	Codification instruction
	4	Effective date — retroactive applicability
647	1	23-5-112
	2	23-5-113
	3	23-5-115
	4	23-5-116
	5	23-5-152
	6	23-5-177
	7	23-5-117
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	9	23-5-324
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	11	23-5-424
	12	23-5-425
	13	23-5-426
	14	23-5-701
	15	23-5-702
	16	23-5-705
	17	23-5-706
	18	23-5-710
	19	23-5-711
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	23	23-5-805
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	28	23-5-153
	29	23-5-154
	30	23-5-156
	31	23-5-158
	32	23-5-162
	33	23-5-176
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	35	23-5-308
	36	23-5-309
	37	23-5-317
	38	23-5-406
	39	23-5-407
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	41	23-5-412
	42	23-5-413
	43	23-5-501
	44	23-5-512
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	46	23-5-603

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	48	23-5-611
	49	23-5-612
	50	23-5-625
	51	23-5-631
	52	17-7-502
	53	2-15-2021
	54	23-5-602
	55	23-5-165
	56	23-5-502
	57	Codification instruction — code commissioner instruction
	58	Effective dates
648	1	75-7-210
649	1	75-10-209
650	1	39-3-409
	2	Repealer
	3	Effective date
651	1	Legislative findings
	2	Definitions
	3	Request for proposals
	4	Site selection committee
	5	Site selection procedure and criteria
	6	Site visitation and hearings required
	7	Site selection
	8	53-1-202
	9	53-30-101
	10	53-30-102
	11	Appropriation
	12	Effective date
	13	Termination
652	1	75-2-111
	2	75-2-211
	3	Retroactive applicability
	4	Effective date — rulemaking authority
653	1-9	Mill levy referendum for support of vocational and technical education
654	1	70-9-210
	2	70-9-301
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	4	70-9-303
	5	70-9-307
	6	Sec. 3, Ch. 14, L. 1989
	7	Codification instruction
	8	Repealer
	9	Effective dates — applicability
655	1	52-2-201
	2	52-2-202
	3	52-2-203
	4	41-3-107
	5	41-3-205
	6	41-5-602
	7	41-5-603
	8	52-1-103
	9	Codification instruction
	10	Effective date
656	1	2-16-404
	2	3-5-211
	3	25-1-201
	4	25-1-201
	5	Termination
	6	Effective dates
657	1	17-7-122
658	1	15-31-552
	2	Repeal of coal retailers' license tax
	3	Repealer
	4	Applicability
	5	Effective dates
659	1	85-1-701
	2	85-1-702
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	4	85-1-704
	5	Study of recreational user fees
	6	Study of water user fees
	7	Study of dam safety and water reservation laws and regulations
	8	85-1-631
	9	85-1-604
	10	85-2-310
	11	90-2-111
	12	Codification instruction
	13	Effective date
660	1	46-4-111
	2	46-4-110
	3	46-4-121
	4	46-4-122
	5	46-4-123
	6	46-4-114
	7	46-4-112
	8	46-4-113
	9	3-15-203
	10	7-4-2911
	11	7-4-2915
	12	44-3-404
	13	46-4-101
	14	46-4-103
	15	46-4-201
	16	46-4-202
	17	46-4-205
	18	46-4-206
	19	Codification instruction

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	20	Coordination instruction
	21	Repealer
661	1	39-71-504
662	1	23-1-121
	2	23-1-106
	3	23-1-122
	4	23-1-105
	5	23-2-410
	6	23-2-506
	7	23-2-641
	8	23-2-806
	9	7-32-303
	10	77-5-104
	11	87-1-502
	12	87-1-503
	13	Codification instruction
	14	Effective date
663	1	33-22-132
	2	33-31-102
	3	53-6-101
	4	Applicability
	5	Codification instruction
664	1	37-7-406
	2	37-7-701
	3	37-7-702
	4	37-7-703
	5	37-7-704
	6	37-7-705
	7	37-7-706
	8	37-7-711
	9	Codification instruction
	10	Severability
665	1	33-32-101
	2	33-32-102
	3	33-32-103
	4	33-32-201
	5	33-32-202
	6	33-32-203
	7	33-32-204
	8	33-32-104
	9	33-32-105
	10	Codification instruction
666	1	39-71-434
	2	Applicability
	3	Effective date
667	1	7-4-2502
	2	7-4-2503
	3	3-10-601
	4	46-18-236
	5	Effective date
668	1	7-34-102
	2	15-10-412
	3	Effective date
669	1	15-24-1802
	2	Effective date — retroactive applicability
670	1	15-30-128
	2	15-30-121
	3	33-15-201
	4	Effective date — retroactive applicability
671	1	37-17-318
	2	2-15-1851
	3	37-17-202
	4	37-17-302
	5	37-17-306
	6	37-17-307
	7	Transition — initial appointments
	8	Codification instruction
	9	Applicability
	10	Effective dates
672	1	61-10-104
	2	61-10-124
	3	61-10-129
	4	Turnpike doubles — study
673	1	90-7-102
	2	90-7-317
	3	90-7-318
	4	90-7-319
	5	90-7-320
	6	Codification instruction
	7	Effective date
674	1	7-8-2304
	2	Effective date
675	1	7-8-2306
	2	Effective date
676	1	10-4-211
	2	15-53-105
	3	15-53-111
	4	15-55-108
	5	15-65-112
	6	15-65-115
	7	35-18-503
	8	69-1-225
	9	69-1-226
	10	23-2-716
	11	10-4-206 35-18-504 69-1-228
	12	15-65-116
	13	23-2-717
	14	23-2-718
	15	10-4-207 35-18-510 69-1-230
	16	35-18-505
	17	35-18-506
	18	Codification instruction

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	19	Coordination instruction
	20	Applicability
	21	Effective date
677	1	85-2-114
	2	85-2-122
	3	85-2-123
	4	Effective date
678	1	2-7-509
	2	Codification instruction
	3	Effective date
679	1	77-6-403
	2	Saving clause
680	1	15-7-102
	2	15-7-111
	3	15-7-201
	4	Voided by sec. 12 (coordination section)
	5	Sec. 10, Ch. 681, L. 1985
	6	15-1-101
	7	15-7-102
	8	15-7-111
	9	15-10-412
	10	Repealer
	11	7-6-2540
	12	Coordination instruction
	13	Applicability dates
	14	Termination
	15	Effective dates
681	1	7-16-2203
	2	7-16-2302
	3	7-16-2303
	4	7-21-3401
	5	7-22-2103
	6	7-22-2215
	7	7-22-2411
	8	Repealer
682	1	40-8-114
	2	49-1-102
	3	49-2-308
	4	49-3-204
	5	49-3-205
	6	Codification instruction
	7	Severability
	8	Effective date
683	1	40-6-125
	2	40-6-135
	3	40-8-109
	4	Effective date
684	1	40-8-109
	2	40-8-115
	3	40-8-116
	4	40-8-117
	5	40-8-135
	6	40-8-136
	7	40-8-103
	8	Codification instruction
	9	Severability
	10	Effective date
685	1	5-2-105
	2	5-4-306
	3	Effective date
686	1	61-8-310
	2	Effective date
687	1	45-5-501
	2	45-5-502
	3	45-5-503
	4	45-5-504
	5	45-5-507
	6	45-5-511
	7	45-5-505
	8	Coordination
	9	Effective date
688	1	72-33-108
	2	72-36-206
	3	Effective date
689	1	5-17-201
	2	5-17-202
	3	5-17-203
	4	5-17-206
	5	5-17-205
	6	5-17-207
	7	5-17-204
	8	Severability
690	1	17-7-502
	2	44-12-206
	3	44-13-102
	4	Effective date
691	1	2-15-501
	2	Effective date
692	1	2-18-620
693	1	15-24-2001
	2	15-24-2002
	3	Codification instruction
	4	Coordination instruction
694	1	15-6-135
	2	15-24-1401
	3	15-24-1402
	4	15-31-124
	5	Effective date — applicability
695	1	15-23-516
	2	15-38-127
	3	15-6-131
	4	15-8-111
	5	15-23-103
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	11	15-23-521
	12	15-38-103
	13	15-38-104
	14	Codification instruction
	15	Effective date — retroactive applicability
696	1	41-3-403
	2	41-3-406
	3	41-5-403
	4	41-5-523
	5	41-5-524
	6	41-5-530
	7	41-3-208
	8	41-3-408
	9	41-4-102
	10	41-5-522
	11	Repealer
	12	Codification instruction
	13	Effective date
697	1	Revenue oversight — state and tribal negotiations — report to legislature
	2	Effective date
	3	Termination
698	1	60-3-201
	2	Effective date
699	1	33-17-1107
	2	33-22-107
	3	33-22-216
	4	33-15-1106
	5	33-18-210
	6	33-20-101
	7	33-20-121
	8	33-20-131
	9	33-22-508
	10	33-1-502
	11	Codification instruction
700	1	15-6-131
	2	15-23-502
	3	Effective date — retroactive applicability
	4	Termination
701	1	61-2-404 (renum. 20-7-513)
	2	61-2-405 (renum. 20-7-514)
	3	Transfer of money
	4	20-7-501
	5	20-7-502
	6	20-7-504
	7	17-7-502
	8	Repealer
	9	Coordination instruction
	10	Codification instruction
	11	Effective date
702	1	15-24-1902
	2	Coordination instruction
	3	Effective date — retroactive applicability
703	1	50-3-109
	2	Effective date
704	1	3-1-702
	2	3-5-604
	3	3-5-901
	4	3-5-902
	5	3-5-903
	6	7-6-2352
	7	46-8-201
	8	46-15-104
	9	46-18-235
	10	Effective date
705	1	15-1-101
	2	15-7-202
	3	Effective date — retroactive applicability
706	1	Name of fire marshal changed — instructions to code commissioner
		2-17-112
		20-6-624
		45-8-332
		50-37-107
		50-37-108
		50-37-109
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	2	2-15-1519
	3	2-15-2005
	4	2-15-2108
	5	50-3-101
	6	50-3-102
	7	50-3-103
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	9	50-39-101
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	33	50-63-203
	34	52-2-733
	35	52-2-734
	36	50-78-301
	37	Repealer
	38	Coordination instruction
	39	Effective date
707	1	Appropriation — purpose — department of social and rehabilitation services to deposit certain funds to general fund — court automation report
	2	Coordination instruction
	3	Effective date
708	1	50-53-102
	2	50-53-103
	3	50-53-104
	4	50-53-201
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	7	50-53-206
	8	50-53-207
	9	50-53-204
	10	50-53-209
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	14	50-53-214
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	16	50-53-217
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	18	50-2-118
	19	Codification instruction
	20	Effective dates
709	1	23-5-160
	2	Codification instruction
710	1	46-7-101
	2	46-9-201
	3	46-9-202
		46-9-206
	4	46-10-202
	5	46-12-103
	6	46-12-201
711	1	17-3-213
	2	15-23-607
	3	15-23-703
	4	20-7-442
	5	20-9-212
	6	20-9-334
	7	20-9-366
	8	20-9-367
	9	20-9-368
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	11	20-10-142
	12	20-10-143
	13	20-10-144
	14	20-10-145
	15	20-10-146
	16	Study of transportation funding
	17	Effective date
712	1	15-32-601
	2	15-32-602
	3	15-32-603
	4	15-32-604
	5	15-32-610
	6	15-32-611
	7	Reports by department of revenue
	8	Effective date — applicability — rulemaking
	9	Termination
713	1	44-1-910
	2	44-1-701
	3	44-1-803
	4	44-1-804
	5	44-1-806
	6	Codification instruction
714	1	33-22-1704
	2	Effective date
	3	Termination
715	1	61-1-102
	2	61-1-129
	3	61-3-107
	4	61-3-524
	5	61-3-525
	6	61-3-518
	7	61-3-519
	8	Codification instruction
	9	Saving clause
	10	Applicability
716	1	53-5-503
	2	53-5-504

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	3	52-3-815
	4	Codification instruction
717	1	15-16-611
	2	Effective date — retroactive applicability
718	1	61-3-512
	2	Codification instruction
719	1	20-9-471
	2	Effective date
720	1	2-18-101
	2	2-18-301
	3	2-18-303
	4	2-18-304
	5	2-18-305
	6	2-18-312
	7	2-18-313
	8	2-18-314
	9	2-18-315
	10	2-18-703
	11	2-18-110
	12	2-16-405
	13	5-2-301
	14	13-37-106
	15	15-2-102
	16	Appropriation
	17	Coordination instruction
	18	Codification instruction
	19	Effective dates
721	1	16-3-214
722	1	15-24-2301
	2	15-24-2302
	3	17-5-703
	4	90-4-901
	5	90-4-902
	6	90-4-903
	7	90-4-904
	8	90-4-905
	9	90-4-906
	10	Project approval
	11	Transfer of funds
	12	Codification instruction
	13	Coordination instruction
	14	Effective date
723	1	15-70-503
	2	15-70-522
	3	Effective date
	4	Contingent retroactive applicability
724	1	61-1-130
	2	61-3-101
	3	61-3-201
	4	61-3-205
	5	61-3-206
	6	61-3-303
	7	61-3-305
	8	Voided by sec. 2, Ch. 632 (coordination section)
	9	61-3-333
	10	61-3-465
	11	61-3-510
	12	61-3-601
	13	61-3-604
	14	61-4-101
	15	Coordination instruction
	16	Repealer
	17	Instructions to code commissioner
		49-4-302
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		61-3-446
		61-3-452
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		61-3-454
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725	1	61-3-210
	2	61-3-202
	3	61-3-211
	4	61-3-212
	5	75-10-512
	6	75-10-541
	7	Appropriation
	8	Codification instruction
726	1	61-5-111
	2	61-5-121
	3	Coordination instruction
	4	Effective date
727	1	33-22-125
	2	33-1-102
	3	Codification instruction
	4	Effective date
728	1	23-2-502
	2	23-2-521
	3	23-2-523
	4	23-2-526
	5	23-2-529
	6	23-2-530
	7	23-2-531
	8	23-2-532
	9	23-2-522(2) - (5)
	10	23-2-512
	11	Appropriation
	12	Codification instruction
	13	Termination date
	14	Effective dates
729	1	20-9-343
	2	20-9-361
	3	Coordination instruction

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	4	Effective date
	5	Termination
730	1	50-51-102
	2	50-51-201
	3	50-51-204
	4	50-51-110
	5	50-51-301
	6	50-51-302
	7	50-51-303
	8	50-51-401
	9	50-51-402
	10	50-51-403
	11	Codification instruction
	12	Coordination instruction
731	1	50-52-202
	2	50-52-210
	3	50-52-301
	4	50-52-302
	5	50-52-107
	6	50-52-108
	7	50-52-303
	8	Codification instruction
	9	Coordination instruction
732	1	50-50-102
	2	50-50-205
	3	50-50-216
	4	50-50-301
	5	50-50-302
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	7	50-50-109
	8	50-50-110
	9	Codification instruction
	10	Coordination instruction
733	1	7-33-2209
	2	7-33-2211
	3	Effective date
734	1	82-11-101
	2	82-11-103
	3	82-11-104
	4	82-11-161
	5	82-11-164
	6	Saving clause
735	1	19-6-506
	2	61-3-321
	3	Coordination instruction
	4	Effective date
736	1	53-30-106
737	1	7-15-4288
738	1	2-18-704
	2	Effective date
	3	Retroactive applicability
739	1	27-1-718
	2	45-6-301
	3	26-1-608
	4	Codification instruction
	5	Coordination instruction
740	1	85-2-436
	2	85-2-437
	3	85-2-438
	4	Sec. 11, Ch. 658, L. 1989
	5	Appropriation
	6	Codification instruction
	7	Termination
	8	Effective date
741	1	85-2-335
	2	85-2-336
	3	85-2-337
	4	85-2-338
	5	Codification instruction
	6	Effective date
	7	Applicability
742	1	15-53-101
	2	15-53-102
	3	15-53-105
	4	15-53-111
	5	Saving clause
	6	Effective date — applicability
743	1	45-8-115
	2	Codification instruction
744	1	30-16-102
	2	30-16-103
	3	30-16-201
	4	30-16-204
	5	Saving clause
	6	Severability
	7	Codification instruction
	8	Effective date
745	1	7-6-501
	2	7-6-502
	3	15-10-402
	4	15-10-412
	5	Codification instruction
	6	Effective date
746	1	15-60-101
	2	15-60-102
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	11	Voided by sec. 19 (coordination section)
	12	15-60-209
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	18	Contingent voidness
	19	Coordination instruction
	20	Severability
	21	Nonapplicability
	22	Effective dates — applicability
747	1	Appropriation
	2	Purpose of appropriation
	3	Termination date
748	1	22-3-801
	2	22-3-802
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	4	22-3-804
	5	22-3-805
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	7	22-3-807
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	13	22-3-811
	14	17-7-502
	15	Appropriation
	16	Severability
	17	Effective dates
	18	Termination
749	1	7-6-2427
	2	61-3-537
	3	Effective date — applicability
	4	Termination
750	1	Appropriation
751	1	61-2-107
	2	61-2-106
	3	61-2-108
752	1	75-10-704
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	6	Severability
	7	Retroactive applicability
753	1	Appropriation
754	1	20-9-512
	2	Effective date
	3	Termination
755	1	22-2-601
	2	22-2-602
	3	Funding — appropriation
	4	Effective date
756	1	2-18-606
	2	2-18-601

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	3	Codification instruction
757	1	39-2-1001
	2	39-2-1002
	3	39-2-1003
	4	39-2-1004
	5	Effective date
758	1	2-18-622
	2	2-18-618
	3	2-18-703
	4	Codification instruction
	5	Applicability
	6	Effective date
759	1	45-8-321
	2	45-8-322
	3	45-8-323
	4	45-8-324
	5	45-8-325
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	13	Requirements for granting governmental entity immunity from suit
	14	Repealer
	15	Codification instruction
760	1	90-6-404
	2	15-37-117
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761	1	18-4-301
	2	18-4-303
	3	Effective date
762	1	2-8-301
	2	2-8-302
	3	2-8-303
	4	2-8-304
	5	Codification instruction
	6	Effective date
763	1	75-11-301
	2	75-11-302
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	4	75-11-308
	5	75-11-318
	6	Severability
	7	Effective date
764	1	50-5-101
	2	50-5-301
	3	53-6-101
	4	Repealer
	5	Effective date
765	1	20-5-301
	2	20-5-311

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	9	20-7-435
	10	20-7-436
	11	20-7-437
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	13	Repealer
	14	Codification instruction
	15	Effective date
766	1	16-1-304
	2	Effective date
767	1	20-3-106
	2	20-3-205
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	5	20-5-312
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	9	20-9-142
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	21	20-9-210
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	24	20-9-231
	25	20-9-301
	26	20-9-315
	27	20-9-321
	28	20-9-344
	29	20-9-353
	30	20-9-360
	31	Voided by sec. 58 (coordination section)
	32	20-9-367
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	49	20-15-404
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	51	20-15-323
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	56	Repealer
	57	Codification instruction
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	59	Retroactive applicability
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768	1	7-32-2222
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769	1	85-2-901
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	6	85-2-906
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	8	2-15-1523
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	21	Effective dates
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770	1	Voided by sec. 31 (coordination section)
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	30	Codification instruction
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	32	Saving clause
	33	Severability
	34	Applicability to joint solid waste disposal
	35	Applicability to garbage and ash collection districts
	36	Effective date
771	1	15-30-188
	2	15-30-189
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	4	15-30-191
	5	Codification instruction
	6	Effective date — retroactive applicability
772	1	15-70-234
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	4	Codification instruction
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773	1	7-13-2527
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	3	Federal funds for administration
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	6	Capital projects appropriations
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	10	Capital improvements
	11	Disposition of unspent bond proceeds and related investment income
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	13	Authorization of bonds
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	21	Priority of projects
775	1	Coal severance tax bonds authorized

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	4	Conditions of loans
	5	Interest rates on loans
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776	1	Appropriation
777	1	61-9-405
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778	1	15-16-613
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	3	Effective date
779	1	Appropriation
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780	1	90-2-111
781	1	46-8-210
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782	1	7-22-2432
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783	1	15-44-101
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	14	Codification instruction
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	16	Severability
	17	Applicability — retroactive applicability
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784	1	2-15-212
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785	1	41-3-201
786	1	15-24-2401
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787	1	5-12-303
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	18	20-9-343
	19	Repealer
	20	Codification instruction
	21	Applicability
	22	Effective date
	23	Termination
788	1	75-5-1106
	2	75-5-1113
	3	75-5-1121
	4	Effective date
789	1	61-8-401
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790	1	20-9-366
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	4	15-23-607
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791	1	61-9-407
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792	1	20-7-714
793	1	Appropriation
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794	1	46-18-104
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	3	46-18-201
	4	46-18-225
	5	46-18-105
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795	1	40-4-130
	2	40-4-131
	3	40-4-132
	4	40-4-133
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	7	40-4-136
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	9	Effective date
796	1	15-30-144
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	5	Effective dates
797	1	39-71-2354
	2	39-71-2355
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	10	Saving clause
	11	Severability
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	13	Requirements for approval of state debt
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798	1	33-1-711
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	27	Repealer
	28	Codification instruction
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	4	46-3-101 (renum. 46-3-111)
	5	46-3-102 (renum. 46-3-112)
	6	46-3-104 (renum. 46-3-113)
	7	46-3-105 (renum. 46-3-114)
	8	46-3-106 (renum. 46-3-115)
	9	Voided by sec. 265 (coordination section)
	10	Voided by sec. 265 (coordination section)
	11	Voided by sec. 265 (coordination section)
	12	46-4-104
	13	Voided by sec. 20, Ch. 660 (coordination section)
	14	Voided by sec. 20, Ch. 660 (coordination section)
	15	46-4-203
	16	Voided by sec. 265 (coordination section)
	17	Voided by sec. 20, Ch. 660 (coordination section)
	18	Voided by sec. 20, Ch. 660 (coordination section)
	19	46-4-301
	20	46-4-302
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	24	46-6-404 (renum. 46-6-310)
	25	46-6-302 (renum. 46-6-213)
	26	46-6-303 (renum. 46-6-212(1))
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	30	46-6-202(1), (2) (renum. 46-6-214) 46-6-202(3) (renum. 46-6-215)
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	32	46-6-311
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	34	46-6-104
	35	46-6-105
	36	46-6-421 (renum. 46-6-601)
	37	46-6-403 (renum. 46-6-313)
	38	46-6-402
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	40	46-6-502
	41	46-6-505
	42	46-5-401
	43	46-5-402
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	45	46-5-502
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	53	46-5-203 (renum. 46-5-224)
	54	46-5-205 (renum. 46-5-226)
	55	46-5-206 (renum. 46-5-227)
	56	46-5-208 (renum. 46-5-228(1))
	57	46-5-209 (renum. 46-5-228(2))
	58	46-5-301
	59	46-5-207 (renum. 46-5-225)
	60	46-5-204 (renum. 46-5-310)
	61	46-5-303 (renum. 46-5-311)
	62	46-5-304 (renum. 46-5-312)
	63	46-8-101
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	74	46-9-501 (renum. 46-9-108)
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	88	46-7-102
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802	1	45-9-202
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	8	Coordination instruction
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804	1	44-5-103
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805	1	85-2-102
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806	1	53-21-204
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807	1	15-30-111
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	30	Codification instruction
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812	1	85-20-301
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813	1	39-71-117
	2	39-71-118
	3	Effective date
814	1	69-14-931
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	4	Codification instruction
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1990 BALLOT ISSUE

Const. Amend.	Sec.	MCA
No. 21	1	Art. IV, Sec. 7, Mont. Const.
	2	Submission to electorate

SESSION LAWS

Enacted by the

FIFTY-FIRST LEGISLATURE

IN SPECIAL SESSION

Held at Helena, the Seat of Government

May 21, 1990 to May 25, 1990

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA LEGISLATIVE COUNCIL

CHAPTER NO. 1

[HB 1]

AN ACT ALLOWING THE USE OF INMATE LABOR FOR CONSTRUCTION OF A LOW SECURITY HOUSING UNIT AT MONTANA STATE PRISON AS AUTHORIZED IN SECTION 6, HOUSE BILL NO. 777, LAWS OF 1989; AMENDING SECTION 53-1-301, MCA AND SECTION 22, HOUSE BILL NO. 777, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-301, MCA, is amended to read:

"**53-1-301. Permitted institutional industries, powers of department, and incentive pay to inmates.** (1) Except as provided in subsection (3), the department may:

(a) establish industries in institutions which will result in the production or manufacture of such products and the rendering of such services as may be needed by any department or agency of the state or any political subdivision thereof, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of residents in institutions;

(b) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction;

(c) print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(d) fix the sale price for goods produced or manufactured at institutions. Prices shall not exceed prices existing in the open market for goods of comparable quality.

(e) require institutions to purchase needed goods from other institutions;

(f) provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(g) provide for construction projects up to the aggregate sum of $25,000 per project, by residents of institutions; provided, however, said construction work is not covered by a collective bargaining agreement;

(h) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(i) provide for the manufacture at an institution of motor vehicle license plates and other related articles;

(j) with the approval of the department, sell manufactured or agricultural products and livestock on the open market;

(k) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(l) pay an inmate or resident of an institution from receipts from the sale of products produced or manufactured or services rendered in a program in which he is working.

(2) (a) Payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials;

(v) regard for safety of others.

(b) The maximum rate of pay shall be determined by the appropriation established for each program.

(3) Except as provided in subsection (4), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(4) Any state institution, facility, or program operated by the department may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.

(5) The department may provide for construction of the project authorized in [section 2] by inmates at the Montana state prison."

Section 2. **Authorization of inmate labor for prison construction — exemptions.** (1) The department of institutions may use inmate labor for purposes of constructing the low security housing unit at Montana state prison authorized in section 6 of House Bill No. 777, Laws of 1989.

(2) The department of administration may exempt the project authorized in subsection (1) from the provisions of any applicable Montana law relating to public bidding, bonding, workers' compensation coverage, or labor and wage requirements.

Section 3. Section 22, House Bill No. 777, Laws of 1989, is amended to read:

"Section 22. **Authorizing inmate labor for ~~construction of prison projects~~ *prison construction.*** ~~For the purposes of constructing a 96-man housing unit authorized in [section 6]; the ranch housing units and the irrigation system at Montana state prison authorized in [section 7]; and the inspection, study, and renovation of dams at Montana state prison authorized in [section 10(2)]; the~~ *The* department of institutions may use inmate labor ~~to construct the projects~~ *for purposes of constructing the low security housing unit authorized in [section 6]* and is exempt, for the purposes of completing ~~these projects~~ *such project,* from the provisions of 53-1-301(1)(g). The department of administration may exempt ~~these projects~~ *the project authorized in [section 6]* from any provisions of Montana law relating to public bidding, bonding, workers' compensation coverage, or labor and wage requirements."

Section 4. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to May 16, 1989.

Section 6. **Effective date — termination.** (1) [This act] is effective on passage and approval.

(2) [Section 1] terminates July 1, 1991.

Approved May 30, 1990.

CHAPTER NO. 2

[HB 6]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE SECOND SPECIAL SESSION OF THE FIFTY-FIRST LEGISLATURE, CONVENING MAY 21, 1990, AND FOR OTHER PURPOSES; CLARIFYING THAT APPROPRIATIONS TO THE OFFICE OF PUBLIC INSTRUCTION FOR DISTRIBUTION OF FEDERAL DISCRETIONARY GRANTS ARE BIENNIAL APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Operations appropriation.** The following amounts are appropriated from the general fund for fiscal years 1990 and 1991 for the operation of the second special session of the fifty-first legislature, convening May 21, 1990, and for other purposes:

House of Representatives	$101,989
Senate	68,543
Legislative Council	31,808

Section 2. **Biennial appropriation.** Fiscal year 1990 and 1991 appropriations to the office of public instruction for the distribution of federal discretionary grants contained in House Bill No. 100, Laws of 1989, are biennial appropriations.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved May 30, 1990.

CHAPTER NO. 3

[SB 1]

AN ACT GENERALLY REVISING OIL AND NATURAL GAS LOCAL GOVERNMENT SEVERANCE TAX RATES; IMPOSING A REVENUE NEUTRAL LOCAL GOVERNMENT SEVERANCE TAX RATE ON NONWORKING INTEREST OWNERS OF OIL AND NATURAL GAS PRODUCTION; ESTABLISHING A BASE YEAR FOR THE DISTRIBUTION OF LOCAL GOVERNMENT SEVERANCE TAXES; DISTRIBUTING LOCAL GOVERNMENT SEVERANCE TAXES TO ELIGIBLE TAXING UNITS; PROVIDING FOR A PERCENTAGE DISTRIBUTION MECHANISM FOR LOCAL GOVERNMENT SEVERANCE TAXES UNDER CERTAIN CONDITIONS; CLARIFYING THE APPLICATION OF THE LOCAL GOVERNMENT SEVERANCE TAX TO NATURAL GAS STRIPPER WELLS; CLARIFYING THE LOCAL GOVERNMENT SEVERANCE TAX ON OIL STRIPPER WELLS; CLARIFYING THAT LOCAL PRODUCTION TAXES ON OIL, NATURAL GAS, AND COAL ARE INCLUDED IN THE GUARANTEED TAX BASE CALCULATION; CLARIFYING THE DEFINITION OF THE GUARANTEED TAX BASE; PROVIDING FOR A STUDY OF THE FLAT TAX SYSTEM BY THE REVENUE OVERSIGHT COMMITTEE AND FOR REPORTS TO THE LEGISLATURE BY THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 15-36-101, 15-36-112, 15-36-121, AND 20-9-366, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-101, MCA, is amended to read:

"**15-36-101. Definitions and rate of tax — *state severance tax* — local government severance tax — *assessment of nonworking interest owner — exemption.*** (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced ~~sufficient in quantity to justify the marketing of the same must~~ *shall*, except as provided in 15-36-121, each year when engaged in or carrying on the business in this state pay to the department of revenue a *state* severance tax for the exclusive use and benefit of the state of Montana plus a local government severance tax in lieu of a tax on net proceeds for the exclusive use and benefit of local government. ~~The~~ *Except as provided in subsection (3), the state* severance tax and the local government severance tax are ~~computed at the following rates~~ *as follows*:

(a) except as provided in subsections (1)(b), (1)(c), ~~and~~ (1)(d), *and (1)(e), a* 5% ~~of~~ *state severance tax on* the total gross *taxable* value of all the petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 8.4% on ~~production~~ *the gross taxable value of all the petroleum and other mineral or crude oil produced by the person* other than interim production and new production, from each lease or unit; but in determining the amount of *the state* severance tax *and local government severance tax*, there must be excluded from consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;

(b) *a* 2.65% ~~of~~ *state severance tax on* the total gross *taxable* value of all natural gas produced *by the person*, plus the local government severance tax of 15.25% on *the total gross taxable value of all* natural gas ~~production~~ *produced by the person* other than interim production or new production, from each lease or unit; but in determining the amount of *the state* severance tax *and the local government severance tax*, there must be excluded from consideration all gas produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the gas or petroleum or crude or mineral oil; and there must also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) *a* 2.5% ~~of~~ *state severance tax on* the total gross *taxable* value of the incremental petroleum and other mineral or crude oil produced *by the person*, plus the local government severance tax of ~~4.2%~~ *5%* on ~~production~~ *the total gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person* other than interim production and new production, from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet the following requirements:

(i) the project must be approved as a tertiary recovery project by the department of revenue. The approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) the property to be affected by the project must be adequately delineated according to the specifications required by the department; and

(iii) the project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the department to be significant in light of all the facts and circumstances, in the amount of crude oil which may potentially be recovered. For ~~the purpose~~ *purposes* of this section, tertiary recovery methods include but are not limited to:

(A) miscible fluid displacement;

(B) steam drive injection;

(C) micellar/emulsion flooding;

(D) in situ combustion;

(E) polymer augmented water flooding;

(F) cyclic steam injection;

(G) alkaline or caustic flooding;

(H) carbon dioxide water flooding;

(I) immiscible carbon dioxide displacement; or

(J) any other method approved by the department as a tertiary recovery method.

(d) except as provided in 15-36-121(2), *a* 3% ~~of~~ *state severance tax on* the total gross *taxable* value of all the petroleum and other mineral or crude oil ~~production~~ *produced by the person* after the first 5 barrels~~, plus the local government severance tax of 4.2% on all production other than interim production and new production, produced by~~ *from* a stripper well, as defined in 15-36-121, that produces more than 5 barrels a day during the period beginning April 1, 1989, and ending March 31, 1991~~,~~*;*

(e) a 5% local government severance tax on the total gross taxable value of all petroleum and other mineral or crude oil produced by the person other than interim and new production produced by a stripper well, as defined in 15-36-121.

(2) For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the department of revenue, to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the department must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project.

(3) (a) A local government severance tax is imposed on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas subject to local government severance taxes imposed under this chapter. The local government severance tax on nonworking interest owners is computed at the following rates:

(i) 12.5% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum and other mineral or crude oil;

(ii) 15.25% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted or marketable natural gas.

(b) The amounts paid or apportioned in kind to nonworking interest owners are exempt from the local government severance taxes imposed under 15-36-121(3) and (4) and under subsections (1)(a) through (1)(e) of this section.

~~(3)~~*(4)* Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil *or natural gas* well or to work in or about any oil *or natural gas* well or prospect or explore for or do any work for the purpose of developing any petroleum, ~~or~~ other mineral or crude oil, *or natural gas* to pay the severance tax, nor may work done or the drilling of a well or wells for the purpose of prospecting or exploring for petroleum, ~~or~~ other mineral or crude ~~oils~~ *oil, or natural gas* or for the purpose of developing them be considered to be the engaging in or carrying on of the business. If, in the doing of any work, in the drilling of any oil *or natural gas* well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum, ~~or~~ other mineral or crude oil, *or natural gas* in excess of the quantity required by the person for carrying on the operation is produced sufficient in quantity to justify the marketing of the petroleum, ~~or~~ other mineral or crude oil, *or natural gas,* the work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of the business of producing petroleum, ~~or~~ other mineral or crude oil, *or natural gas* within this state within the meaning of this section.

~~(4)~~*(5)* Every person required to pay the *state or local government* severance tax under this section shall pay the tax in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of the extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the interests that are owned by the federal, state, county, or municipal governments are exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(6) For purposes of this section, the following definitions apply:

(a) "Gross taxable value" means the gross value of the product as determined in 15-36-103 less the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas.

(b) "Nonworking interest owner" means any interest owner who does not share in the development and operation costs of the lease or unit. (Subsection (1)(d) terminates on occurrence of contingency—sec. 7, Ch. 656, L. 1987.) "

Section 2. Section 15-36-112, MCA, is amended to read:

"**15-36-112. Disposition of oil and gas *state and local government* severance taxes — calculation of unit value for local government severance tax.** (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each ~~school district~~ *taxing unit.*

(2) For purposes of the distribution of local government severance taxes collected under ~~15-36-101~~ *this chapter,* the department shall determine the unit value of oil and gas for each ~~school district~~ *taxing unit* as follows:

(a) The unit value for petroleum and other mineral or crude oil for each ~~district~~ *taxing unit* is the quotient obtained by dividing the net proceeds taxes calculated on petroleum or mineral or crude oil produced in that ~~district~~ *taxing unit* in calendar year 1988 by the number of barrels of petroleum or other mineral or crude oil produced in that ~~district~~ *taxing unit* during 1988, *excluding new and interim production.*

(b) The unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculated on natural gas produced in that ~~district~~ *taxing unit* in calendar year 1988 by the number of cubic feet of natural gas produced in that ~~district~~ *taxing unit* during 1988, *excluding new and interim production.*

(3) The *state and local government* severance taxes collected under this chapter are allocated as follows:

(a) The local government severance tax is statutorily appropriated, as provided in 17-7-502, for allocation to the county for distribution as provided in subsection (4)~~(a)(ii)~~;

(b) ~~Any amount not allocated to the county under subsection (3)(a)~~ *The state severance tax* is allocated to the state general fund.

(4) (a) For the purpose of distribution of the local government severance tax, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes

collected during the quarters to be distributed plus accumulated interest earned by the state and penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters to be distributed. The taxes must be calculated and distributed as follows:

(i) By November 30 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which *the local government* severance tax was owed during the calendar quarters ending March 31 and June 30 of the preceding calendar year.

(ii) By May 31 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which *the local government* severance tax was owed during the 2 calendar quarters immediately following those quarters referred to in subsection (4)(a)(i).

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsections (4)(a)(i) and (4)(a)(ii) must be calculated and distributed in the following manner:

(i) The excess amount or shortage must be divided by the total ~~units of production to obtain the tax value per unit of production~~ *distribution determined for that period to obtain an excess or shortage percentage.*

(ii) ~~The tax value per unit of production must be multiplied by the units of production in that taxable period in each school district that had production in that period, and this amount must be added to or subtracted from the distribution to each respective district~~ *The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.*

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(5) The county treasurer shall distribute the money received under subsection ~~(3)(a)~~ *(4)* to the taxing ~~jurisdictions~~ *units* that levied mills *in fiscal year 1990* against *calendar year 1988* production ~~during fiscal year 1989~~ in the same manner that all other property tax proceeds were distributed during fiscal year ~~1989~~ *1990* in the taxing ~~jurisdiction~~ *unit,* except that no distribution may be made to a municipal taxing ~~jurisdiction~~ *unit.*"

Section 3. Section 15-36-121, MCA, is amended to read:

"**15-36-121. Exemption from *state* severance tax — *imposition of local government severance tax.*** (1) It is the public policy of this state to promote a sufficient supply of natural gas to provide for the residents of this state, to lessen Montana's dependence on imported natural gas, and to encourage the exploration for and development and production of natural gas, petroleum, and other mineral and crude oil within the state.

(2) All new production, as defined in 15-23-601, from a well during the 24 months immediately following the date of notification to the department of revenue that an oil well is flowing or being pumped or that a gas well has been connected to a gathering or distribution system is exempt from all of the *state* severance tax imposed by 15-36-101, provided the notification was made after March 31, 1987, and before July 1, 1991.

(3) All the natural gas produced from any well that has produced 60,000 cubic feet or less of natural gas a day for the calendar year prior to the current year shall be taxed as provided in this section. Production must be determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365. The first 30,000 cubic feet of average daily production per well is exempt from all of the *state* severance tax imposed by 15-36-101. *The first 30,000 cubic feet of average daily production per well is subject to a local government severance tax of 10%.* Everything over 30,000 cubic feet of gas produced is taxed at 1.59% plus a local government severance tax of ~~7.625%~~ *10%.*

(4) The first 5 barrels of average daily production from a stripper well are exempt from all of the *state* severance tax imposed by 15-36-101, ~~except~~ *but not from* the local government severance tax.

(5) For the purposes of this section, "stripper well" means a well that produces less than 10 barrels per day, determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area, and by dividing the resulting quotient by 365.

(6) Notwithstanding the provisions of subsections (2) through (4), all reporting requirements under the *state* severance tax remain in effect. *(Subsections (2) and (4) terminate on occurrence of contingency—sec. 7, Ch. 656, L. 1987.)* "

Section 4. Section 20-9-366, MCA, is amended to read:

"20-9-366. *(Effective July 1, 1990)* **Definitions.** As used in 20-9-366 through 20-9-369, the following definitions apply:

(1) "County mill value per elementary ANB" or "county mill value per high school ANB" means the sum of the current taxable valuation of all property in the county *plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3)* plus all the taxable value of ~~nontax~~ *nonlevy* revenue for the support of schools, other than Public Law 81-874 funds, *divided by 1,000, with the quotient divided by the total county elementary ANB count or the*

total county high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of ~~nontax~~ *nonlevy* revenue received by a district in the previous year, *including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax,* divided by the number of mills levied by the district in the previous year, multiplied by 1,000~~, divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts~~.

(2) "District mill value per ANB" means the current taxable valuation of all property in the district *plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3)* plus all the taxable value of ~~nontax~~ *nonlevy* revenue for the support of schools, other than Public Law 81-874 funds, *divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year foundation program schedule amount. The taxable value of nonlevy revenue* for the purpose of computing guaranteed tax base aid for schools is the amount of ~~nontax~~ *nonlevy* revenue received by a district in the previous year, *including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax,* divided by the number of mills levied by the district in the previous year, multiplied by 1,000~~, divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year foundation program schedule amount~~.

(3) "Guaranteed overschedule general fund budget" means that portion of a district's general fund budget in excess of the foundation program amount for the district, as provided in 20-9-316 through 20-9-321, but not exceeding 135% of the district's foundation program amount, and which excess is authorized under the provisions of 20-9-145 and 20-9-353.

(4) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB" means the sum of the current taxable valuation of all property in the state *plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3)* plus all the taxable value of ~~nontax~~ *nonlevy* revenue for the support of schools, other than Public Law 81-874 funds, *divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. The taxable value of nonlevy revenue* for the purpose of computing guaranteed tax base aid for schools is the amount of ~~nontax~~ *nonlevy* revenue received

by a district in the previous year, *including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax,* divided by the number of mills levied by the district in the previous year, multiplied by 1,000~~, divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts~~."

Section 5. **Revenue oversight study — reports by department of revenue.** (1) The revenue oversight committee shall study the new methods of taxing coal, oil, and natural gas production that were mandated by House Bill No. 28, Special Laws of June 1989, and amended by [this act]. The committee shall report its findings to the 52nd legislature.

(2) The department of revenue shall report to the 52nd legislature and to the 53rd legislature on any conversion of nonworking interest owner taxpayer status to operator taxpayer status.

Section 6. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Effective date.** [This act] is effective on passage and approval.

Section 8. **Retroactive applicability.** [Sections 1 and 3] apply retroactively, within the meaning of 1-2-109, to all local government severance taxes on oil and natural gas produced after December 31, 1988.

Approved June 19, 1990.

CHAPTER NO. 4

[HB 2]

AN ACT SEPARATING THE LIABILITY OF THE STATE WORKERS' COMPENSATION INSURANCE PROGRAM AND FUND ON THE BASIS OF WHETHER THE LIABILITY ARISES FROM CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990, OR ACCIDENTS THAT OCCUR ON OR AFTER THAT DATE; PROVIDING MONEY FOR INITIAL OPERATING EXPENSES FOR CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCUR ON OR AFTER JULY 1, 1990; AUTHORIZING LOANS FROM RESERVES OF THE STATE FUND FROM PREMIUMS ATTRIBUTABLE TO WAGES PAYABLE ON OR AFTER JULY 1, 1990, FOR PAYMENT OF CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990; ESTABLISHING SEPARATE FUNDING AND ACCOUNTS FOR CLAIMS REPRESENTED BY THE UNFUNDED LIABILITY AND CLAIMS REPRESENTED BY NEW BUSINESS; PROVIDING FOR INCREASED LEGISLATIVE OVERSIGHT OF THE STATE FUND; CLARIFYING THE STATE FUND'S DUTIES; PROVIDING THAT THE STATE FUND MAY NOT ISSUE BONDS; ENSURING COMPLIANCE WITH THE MANDATE THAT THE STATE FUND SET PREMIUMS FOR NEW BUSINESS AT A LEVEL SUFFICIENT TO ENSURE SOLVENCY; REMOVING THE TERMINATION OF THE WORKERS' COMPENSATION PAYROLL TAX; PROVIDING A SPECIAL METHOD OF OFFERING NEGOTIATED SETTLEMENTS FOR CLAIMS ARISING PRIOR TO JULY 1, 1990; PROVIDING FOR COORDINATION OF THIS ACT WITH THE OCCUPATIONAL DISEASE ACT OF MONTANA; ALLOWING THE STATE FUND TO REQUEST PROPOSALS FOR THE SETTLEMENTS OF CLAIMS ARISING PRIOR TO JULY 1, 1990; APPROPRIATING MONEY TO THE DEPARTMENT OF REVENUE FOR ADMINISTERING COLLECTION OF THE PAYROLL TAX; AMENDING SECTIONS 33-1-102, 39-71-116, 39-71-2311, 39-71-2313 THROUGH 39-71-2316, 39-71-2321, 39-71-2323, 39-71-2501 THROUGH 39-71-2504, MCA; AMENDING SECTION 10, CHAPTER 664, LAWS OF 1987; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

The legislature recognizes that the unfunded liability currently existing in the state fund cannot be fully addressed at this time. The legislature further recognizes that the unfunded liability will have to be addressed from time to time in future legislative sessions; that other sources of revenue may have to be obtained from time to time to assist in reducing the unfunded liability; and that because of the current state of the economy and because of the current premium rates being charged employers, there should not be a substantial increase in premium rates at this time.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date.** (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to

provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) extend the payroll tax imposed by 39-71-2503 and dedicate the tax money first to the repayment of loans given under [section 4] and then to the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased.

Section 2. **Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 — spending limit.** (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in [section 4] and 39-71-2316(9), premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.

Section 3. **Initial operating expenses for claims for injuries resulting from accidents that occur on or after July 1, 1990.** During the fiscal year beginning July 1, 1990, the state fund shall transfer $12 million from money deposited under 39-71-2321 in the state fund before

July 1, 1990, to the account created by 39-71-2321 for the administration and payment of claims for injuries resulting from accidents that occur on or after July 1, 1990.

Section 4. **Use of payroll tax proceeds — loans.** Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying loans given under this section. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with other funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund, through its board of directors, may advise the board of investments that additional funding is necessary. The board of investments may loan, from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990, amounts necessary for payment of claims for injuries resulting from accidents that occurred before July 1, 1990. The loans must bear interest at 7 ½%.

Section 5. **Legislative audit of state fund.** The legislative auditor shall annually conduct or have conducted a financial and compliance audit of the state fund, including its operations relating to claims for injuries resulting from accidents that occurred before July 1, 1990. The audit must include evaluations of the claims reservation process, the amounts reserved, and the current report of the state fund's actuary. The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense of and must be paid by the state fund and must be allocated between those claims for injuries resulting from accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on or after that date.

Section 6. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to the investigation, review, and settlement of claims; payment of benefits; setting of reserves; furnishing of services and facilities; and utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

~~(1)~~*(2)* "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

~~(2)~~*(3)* "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections ~~(2)(a)~~ *(3)(a)* through ~~(2)(d)~~ *(3)(d)* of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections ~~(2)(a)~~ *(3)(a)* through ~~(2)(e)~~ *(3)(e)* of this section, exists).

~~(3)~~*(4)* "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

~~(4)~~*(5)* "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

~~(5)~~*(6)* "Days" means calendar days, unless otherwise specified.

~~(6)~~*(7)* "Department" means the department of labor and industry.

~~(7)~~*(8)* "Fiscal year" means the period of time between July 1 and the succeeding June 30.

~~(8)~~*(9)* "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

~~(9)~~*(10)* "Invalid" means one who is physically or mentally incapacitated.

~~(10)~~*(11)* "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

~~(11)~~*(12)* "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(12)~~*(13)* "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(13)~~*(14)* "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

~~(14)~~*(15)* "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

~~(15)~~*(16)* The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

~~(16)~~*(17)* The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

~~(17)~~*(18)* "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

~~(18)~~*(19)* "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(19)~~*(20)* "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

~~(20)~~*(21)* "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

~~(21)~~*(22)* "Year", unless otherwise specified, means calendar year."

Section 7. Section 39-71-2311, MCA, is amended to read:

"**39-71-2311. Intent and purpose of plan.** It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a mutual insurance fund. The state fund is required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer unless an assigned risk plan ~~is~~ established under 39-71-431 ~~and~~ is in effect. The state fund must be neither more nor less than self-supporting. Premium rates must be set *at least annually* at a level sufficient to ~~fund~~ *ensure the adequate funding of* the insurance program, including the costs of administration, benefits, and adequate reserves, *during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part.* For the purpose of keeping the state fund solvent, it must implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record."

Section 8. Section 39-71-2313, MCA, is amended to read:

"**39-71-2313. State compensation mutual insurance fund created.** There is a state compensation mutual insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter. ~~The state fund exists as a domestic mutual insurer as defined in 33-3-102.~~"

Section 9. Section 39-71-2314, MCA, is amended to read:

"**39-71-2314. State fund ~~a mutual insurance carrier~~ — *assigned risk plan.*** ~~(1) The state fund is a domestic mutual insurer controlled by the laws relating to the regulation of domestic mutual insurers in this state. However, the formation, incorporation, bylaws, and bonding requirements set forth in Title 33, chapter 3, do not apply to the state fund. The state fund is not a member insurer for the purposes of the insurance guaranty association established pursuant to Title 33, chapter 10, part 1.~~

~~(2) The commissioner of insurance may not terminate the operations of the state fund based on insolvency due to the unfunded liability that is recognized to exist on the date of passage of this part.~~

~~(3)~~*(1)* If an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue from the previous fiscal year.

(2) The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (except as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law."

Section 10. Section 39-71-2315, MCA, is amended to read:

"**39-71-2315. Management of state fund — powers and duties of the board.** (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. *Bonds may not be issued by the board, the state fund, or the executive director.*"

Section 11. Section 39-71-2316, MCA, is amended to read:

"**39-71-2316. Powers of the state fund — rulemaking.** For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) adopt, amend, and repeal rules relating to the conduct of its business;

(4) *except as provided in [section 21],* enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(5) collect and disburse money received;

(6) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. *Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After such rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classifica-*

tion or premium rate. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council and corresponding rates as a basis for setting its own rates.

(7) pay the amounts determined due under a policy of insurance issued by the state fund;

(8) hire personnel;

(9) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until ~~the unfunded liability of the state fund is eliminated and~~ adequate actuarially determined reserves are ~~determined~~ *set aside. If those reserves have been set aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.*

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund."

Section 12. Section 39-71-2321, MCA, is amended to read:

"**39-71-2321. What to be deposited in state fund.** *(1)* All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund. *They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.*

(2) The loan proceeds given to the state fund under [section 4] must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 13. Section 39-71-2323, MCA, is amended to read:

"**39-71-2323. Surplus in state fund — payment of dividends.** ~~If~~ *Subject to the provisions of 39-71-2316(9), if* at the end of any fiscal year there exists in the state fund *account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990,* an excess of assets over liabilities, *including necessary reserves* and a reasonable surplus, ~~such liabilities to include necessary reserves, which~~ *and if the* excess may be ~~divided~~ *refunded* safely, then the state fund may declare a dividend. ~~in the manner as the~~ *The* rules of the state fund *must* prescribe *the manner of payment* to those employers who have paid premiums into the state fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year."

Section 14. Section 39-71-2501, MCA, is amended to read:

"**39-71-2501. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of ~~labor and industry~~ *revenue* provided for in ~~2-15-1701~~ *2-15-1301*.

(2) "Employer" has the meaning set forth in 39-71-117.

(3) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

(4) "State fund" means the state compensation mutual insurance fund.

(5) "Tax" means the workers' compensation payroll tax provided for in 39-71-2503.

(6) "Tax account" means the workers' compensation tax account created by 39-71-2504."

Section 15. Section 39-71-2502, MCA, is amended to read:

"**39-71-2502. Findings and purpose.** (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund *with regard to claims for injuries resulting from accidents that occurred before July 1, 1990,* and ~~is projected to~~ *it may* increase. While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide a source of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all employers who have workers' compensation coverage. Therefore, all employers who have employments covered by the workers' compensation laws should share in the cost of the unfunded liability.

(3) The purpose of this part is to provide a supplemental source of financing for the unfunded liability."

Section 16. Section 39-71-2503, MCA, is amended to read:

"**39-71-2503. Workers' compensation payroll tax ~~— penalty~~.** (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to ~~0.3%~~ *0.28%* of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, *except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% of the employer's payroll in the preceding week.* This payroll tax must be used to reduce the unfunded liability in the state fund *incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. The department must report past and projected future tax proceeds to the legislature, which shall consider the report and determine the tax rate necessary for repayment of loans with interest.*

~~(b) The tax is due and payable following the end of each calendar quarter, commencing with the quarter ending September 30, 1987.~~

~~(c) The tax must be paid to and collected by the department. The department shall prepare appropriate returns to be filed by each employer or insurer with the payment of the tax.~~

~~(d)~~*(b)* Each employer shall maintain the records the department requires concerning the employer's payroll. The records are subject to inspection by the department and its employees and agents during regular business hours.

~~(e) Taxes not paid when due bear interest at the rate of 1% a month. The employer shall also pay a penalty equal to 10% of the amount of the delinquent tax.~~

(2) All collections of the tax are appropriated to and must be deposited as received in the tax account. The tax is in addition to any other tax or fee assessed against employers subject to the tax.

(3) (a) On or before the 20th day of May, August, November, and February, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a).

(c) A tax payment required by subsection (1)(a) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who

willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall, on [the effective date of this act] or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

~~(3)~~*(7)* ~~Sections 15-35-112 through 15-35-114, 15-35-121, and 15-35-122~~ *The provisions of Title 15, chapter 30, not in conflict with the provisions of this part* regarding *administration, remedies, enforcement, collections, hearings, interest,* deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department."

Section 17. Section 39-71-2504, MCA, is amended to read:

"**39-71-2504. Workers' compensation tax account.** (1) There is a workers' compensation tax account in the state special revenue fund. *The workers' compensation tax account consists of a tax account and a workers' compensation loan repayment account.*

(2) All collections of the tax, interest and penalties on the tax, and revenue appropriated to the *workers' compensation tax* account under section 11, Chapter 9, Special Laws of June 1989, must be deposited in the *workers' compensation tax* account. *All such money deposited in the workers' compensation tax account must be credited to the workers' compensation loan repayment account to the extent necessary to pay the principal of and interest due on workers' compensation loans issued under [section 4]. The balance in the workers' compensation loan repayment account must be credited to the tax account within the workers' compensation tax account* and ~~are~~ *is* statutorily appropriated, as provided in 17-7-502, to the ~~department~~ *state fund* to be used to reduce the unfunded liability in the state fund *incurred for claims for injuries resulting from accidents that occurred before July 1, 1990.*"

Section 18. **Coordination with Occupational Disease Act of Montana.** For purposes of [this act] and the administration of Title 39, chapter 72, a reference in [this act] to an injury resulting from an accident or to a claim for an injury resulting from an accident includes a disablement as defined in 39-72-102(4).

Section 19. **Transfer of accounts receivable.** The department of revenue is not responsible for the collection of an account receivable it takes over from the department of labor and industry on [the effective date of this section] if the account is more than 720 days past due or is an account of an employer that is no longer in business. Such accounts must be transferred to the state auditor for collection.

Section 20. **Settlement of fixed benefit claims that arose prior to July 1, 1990.** (1) If funds are available, the state fund may offer a negotiated claim settlement to each person who has a claim that arose before July 1, 1990, for which the state fund has accepted liability, other than liability for medical benefits, and has fixed benefits. Each settlement offer must contain a provision granting the state fund a full and unconditional release of liability, other than liability for medical benefits, in exchange for accepting the negotiated claim settlement. The claimant shall accept a negotiated claim settlement in writing before November 1, 1990, or the settlement offer is void. The negotiated claim settlement may be paid in a fixed amount without any justification by the claimant.

(2) If the negotiated claim settlement offer made pursuant to subsection (1) is not accepted, the lump-sum law in effect on the date of the injury applies.

Section 21. **Request for proposals for claim settlement.** The state fund may prepare a request for proposals for contracting with private claims adjusters for settling the claims of persons whose benefits have not been determined under a claim that arose before July 1, 1990. The request for proposals may be based upon a dollar amount of unsettled claims or upon a percentage of claims for which benefits have not been determined. The state fund may not enter into a contract based upon a proposal until it has reported the results of the proposals to the 52nd legislature and has received legislative authorization to enter into a contract based upon a proposal.

Section 22. Section 33-1-102, MCA, is amended to read:

"**33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs.** (1) No person shall transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of such corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of such organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, ~~part~~ *parts* 21 *and 23*, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 23. Section 10, Chapter 664, Laws of 1987, is amended to read:

"Section 10. **Effective date ~~— termination~~.** This act is effective on passage and approval ~~and terminates June 30, 1991~~."

Section 24. **Time for filing tax returns.** For the period from July 1, 1990, through June 30, 1991, each employer subject to the tax provided for in 39-71-2503 shall file, on or before the 20th day of May, August, November, and February, a return in the form and containing the information required by the department of labor and industry.

Section 25. **Appropriation.** There is appropriated $124,131 from the general fund to the department of revenue for the fiscal year beginning July 1, 1990, to be used to convert state fund and department of labor and industry data relating to the collection of the employer's payroll tax and to prepare a system for the collection of the tax by the department of revenue.

Section 26. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 27. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 28. **Codification instruction.** [Sections 1, 2, 4, and 5] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1, 2, 4, and 5].

Section 29. **Effective dates — applicability.** (1) [Sections 1 through 13, 15, 17, 18, 20 through 28, and this section] are effective July 1, 1990.

(2) The change in the tax rate in 39-71-2503(1)(a) and the amendment inserted at the end of 39-71-2503(1)(a) by [section 16] are effective October 1, 1990, and apply to wages payable on or after July 1, 1990.

(3) [Sections 14 and 19] and all other amendments to 39-71-2503 contained in [section 16] are effective July 1, 1991.

Approved June 19, 1990.

House Bill No. 2 Clarification: In sec. 7 of HB No. 2, at end of first sentence, the phrase "nonprofit, independent public corporation" was deleted but was not shown as stricken and "mutual insurance fund" was added but was not underlined.